

JUSTICE COMMITTEE

VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL

SUBMISSION FROM SOCIAL WORK SCOTLAND

Social Work Scotland is the professional leadership body for the social work and social care professions. We are a membership organisation which represents social workers and other professionals who lead and support social work across all sectors.

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.

Social Work Scotland strongly believes that the interests of both justice and the wellbeing children and vulnerable witnesses will be better served by evidence being taken in advance of a trial.

Social Work Scotland believes that changes in law and practice need to focus on creating child centred conditions to elicit best evidence. We do not believe that these conditions can be created in a court setting. Traditional forms of examination in chief and cross examination do not produce reliable evidence and are often traumatic and potentially abusive for the vulnerable witnesses concerned. Social Work Scotland believes that this situation is not compliant with the principles of UN Convention on the Rights of the Child (UNCRC).

To get it right for every child all our systems have to have the principle of child wellbeing at the centre of their processes. It is imperative that any processes that require children to adapt to organisational demands, including those of the court, are reformed. It is vital that all the agencies and systems that children come into contact with operate to this principle if children are to feel confident that adults are there to help them.

Research has shown that children are unlikely to lie but may not give best evidence (even with existing safeguards) when the questions posed to them during any examination are closed, leading, complex or take insufficient cognisance of the child's age and developmental stage. Studies and research have shown that the way in which children are questioned can impact on the accuracy of their responses¹. Therefore, to achieve justice and ensure that the wellbeing of the child is

¹ SCTS (2015) *Evidence and Procedure Review*; D Poole & L White 'Tell me again and again: Stability and change in the repeated testimonies of children and adults' in M Zaragoza et al (eds) *Memory and Testimony in the Child Witness* Sage Publications Thousand Oaks 1995, 24; JR Spencer & R Flin *The Evidence of Children: The Law and the Psychology* Blackstone Press London 1990, 249–25; Andrews, S et al (2016) How do lawyers examine and cross examine children in Scotland? *Applied Cognitive Psychology* 30 (6) 953-971.

safeguarded, the key issue is ensuring that children are interviewed from the outset by people who are highly skilled and knowledgeable about how children consolidate, retain and communicate from memory.

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

Social Work Scotland believes that the quality of evidence would be significantly improved if high quality statements were taken in advance of the trial. Using statements taken by highly trained and skilled practitioners as soon as possible after the disclosure or event would improve the quality of evidence and fairness of the trial.

Social Work Scotland therefore welcomes the provision of the bill to ensure that pre-recorded evidence is used in solemn cases. We welcome the provision that this includes pre-recorded statements from child witnesses such as those taken in Joint Investigative Interviews (JII). Where a high quality prior statement is achieved, the evidence is likely to be more reliable and will reduce the risk of re-traumatisation through subsequent legal processes.

Social Work Scotland draws attention to the current work being undertaken by Social Work Scotland and Police Scotland to improve the quality of Joint Investigative Interviews through new training and guidance in order to achieve a consistently high standard of prior statements as recommended by the JII workstream of the Evidence and Procedure Review chaired by Lady Dorrian².

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?

Social Work Scotland believes that learning from positive changes in taking evidence from children should be applied over the longer term to vulnerable adults. The experience of members of Social Work Scotland is that existing measures are not being used consistently or regularly. We welcome legislation to address this ongoing and serious issue.

The definition of a vulnerable adult as set out at section 42 of the Criminal Justice (Scotland) Act 2016 could be used.

² <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-review.docx?sfvrsn=4>

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?

We agree with the changes in procedure for taking evidence by commission. The law needs to allow for flexibility in making decisions about when to take best evidence that allows for an understanding of the child's age, development and psychological wellbeing. We acknowledge that in many cases it is only after an indictment is served that it will become clear what requires to be proven in a specific case and therefore evidence by commission should take place thereafter. Nevertheless, the serving of indictment takes a considerable amount of time and we believe that what is needed is pro-active decision making on the part of all involved that is cognisant of the child's needs. In some cases it is clear what needs to be proven at an early stage and evidence by commission could be taken sooner.

