The Experiences of Young Complainant Witnesses in Criminal Court Trials for Sexual Offences

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For effective provision of justice it is important that young witnesses are involved in criminal trials, yet participation may be detrimental to their well-being and presents challenges for gaining full and accurate evidence from them. Innovations in court processes intended to support the well-being of young witnesses should, amongst other considerations, be informed by the perspectives and experiences of those whom they are intended to assist. The participants in the current study consisted of young complainant witnesses who were involved in criminal court trials for sexual offences, along with their parents or caregivers. Semi-structured interviews with individual participants were conducted. Audio recordings of interviews were then transcribed and analysed using thematic analysis. Nine themes were identified in the data: (1) pre-trial delay makes everything worse, (2) uncertainty is difficult and being prepared is important, (3) cross-examination is stressful, (4) having a voice is a positive aspect of the trial, (5) the possibility of seeing the defendant is stressful, (6) for parents, putting on a brave face and being a supporter is challenging, (7) young witnesses feel exposed by the court process and family members feel exposed to details of the offending, (8) support is critical, and (9) families place importance on the verdict and sentencing. The findings are considered within the New Zealand context as well as other jurisdictions, and recommendations are made.

Key words: child sexual abuse; child witnesses; complainant witnesses; criminal trials; cross-examination.

For effective provision of justice, it is important that young witnesses are involved in justice processes. However, participation may be detrimental to their well-being (Quas et al., 2005) and presents challenges for gaining full and accurate evidence from them (Andrews & Lamb, 2017; Klemfuss, Quas, & Lyon, 2014; Zajac & Cannan, 2009; Zajac, Gross, & Hayne, 2003).

Child sexual abuse is the primary reason for children appearing as complainant

witnesses in New Zealand criminal courts (Hanna, Davies, Henderson, Crothers, & Rotherham, 2010). In such cases, a child complainant's evidence may be critical, as additional evidence – whether medical or from other witnesses – is frequently lacking (Blackwell & Seymour, 2015). Several aspects of the justice process have been identified as difficult and distressing for young witnesses, particularly those who are complainants. These include delay to trial, lack of

understanding of the justice process, cross-examination, and trial outcomes (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Plotnikoff & Woolfson, 2009).

Interviews with young complainant witnesses reveal significant distress and anxiety while awaiting trial (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Plotnikoff & Woolfson, 2009). Pre-trial distress is likely to be exacerbated by long delays between reporting to the police and going to trial. Such delays are common, with studies finding average pre-trial delays of approximately 18 months in Australia (Eastwood & Patton, 2002) and 15 months in New Zealand (Hanna et al., 2010). In addition, trials are frequently rescheduled, thus adding to delay and uncertainty. In the United Kingdom, around one third of trials are rescheduled (Plotnikoff & Woolfson, 2009), and this is also common in New Zealand (Hanna et al., 2010). Young witnesses' reports of difficulties experienced during this period of delay include nightmares, suicide attempts, deliberate self-harm, self-hatred, fear of further victimisation, depression, inability to concentrate on schoolwork, fear of returning to school following the trial, and fear of not testifying well (Eastwood & Patton, 2002; Hayes, Bunting, Lazenbatt, Carr, & Duffy, 2011). The effects of involvement in court processes include adverse short- and long-term outcomes in terms of well-being and functioning (Goodman et al., 1992; Quas et al., 2005). Even after controlling for a number of factors, testifying is associated with poor adjustment one decade after trial (Quas et al., 2005).

Fear of seeing the defendant is a particularly salient aspect of court-related distress for young people (Eastwood & Patton, 2002; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). Even in jurisdictions where young witnesses are protected from direct contact with the defendant by use of closed-circuit television (CCTV) or screens, seeing the defendant during the trial (either in or outside of the court room) is reported by young witnesses as being distressing, and relief and gratitude are

expressed by those who are informed that contact with the defendant will not occur (Eastwood & Patton, 2002). Eastwood and Patton (2002) comment that in failing to protect the child witness from the alleged perpetrator, the justice system perpetuates power relationships between child and abuser, and risks further trauma.

Poor understanding of court processes, including the roles and responsibilities of court staff and participants, contributes to distress among young witnesses (Quas, Wallin, Horwitz, Davis, & Lyon, 2009). Although legal knowledge improves with age, difficulties in understanding are common even for older witnesses (Cooper, Wallin, Quas, & Lyon, 2010; Quas et al., 2009).

The aspect of court involvement that has been subject to the greatest research interest is that of testifying. Young witnesses report that both evidence-in-chief and cross-examination are stressful, and that cross-examination is particularly distressing. The language employed by lawyers is often experienced as confusing, and lack of comprehension adds to young witnesses' reports of stress (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Plotnikoff & Woolfson, 2009). Consistent with this observation, examination of New Zealand trial transcripts has identified that lawyers – particularly the defence – frequently use closed, leading and complex questions, and language which is beyond the communicative and cognitive capabilities of young witnesses (Davies & Seymour, 1998; Hanna, Davies, Crothers, & Henderson, 2012; Zajac & Cannan, 2009; Zajac et al., 2003). In addition, accusations of lying and aggressive cross-examination are common (Blackwell, 2007; Davies, Henderson, & Seymour, 1997; Davies & Seymour, 1998; Hanna et al., 2010), and this is experienced by young witnesses as especially upsetting (Back, Gustafsson, Larsson, & Berterö, 2011; Eastwood & Patton, 2002). Stress associated with the courtroom setting and unsupportive interviewing styles has been shown to have a negative impact on memory retrieval (Nathanson & Saywitz, 2003; Quas & Lench,

2007; Saywitz & Nathanson, 1993), suggesting an impact of stress on the quality of evidence that young people are able to provide within the trial.

