

JUSTICE COMMITTEE

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL

SUBMISSION FROM SCOTTISH ASSOCIATION OF SOCIAL WORK

1. Do you agree with an introduction of the “new rule” that child witnesses in the most serious cases must give all their evidence in advance of a criminal trial? Do you have any views on how this new rule should be implemented?

The Scottish Association of Social Workers (SASW) is the British Association of Social Workers (BASW) national body representing practitioners, managers, academics and researchers in all social care settings across Scotland. We're here to promote the best possible social work services for all people who may need them, while also securing the wellbeing of social workers. Many of our members include social workers working in the field of criminal justice, who have extensive knowledge of the system and its impact and effect on those within it.

SASW - after consultation with our members - supports the 'new rule' that the most vulnerable child witnesses in the most serious cases must give all their evidence in advance of a criminal trial. We believe this would improve the fairness and efficiency of the court process, both for witnesses and accused. There is extensive evidence to suggest that not only is the experience of giving evidence in court distressing and traumatic for child witnesses, it is also not an effective way to get good evidence from them (Scottish Court Service, 2015). The experience of going to court and recounting the details, often long after they have occurred, can cause further damage and interrupt the healing process which may already have begun, or delay it from beginning due to the prospect of having to give evidence (Spencer & Lamb, 2012).

SASW believes the long-term aim for Scotland should be to adopt either the 'Barnehus Model' or the 'Full Pigot'.

'The Barnehus' or 'Children's House' model was introduced in Norway, in response to widespread criticism of low prosecution and conviction rates in relation to child abuse (BBC, 2018). The Barnehus provides a purpose-built, child-friendly location for all interviews and cross-examination of children, using a multi-disciplinary model which allows for gathering of best evidence alongside assessment of the child's support needs. The purpose is to provide a safe environment for children to be interviewed and assessed. The first ever Barnehus was established in Iceland in 1998 and Sweden has similar interview systems for children. The model allows for the appropriate interviewing of the witness and for additional therapeutic and medical support to be instantly accessed if its required, making the experience of the interview less traumatic (Scottish Court Service, 2015). It has been described as the 'ideal' to which countries should adhere and aligns with the intention outlined by

Scottish Ministers, to make Scotland ‘the best place in the world to grow up’, putting the child’s welfare at the centre of the criminal justice process.

In 1989 an official committee – the Pigot Committee – proposed a mechanism which sought to prevent children from being exposed to the traumatic experience of giving evidence in open court. The ‘Full Pigot’ involves pre-recording both the evidence-in-chief and the cross-examination of the complainant in certain cases, allowing a child’s evidence in chief and cross examination to be recorded prior to the trial hearing. In Australia, ‘A judge may order a pre-recording of the evidence and cross-examination (known as a special hearing) of a child against whom an alleged offence has been committed (an ‘affected’ child) within three broad categories of offences – (i) any sexual offences; (ii) various offences under the Prostitution Act mainly in the nature of procuring a child to act as a prostitute; and (iii) various offences involving violence against a child by a close relative or a person acting in loco parentis’ (Scottish Court Service, 2015). A version of the ‘Full Pigot’ in Scotland could allow for the Joint Investigative Interview (JII) to be used as evidence-in-chief alongside a procedure to allow pre-recording of cross-examination.

Transforming the whole system to make it fairer for child and other vulnerable witnesses will understandably take time. Legislative change itself can take time to come to fruition, so we are in support of this being staged with the introduction of the ‘new rule’, with a view to either the ‘Barnehus’ or ‘The Full Pigot’ being adopted and trialled on vulnerable child witnesses.

SASW believes that there are some more immediate steps that that can be taken now to begin to dramatically improve the experience for children in the interim. A pilot scheme for the use of intermediaries is one of these steps and could be more immediate, in-the-event that ‘Barnehus’ or ‘The Full Pigot’ are being developed as part of the new rule. Intermediaries are highly trained, independent officers of the court who work with children and adults with special needs. Many of them are speech and language experts who assess the witness's communication needs and how they can best be supported. There are currently over 200 intermediaries working in England and Wales, with positive results (Plotnikoff & Wilson, 2015). As the Lord Chief Justice of England and Wales argued in 2012, ‘*The use of intermediaries has introduced fresh insights into the criminal justice process. There was some opposition. It was said, for example, that intermediaries would interfere with the process of cross-examination. Others suggested that they were expert witnesses or supporters of the witness. They are not. They are independent and neutral. They are properly registered. Their responsibility is to the court, their use is a step which improved the administration of justice and it has done so without a diminution in the entitlement of the defendant to a fair trial.*

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. As is the case in England and Wales, a ‘deemed vulnerable witness’ is, ‘Any witness whose quality of evidence is likely to be diminished because they:

- (i) Are suffering from a mental disorder (as defined by the Mental Health Act 1983);
- (ii) Have a significant impairment of intelligence and social functioning; or
- (iii) Have a physical disability or are suffering from a physical disorder’

(Crown Prosecution Service, 2017). SASW believes the provision should extend to any witness who falls within these criteria.

Other witnesses to whom the provisions should be extended are victims of serious crime, including sexual offences; domestic abuse; hate crime; kidnap and false imprisonment; arson with intent to danger life; wounding or causing gross bodily harm with intent; female genital mutilation; stalking and close relatives who have been bereaved by criminal conduct. Witnesses who are intimidated and vulnerable as a result should also be included.

We recognize that the transition to this process will be complex and involve a major overhaul of some very established practices, procedures and systems, as well as the overall culture. As a result, SASW agrees that the new rule should be staged to ensure efficacy, but that care should consistently be taken to ensure that the wellbeing of all victims of crime be placed at the centre of the justice process.

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?

SASW supports the introduction of a ground rules hearing as a means of preparing a vulnerable witness’s evidence to be taken by commissioner. A model such as the ground rules hearing would mean that the cross-examination process was tailored to the needs of the individual witness, while still fulfilling the demands of justice. This should mean that the cross-examination is done in as efficient a way as possible, minimizing the trauma to the child (or vulnerable adult).

SASW agrees with the requirements laid out by the Crown Prosecution Service, who state that the ground rules hearing should address:

- Management of questioning about third part disclosure
- Restrictions about the witness’s previous sexual history

- Avoiding repetitive questioning, particularly in multi defendant cases
- Control of comment, stereotypes and insulting vocabulary
- Management of questions accusing the witness of lying
- Time limits on cross examinations

(Crown Prosecution Service, 2017)

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

SASW agrees with the introduction of a simplified notification procedure for standard special measures.

As the Policy Memorandum describes, the current process is 'overly bureaucratic and cumbersome', in that it still requires judicial oversight and a delay before the order is made. Making the process administrative rather than judicial will remove the uncertainty that current vulnerable witnesses face when seeking standard special measures and will allow for the process to be far faster.

Whilst SASW acknowledges that this does not apply to the new rule, we support the simplification of any process that could be detrimental to the wellbeing of vulnerable witnesses.

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?

SASW supports rolling out the provisions to ensure effectiveness. However, it is important that all vulnerable victims of crime remain at the centre of the criminal justice process; their wellbeing should always be paramount. Practically and financially, staging the provisions will have less of an impact and allows for different measures to be explored and tested accordingly to see if they are suitable in the Scottish context.