

## **JUSTICE COMMITTEE**

### **VULNERABLE WITNESSES (CRIMINAL EVIDENCE) (SCOTLAND) BILL**

#### **SUBMISSION FROM VICTIM SUPPORT SCOTLAND**

##### **Introduction**

1. Victim Support Scotland (VSS) welcomes the opportunity to respond to the consultation on the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill. VSS is the largest charity supporting people affected by crime across Scotland through the provision of practical help, emotional support and essential information. Our organisation supports children and vulnerable people through the criminal justice system and therefore welcomes the opportunity to provide a written submission to the Justice Committee.
2. The lead up to a trial and the lengthy cross examinations are all widely accepted as stressful and traumatic to children and vulnerable witnesses. As outlined in our previous response to the “*Pre-Recording of Evidence*” consultation in 2017 - we support the presumption that child and other vulnerable witnesses have all their evidence taken in advance of the criminal trial. The measures currently in place do not adequately protect children and other vulnerable witnesses. As stated in The Scottish Court Service, Evidence and Procedure Review; “*a considerable body of evidence demonstrates that the process of giving evidence in criminal trials... can have adverse mental, physical and psychological effects on child witnesses*”<sup>1</sup>, although the special measures currently in place can help to reduce the stress and trauma.

##### **Joint Investigative Interviews and Relationship Building**

3. The evidence we have gathered from our witness service is that the best experiences on current evidence on commission practices is where there exists good relationships with the Victim Information and Advice Service (VIA), the Scottish Courts and Tribunals Service (SCTS), and the Crown Office and Procurator Fiscal Service (COPFS). We expect this will continue and hope that the process of the joint investigative interview (and a focus on strengthening and improving the current arrangements for evidence being taken by a Commissioner) has the potential to drive up the standard of relationships between the justice partners. In turn, this should elicit better evidence from victims and witnesses of crime and outcomes for everyone involved in the justice sector.

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<sup>1</sup> Scottish Court Service (2015), Evidence and Procedure Review Report. Scotland.

## **Amendment to the Criminal Procedure (Scotland) Act 1995**

4. VSS supports an amendment to the Criminal Procedure (Scotland) Act 1995 to include the use of (a) prior statements as evidence in chief and (b) evidence by a Commissioner as standard special measures.
5. We agree that transitional arrangements for moving to pre-recorded evidence for child witnesses is a step forward and that it would be prudent initially to focus on all younger child witnesses and complainers and on serious crimes heard in the High Court.

## **Child Accused in Criminal Cases**

6. The European Parliament's Procedural safeguards for accused children in criminal proceedings highlights that the difference is that accused children must be afforded the right to be present during the trial, as otherwise their right to a defence could be compromised<sup>2</sup>.
7. We are not an authority on the range of complex procedural issues involved in relation to taking evidence on commission from the child accused. Although, as part of the phased approach to the legislation, we accept that further work ought to be undertaken to review the approach on the child accused.
8. VSS does not support the accused in criminal trials. As such, the focus of our response is on the position for victims and witnesses of crime.

## **Ground Rules Hearings**

9. VSS supports the use of ground rules hearings in all cases involving child or vulnerable witnesses, including where a child's evidence is to be pre-recorded. The ground rule hearings are an effective way of ensuring that the child's development, needs and safety are met during questioning. The need for this is clear. Research on how solicitors examine and cross examine children in Scotland shows that solicitors do not alter their questioning technique when questioning a child, regardless of the child's age<sup>3</sup>. This highlights that more needs to be done to protect children from inappropriate, misleading and/or confusing questions.

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22

[http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/577992/EPRS\\_ATA%282016%29577992\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2016/577992/EPRS_ATA%282016%29577992_EN.pdf)

<sup>3</sup> Andrews, S.J. and Lamb, M.E., 2016. How do Lawyers Examine and Cross-Examine Children in Scotland?. *Applied Cognitive Psychology*, 30(6), pp.953-971.