In response to these concerns, a number of legislative changes and other innovations aimed at minimising the distress of court involvement for young witnesses and increasing the quality of evidence that they are able to provide have been introduced in New Zealand. These have, in most cases, mirrored those implemented in jurisdictions elsewhere and include pre-recorded evidence-in-chief, support in the form of victim advisors and education for court, and provision of CCTV or screens when giving evidence in court (for an overview of current provisions for child witnesses, see Ministry of Justice, 2010).

Despite such innovations, concerns remain about witness distress and associated quality of evidence (e.g., Hanna et al., 2010; New Zealand Law Commission, 2015). With the intention of further addressing these concerns, the Whangarei Young Witness Pilot Protocol was implemented by judges in the Whangarei region in late 2014. The protocol operates within existing resourcing frameworks and is not reliant on legislative change (for details of the protocol, see Randell, 2017; Randell, Seymour, Henderson, & Blackwell, 2016). The discussion surrounding innovations relevant to young witnesses in New Zealand has lacked qualitative research which considers the experiences of these young witnesses and their family members, and the current study represents a first step in addressing this deficit. Participants in this study included both those who had appeared in trials conducted under the protocol and those who had appeared in standard trials. The present study is predicated on the assumption that a better understanding of the experience of young witnesses and their family members will assist in the development of innovations in New Zealand such as the Whangarei Young Witness Pilot Protocol.

Method

Participants

This research used semi-structured interviews that were conducted with young complainant witnesses and their parent or primary caregiver involved in trials for sexual offences in district courts in Auckland and Whangarei that had occurred in 2014 or 2015. For the purposes of this research, a 'young person' is defined as being under 18 years of age at the time of the trial. With the intention of better ensuring that young participants were well supported, only young witnesses whose parent was also willing to be interviewed were eligible for participation. Use of the term 'parent' throughout this report refers to a parent or primary caregiver. Parents were able to participate whether or not their child was interviewed.

As recruitment progressed, it became apparent that more parents than young witnesses were willing to participate. In some cases, parents informally reported the reason for this being that their children did not want to talk about their experiences and, in other cases, parents did not want their children to participate as their experience of court had been taxing and they did not want them to have to discuss this any further. In total, ten parents and four young person complainant witnesses were interviewed.

Nine of the ten parent participants were biological parents (six mothers and two fathers), one is a step-parent, and one was a family member in a caregiver role. The children of the parent participants who participated in court as young witnesses were aged between 8 and 17 years at the time of the trial. Some parent participants had more than one child involved in the trial as a complainant witness. For one parent participant, the trial had not eventuated due to a last-minute guilty plea. The young witness participants were all female and were pre-adolescent or adolescent at the time of the trial. In all cases the defendant was a person known to the young person such as a parent, step-parent, other family member or family friend. In all but one case

the defendant was found guilty on some or all charges. Further demographic details of participants and trial details are not included for the purposes of protecting participants' identities.

Interview Schedule

Given that such research has not previously been conducted in a New Zealand context, it was important that the study was not limited to preconceived areas of focus indicated by overseas literature or researcher assumptions. Participants were encouraged to identify the aspects of their experience that were of importance to them. Nevertheless, a semi-structured interview schedule was developed that invited comments related to each stage of the court process (pre, intra and post). This included questions about the best, worst, least stressful, and most stressful aspects of court involvement, factors that increased or decreased any stress experienced, supports, understandings of what was happening throughout the trial, and any positive and negative impacts of participating in the court process. In addition to their own experience, participants were asked for any advice they had for people who work in the courts to make the process better, and any advice for other young people and for families going through this process. Interviews with parents covered both the parent's experience and their perspective of their child's experience.

Procedure

Ethical approval for this study was granted by the University of Auckland Human Participants Ethics Committee. Approval was also granted by the Ministry of Justice Research and Evaluation Team Sector Group.

Initially crown prosecutors recruited participants for the current study. However, after the obtaining of ethical and Ministry of Justice approvals, court support staff at HELP Auckland (an Auckland sexual abuse counselling agency) and the Whangarei and

Auckland Courts' Victim Advisors made initial contact with potential participants in the majority of cases. Recruiters met with or phoned young people and their parents following their involvement in a trial. A participant information sheet was provided and reviewed, and if interest in participation was expressed, a consent form for provision of consent for contact to be made by the primary researcher was completed.

Consistent with ethics provisions, such contact was not made until at least six weeks following a not guilty verdict or, in the case of a guilty verdict, six weeks after sentencing. This was to allow for the appeal period to have passed, thereby minimising the risk of interviewing a witness when the case had not yet been concluded. Thus the risk of interviews being viewed as contaminating any subsequent evidence was averted.

The primary researcher contacted potential participants to provide further information about the research and allow them an opportunity to ask detailed questions about the research. If they then decided to participate, they were offered the option of being interviewed in their home or at university or counselling settings available to the research team. The young witness participants were offered the option of being interviewed alone or with a support person present. Participants were emailed a consent form that they were able to review prior to the interview. For those under 16 years of age, consent from a parent was required in addition to assent from the young person. Participants received a NZ\$25 voucher in appreciation of their time and involvement.

