



**REFERRALS AND INFORMATION EXCHANGE:**

**AN OPERATIONAL PROTOCOL**

**BETWEEN**

**CROWN OFFICE AND PROCURATOR FISCAL SERVICE (COPFS)**

**SCOTTISH COURT SERVICE (SCS)**

**AND**

**VICTIM SUPPORT'S WITNESS SERVICE (WS)**

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## ***BACKGROUND***

1. This protocol sets out agreed arrangements between Crown Office and Procurator Fiscal Service (COPFS), Scottish Court Service (SCS) and the Witness Service (WS) (part of Victim Support Scotland) covering witness referrals and related information exchange between COPFS staff (mainly Victim Information and Advice (VIA) staff), Sheriff Clerks and WS representatives.
2. The Vulnerable Witness (Scotland) Act 2004 sets out a framework for the use of special measures in criminal and civil proceedings and governs the statutory entitlement of certain witnesses to give their evidence with a special measure. This includes the provision to take the witness' evidence at a suitable location outwith a court building. These locations are generally referred to as 'remote sites'.
3. This protocol also:
  - sets out the principles within which each party will operate to ensure the smooth and effective conduct of proceedings where evidence is given via special measures;
  - highlights respective responsibilities; and
  - recognises the importance of effective partnership working
4. The aims of the protocol are to:
  - ensure the service provision meets a victim / witness' needs as far as is practicable; and
  - meet legislative obligations
5. Further technical information is available in related guidance on standards and technical specification for remote sites:  
([http://www.scotcourts.gov.uk/courtusers/witnesses/vulnerable\\_witness\\_site\\_standards.pdf](http://www.scotcourts.gov.uk/courtusers/witnesses/vulnerable_witness_site_standards.pdf))
6. This protocol replaces the existing COPFS /WS protocol dated June 2007 and incorporates the SCS in a new tripartite protocol. This also incorporates the COPFS /SCS Joint Statement on Crown witnesses.

## ***AGREEMENT***

7. This protocol has been agreed at national level and staff should not enter into any local agreements that are contrary to the terms of this document.

## **GENERAL**

### **Court Familiarisation Visits**

8. There is currently a WS presence in all High Court and Sheriff Court Buildings. No agreement has been reached for the WS to provide a service in the Justice of the Peace Court at this time.

9. There is a general presumption that all Court Familiarisation Visits (CFVs) for Crown Witnesses in the High Court and Sheriff Court will be conducted by the WS. A referral to WS will be made by VIA staff in relevant cases under the opt-in or opt-out procedure (see paragraphs 24 - 41). All such visits will be conducted within the terms of the guidance on the [Conduct of Court Familiarisation Visits](#). The WS will arrange and attend at CFVs at remote sites in advance of the Intermediate Diet (and where appropriate the First Diet or Preliminary Hearing). On the day of the trial the WS will attend remote sites only if nominated supporter.

10. Where a witness has been referred for a CFV and it appears to WS that an interpreter may be required they should liaise with the local VIA Office to determine the appropriate way to proceed. In these circumstances it would be normal for COPFS to instruct the interpreter and conduct the CFV with a WS representative in attendance as an observer.

11. There may be other occasions when COPFS may deem it appropriate to conduct the CFV. In such cases COPFS will bring this to the attention of the WS and together they should agree in advance whether WS will be in attendance. Likewise, there may be occasions when COPFS staff may wish to observe WS staff conduct a CFV. The individual not conducting the CFV will only observe. Issues of concern or differences of view between agencies may arise during the visit. These should not be discussed in front of the witness.

12. There are cases where CFVs may be conducted by the WS working in partnership with others either in a lead or observational role. These include:

- particularly sensitive cases where COPFS needs to manage all aspects of the case and will therefore wish to be present;
- cases where another agency is already involved and it is agreed that it would benefit the witness for that agency to conduct or be present at the court familiarisation visit ;
- cases where the witness expresses a preference (as is their right) for another agency to conduct or be present at the visit; and / or
- certain cases calling at the High Court in Edinburgh and Glasgow where Social Work Services staff may be present or carry out the visit.

13. In a very limited number of cases it may be necessary for COPFS to carry out the CFV without the involvement of the WS, e.g. where the case concerns issues of national security

14. COPFS will highlight the importance of CFVs in its communications with witnesses (including letters and leaflets). The WS will provide VIA with adequate supplies of the general WS leaflet, which will be sent out to witnesses by COPFS staff (usually VIA) in relevant cases.

