



Victim Support Scotland (VSS) welcomes the consultation on Pre-Recording Evidence of Child and Other Vulnerable Witnesses. VSS is the largest charity supporting people affected by crime across Scotland through the provision of practical help, emotional support and essential information. VSS supports children and vulnerable people through the criminal justice system and as such, we welcome the opportunity to provide evidence to the Justice Committee.

Do you consider that the ultimate longer-term aim should be a presumption that child and other vulnerable witnesses should have all their evidence taken in advance of a criminal trial?

Yes.

Comments:

Victim Support Scotland supports the presumption that child and other vulnerable witnesses should have all evidence taken in advance of the criminal trial. The measures currently in place do not adequately protect child and other vulnerable witnesses. As stated in The 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”*^[1], although the special measures currently in place can help to reduce the stress and trauma. The lead up to the trial and the lengthy cross examinations are all widely accepted as stressful and traumatic to children and vulnerable witnesses.

Research into how children are cross examined within courts in Scotland highlighted that cross examination may not be conducive to getting the most effective evidence from children^[2]. In order to ensure that children are protected from overzealous cross examination, and lengthy cross examination, ground rule hearings should be

implemented before any cross examination, in which a judge would stipulate the questions asked and the length of the cross examination.

Research into pre-recorded evidence has shown that perception of guilt is not affected by the mode of testimony^[3], so long as the technology used to record and present the evidence is of a good quality. Therefore, VSS supports the presumption that child and other vulnerable witnesses should have all evidence taken in advance of a criminal trial - including cross examination.

Do you consider any further change is necessary regarding how a child witness's wishes, on whether to give evidence during the trial, are taken into account?

VSS recognises the right of a child to participate in decisions relating to them, including how they interact with the criminal justice system. However, where a child expresses a desire to give evidence at trial, the utmost must be done to ensure that a child fully understands what giving evidence in a trial would entail, and does so free from coercion by any concerned parties. Further, if a child chooses freely to give evidence during the trial, VSS would advocate for the use of existing special measures, and ground rules hearings to ensure that the length of the testimony, and questions the child is asked are fair and the child is protected during giving evidence.

Should the right to choose to give evidence in court be maintained for all witnesses or limited to those above a certain age, eg. children aged 12 or above?

VSS recognises the right of any person to participate in decision affecting them, including children, as enshrined in the UN's Convention on the Rights of the Child^[4]. The convention does not place a restriction on the age that a child is able to participate and express their views, and therefore VSS would express concern that any restriction would go against the convention.

Should a child accused in a criminal case be able to give pre-recorded evidence in advance of trial?

VSS supports the extension of pre-recorded evidence in advance of trial to accused children, where a child is accused of a crime, and there is a decision to proceed with a criminal trial (rather than a children's hearing). A disproportionate number of children in the criminal justice system have experienced adverse childhood circumstances such as violence, abuse and childhood sexual abuse ^[5], therefore, the protection of the young person from further trauma should be considered.

Are there any differences to be considered between how a child complainant or witness can give pre-recorded evidence and how a child accused can do so?

The European Parliament's Procedural safeguards for children suspected or accused in criminal proceedings highlights ^[6] the difference is that accused children must be afforded the right to be present during the trial, as otherwise their rights to defence could be compromised. Further, an accused person can choose not to give evidence at trial. But, it must be ensured the reason a child is not present (or doesn't give evidence) is not predicated on the wellbeing of a child, which could otherwise be negated by special measures.

Do you consider legislation should provide for the taking of evidence by commissioner before service of the indictment?

VSS supports the introduction of the "Full Pigot" as recommended in the Evidence and Procedure Review, Scottish Court Systems ^[7]; including the collection of statement evidence as soon as possible after the crime has been reported, by a Joint Investigative Interview. Stress and time have been shown to decrease recall, especially in child and vulnerable witnesses ^[8]. As highlighted by the Evidence and Procedure Review Report, Scottish Court and Tribunals Service, a "*properly conducted witness interview prior to trial may be far more conducive than a belated appearance at court to elicit a comprehensive, credible and reliable story*" (pg 9).

Do you agree that a ground rules hearing should be a requirement for all cases where a cross examination of a child witness is to be pre-recorded?

Yes.

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 during questioning. The need for this is clear. Research on how Solicitors examine and cross examine children in Scotland show that Solicitors do not alter their questioning technique when questioning a child, regardless of the child's age ^[9]. This highlights that more needs to be done to protect children from *'inappropriate, misleading and confusing questions'* (pg 30).

Do you have any other comments relevant to this consultation?

VSS supports the extension of this legislation to all vulnerable witnesses within the Scottish Criminal Justice system and advocates for the introduction of the 'Full Pigot' method into the Scottish Criminal Justice System. The introduction of this model would ensure that any child or vulnerable person is spared the trauma of cross examination and that the interview evidence is taken within a reasonable time from the incident.

VSS supports victims and witnesses of crime, so we are uniquely placed to comprehend the difficulties and stresses involved in the criminal justice system - a significant part of which revolves around giving evidence

The changes would not only ensure victims and witnesses are spared the trauma, but that the best possible evidence would be gathered, which would also benefit the criminal justice system as a whole.

ENDS