Interviews were approximately one hour in length. All interviews were conducted by the primary researcher. Prior to beginning the interview, a clear explanation of the interview process was provided to participants, including the topics in the interview schedule and a discussion of confidentiality and use of data for the purposes of this research. The consent form was then reviewed and signed before proceeding with the interview. It was made

clear that participants could stop the interview at any time, and that if they did not wish to answer any particular question they could say 'I don't want to answer that' and their wish would be respected. Interviews were audio recorded.

Data Analysis

All interviews were transcribed verbatim by a professional transcriber who had signed a confidentiality agreement. The transcripts were then de-identified through the removal of all person and place names.

Interview data were analysed using thematic analysis following the process recommended by Braun and Clarke (2006). Data relevant to the research questions were first coded and entered into a spreadsheet. A code identifies an individual piece of data that is of interest given the research question. The codes were then collated into broader themes. A theme, as defined by Braun and Clarke, 'captures something important about the data in relation to the research question, and represents some level of patterned response or meaning within the data set' (2006, p. 82). To improve the trustworthiness of the analysis, codes and themes were reviewed and refined by the primary researcher and supervisor until consensus was reached (Morrow, 2005).

Findings

Nine themes regarding the experiences of young complainant witnesses and their family members were evident in the data as follows.

Pre-Trial Delay Makes Everything Worse

For almost all families the delay period between reporting an offence and the trial was an aspect of the entire court process that had the most significant negative impact:

The delay up to the trial was ghastly. It was absolutely shocking and if I could do anything about it I would. That's just not fair on kids, not at all [...] I just think that's

disgusting to make kids wait that long. It's hard enough for them to come out and tell their story, and to have to wait that long is just wrong. They need to do something with that. Parent 7

Some parents noted the significance of the length of the pre-trial delay in relation to the lifespan of a child:

The waiting was definitely the worst part. The time that it took for it, two and a half years, is a huge amount of time for a child. It was the day before her eighth birthday that she disclosed and then it was May, she was 10, two and a half years. Parent 5

The pre-trial delay period was variously described by parents and young people as 'nerve-racking', 'harrowing' and 'horrendous', and as exacerbating the significant stress and mental health difficulties that they experienced. Relationships and schooling were both affected by the stress of the delay period and contributed to this stress. Some participants spoke about significant absences from school, due both to court-related obligations and mental health difficulties. This impacted on the children's ability to be settled at school and manage schoolwork, peer relationships and queries from peers about the reason for their absences.

My 17-year-old doesn't go to school because she had to go over a bridge, and attempting suicide four times she was a real worry for the school. They were always on guard. They always had to check where she was. She was in the red flag and it got too hard for her to even concentrate without having panic attacks, or panic seizures. And it was just easier for her not to be ruining everybody else at that school, and she couldn't focus [...] she had to stop. Parent 1

Many participants attributed the negative impact of the pre-trial delay period as being the result of young people being unable to move forward with their lives until completion of the trial; a feeling of life being 'on hold'. Some parents described the constant presence of the trial in their minds and the

minds of their children, and some emphasised how incredibly long this period of time is in the life of a child:

[If the pre-trial period had been shorter] I think it would have made a huge difference, the emotions wouldn't just keep building [...] it was a constant conversation, so it kind of drags on it takes over your life more and more. Parent 6

Many participants spoke of the emotional 'roller coaster' associated with anxiety about the trial, engagement with practicalities and logistics relating to the upcoming trial, continual reminders of the offending and the upcoming trial, and the knowledge that they had to maintain memory of details of the offending:

It came down to my daughter. The biggest impact [was on] her health and well-being and the delay was huge on her because she was scared, she didn't want to talk, she didn't know what was going to happen and she had to re-dredge up, she just wants to forget about it and put it behind her. And that couldn't happen because it was two and a half years later. Parent 5

Delay to trial exacerbated existing tensions in families where certain family members were supporting the complainant and others supporting the defendant:

When I rang to say I'm sorry about [a relative] passing away, she just said 'Don't bother coming to the tangi [funeral]' and hung up on me. Parent 5

You always have this fear and some anxieties that someone in your family is going to throw some derogatory comments about it. It happened on a number of occasions, so it would make social events not so nice [...] you've got to start re-evaluating whether you attend these things. Parent 10

When asked specifically what would make the process better for young witnesses and their families, half of the parents highlighted the need to address the delay to

trial given its role in exacerbating the stress and distress that young people and their families experience.

Uncertainty is Distressing and Being Prepared is Important

Uncertainty about aspects of the trial played a significant role in the stress of court involvement for the young people and their families. The court process was experienced as foreign and intimidating by both the young people and families, and many described anxiety arising from the uncertainty of what the trial would involve. This included fears that young witnesses had regarding whether or not they would have to sit in court, the types of questions that would be asked, and practicalities such as court dates and times, and organisation of school and work around court appearances. One young person said that although she had people available to answer her questions, the court process was so foreign that she did not know what to ask.