15. The WS will encourage all witnesses who fall within VIA's remit to undertake a CFV.

16. Witnesses and their carers who are referred by COPFS for a CFV are entitled to expenses for attending CFVs. WS should be provided with a claim form for any Crown witness

referred to them ([Annex A](#)). COPFS will complete the form with details of the case when making the referral and WS will complete the section of the form to confirm that the visit has taken place. The witness should complete details of the expenses incurred and give it to the WS representative who will submit the form to COPFS

## Information Sharing

17. VIA and WS staff will liaise in all relevant cases to ensure that information regarding assistance and / or support needs is shared appropriately and to confirm how the identified assistance / support needs will be actioned.

18. COPFS staff (usually VIA Officers) will normally greet certain witnesses or bereaved relatives when they arrive at court for the trial and will facilitate their introduction to the WS and any other relevant agency. Where there is not a permanent VIA presence in the court they will notify WS in advance of their proposed attendance and the details of the witness or bereaved relative whom they intend to meet. It will not normally be necessary for COPFS staff to remain with witnesses or bereaved relatives all day, even in High court cases. The WS and any other relevant agencies will be advised of any such arrangements in advance.

19. In the case of bereaved relatives attending a Sheriff Court trial, with consent, VIA will forward their details to the Witness Service to facilitate appropriate in-court support / assistance.

20. The WS will normally convey decisions made in court, but not the reasons for the decisions, to the witnesses present in court. Where an explanation is sought, however, the WS may facilitate communication with VIA or other COPFS staff. VIA and / or other COPFS staff will normally provide explanations / give reasons to witnesses where that is permitted. WS staff must not become involved in excusing witnesses from court. Witnesses will only be excused on the instruction of Procurators Fiscal or Advocates Depute.

21. VIA will provide information about decisions made in court (including bail, adjournments, verdicts and sentences) to all witnesses who fall within their remit, even where these decisions have been previously conveyed by a WS representative at court. In non-VIA cases COPFS staff will only provide such information when it is specifically requested.

22. If asked to do so by a VIA case officer, the VIA High Court Officer / VIA Officer on circuit will meet any victim, witness or bereaved relative following a deferred sentence at the High Court and will, if appropriate, facilitate an advanced referral to the WS.

23. The VIA High Court Officers based at Aberdeen, Edinburgh or Glasgow High Courts will normally act as a link between the Advocate Depute, the High Court Sitting Manager and witnesses. In High Court cases, the WS should where possible, in the first instance, discuss any issues relating to witnesses with the VIA High Court Officer in order that VIA can raise them with the Advocate Depute. Any documentation provided by witnesses or issues raised by witnesses to WS which may affect the case should be directed by WS to the VIA High Court Officer or Sitting Manager (where VIA is not present). The WS should not routinely be approaching Advocate Deputes in these circumstances.

## ***WITNESS REFERRAL PROCEDURES***

### **Referral by VIA staff – ‘Opt-Out’ in Summary Cases**

24. Where a witness may be regarded as vulnerable an opt-out system of referral to the WS will be used by VIA Officers. Such witnesses will include, but will not be restricted to, child witnesses, victims / survivors in cases involving sexual offences (including historical abuse cases), and bereaved nearest relatives in crime related deaths.

25. Under the opt-out system, in summary cases VIA will attempt to obtain the consent of the witness (or their parent in child cases) to refer their details to the WS as soon as is reasonably practicable after the first calling of the case. VIA will also write to the witness shortly after the first appearance to advise that their details will be passed on to the WS unless they indicate that they do not wish this to happen. Referrals to the WS should be made at the earliest possible opportunity and unless there are exceptional circumstances this information should be passed to WS not later than two weeks before the Trial.

26. In relation to summary custody trials and “early diet” summary trials, due to the early scheduling of the trials, VIA will proactively contact the witness by telephone to gain consent and immediately thereafter refer the witness’ details to WS.

27. Where a witness is not identified until a late stage in proceedings VIA should proactively attempt to gain consent and immediately thereafter pass the information to WS.

### **Referral by VIA staff – ‘Opt-Out’ in Summary Adult VWA Cases**

28. In terms of the Vulnerable Witnesses (Scotland) Act 2004, VIA will operate an opt-out referral system in relation to vulnerable adult witnesses in summary proceedings where there is a significant risk that the quality of their evidence will be diminished by reason of:

- mental disorder (within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003; or
- fear or distress in connection with giving evidence at the trial.