In terms of operation, taking evidence by commission can still be a stressful experience for children and has the potential to trigger trauma for them. Where evidence is taken by commission the following principles should be adhered to:

- the needs of the child or vulnerable witness is seen as a priority
- evidence is taken in an environment that is child centred and feels safe and comfortable for the child. The court should come to the child and not the other way around
- evidence is taken by sheriffs and judges who have undertaken rigorous training which includes learning on communication and is in line with the National Trauma Training Framework³
- there is judicial control of proceedings that eliminates unnecessary or inappropriate questioning.

Ground Rules Hearing

Social Work Scotland welcomes the requirement for a ground rules hearing to take place before evidence is taken in proceedings before a commissioner. We believe that a ground rules hearing should not be limited to pre-recorded evidence but should take place whether the evidence is pre-recorded or to be given in court (in civil or criminal proceedings) and that the law should reflect this.

Section 271BZA of the bill (at 5) lists giving evidence in chief in the form of a prior statement as a special measure. Social Work Scotland therefore recommends that statements given by child complainers within a Joint Investigative Interview should be used as evidence in chief, where possible.

³ <https://www.nes.scot.nhs.uk/education-and-training/by-discipline/psychology/multiprofessional-psychology/national-trauma-training-framework.aspx>

If the original pre-recorded interview does not capture all the evidence to prove the indictment, the bill should make provision for the grounds hearing to arrange for the original interviewers to interview the child on the specific issues not previously addressed where this is judged to be better for the child and achieving best evidence. Such an interview would have the advantage of the judicial oversight of the ground rules hearing and continuity for the child. We believe this to be consistent with Article 6 of ECHR. It would also 'future proof' the bill as practice develops.

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

It seems sensible to remove what appears to be an overly bureaucratic step for the judiciary.

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?

Social Work Scotland agrees that the bill will have significant implications for the justice system. To meet the policy intentions of the bill, Social Work Scotland believes there are cultural, financial and practical implications for all agencies that are not fully reflected in the accompanying documents to the bill.

When this bill is enacted, there will be a requirement for a concerted effort to shift the culture to thinking about the needs of the child or vulnerable witness as a priority. This will require legal practitioners to consider:

- how they prepare their witness
- working to quicker timescales
- identifying vulnerable witnesses timeously
- using the full provision of the law for vulnerable witnesses.

We therefore believe that financial provision should be made for additional training required of the legal profession to make decisions and practise in a way that is both trauma informed, child centred and legally competent. This does not appear to have been addressed at present.

Obtaining quality prior statements from vulnerable witness (which in terms of the bill can be used as a special measure) is central to improving the experiences of child witnesses and getting best evidence. We note that the policy memorandum to the bill references the recommendations of the Evidence and Procedure Review Next Steps Report to ensure Joint Investigative Interviews are of a consistently high standard. Police Scotland and Social Work Scotland are leading a project to revise the model for Joint Investigative Interviews and develop a training programme which recognises the depth of knowledge and skills required for this interview process.

The new training programme will incur additional costs for local authorities as the time commitment for social workers undertaking the course will be at least five times greater than the current 5-day training course.

While the approach of police, social workers, lawyers and others is key to eliciting best evidence, the environment in which children are interviewed, or give evidence, is also important. While the provisions of the bill are not dependent on new or improved facilities, the policy intention to get best evidence is. Therefore, Social Work Scotland welcomes the fact that the Scottish Government is considering how elements of the Barnahus concept could be adapted for Scotland. The importance for a child of giving evidence in a child friendly environment that is suited to their needs is a central principle that we can learn from and will require investment.

Roll out of the bill

Given the changes required it seems sensible to adopt a phased approach to implementation. We note that the proposed bill will apply in the most serious solemn cases. Social Work Scotland draws the committee's attention to the fact that from a child perspective many other crimes cause serious harm and may affect the child for the rest of their life. Social Work Scotland believes that the 'new rule' should also apply to charges preferred under the Domestic Abuse (Scotland) Act 2018 in circumstances where they are dealt with by solemn procedure. In the longer term, children and vulnerable adults should be able to give evidence in advance of all court hearings (civil and criminal).