

Institution: University of Nottingham
Unit of Assessment: 20
Title of case study: Piloting Pre-Trial Witness Interviews (PTWI) by Crown Prosecutors – Facilitating the Practical Implementation of Criminal Justice Policy
<p>1. Summary of the impact</p> <p>This research informed the introduction and on-going implementation of a major criminal policy innovation, namely, Pre-Trial Witness Interviewing (PTWI) by Crown Prosecutors across England and Wales. It was conducted in partnership with the Crown Prosecution Service (CPS), and provided independent evaluation of PTWI as an integral component of the piloting phase prior to national roll-out. The research formed part of the initial PTWI training of selected Crown Prosecutors and, following roll-out, continued to serve as a resource for frontline prosecutors, affecting case progression, complainants' experiences and the outcomes of criminal cases (prominently including serious sexual assaults and domestic violence).</p>
<p>2. Underpinning research</p> <p>Until very recently, pre-trial contact between prosecutors and witnesses was forbidden in criminal proceedings in England and Wales. This restriction (absent in many other common law jurisdictions) increasingly came to be viewed as contrary to the interests of justice, as highlighted, e.g., in public criticism of the CPS following the collapse of the first Damilola Taylor murder trial. PTWI is a revolutionary development in English criminal procedure, enabling prosecutors to interview key witnesses at an early stage in the process for the purposes of improving their decision-making in relation to charge selection, discontinuance and case preparation for trial. PTWI may also ameliorate complainants' experiences of criminal proceedings and assist witnesses to give their best evidence in court.</p> <p>In order to test and fine-tune the policy, CPS conducted a "live case" Pilot of PTWI between January 2006 and April 2007. Extending previous successful research collaborations in relation to special measures for vulnerable and intimidated witnesses[1], [2], CPS engaged Professor Paul Roberts as a consultant to devise and conduct an independent socio-legal evaluation of PTWI in action during the Pilot phase. This project was designed to ascertain (in conjunction with other monitoring activities undertaken by CPS) whether, and to what extent, Pilot interviews achieved their stated objectives, and to identify areas of best practice and issues for further practical consideration [3], [4]. A qualitative socio-legal methodology was developed by Roberts, in discussion with CPS Policy Directorate, to investigate the dynamics of prosecutors' decision-making in relation to (i) case-selection; (ii) interviewing strategy; (iii) interactions with other agencies (police; counsel); and, crucially, (iv) the impact of PTWI interviewing on case progression (decisions to charge, discontinue, secure further evidence, or prosecute to trial)[5].</p> <p>CPS granted Roberts unparalleled access to the 20 or so Crown Prosecutors selected and trained to conduct Pilot interviews, and also to CPS' own monitoring data on the 93 Pilot cases in which PTWI was considered. Sixteen in-depth, semi-structured qualitative research interviews were conducted by Roberts or his then doctoral student and research assistant, Candida Saunders, with Crown Prosecutors and Chief Crown Prosecutors in the four CPS Pilot Areas. In addition, Roberts organised and led three "training days" (run as large focus and discussion groups) with these and other PTWI prosecutors in May 2006 and January 2007, which also provided supplementary research data.</p> <p>A comprehensive final report (c.110,000 words), detailing the research findings and containing twenty-two specific recommendations for further consideration, was presented to CPS Policy Directorate in April 2007. A heavily abbreviated summary was published by CPS on its website in early 2008 [3], and this document formed part of the guidance provided to Crown Prosecutors in PTWI's crucial formative years following national roll-out in April 2008.</p> <p>In brief, the research demonstrated empirically that PTWI could in principle achieve its stated aims of improving prosecutorial decision-making, promoting effective prosecutions and helping complainants and other witnesses in the interests of justice. However, several practical concerns—not just "teething-troubles"—were also identified (including potential "witness coaching", non-cooperation, and credibility/impeachment issues[5]); and (i) prosecutor selection; (ii) tape-</p>

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recording; (iii) pre-trial disclosure; and (iv) the definition of “new evidence” requiring supplementary witness statements were highlighted as practical matters requiring further attention both pre- and post-national roll-out.