29. VIA will attempt to obtain the consent of the witness by telephone to refer their details to the WS as soon as is reasonably practicable after the first calling of the case. VIA will also write to the witness shortly after the first appearance to advise that their details will be passed on to the WS unless they indicate that they do not wish this to happen. Referrals to the WS should be made at the earliest possible opportunity. The aim is to have a CFV before the Intermediate Diet so that the witness can give their views and the court can make an informed decision regarding choice of special measures. It also means that arrangements for the appropriate equipment can be made in advance of trial. There will be an increase in the number of CFVs and SCS and WS colleagues will need to work closely to ensure that CFVs can be managed effectively.

30. Where a witness is not identified as potentially vulnerable under the Act until a late stage in proceedings VIA should proactively attempt to gain consent and immediately thereafter pass the information to WS

### **Referral by VIA staff – ‘Opt-In’**

31. Witnesses who are not identified as vulnerable but who are receiving information from VIA will be given details about the Witness Service so that they can decide if they wish to have

a CFV. Witnesses may ask VIA staff to refer them to WS and they should do so immediately on request.

## Self-Referrals

32. COPFS will ensure that details of the WS are communicated to all witnesses so that each individual has the opportunity to contact the WS directly. The witness citation pack will contain a 'Being a Witness' booklet that details the services provided by WS and a local WS contact number is contained in an accompanying document called "Going to Court". In all cases referred to them, VIA will offer to make a referral on behalf of the individual and follow the process referred to above.

## Referrals in Solemn Cases

33. In Solemn cases, VIA will endeavour to obtain the consent of vulnerable adult and child witnesses (and their parents) to refer their details to the WS as soon as is reasonable practicable. This information should normally be passed to WS before a First Diet or Preliminary Hearing.

## Referral by other COPFS staff – 'Opt-Out'

34. In solemn cases where a witness is not identified as "vulnerable" in terms of the Vulnerable Witnesses (Scotland) Act 2004 until precognition or after precognition and has not already been referred to VIA, other COPFS staff should refer the witness to VIA who will apply the 'opt-out' arrangements outlined above.

## Completion of Referral Forms and Feedback Procedures

35. Where COPFS is making a referral to the WS, the staff member (usually a VIA Officer or VIA Assistant) will complete the "Witness Service Referral" form ([Annex B](#)). This should include information about the witness' vulnerability and/or additional support needs (where or when they are known) and details of any support agencies involved with the witness. A copy of this form will be saved electronically so that it can be accessed and amended later as required. A hard copy will be placed on file with the file minutes updated as appropriate. The referral is completed when an electronic copy is sent to the relevant WS representative. (Where the witness is not willing for personal information about vulnerability and/or additional support needs to be divulged it may be appropriate for COPFS to retain a controlling interest in the case or to consider whether a referral should be made.)

36. Attempts should be made to include as much information as possible and, where mobile telephone numbers are quoted, this should include the name of the person whose mobile phone it is. Enquiries should be made by COPFS staff to obtain a contact number for the victim, witness or bereaved relative and, if no number is available, the form should specify that there is no contact number. Details of any known vulnerability or disability should be passed to the WS so that they can assist the witness as appropriate.

37. The WS will advise VIA of any relevant information as soon as it comes to their attention by updating the "Witness Service Referral" form. This process should be repeated as many times as appropriate but must be completed immediately following any CFV, even where no additional observation has been made. Where SCS staff become aware of any additional information about the needs or circumstances of the witness they should pass this information to the Witness Service or COPFS staff as appropriate.

38. The WS representative should always provide feedback, by the date specified on the witness referral form, on the visit using the "Witness Service Referral" form.

39. If the WS representative is unable to make contact with the witness, or if a CFV does not take place, notification of this must be relayed to the COPFS staff member (usually a VIA Officer or VIA Assistant) by the date specified on the witness referral form. This will enable the Court Depute to advise the Court that details of a potentially vulnerable witness had been passed to the WS but the witness had failed to engage.

40. Where the COPFS staff member (usually a VIA Officer or VIA Assistant) becomes aware of any additional information about the needs or circumstances of the witness, the appropriate "Witness Service Referral" form should be updated and copied as in Paragraph 35. This process should be repeated as many times as appropriate in advance of the CFV. Routine information about court dates or adjournments will not normally be included in this process unless WS has been identified as a supporter. Where SCS staff become aware of any additional information about the needs or circumstances of the witness they should pass this information to the Witness Service or COPFS staff as appropriate.

