

Section 28 for vulnerable victims and witnesses in Crown Courts



Section 28 of the Youth Justice and Criminal Evidence Act 1999 enables the recording of evidence and cross-examination prior to trial, subject to judicial discretion.

It applies to vulnerable complainants of a crime (commonly referred to as victims) and witnesses, regardless of offence, and includes:

- all child witnesses
- any witness whose quality of evidence is likely to be diminished because they:
 - a. are suffering from a mental disorder
 - b. have a significant impairment of intelligence and social functioning
 - c. have a physical disability or are suffering from a physical disorder.

The provision of this service has been made possible with the support of the judiciary, legal professional associations, and victim and witness support services.

How it works

Where the judge directs, s.28 allows vulnerable victims and witnesses to have their cross-examination video-recorded before the full trial, away from the court room. This evidence is then played during the live trial, which, in most cases, means the vulnerable person does not need to attend in person.

The s.28 recording is completed close to the time of offence through an expedited timetable, aiding memory recall and to reduce the distress experienced by some witnesses when giving evidence to a full courtroom at trial.

Both the defence and prosecution lawyers are present in court during the pre-recording, as well as the judge and the defendant.

Pre-recorded cross examination does not impact a defendant's right to a fair trial.

Courts offering the s.28 service

Following a successful pilot in Kingston-upon-Thames, Leeds and Liverpool and subsequent rollout to additional sites, the scheme has been available for vulnerable witnesses in at least one court in every region since earlier this year.

The measure is [now in place in all Crown Court locations across England and Wales](#).

Intimidated witnesses

Last year we commenced a pilot of the technology for intimidated witnesses (victims of adult sexual offences and modern slavery offences) in three early adopter courts (Liverpool, Leeds and Kingston-upon-Thames).

There may be wider rollouts to intimidated witnesses pending the evaluation of this pilot.

Published 27 October 2020

Last updated 26 November 2020 [+ show all updates](#)

1. 26 November 2020

Added translation

2. 23 November 2020

Updated now that measure is available in all courts in England and Wales.

3. 27 October 2020

First published.