10. We are in favour of the ground rules hearing being held as soon as possible in the process. We do however acknowledge that adequate time is required for appropriate preparation for all the parties involved.

### **Role of the Commissioner**

11. As a means to provide continuity and reassurance to a witness we are in favour of the same individual sitting as a Commissioner and presiding as the judge at the trial.

12. The possibility of a Commissioner having the power to review arrangements for the vulnerable witness is encouraging. Our witness service staff and volunteers have expressed concern on the appropriateness of some vulnerable witness arrangements. Witnesses should be catered for in a manner commensurate with their particular vulnerability.

13. We are in favour of the Commissioner being the ultimate decision maker on the appropriateness of questions to be asked during a pre-recorded examination. The questioning however should consider the well-being of the witness and wider vulnerabilities – including learning disabilities.

14. VSS highlights the need for highly trained commissioners and suitable locations for the taking of evidence. We accept the identified barriers on the proposals, including the time it will take for the wider cultural changes to embed, the impact on COPFS and SCTS resourcing and the need to pilot and learn from the experiences of other jurisdictions to address identified barriers.

15. We believe one Commissioner who asks questions under instruction from both solicitors (prosecution and defence) would be a positive step to removing the adversarial approach some defence counsel use and would improve the witness experience and elicit better evidence.

### **Bill Powers**

16. We agree with the power in the Bill allowing for phased introduction by age (under 12, 16, 18) and a power to allow for staged commencement by court forum – High Court, Sheriff Court, and specific Sheriff Courts (in solemn cases only) and where a witness is aged 12 or over and expresses a wish to give evidence by other means, and the court is satisfied this would be in the child's best interests, then the court will order that the child's evidence be taken by pre-recorded means.

## **Extending new rules to those deemed vulnerable under the Criminal Procedure (Scotland) Act 1995**

17. VSS believes extending new rules to those deemed vulnerable under the Criminal Procedure (Scotland) Act 1995 is important as fewer vulnerable witnesses will be required to give evidence in court during criminal trials.
18. Our wish is for the legislation to be a success and we therefore understand the need to change law and practice in a manageable way. We are supportive of improved support for victims and witnesses and agree that children should be able to avoid giving evidence in cases involving a range of serious offences. VSS appreciates the complexities, resourcing, and culture shifts required from agencies within the Criminal Justice sector and the need for a phased approach. We know from our witness service that victims and witnesses of serious crime – particularly crimes of a sexual nature – find the adversarial approach extremely traumatic. Our witness services have relayed the depth of trauma involved. For the benefit of victims and witnesses we urge the extension or the pre-recording of evidence arrangements to be completed as soon as practicably possible.

### **The Future**

19. VSS supports the introduction of the “Full Pigot” [pre-recording both the evidence-in-chief and the cross-examination] as recommended in the Evidence and Procedure Review – including the collection of statement evidence as soon as possible after the crime has been reported via a Joint Investigative Interview. We are reassured to see focus in the Bill on this area. Stress and time have been shown to decrease recall, especially in child and vulnerable witnesses<sup>4</sup>. We believe a properly conducted witness interview prior to a trial will be far more conducive than a belated appearance at court in order to elicit the most accurate and comprehensive evidence<sup>5</sup>.
20. The Joint Investigative Interview should be of a high quality and should be monitored frequently to ensure collaboration between the agencies involved, ensuring best practice is followed, and that the best interests of victims and witnesses remain a primary consideration.
21. We would be open to discussions on the role of VSS in relation to children’s proof hearing procedures and what role intermediaries might play – particularly on physical and learning disabilities and how that fits with the overarching aim of making the justice sector fit for all victims and witnesses of crime.

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<sup>4</sup> Gudjonsson, G.H. and Henry, L., 2003. Child and adult witnesses with intellectual disability: The importance of suggestibility. *Legal and Criminological Psychology*, 8(2), pp.241-252.

<sup>5</sup> Scottish Court Service (2015), Evidence and Procedure Review Report. Scotland