41. Where there is no WS referral because the witness has 'opted out', COPFS can only discuss limited information with the WS. This information is restricted to basic case details, the name of the witness and whether the witness is an adult or a child (under 16 years of age). No other personal information regarding the witness can be shared without explicit permission from the witness.

### **Monitoring of Referrals**

42. COPFS and WS will keep records of the number and category of referrals made and will carry out periodic joint checks to ensure that these records are being maintained satisfactorily. This information may be shared with other key stakeholders and partner agencies.

43. WS staff will periodically notify the VIA National Team Leader and Victim Support's Head of Quality of cases in which child witnesses have presented at court without a referral having been made using the form at [Annex C](#). The VIA National Team will thereafter make enquiries to ascertain the reason for the non-referral and will advise Victim Support Scotland of the general findings.

44. WS staff will periodically notify the VIA National Team Leader and Victim Support's Head of Quality of cases in which potentially vulnerable adult witnesses have presented at court without a referral having been made using the form at [Annex D](#). This form should set out in detail why the witness was considered to be vulnerable. The VIA National Team will thereafter make enquiries to ascertain the reason for the non-referral and investigate whether the vulnerability was drawn to the attention of the police.

45. COPFS (particularly through VIA staff) and WS staff should monitor the quality of the information contained in the forms received and should bring examples of good and bad practice to the attention of their line manager. WS, SCS and COPFS staff (VIA and legal managers) should meet regularly (ideally quarterly) to address local issues.



## *Consideration of Special Measures under the Vulnerable Witnesses (Scotland) Act 2004*

46. The provisions of the Act do not apply to proceedings in the Justice Court.
47. The Vulnerable Witnesses Act introduced an entitlement to one or more special measures for child witnesses (aged under 16 at the commencement of proceedings).
48. For certain vulnerable adult witnesses the court may authorise the introduction of a statutory special measure where:
- The witness meets the statutory test for vulnerability,
  - The use of the special measure(s) sought will improve the quality of the witness' evidence (its completeness, coherence and accuracy).
49. There is no automatic entitlement for an adult witness who has an apparent vulnerability to give their evidence with the assistance of a special measure. The Vulnerable Witnesses (Scotland) Act 2004 has provided a definition which requires the party making a Vulnerable Witness Application to demonstrate how the quality of the witness' evidence will be affected by the introduction of a special measure before the court will grant such a measure
50. VIA staff will explain to the adult witness that the decision as to which special measure(s) will be used is a matter for the Court and, while the witness' views will be taken into account, they do not have the final say in this matter. In the case of a child witness certain special measures can be granted automatically but the choice of measures may be limited by other factors e.g. the requirement for dock identification.
51. The views of the child and parent / guardian must be considered when deciding which special measure is in the best interests of the child witness. In any case where an adult is considered to be a vulnerable adult witness that witness' views in relation to the effect upon the quality of the evidence if a special measure is not introduced must be obtained. An Application in respect of a vulnerable adult witness cannot be made unless information on the effect of evidence has been obtained.
52. VIA staff are responsible for issuing the Scottish Government's booklets about special measures for [children](#), [young people](#) and [adults](#) and information for the [parents](#) of child witnesses and for ascertaining the views of adult vulnerable witnesses or children and their parents in relation to special measures. All staff dealing with vulnerable witnesses are directed to the Scottish Government's [guidance pack for practitioners](#).
53. When discussing special measures with vulnerable witnesses VIA staff should ascertain if there has been contact with other agencies as they may have important information about support needs or vulnerabilities.
54. VIA should highlight the role of the WS with the adult vulnerable witness or the child witness and their parents/guardians and advise them of the process for a referral to be made to WS should the person be required as a witness. VIA staff should actively encourage vulnerable witnesses to take advantage of CFVs
55. SCS are responsible for the management of, and provision/operation of equipment and staff for, remote sites. The WS will arrange and attend at CFVs at remote sites in advance of the Intermediate Diet (and where appropriate the First Diet or Preliminary Hearing). On the day of the trial the WS will attend remote sites only if nominated supporter.