Some witnesses and families commented on the timing of information about the trial process whereby they received a lot of the information close to the court date but felt 'left in the dark' up until then. This is likely because education for court is provided for young witnesses in the weeks or days preceding the trial:

We were left in the dark a little bit for the whole time and then it got closer; a few days [prior to the trial] everything started up and we were rushing around. So it would've been absolutely wonderful if we could've gotten more advice prior [...] we just went along [with] our normal life and we were on edge because we didn't know what was going to happen. Young Person 1

It is notable that as a result of a lack of understanding or knowledge, young people made incorrect assumptions about the court process. This included that they would have to give evidence in the court room, that they would be giving evidence in an open court and

that parents and other family members would hear them giving evidence. Some of these were informed by television programmes:

It's not as scary as you'd think and it's nothing like you would see on the TV shows [...] You don't absolutely have to sit in the court room. No one gets up and walks around and everything and gets in your face. Young Person 1

Although the extent to which families felt well prepared for the court process varied significantly, preparedness was seen as a means of relieving anxiety and stress. Preparedness typically occurred through the contact that families had with professionals involved with their case. However, half of the parents experienced changes to personnel, particularly police, for reasons such as staff resignations and maternity leave. Such changes disrupted the provision of information and support. Parents described the process of building a trusting relationship with someone and then having to rebuild it again with someone else:

We went through three policemen [...] we trusted in the first one, and then he disappeared [...] I didn't know the rest of his process, and I thought 'will it just get lost? Will we be left all by ourselves flapping in a room, not knowing what is going to happen or even any of the court process that you have to do, - when you walk in which side do you sit on, all of that?' Parent 1

The court visit was described as a useful and positive part of preparation for the trial by several of the parents and all of the young people. For one young person who had initially wanted to give evidence in court, this visit allowed her to make an informed decision regarding this. After seeing the proximity of witnesses in court to the defendant, she decided to give evidence via CCTV. Notably, preparation through having to come to court on multiple occasions was also helpful to her confidence about participation in the court process, although the procedural delays that caused this were perceived negatively.

Some participants commented on the importance of preparedness for the cross-examination in particular. Preparation for aggressive questioning and accusations of lying from the defence lawyer was described as reducing the distress experienced by young witnesses in relation to such questioning, and enabling them to give better answers. However even when prepared, some young witnesses still found the cross-examination unexpectedly difficult:

They told us a lot of times but we didn't expect it to be that hard. Young Person 4

Cross-Examination is Stressful

For young people, cross-examination was an extremely stressful aspect of the court process. There were three main aspects relating to cross-examination which contributed to their experience of stress: the confusing nature of the questions, the manner of the defence lawyer, and not feeling believed or being accused of lying.

Young people said that the cross-examination questions were confusing, vague and at times irrelevant. Some young people described feeling like the defence lawyer was deliberately trying to confuse them:

The defence lawyer on the other side he was really vague and used a lot of double negatives and that got under my skin a little bit. I felt like I was being accused even though I understand that that's his job and everything [...] He just confused me with the way that he asked his questions, and so I had to sit there and think about it. Young Person 1

Some described feeling pressure to answer questions quickly, and that the defence lawyer would then answer for them rather than allow them the time to answer:

He was pushy. He'd push you to the answer, he wouldn't wait much longer. He'd ask you a question [and then] say the answer [...] So we had to correct him a lot of times. Young Person 3

Young people described the defence lawyer as 'mean', 'rude', 'offensive' and 'a bully'. Parents also reflected negatively on the manner of the defence lawyers:

They said that they've never seen a lawyer hound a kid like he was hounded and he toughed it out [...] the lawyer was trying to get him to say that I was telling him what to say, and he was saying things like 'Oh did Daddy tell you that [the defendant] is a liar?'. Parent 3

I mean she does your typical teenage stuff, but she's a good girl otherwise. I guess nothing in the way that the defence tried to make her sound like [...] That's what she shared with me [...] and I also got that when I was on the witness stand. The light that they were trying to put her in was not a positive light. When you're the defence that's your job I guess [...] to try and make the victim look like it's their fault [...] That's where I was telling you she'd come down and felt like she was being picked on. Parent 10

All young people reported being accused of lying and feeling disbelieved by the defence lawyer:

Just being like accused of lying for something, why would I get up in front of everyone and make this big deal over nothing? I just felt really bullied because he's my dad's defence lawyer and I'm just 15 [...] 'I put it to you that you made up this story, blah, blah, blah'. It just really annoyed me because I didn't want anyone not to believe me. Young Person 2

Some participants did comment on the fact that the judge did intervene when a lawyer asked confusing questions, and that they were appreciative of this intervention. These participants described the judge as being 'protective' of the young witness or 'tough' on the defence lawyer:

There were a few times that jargon was used by the lawyer, which is completely confusing to any adult let alone a child. And the judge would go 'no, you reword that' and was straight in there: 'you're not going to

say it like that, you're going to make her understand what you're saying'. And he was brilliant. Parent 2

Having a Voice is a Positive Aspect of the Trial

The importance of young witnesses having a voice was an important positive aspect of the court process for many of the young people and their families. This was described as the opportunity to tell their story and have it heard. One parent commented on the importance of her child having this voice when it was previously silenced or undermined by the alleged offender:

not only did they get justice [...] but for us, it was being heard. Incredibly private case, but [now it's] out there and it's not a secret any more, and she can deal with it. Parent 8

Most young witnesses also described telling their story as a positive part of the court process in terms of 'letting it out' and being heard:

It's that relief knowing you said as much as you could, you stood up for yourself as much as you could. Young Person 2

The Possibility of Seeing the Defendant is Stressful

The possibility of seeing the defendant was a concern that was evident throughout all aspects of the trial from pre-trial delay through to sentencing. Many parent participants spoke about the fear and distress associated with contact with the defendant and the defendant's family during the pre-trial period. These concerns included their child's anxiety in relation to seeing the defendant, the strong emotional response to seeing the defendant if this did occur, and being unable to publicly say anything about the alleged offending or the defendant's identity prior to the trial:

