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02 April 2019

Dear Convener,

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL

During Stage 2 consideration of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill, I welcomed discussion of the vital role that training has on the questioning of witnesses and I am grateful for your lodging of the amendment which allowed us to discuss this important issue.

I agree that it is essential that any questioning of vulnerable witnesses is carried out to a high standard and appropriate training of those involved in ground rules hearings and commissions is a key element in achieving that outcome.

However, as I raised in my response to the Committee's Stage 1 report and reiterated at Stage 2, training on these issues is not a matter for the Scottish Government to lead on. It is a matter for the Lord President, through the Judicial Institute for Judges and Sheriffs, and for professional bodies that regularly provide training to advocates and solicitors. It would be inappropriate for the Scottish Government and the Scottish Parliament to cut across the professional regulatory responsibilities of the Faculty of Advocates and the Law Society of Scotland, and the independence of the judiciary in these matters.

I am pleased to say, however, that there is currently a range of work ongoing to advance and develop training in this area and I thought it might be helpful if I wrote to Committee members to set out some of the most recent developments.

High Court Practice Notes

The consideration of questions and how they are undertaken are already matters that would be covered at the ground rules hearing and therefore are subject to judicial scrutiny. The High Court Practice Note which came into effect on the 8 May 2017 provides extensive guidelines for practitioners for the taking of evidence by commissioner. The Practice Note specifically asks practitioners to bear in mind the useful information contained in the Advocates Gateway (<https://www.theadvocatesgateway.org/>). This website provides detailed guidance on questioning children and vulnerable persons and helpful guidance on how to ask appropriate questions depending on the age of a child or young person.

In addition, a supplementary Practice Note will come into effect in April 2019. (<https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/practice-notes/criminal-courts/criminal-courts--practice-note-p--number-1-of-2019.pdf?sfvrsn=4>). This contains further detail about the submission of questions in writing and in advance and sets out a Protocol for the general approach to be taken. This Protocol was agreed by the Crown, the Faculty of Advocates and the Law Society of Scotland. Greater use of this procedure will help to ensure that questioning is appropriate.

I understand from the Lord President that the Judicial Institute has already introduced specific training on Evidence by Commissioner hearings for the High Court judiciary. As noted by the Right Honourable Lady Dorrian, Lord Justice Clerk, in her letter to you on 8 March 2019, the Scottish Courts and Tribunals Service will continue to explore the nature of training provided with the relevant professional bodies, and work with them to secure the highest possible standards of advocacy.

This appears to be a more appropriate way to address training whilst not undermining the important role of organisations which have within their remit the training of our Judges and lawyers.

National Institute of Child Health and Human Development (NICHD) Protocol

You also helpfully mentioned the research which suggests that, to improve the quality of investigative interviewing of children, it would be best practice to adopt the NICHD Protocol.

The Scottish Government has already committed over £400,000 to a joint project led by Police Scotland and Social Work Scotland which will create a revised model for joint investigative interviews and develop an approach to investigative interviewing of children which is both trauma informed and achieves best evidence through more robust planning and interview techniques.

The new training programme will adopt the NICHD protocol, adapted for the Scottish context to become the Scottish NICHD Protocol. The programme will be underpinned by evaluation and quality assurance – which will include ongoing data collection on the use of JIIs and continuous feedback by the justice agencies involved.

Victims Taskforce – Training workstream

In addition, the Victims Taskforce is currently developing a range of workstreams to improve the experience of victims and witnesses in the justice system.

This includes a workstream on trauma informed training for frontline legal or justice system staff. This will be informed by the National Trauma Training Framework to promote a safe and trauma informed experience of the justice system for those affected by trauma and to manage the impact of this exposure to trauma on staff.

(<https://www.nes.scot.nhs.uk/education-and-training/by-discipline/psychology/multiprofessional-psychology/national-trauma-training-framework.aspx>). I hope this further information reassures you and fellow members of the committee that a wide range of work is going on in this area.

Encouraging use of special measures in summary cases

I noted that the possibility was also raised whether more can be done to use special measures in summary proceedings. I understand that this may specifically relate to pre-recording given the Committee in its report recommended that more use should be made of existing provisions which allow evidence to be pre-recorded in summary cases. As in our response to the Stage 1 Report about greater use of pre-recording for other categories of witness, we also consider that the greater use of pre-recording for individual summary cases is a matter for the Lord Advocate, or legal representatives of vulnerable witnesses who are called for the defence.

Review of the operation of the Act

I undertook to work with Liam Kerr on a possible Stage 3 amendment on review of the operation of the Act. If other members would like to take part in these discussions, I would be grateful if they could contact my office within the next week.

Barnahus

I also undertook to meet the Committee to hear members' perspectives following their visit to Barnahus in Norway, and to report to Parliament on our own progress with Barnahus. Thank you for making the time for our useful meeting on 19 March. It was extremely helpful to have a more detailed discussion about the learning from Norway and this will inform our work moving forward. As I said at the Stage 1 debate in February, I will write to the Committee in April with details of the work underway to develop Scotland specific standards and provide a timetable for reporting on further progress.



HUMZA YOUSAF