## *Procedures for Obtaining Witness' Views on Special Measures*

### **Solemn Procedure - Children**

56. The VIA Officer will normally meet the child and demonstrate the "Being a witness" CD ROM / DVD after precognition. The views of the parent or guardian and child in respect of special measures should be obtained. Thereafter COPFS staff will make an assessment as to the most appropriate special measure having regard to the views expressed, their experience and the guidance available.

### **Solemn Procedure - Adults**

57. Other than at precognition, face-to-face meetings will not normally take place for adult vulnerable witnesses. VIA arrangements are such that the witness in a solemn case will normally be contacted by phone to explore which, if any, special measures might be appropriate. A face-to-face meeting will take place where telephone communication is insufficient to obtain the views of the vulnerable witness.

### **Summary Proceedings Children**

58. VIA staff will write to the child and parent/guardian to invite them to indicate their views on special measures. If the child witness is under 12 years of age attempts will be made by VIA to contact the parent / guardian by phone to discuss the child's needs and to obtain their views on special measures.

59. If the child or parent/guardian does not contact VIA to indicate their views on special measures, a default position will apply. This means that an application will be made for a standard special measure as follows:

- Children aged 12-15 – screens and Witness Service supporter
- Children aged 7-11 – screens and Witness Service supporter
- Children aged 7-11 (where the case involves an offence to which s288c of the 1995 Act applies or an offence of violence) – live link from a remote site and Witness Service supporter. (It is very important that the WS is given reasonable notification of this to allow arrangements to be put in place – ideally at least 2 weeks.)

### **Summary Proceedings - Adults**

60. In summary proceedings adult vulnerable witnesses will be identified:

- By the police
- By COPFS staff from information contained in the police report or police statements
- Self-referral by the witness or referral by a representative (eg care worker, social worker) on receipt of the witness citation
- By other agencies or organisations

61. Following the identification of a vulnerable adult VIA will

- Make early telephone contact with witnesses to explain the statutory criteria, explore any vulnerability and its impact on the witness' ability to give evidence and discuss which, if any, special measures might be appropriate. Face-to-face meetings will take place only where a telephone call is insufficient to obtain relevant details from the witness.

## Witness Service as Named Supporter

62. In solemn and summary proceedings, WS may be named as the supporter on the Child Witness Notice or Vulnerable Witness Application. Where COPFS proposes to name the WS as the supporter, VIA will contact the relevant WS Co-ordinator to advise them of this prior to doing so.

## Intimation of the Granting / Approval of Applications / Notices

63. In accordance with the Act of Adjournal, the Sheriff Clerk will intimate the granting or approval of a Child Witness Notice / Vulnerable Witness Application to COPFS (to the locally designated member of COPFS staff) on the day the decision on the CWN or VWA had been made. COPFS will advise the Witness Service accordingly.

## *Procedures for processing VWA cases at Court*

### Summary Cases – Child Witnesses

64. Where possible cases of this nature will commence by way of “undertakings” rather than by citation.

65. Where a child witness is likely to be cited to a trial, **prior to the case first calling in court** the PF will contact the sheriff clerk and:

- intimate that the case involves a potential child witness for whom a live link may be required;
- specify the nature of the live link (in Court/Remote) that may be required;
- advise the Sheriff Clerk of the Crown's attitude to bail where the accused is appearing from custody (*there is an expectation that the depute will call the sheriff clerk to seek a custody diet where bail is to be opposed – the sheriff clerk will provide a contact in the sheriff clerk's office who liaise with ESDU.*); and
- provide details of witness availability that has been intimated to the PF.

66. The Sheriff Clerk will liaise with [ESDU](#) (see para 103 below) to agree a suitable trial diet (agreed diet) with appropriate facilities, in accordance with the availability of witnesses. Where possible, early trial diets will be sought for cases involving child witnesses.

67. Where the accused pleads not guilty to the charges at the first calling the agreed diet referred to above will be assigned as the trial diet.

68. The Sheriff Clerk is responsible for notifying ESDU if the live link and/or remote site is no longer required – e.g. if an accused pleads guilty at an earlier diet or the case is to be adjourned.

69. Where possible, the PF will lodge the Child Witness Notice at least one week prior to the Intermediate Diet.

70. Where an application for special measures or an application for review for special measures has been determined by the Sheriff without a Hearing at which the Crown is represented, the Sheriff Clerk will intimate the result of the application to COPFS (VIA) on the day the application is granted and COPFS will advise WS accordingly.