Every time I saw him I thought, 'oh I wonder if I could just let my foot slip on the accelerator'. You know, that's how crazy my thoughts were. No one was moving fast enough to have him moved out of the

township. Even after we told on him, they just didn't make him leave the town. Parent 9

For some families, fear of retribution from the defendant or those close to the defendant were a significant stressor:

I think it was the fact that when he was on bail at his grandma's we were totally vulnerable to him. And so the nerves were in your mouth about what he's going to do before he gets to trial [...] that's why that year to get into court was so mentally draining on them. 'He's coming to get us; he's coming to get us' [with] every sound at night. I was exhausted. Parent 8

A notable exception to this was one parent who described the delay period as 'wonderful' and a positive time because the defendant was on bail and the conditions of this prevented contact with the child, thus ensuring the child's safety and minimising family stress.

Pre-trial anxiety about seeing the defendant and supporters of the defendant included the fear of seeing them at court. Even when aware that they would be giving evidence via CCTV, some young people expressed the fear that they would bump into the defendant at court or see him or her via the CCTV cameras:

[They said] that we won't see him [...] but I was still wary of it. Young Person 4

When contact with the defendant and his or her family did occur, it heightened the distress experienced by young witnesses and their families, particularly when the alleged offending was intra-familial and disclosure had resulted in family divisions:

When he [the defendant and the father of the complainant] came out he just gave me this really evil look, and that really just put me down for the whole week. I was really upset, it was just horrible because just that look showed to me that he didn't care and that he wasn't sorry at all for. He was just angry at

me for being in the situation he is now, rather than feeling remorse. Young Person 2

For many families, sentencing was a time when they felt less protected from contact with the defendant and supporters of the defendant. This was due to having to sit in close proximity to the defendant and his or her supporters in the court during sentencing, as well as the chance of encountering them outside of the court. Some parents feared altercations occurring with the defendant (e.g., between an offending father and a supportive stepfather).

It's really hard having to sit within arm's reach sometimes of the person that has offended [...] you're sitting there and then they walk in and sit right behind you and it's just an uncontrollable feeling. It may seem small but it's actually quite big inside. Parent 6

However, in two cases parents reported a positive experience for their children as a result of attending sentencing. In both these cases the defendant was found guilty on at least some of the charges:

I took the two oldest to the sentencing, for its closure [...] It was important for them to get their closure by actually seeing that it was him, that they'd done all this work for. Parent 1

And little 'un said to me 'I want to see him', so I grabbed her and pulled her forward so she could see him. You know, even at her young age she wanted to look him in the eye. Up until that point she hadn't, and I don't think she should've. But once she knew her journey with that had come to an end it was okay, and that's the nicest feeling in the world when he's been found guilty and you see him get taken downstairs by that prison guard. Parent 2

For Parents, Putting on a Brave Face and Being a Supporter is Challenging

The role of parents as a key source of support for young witnesses and the immense

challenges that accompanied this role was a salient theme. Parents provided both practical and emotional support for their children throughout the court process. They spoke about feeling a significant responsibility for explaining the court process to their children, answering their questions and addressing their worries, and ensuring that the information they received was age appropriate, as well as protecting their children from distressing and unnecessary information:

I didn't want them to suffer in the unknown. I didn't want them out in deep waters and not knowing what to do. Parent 9

Additionally, parents were faced with the challenges of supporting children who had experienced an often significant trauma and, as a result, were experiencing complex mental health and behavioural problems, including in some cases self-harm and suicidality. Parents described the need to maintain normality and routine in the face of what was often a time of significant upheaval and chaos for families. This was due to, for example, the aforementioned family distress and mental health difficulties, an alleged offender being removed from the home, and conflict with immediate or extended family as a result of the sexual abuse disclosure:

You just do it, because you've got to have a strategy to still bring your family up in chaos – and it's absolute chaos, it's crazy. But you've still got to be consistent – every day, get up and do it. Parent 8

Almost all parents highlighted the importance of prioritising their child and their role in supporting them. 'Putting on a brave face' represented a sentiment among parents that it was their 'job' to support their child, to be strong and be seen to be coping, and maintain a stable home environment – yet the parents typically struggled to cope. They spoke of their own emotional struggles relating to learning of the offending, often with increasing detail emerging over the pre-trial period,

experiencing feelings of guilt and relationship deterioration. Parents often felt that they were not coping, were 'emotionally drained' and 'running on empty':

I've got three children and I have to have a positive stable home environment to support them through day-to-day life – you just fake it really as a mum. You have this huge amount of guilt but you have to function and provide for the children. So how do you cope? You just have to. Parent 5

Most parent participants spoke about a lack of support for them as parents, in terms of both formal and informal support (particularly in cases where extended family members did not believe or support the young witness). Some parents spoke about finding the support and information that they needed because they were assertive or courageous. Parents who were also witnesses spoke about a lack of support at court, as the victim advisor was, appropriately, there to support the child:

And I think that was probably, 'yeah we're looking after the child', but maybe the mum needed to have been looked after [as well]. Parent 2

Young Witnesses Feel Exposed by the Court Process, and Family Members Feel Exposed to Details of the Offending