Paul Roberts was appointed to a lectureship in the University of Nottingham School of Law in 1993, and has been Professor of Criminal Jurisprudence since 2003.

Candida Saunders began her doctorate in the University of Nottingham School of Law in 2005, and was appointed to a lectureship in the School in 2008.

3. References to the research (indicative maximum of six references)

1. Debbie Cooper and Paul Roberts, *Special Measures for Vulnerable and Intimidated Witnesses: An Analysis of Crown Prosecution Service Monitoring Data*. London: CPS (2005), v + 193pp <http://www.cps.gov.uk/legal/assets/uploads/files/monitoring%20data.pdf>
2. Paul Roberts, Debbie Cooper and Sheelagh Judge, ‘Monitoring Success, Accounting for Failure: The Outcome of Prosecutors’ Applications for Special Measures under the Youth Justice and Criminal Evidence Act 1999’ (2005) 9 *International Journal of Evidence & Proof* 269-290 doi: <http://dx.doi.org/10.1350/ijep.2005.9.4.269>
3. Paul Roberts and Candida Saunders, *Interviewing Prosecution Witnesses: A Socio-Legal Evaluation of the Pre-Trial Witness Interview Pilot* (CPS, 2008), 38pp, 2008-2013 hosted at: http://www.cps.gov.uk/publications/research/interviews_report.html [available on request].
4. Paul Roberts and Candida Saunders, ‘Introducing Pre-Trial Witness Interviews – A Flexible New Fixture in the Crown Prosecutor’s Toolkit’ [2008] *Criminal Law Review* 831-853 [REF2 (Saunders)]
5. Paul Roberts and Candida Saunders, ‘Piloting PTWI – A Socio-Legal Window on Prosecutors’ Assessments of Evidence and Witness Credibility’ (2010) 30 *Oxford Journal of Legal Studies* 101-141 [REF2 (Saunders)]
6. Paul Roberts and Candida Saunders, ‘Pre-Trial Witness Interviews and the “Justice Gap” - A Plea for Sophistication in Criminal Procedure Reform’, <http://ssrn.com/abstract=1486040>

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4. Details of the impact

The research was commissioned by CPS, specifically in order to develop and implement evidence-based criminal justice policy, and to provide operational guidance in its refinement. It represented the cementing of a pioneering research partnership, affording exceptional research access—and influence—of a kind that CPS has rarely granted to external researchers. Although the primary research partner/stakeholder was CPS itself, improvements in the quality of criminal prosecutions benefit all concerned. Complainants should be treated more sensitively. Cases are strengthened, improving outcomes; or discontinued more efficiently, saving resources and sparing suspects from unnecessarily prolonged official scrutiny or detention[i, ii, viii]. The ultimate beneficiary is society at large, in terms of criminal proceedings better able to secure justice. In the words of the Director of Public Prosecutions:

"Pre-trial witness interviews represent a fundamental change to our legal system as prosecutors were not allowed to interview witnesses in any cases in England and Wales before these CPS pilots began. I consider witness interviews to be an essential tool to help prosecutors to make better informed decisions about criminal cases so that the right person is brought before the right court for the right offence"[iii].

Independent external research was regarded by CPS as a precondition of national roll-out, and was therefore instrumental in promoting each of these positive outcomes. As the CPS Policy Team Leader with responsibility (at that time) for PTWI confirms: “[T]he evaluation process, incorporating

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your socio-legal study, was of considerable assistance to the prosecutors in the pilot areas and assisted me in informing the content of guidance and training that we provided and continue to provide. I think it also fair to say that the contents and conclusions of your summary report contributed to the decision to roll it out in the first place.... [Y]our research was useful to CPS in developing this significant initiative in prosecutorial practice”[vi].