71. At the Intermediate Diet the court should be in position to be satisfied that all matters pertaining to the vulnerable witness have been addressed.

72. Special measures can be reviewed at any stage. Any additional information received that might necessitate a review should be shared amongst partner agencies.

73. There is an understanding that a Court Familiarisation Visit (CFV) will take place before the intermediate diet in order that the Court can be made aware of the informed decision regarding choice of special measures and arrangements for the appropriate equipment can be made in advance of trial

74. SCS are responsible for the management of, and provision/operation of equipment and staff for, remote sites. The WS will arrange and attend at CFVs at remote sites in advance of the Intermediate Diet in consultation with the sheriff clerk. On the day of the trial the WS will attend remote sites only if nominated supporter.

75. Procurators Fiscal should consider the need to transfer productions to a remote site on a case by case basis.

76. Every effort will be made to preserve the agreed diet but if this diet requires to be adjourned it will be necessary for the Sheriff Clerk to liaise first with ESDU in order to identify a suitable alternative agreed diet before formally assigning same.

77. It is recognised that there may be some influencing factors:

- Difficulties in obtaining the views of the child and/or parent or guardian to lodge a Child Witness Notice
- Child witnesses in summary cases are not precognosced. Communication between COPFS and witnesses in summary cases prior to attendance at court is predominately in writing
- If the child or parent/guardian does not contact VIA to indicate their views on special measures. COPFS will apply a default position as set out above at Para 59

78. If special measures are changed on the day the PF will be responsible for advising the WS and witness. Court staff may assist in this regard.

79. Live link facilities and remote sites are finite resources which require careful allocation and management. There may be occasions where, despite appropriate allocation, trials are assigned to Courts with live link and/or remote site facilities and the special measure (s) are not utilised on the assigned date. All staff must be aware of the need to manage these resources appropriately.

### **Summary Cases - Adult Vulnerable Witnesses**

80. Where possible cases of this nature will commence by way of "undertakings" rather than by citation

81. Where there is sufficient evidence in the initial report to the PF by the Reporting Agency to enable the PF to determine that it is appropriate to lodge a Vulnerable Witness Application for live link at trial, **prior to the case first calling in court**, the PF will contact the sheriff clerk and intimate:

- That the case involves a potential vulnerable adult witness for whom a live links may be required,

- Advise the Sheriff Clerk of the Crown's attitude to bail where the accused is appearing from custody
- Provide details of witness availability that has been intimated to the PF
- Advise whether a report will be sought to support the application

82. The Sheriff Clerk will liaise with [ESDU](#) in order to agree a suitable trial diet (agreed diet), in accordance to the availability of witnesses, when a suitably equipped courtroom will be available and the timeframe within which a necessary report to support an application for special measures is likely to be available. Where appropriate, early trial diets will be sought

83. Where the accused pleads not guilty to the charges at the first calling of the case the agreed diet referred to above will be assigned as the trial diet

84. If the PF/ VIA subsequently receives sufficient information to allow an application for live link and/or remote site to be made, VIA/ PF will advise the Sheriff Clerk as soon as is practicable that an application will be made. The Sheriff Clerk will liaise with ESDU to obtain appropriate equipment. The Sheriff Clerk will confirm with the PF whether equipment can be made available.

85. The Sheriff Clerk is responsible for notifying ESDU if the live link and/or remote site is no longer required – e.g. if an accused pleads guilty at an earlier diet or the case is to be adjourned.

86. Where possible, the PF will lodge the Vulnerable Witness Application at least one week prior to the Intermediate Diet

87. Where an application for special measures or an application for review for special measures has been determined by the Sheriff without a Hearing at which the Crown is represented, the Sheriff Clerk will intimate the result of the application to COPFS (VIA) on the day the application is granted and COPFS will advise WS accordingly

88. At the Intermediate Diet the Court should be in position to be satisfied that all matters pertaining to the vulnerable witness have been addressed

89. Where a potentially vulnerable witness has failed to engage with COPFS and, consequently, no Vulnerable Witness Application has been lodged, VIA will inform the WS of the attendance of the witness at court. WS will engage with the witness and provide any relevant information as in Para 37 to the depute in court in order that an Application can be considered. Similarly, where a witness who has not previously been identified as vulnerable engages with the WS they will provide feedback to the depute in court in order that an Application can be considered

90. If special measures are changed on the day the PF will be responsible for advising the WS and witness. Court staff may assist in this regard.

