

JUSTICE COMMITTEE

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL

**SUBMISSION FROM NHS EDUCATION SCOTLAND PSYCHOLOGY
DIRECTORATE**

1. Do you agree with introduction of the “new rule” that child witnesses in the most serious cases must give all their evidence in advance of a criminal trial?

Yes. The implementation process should take account of the impact of the range of factors that affect the quality of evidence that children and vulnerable witnesses are able to give, including the developmental age and cognitive capacity of children and vulnerable adults, and recognising and minimising impact of psychological trauma.

Do you have any views on how this new rule should be implemented?

In line with the principles of trauma informed practice, every stage of the process by which evidence is taken from child and vulnerable victims and witnesses (from first disclosure to completion of examination and cross examination) should minimise risk of triggering trauma memories relating to offences witnessed– “re-traumatisation”. This includes policies and procedures, physical settings, communications, and staff training. This should be done with reference to the Scottish Government and NHS Education Scotland (2017) Transforming Psychological Trauma Knowledge and Skills framework (“The TPT Framework”) (link [here](#)).¹

Special consideration should be given to the impact that psychological trauma can have on the quality, consistency and accuracy of evidence that witnesses are able to give, and the ways staff and processes can mitigate this.

2. The Bill would allow in the future for this new rule to be extended to other vulnerable witnesses, including adult “deemed vulnerable witnesses”. Do you agree with this approach and, if so, to whom would you extend the provisions?

Yes. It should apply to all those that are vulnerable to or risk of additional harm as a result of their engagement with the criminal justice process as a witness. This includes victims and witnesses of traumatic events (such as sexual, physical or domestic violence or abuse) who are vulnerable to re-traumatisation and whose evidence may be compromised unless the impact of trauma is taken into account and mitigated throughout the process.

¹ <https://www.nes.scot.nhs.uk/media/3971582/nationaltraumatrainframework.pdf>.

In the main this would be adequately covered by section 10 of the Victims and Witnesses (Scotland) Act 2014. Adequate processes and staff training should be in place to ensure that all those meeting this criteria for “vulnerability” are identified at an early stage, in line with the TPT framework.

3. Do you have any views on the changes proposed to the procedure for taking evidence by commissioner, such as the introduction of a ground rules hearing?

Ground rules hearings can support victims and survivors of traumatic events to offer more clear, coherent and comprehensive evidence about these events by adapting the process to their needs, with staff and procedures that recognise and adapt to their vulnerability including the impact of traumatic event(s), staff knowing how and when to minimise “triggering” of traumatic memories, feelings and responses.

Results from English “Pigot” pilots appear to suggest that ground rules hearings can support this through consideration of the length of cross examination, nature of questioning and adaptations required by the vulnerability of the witness, and where necessary input from an expert intermediary who understands the strengths and vulnerabilities of the witness.

The process should be trauma informed throughout to minimise triggers (both interpersonal and physical). All staff involved in the process of taking evidence from victims and witnesses of traumatising events should be trained in the necessary and relevant knowledge and skills at “Tier 3” level of the TPT framework to enable them to recognise individual vulnerabilities to and likely triggers for re-traumatisation, and to adequately respond to the impact of trauma and minimise likelihood of re-traumatisation.

4. Do you agree with the introduction of a simplified notification procedure for standard special measures?

5. The Scottish Government considers that the proposals in the Bill will have significant implications for the criminal justice system. Do you have any views on the practical, financial or other impacts of the Bill, including the proposed phased roll-out of the provisions in this Bill?

If one of the key aims of this significant change in procedure is to minimise the negative impact of engagement in the criminal justice process on victims and witnesses, particularly with respect to trauma, then it is of key importance that all elements of the new procedure are able to adequately recognise the impact of trauma in vulnerable witnesses, and respond in a way that support both recovery and collection of best evidence. This is not simply or automatically achieved by introducing the provisions of the Bill. Introduction of a process and protocol which

has not been evaluated through a trauma informed lens and is not supported by adequately trained staff to recognise and respond to the impact of trauma may be counterproductive.

The timing and planning of the proposed phased roll out of the provision of the Bill will need to take the necessary time and resource to plan and implement a process that is trauma informed: one in which policies and procedures are explicitly developed to recognise and respond to the impact of trauma, including minimising relational and sensory triggers and risk of re-traumatisation.

Key to this will be ensuring a suitably educated and trained workforce that understands, recognises and responds to the impact of trauma on witnesses in a way that minimises trauma related distress and “re-traumatisation”, maximises the quality of the evidence they can provide, and supports them to recover.

This work is already ongoing in the development of training for Joint Investigative Interview Teams, in collaboration with NHS Education for Scotland, and training in trauma informed interviewing should be applied throughout the process.