The published research findings and analysis, in conjunction with informal advice to CPS, have continued to contribute to the further refinement and implementation of PTWI on a rolling basis:

(1) Following completion of the PTWI Pilot and its evaluation (centrally featuring Roberts and Saunders’ socio-legal research), the decision to implement PTWI nationally was announced in 2007 (Statement of Baroness Scotland, Attorney-General, HL Deb 27 Nov 2007, vol 696 cols 142-143WS; Statement of Vera Baird MP, Solicitor-General, HC Deb 27 Nov 2007, vol 468 col 24WS). PTWI was successfully rolled-out to all 42 CPS Areas in England and Wales in April 2008. A CPS press release stated: “The initiative was trialled in four CPS areas from January to December 2006, on the basis of which a decision was made to roll out the initiative throughout England and Wales”[iii]. The CPS *Annual Report* for 2007-2008 elucidated:

“Between January 2006 and January 2007, the pre-trial witness interview (PTWI) scheme was successfully piloted in four CPS Areas.... Following the pilot, the four CPS Areas have continued to undertake PTWIs – by January 2008 over 90 interviews had been conducted, predominantly in serious cases. **An external evaluation concluded that the scheme improved prosecutorial decision-making by strengthening cases which went to trial and rejecting potentially weak cases at an early stage.** National implementation was achieved on time in April 2008 and around 180 prosecutors have been trained to undertake PTWIs”.[iv, emphasis supplied]

Many informed observers were initially sceptical or hostile to the introduction of PTWI[v]. Crucially, the Pilot Evaluation research drew attention to risks and potential shortcoming which would require on-going monitoring and effective management to ensure the success of national roll-out.

Building on the influence of the research in helping to pave the way for PTWI’s national roll-out, the principal on-going impacts of the research post roll-out (April 2008 onwards) are attributable to:

(2) The experience gained by Pilot prosecutors who participated in the “training days”, and subsequently became PTWI “champions”, extolling the benefits of PTWI and passing on tips to their front-line colleagues. The “training days”, devised and run by Roberts, were organised around presentations, by Roberts, of provisional results of the socio-legal study, which were debated at length by prosecutors (and the research findings augmented accordingly). Pilot prosecutors said that these sessions were invaluable opportunities to pool experiences, and that there was no substitute for face-to-face instruction and discussion, e.g. one prosecutor emphasised the indispensability of “[a]wareness training... informing lawyers in a lecture or seminar scenario. Whilst lawyers have memos and written guidance, they are less likely to read and digest information, as they have other pressing concerns. A course, however, ensures they are made aware”. The study’s “training days”/focus groups are regarded by CPS as having made an on-going, long term contribution to the development, practical implementation and refinement of PTWI: “[A] useful, possibly overlooked, aspect of your evaluation report was that you brought together a lot of scenarios and views in one document, which made it easier to pick through and discuss potential pitfalls in the pilot evaluation meetings and later in the training sessions” [vi].

(3) On-going influence on CPS operational policy guidance. CPS internal documentation and operational guidance on conducting pre-trial interviews was systematically revised in the light of the Pilot: see http://www.cps.gov.uk/legal/p_to_r/pre-trial_witness_interviews/. In particular, the summary research report written by Roberts and Saunders [i] was hosted on the CPS website from January 2008 to mid-2013, and during this time formed part of the operational resources provided to front-line Crown Prosecutors in considering and conducting pre-trial interviews.

PTWI continues to figure in developments of CPS operational policy, e.g. in revised guidance for prosecutors in relation to rape and sexual offences, which now states: “The use of pre-trial witness interviews (PTWI) is considered an effective tool in rape cases. This will particularly apply in cases where the decision to prosecute is 'borderline'. In June 2009... the DPP instructed that prosecutors should, as part of their decision-making in every rape case, consider whether or not a PTWI is appropriate and provide reasons for their decision... This instruction remains in force and should be followed in every case”[vii]. This echoes our research finding of “several striking illustrations in the Pilot cases in which convictions were achieved that probably could not have been secured without the benefit of a pre-trial witness interview” (viii, p.7).