91. The WS will advise COPFS (VIA) of any relevant information that may necessitate a review of special measures as soon as it comes to their attention Where SCS staff become aware of any additional information about the needs or circumstances of the witness they should pass this information to the Witness Service or COPFS staff as appropriate.

92. Every effort will be made to preserve the agreed diet. If this diet requires to be adjourned it may be necessary where a live link is required, to liaise first with ESDU in order to identify a suitable alternative agreed diet before formally assigning same.

93. It is recognised that the following factors may affect the foregoing;

- Adult witnesses in summary cases are not precognosced. COPFS (VIA) will proactively contact witness flagged as vulnerable by telephone to explore vulnerability, gain consent and immediately thereafter refer the witness' details to WS
- The identification of adult vulnerable witnesses to COPFS in summary cases is dependent upon the police or other reporting or supporting agency highlighting vulnerability in the report or statement to the PF. This also applies to self referral by a witness following the commencement of criminal proceedings or referral by a person acting on behalf of a witness following the commencement of proceedings
- Adult vulnerable witnesses are not automatically entitled to give their evidence with the assistance of special measures
- The Crown will not be able to submit a vulnerable witness application in respect of a vulnerable witness unless the Crown has been made aware of the views of the witness regarding choice of special measure and the effect on the evidence of the witness if the witness were to give his or her evidence without the assistance of the special measure. It is unlikely that this information will be available at the time of commencement of proceedings.
- There may be insufficient evidence in the initial report to the PF by the Reporting Agency to enable the PF to determine that a Vulnerable Witness Application will be lodged seeking the use of live link. The PF will not be able to advise the Sheriff Clerk that an application will be made until they have received sufficient information about the views of the witness and details of the effect on the witness' evidence if special measures are not utilised. This may include any necessary supporting reports (for example, where vulnerability is based on clinical factors)
- The application for special measures may be reviewed at any time until the witness completes his or her evidence
- Live link facilities and remote sites are finite resources which requires careful allocation and management. There may be occasions where, despite appropriate allocation, trials are assigned to Courts with live link and/or remote site facilities and the special measure (s) are not utilised on the assigned date.

### **Solemn Criminal Proceedings - Child and Vulnerable Adult Witnesses**

94. Unlike summary proceedings, sheriff and jury trials are assigned to Sittings (which occur over a period of days or weeks) as opposed to a fixed trial date. The Sitting during which the case will call for trial is determined by the PF. The *date* in the Sitting when the case will call is affected by a number of factors that are outwith the control of the PF.

95. The process of cases calling in Sittings as opposed to fixed trial dates creates challenges in addition to those faced in coordinating the provision of facilities for special measures for summary proceedings. It is therefore necessary to afford maximum flexibility to the Prosecutor.

96. The effective management of live link facilities (in Court and remote sites) is dependent upon intimation to ESDU at an early stage.

97. Prosecutors will forward a copy of the intimation contained at [Annex E](#) to ESDU at the address noted below by fax or by e-mail **prior** to any notice or application being submitted to court.

98. This procedure will enable ESDU to:

- liaise with the prosecutor in relation to the preferred dates and availability of suitable sites or viable alternatives; and

- diary requirements and avoid potentially conflicting demands

99. A flowchart is attached at [Annex F](#) which demonstrates the application and intimation procedure.

100. SCS will make every attempt to provide facilities at preferred sites. However it will not be possible to guarantee the availability of preferred sites on the required date due to the finite number of sites that are available. Prosecutors may require to consider alternative venues and advise Crown witnesses accordingly.

101. SCS are responsible for the management of, and provision/operation of equipment and staff for, remote sites. The WS will arrange and attend at CFVs at remote sites in advance of the Preliminary / First Diet in consultation with the sheriff clerk / Depute Clerk of Justiciary. On the day of the trial the WS will attend remote sites only if nominated supporter.