Either feeling exposed as a young witness or being exposed to unwanted details of the offending as a parent or other family member is something that participants found distressing. Participants primarily talked about young witnesses feeling exposed during sentencing, when it was no longer a closed court and others – including extended family members – were present:

The worst thing about the whole court thing was that it wasn't a closed court [during sentencing]. When they were reading out the victim impact statements, I know they don't know who it is but you can tell when the person is crying, or when the judge is

talking to you and they look at you. I didn't like it at all because it was so private [...] it's embarrassing enough for everyone else to hear it, and then just for members of the public. And having to walk past them afterwards [...] I didn't like it. Young Person 2

Some parents spoke about how they or other family members were exposed to details of the offending either through hearing the evidential interview or testimony as a support person, or when attending the sentencing:

The hardest part for her [the young witness] was that she asked me to be her support person [...] she had to rewatch her evidential video to freshen her mind because it had been a long time. And she didn't laugh, but she turned around and said 'it's not a family movie, we don't need to all bloody watch it'. And that was really hard because she had told us what had happened, but when I was in that room I heard a lot more than I actually thought had happened. Parent 2

Support is Critical

Both practical support and information, as well as emotional support, were identified by all participants as being of importance. The sources of support that were of most importance for families varied and included police, the crown prosecutor, counselling, school staff, friends and family members. However, the support of victim advisors and HELP Auckland court support staff specifically was identified by every parent and child interviewed as involving both practical and emotional support. It was apparent that for almost all families, the support provided by victim advisors and court support staff was viewed as critical to their ability to manage the court process.

Victim advisors and court support staff were seen as warm, non-judgemental and understanding. They were able to help families feel more comfortable and ease their fears, as well as offering whatever support was required. The support they provided

varied in nature and was specific to the needs of the family. Some parents spoke about the victim advisor as standing in for them when they were unable to be with their child in court as they were also a witness. A young person spoke about how her court support person provided hugs when her mother could not be there, and what an important role this played in supporting her while at court. In a practical sense victim support staff were available to answer questions, provide information and assist with the organisation of things like petrol money to assist long distance travel to court:

She was absolutely awesome [...] She had empathy for the children. She was more like a mother figure to my youngest. If I couldn't be there, she would be the person that I would put there to soothe her fears. She was wonderful. Parent 1

When asked about the advice that they would have for other parents who were going to experience the court process, several parents mentioned support. This included getting as much support as possible, getting counselling and parenting support quickly, and trusting and utilising support people associated with the court process such as police and victim advisors.

Several participants raised the idea that some level of peer support, either at the court or outside of court, would have been helpful. Parents believed that other parents who had been through similar court experiences could be a beneficial source of information and support, and could have helped to normalise the process. Suggestions regarding this include groups that meet face-to-face, and Facebook groups. Some young people thought that it would have been useful to have messages of advice and encouragement from other young people who have been through the process, maybe in the form of a booklet. One family who met other complainant witnesses in the same trial at sentencing found this to be hugely beneficial.

Families Place Importance on the Verdict and Sentence

The verdict and sentence were of great significance to the families. Guilty verdicts and sentences that the family felt were appropriate were experienced positively, while not guilty verdicts were experienced extremely negatively. Because significant weight is placed on the sentence and verdict, waiting for the outcome is an anxiety-provoking aspect of the court process:

What if they found him not guilty? What if [...] all of her efforts, all of her truth goes to waste? I was extremely nervous. Parent 4

Some parents described the main concern around the verdict and sentencing as being the safety of their child. A prison sentence could provide significant relief due to its guarantee of safety, whereas not guilty verdicts and short prison sentences raise fears for the protection of the young witness:

We got the call [...] some guilty, a couple not guilty, a big amount was hung [...] And he said what happened and I said 'that's really quite shocking, but what happens now? Where does he go?'. Because the first question the kids are going to ask is 'what happens to him? Is he going to be let out?'. Parent 1

A guilty verdict was also considered by one parent as important in validating the young person's story and counteracting any disbelief within the community:

The best thing was hearing that he was guilty on all charges and that relief [...] because there were a lot of people who didn't believe these girls. You lose a lot of friends because it's people you know. And even if he doesn't serve his term or as much as I want him to rot, for everybody to know that those girls were telling the truth and he has been punished, and because they told the truth the justice system worked and has done the right thing – I can't thank God enough. Parent 2

Two parents and most young people identified the importance of a guilty verdict and a sentence which the family was satisfied with. These outcomes are associated with a sense of 'closure', 'justice', and allowing people to move forward with their lives. Disappointment with the sentence was associated with less emotional closure:

So after [the sentence there] was relief to the point where [one sibling] fell down, legs wobbly, collapsed, the whole lot, [the second sibling] cried, and [the third sibling] went 'good, not long enough' [...] but it changed after a few days and she was a bit 'oh my goodness me, he won't be able to touch me anymore' [...] So everything's done now, we don't have to worry and we clapped our hands and started on Monday and decided 'now what's our next move?'. Parent 1

Discussion

The experiences of young witnesses and parents in the current study to a large extent mirror the experiences of those in other jurisdictions (Back et al., 2011; Eastwood & Patton, 2002; Hayes & Bunting, 2013; Hayes et al., 2011; Plotnikoff & Woolfson, 2009). Although some aspects of the process were experienced positively, several factors contributed to significant distress for both young witnesses and their parents. The responses from the participants indicate that there is significant scope for further change to better facilitate young witness participation in the justice process in a manner that better protects their well-being.