(4) International policy transfer: Dissemination of research findings is still on-going, especially in terms of international impact[ix]. There has been interest from senior prosecutors and policy-makers overseas, e.g. Hong Kong[x], in examining English experiences of PTWI.

5. Sources to corroborate the impact

- i. Paul Roberts and Candida Saunders, *Interviewing Prosecution Witnesses: A Socio-Legal Evaluation of the Pre-Trial Witness Interview Pilot* (CPS, 2008), 38pp, was hosted 2008-13 at http://www.cps.gov.uk/publications/research/interviews_report.html; and summarised in Paul Roberts and Candida Saunders, ‘Introducing Pre-Trial Witness Interviews – A Flexible New Fixture in the Crown Prosecutor’s Toolkit’ [2008] *Criminal Law Review* 831-853.
- ii. Clare Dyer, ‘Criminal Justice Revolution to Secure More Convictions – Plan for prosecutors to interview witnesses before trial will end ancient rule’ *The Guardian*, 11 November 2005 (front-page headline).
- iii. “CPS announces the roll out of two key justice initiatives”, CPS Press Release 1 April 2008, http://www.cps.gov.uk/news/latest_news/122_08/ (originally, with hypertext link to i).
- iv. Crown Prosecution Service *Annual Report 2007-2008*. HC 619 (TSO, 2008) <http://www.cps.gov.uk/publications/reports/2007/justice.html>
- v. Polly Botsford, ‘Early Warnings – Pre-trial interviews for Barristers are not far off but the reforms bring potential hazards alongside welcome benefits’, *Law Society Gazette*, 28 March 2008. <http://www.lawgazette.co.uk/features/early-warnings>; Liberty’s Response to the CPS Consultation on Pre-Trial Witness Interviews by Prosecutors. (Liberty, July 2003). <http://www.liberty-human-rights.org.uk/pdfs/policy03/pre-trial-witness-interviews-july-2003.pdf>; Criminal Bar Association Response to ‘Pre-Trial Witness Interviews by Prosecutors, A Consultation Paper’. (CBA, July 2003).
- vi. Mr Dan Jones, Specialist Prosecutor (Special Crime and Counter Terrorism Division), Crown Prosecution Service (e.g. letter to PR dated 17 Oct 2013)
- vii. CPS Legal Guidance, Rape and Sexual Offences: Chapter 7: Pre-Trial Witness Interviews, http://www.cps.gov.uk/legal/p_to_r/rape_and_sexual_offences/pre-trial_witness_interviews/index.html.
- viii. Paul Roberts and Candida Saunders, ‘Pre-Trial Witness Interviews and the “Justice Gap” - A Plea for Sophistication in Criminal Procedure Reform’, <http://ssrn.com/abstract=1486040>
- ix. Paul Roberts, “Prosecutors Interviewing Witnesses: A Question of Integrity?”, paper to mixed academic/practitioner criminal justice seminars in Hong Kong (Dec 2012) and Sydney (April 2013): <http://www.nottingham.ac.uk/law/news/archive/paul-roberts/professor-paul-roberts-participates-in-conduct-unbecoming-conference.aspx>
- x. Legislative Council Panel on Administration of Justice and Legal Services (2008), *Information Paper on Pre-trial Interviewing of Witnesses by Prosecutors*, LC Paper No. CB(2)2327/07-08(05). <http://www.legco.gov.hk/yr07-08/english/panels/ajls/papers/aj0623cb2-2327-5-e.pdf>; *Submission of the Hong Kong Bar Association – Pre-Trial Witness Interview By Prosecutors* (HKBA, Oct 2009) <http://www.hkba.org/whatsnew/submission-position-papers/2009/20091016a.pdf>