The negative impact of pre-trial delay was the most consistent theme in the current study, raised by almost all participants as either the most difficult or one of the most difficult aspects of their court experience. The experience of pre-trial delay as distressing and having broad and significant negative impacts on young witnesses is consistent with similar research elsewhere (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Hayes et al., 2011; Plotnikoff & Woolfson, 2009; Plotnikoff, Woolfson, & Marshall, 2007).

The delay period is particularly stressful due to anticipation of the trial, uncertainties about trial date, and the trial being constantly on the mind of young witnesses, thereby preventing them from being able to ‘move on’ with their lives. The significant impact of the delay period on mental health and well-being, education, and relationships is evident in various international studies, as well as in the current study. Reducing pre-trial delay would result in a profound reduction in the negative impact on witnesses, mitigating many of the factors that young people and families associate with the distress of court involvement.

Reducing the pre-trial delay would also minimise the resources needed to effectively support a young witness and his or her family during the pre-trial and trial period. Approaches to minimising pre-trial delay in other jurisdictions include prioritising such trials for early hearings and/or pre-recording young witnesses’ evidence, including cross-examination. Adopting the pre-recording of all evidence for young witnesses has been found elsewhere to eliminate the need for young people to attend court at all in the vast majority of cases (for a review, see Hanna et al., 2010). In New Zealand, provisions for pre-recording evidence already exist under section 105(1)(b) of the Evidence Act 2006, and the first application to pre-record a child witness’s entire testimony was approved in 2010. However, two appeals (MvR (CA 335/2011) and RvE (CA 339/2011)) in relation to the pre-recording of cross-examination in 2011 determined that pre-recording should be restricted to special, and by implication, rare circumstances. Lawyers’ and victim advisors’ experiences of the nine cases in which the entire testimony had been pre-recorded were largely positive (Davies & Hanna, 2013), and professionals interviewed in relation to the introduction of the Whangarei Young Witness Pilot Protocol raised this as a solution to the problem of pre-trial delay (Randell, 2017; Randell et al., 2016).

The reports of distress and confusion in relation to cross-examination are consistent

with other qualitative studies (Eastwood & Patton, 2002; Hayes & Bunting, 2013; Hayes et al., 2011; Plotnikoff & Woolfson, 2009) and reflective of research involving analysis of court transcripts in New Zealand which indicates that lawyers use developmentally inappropriate language and confusing questioning (Davies & Seymour, 1998; Hanna et al., 2012; Zajac & Cannan, 2009; Zajac et al., 2003). Participants’ descriptions of defence lawyers as ‘aggressive’, ‘rude’ and ‘mean’ as well as their experience of being accused of lying are also experiences that young witnesses commonly report in international studies. It is unsurprising, given that shame and fear of disbelief are often reasons for young people delaying disclosure of sexual abuse (Alaggia, 2010), that being accused of lying when testifying results in significant distress. Despite these concerns, particularly in relation to cross-examination, having an opportunity to have a voice and be heard was highlighted as important by many participants in the current study, consistent with existing research which indicates that young people ‘want to be participants in the legal process rather than passive objects of that process’ (Back et al., 2011, p. 50).

Young witnesses’ experiences of cross-examination as described by themselves and their parents suggest that despite legislative provision for judge intervention in such questioning (s 85 Evidence Act 2006 (NZ)), this is not occurring to an extent that sufficiently protects young witnesses. Low rates of judge intervention have been found in previous research conducted in New Zealand, although this research also indicates that there has likely been an increase in judge intervention over time (Blackwell, 2007; Davies & Seymour, 1998; Hanna et al., 2010). In addition to greater reliance on judge intervention to counter inappropriate questioning of witnesses, another solution to the confusing nature of courtroom language – and in particular that of defence lawyers – is the greater use of intermediaries (Plotnikoff & Woolfson, 2015), referred to in New Zealand

legislation as ‘communication assistants’. The use of specialist intermediaries has been advocated in New Zealand as a means of mitigating the barriers to quality of evidence caused by the use of confusing questioning and developmentally inappropriate language (e.g., Davies, Hanna, Henderson, & Hand, 2011).

Fear and distress related to seeing the defendant before, during and after the trial are common among participants in the current sample. Such fears are also evident in a Northern Irish sample, in which nearly half of parents identified that managing intimidation by the defendant or family and friends of the defendant while waiting to go to court was a primary need of their children (Hayes & Bunting, 2013). Research in Australia indicates that in states where young witnesses gave evidence via CCTV, fear of seeing the defendant was less apparent than in those states where CCTV was not commonly used. In states where CCTV and prerecording of evidence were used, young witnesses identified protection from the possibility of seeing the defendant in court as a major benefit (Eastwood & Patton, 2002). It is notable that the fear of seeing the defendant at court was still salient in the current sample, despite the use of CCTV being the norm for young witnesses in New Zealand. Additionally, once at court, families reported feeling safe from the defendant. This suggests that not enough is being done early on in the process to inform young witnesses and their families about the protections that will be in place to mitigate the possibility of them seeing the defendant and his or her supporters at court. The provision of such information as early as possible would likely contribute to a reduction in pre-trial anxiety.

A notable exception to feeling protected from the defendant when at court occurs during sentencing, when the risk of interactions and altercations with the defendant and his or her supporters is possible. Sentencing is also a time when young witnesses feel exposed, and families feel privy to distressing

information about the offending that they do not expect to hear. This suggests that more needs to be done to adequately inform families about the nature of sentencing so that they can make informed decisions about attendance. The use of CCTV during sentencing may also be a means of allowing families to ‘attend’ sentencing without being present in the courtroom.

The verdict and sentence are of importance to the participants. For families in the current study, a not guilty verdict implies disbelief of the witness’s evidence and a light sentence implies lack of regard for the severity of the offending. Very similar findings are evident in an Australian study in which all participants in cases where there was a not guilty verdict expressed strong anger about the outcome. Acquittals exacerbate fears of not being believed, and disappointment and disgust are expressed about light sentences (Eastwood & Patton, 2002). Quas et al. (2005) found that testifying when the defendant subsequently receives a not guilty verdict or a light sentence, in contrast with cases where there is a guilty verdict and a significant sentence, predicts poorer mental health several years post-trial. This highlights the potential gravity of the verdict and the sentencing for many.

The importance of specialised support people, particularly victim advisors, is evident in this study and is also reflected in the Northern Ireland research of Hayes et al. (2011). In both studies the vast majority of participants indicated that a specialist support person either made a significant difference to their ability to manage the court process or made it possible for the young person to go to court. Plotnikoff and Woolfson (2004) found that the majority of young witnesses in their United Kingdom sample identified contact with their supporter as the most helpful aspect of the court process. Despite the importance of victim advisors as a source of support for participants in the current study, they were reported by participants as being most available as a support to the witness very close to

the time of the trial. The availability of a support person to a young witness and his or her family from the time of reporting the offence to the police until the trial, including sentencing, would likely help to ease the stress of the pre-trial delay period and the uncertainties associated with awaiting trial and trial outcome. This support person could provide education on the court experience, answer questions and address concerns, inform the family of available support services and provide referrals where needed, as well as liaising with other professionals such as police officers and the crown prosecutor.

The parents in the current study were the key support people for their children. These parents reported significant difficulties in coping with multifaceted challenges related to involvement in the court process and supporting their children through this. For young people who have experienced abuse, parent support is a key moderator of adverse outcomes regardless of circumstances of testifying (for a review, see van Toledo & Seymour, 2013), and is associated with increased functioning during court involvement (Goodman et al., 1992). Lack of parent support increases risk for adverse mental health outcomes during and immediately following the trial (Goodman et al., 1992), as well as being predictive of ongoing adverse outcomes (Quas et al., 2005). Parents whose children disclose sexual abuse have a need for information, emotional support, support in relation to their own victimisation, if relevant, and parenting assistance (for a review, see van Toledo & Seymour, 2013). Their needs are likely to be even greater when a disclosure is coupled with an impending court case. Greater support for parents of young witnesses in New Zealand would not only provide some relief to parents, but in light of the research cited above provision of such support would be likely to promote the well-being of young witnesses throughout the pre-trial period, the trial itself and its aftermath.

In the absence of, or in addition to, the face-to-face support of complainant witnesses

and family members, the development of a programme of online education for the court process and experience would likely be of significant benefit. Given that court education is only provided close to the trial, such a resource would allow those with Internet access to seek information as and when they wished. This would likely ease some of the uncertainty and anxiety in the pre-trial period. Inclusion of messages from those who had been witnesses before could be incorporated into such an online resource. Young participants in the current study suggested that contact, in some form, with others who have been through a similar experience would have been useful to them.

Limitations of the current research include the lower than expected number of participants. As with previous similar studies (e.g., Hayes et al., 2011; Plotnikoff & Woolfson, 2004, 2009), it proved difficult to recruit young people in particular. Furthermore, it is not known to what extent the current sample of young people and parents is representative of the wider population involved with such trials. For example, it is possible that the recruitment process may not have attracted those who have had particularly bad court experiences, as they may have been regarded by victim advisors – who were the point of contact in recruitment – as lacking the emotional capacity to safely discuss their experiences. Alternatively, those who had negative experiences may have been more motivated to share their stories. It is notable that the rate of conviction is high in trials that the participants in the current study were involved in. Despite this consistency in trial outcome, a range of experience is apparent among the participants interviewed.

This study is the first of its kind in New Zealand, and represents an opportunity for those making decisions regarding court processes to better understand witness experiences and consider this when making changes that have a direct effect on young witnesses. It is apparent that although there are some positive aspects of the trial process, several

factors cause considerable distress to young complainant witnesses in sexual abuse trials as well as their parents, which can contribute to long-term damage to the well-being of these witnesses.

During the period in which the current research was being undertaken, two pilot specialist sexual violence courts were in the process of being established – one in Auckland and the other an extension of the Whangarei initiative. These courts have established guidelines based on the Whangarei Young Witness Pilot Protocol. As highlighted by the authors of similar research (Plotnikoff & Woolfson, 2004), Article 12 of the United Nations Convention on the Rights of the Child (1990) states the right of children to participate in decision-making about processes that are relevant to their lives and influence decisions that concern them. This argues for there being an ethical responsibility for those who influence court processes to seek and consider the voices of young witnesses in their decision-making. Currently there is no system for routinely obtaining feedback from young witnesses and family members. Further qualitative research into the experiences of young witnesses – and that which better addresses the practical problems of recruitment – is needed to contribute to an evaluation of the Auckland and Whangarei sexual violence courts and inform the ongoing development of processes that reduce the negative impact of court involvement and improve the quality of evidence that young people are able to provide.

Disclosure Statement

No potential conflict of interest was reported by the authors.

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