### **Rural Areas**

102. Where sufficient notice is provided SCS will consider what ad hoc arrangements may be provided in more remote areas to minimise travelling and inconvenience to witnesses. ESDU will liaise directly with the prosecutor in this regard

### **ESDU Contact Details**

103. The contact details for the SCS Electronic Service Delivery Unit are as follows:

Electronic Service Delivery Unit  
Tel: 0141 559 4590  
Tel: 0141 559 4589  
Fax: 0141 559 4585  
Email: [esdu@scotcourts.gov.uk](mailto:esdu@scotcourts.gov.uk)

### ***Miscellaneous Provisions***

#### **Witness Lists**

104. COPFS, through the Sheriff Clerk, will provide the WS with a copy of the witness list for each trial (including witnesses appended to a section 67 notice in solemn procedure)

105. The WS will only use this information for the purposes for which it was given. All witness lists provided to WS will be disposed of in accordance with the WS Operational Practice Note (WS FR001 – 04/06)

#### **Liaison between the Trial Depute and WS at Trial and keeping witnesses informed**

106. In the sheriff court the trial depute and WS where practicable, will introduce themselves to one another prior to the start of court business. Thereafter the Depute will advise the WS of any particular issues e.g. change to the running order of cases; likely adjournments etc which may impact on the timing of the calling of trials during the course of the day.

107. There is an expectation that witnesses will be updated on a regular basis (**at least hourly**) on the progress of Court business as a result of updates provided by the Depute to WS or a court official. Operational arrangements will require to be agreed locally to address practical issues. At the conclusion of a witness' evidence, and subject to any other direction

made by the court, the trial depute will intimate (either directly or by means of another court official) whether or not the witness may be released and excused from further attendance. This will enable the information may to be relayed to the witness, including a witness at any remote site.

108. The WS will update the trial depute with information about witnesses who present as vulnerable whether or not prior intimation was given to the WS. This will enable the depute to be updated with information about vulnerable adult witnesses who have previously failed to engage with COPFS and WS at an earlier stage in proceedings and allow the Depute to make such enquiries as are appropriate to determine whether a late application for special measures should be made.

### **Productions**

109. Where label or documentary productions are to be presented to a witness who is giving evidence by TV link, the trial depute will engage with court officials in early course to discuss how this is to be done. Advance notice will be required where special viewing facilities are required.

### **Multiple Witnesses**

110. Various remote sites and some court facilities cannot accommodate the congregation and waiting of multiple vulnerable witnesses prior to their giving evidence by TV link. Where such a case arises the trial depute will contact court officials, prior to arranging any attendance, to discuss facilities and how witnesses may be managed in order to minimise inconvenience to those attending and to remove the risk of contamination of evidence.

### **Implementation**

111. **This protocol comes into effect from 1 August 2008 and will be subject to regular review and in any event within six months of signing.**





Expenses for Witnesses Attending Court for Court Familiarisation Visits

Case Against:	PF Reference:
Name of Witness: Address:  Postcode: Telephone Number:	
Date of VIA Referral:  VIA Representative who made Referral:  Telephone Number:	

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**FOR WITNESS SERVICE USE ONLY**

Date of Court Familiarisation Visit: .....

Court Attended: .....

WS Representative who conducted  
CFV: .....

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

This form to be completed and returned to the VIA Representative above



ANNEX B

“WITNESS SERVICE REFERRAL” FORM

PLEASE HOLD A COURT FAMILIARISATION VISIT AND REPORT THE RESULTS TO  
(DETAILS) BY (INSERT 2 DAYS BEFORE ID)

SECTION A: CASE DETAILS		
PF REFERENCE	<u>DATE OF ID / FD / PH</u> ID	<u>DATE OF TRIAL</u>
<u>CASE PROCESS</u> Solemn - High Court	<u>BAIL STATUS</u> Bail - Standard	<u>TRIAL LOCATION</u> _____
<u>CASE TYPE</u> Other	Charge Type	<u>ACCUSED</u>
<u>WITNESS RESPONDED TO VIA COMMUNICATION</u>  YES/NO		

A SEPARATE FORM MUST BE COMPLETED FOR EACH WITNESS REFERRED

**SECTIONS D AND E MUST BE COMPLETED EACH TIME THE FORM IS UPDATED**

<u>SECTION B: DETAILS OF VULNERABLE WITNESS</u>			
NAME		CONTACT DETAILS	
		If witness under 16, also enter guardian name and details	
<u>STATUS</u> Victim and witness	GENDER Female	AGE	
OBSERVATIONS/VULNERABILITY	ADDITIONAL SUPPORT MEASURE/PROVISION		<u>DATE GRANTED</u>
<u>WITNESS REQUEST</u>	<u>ADDITIONAL SUPPORT MEASURE/PROVISION</u>		DATE GRANTED

OTHER RELEVANT INFORMATION Including where victim, outline of impact

*SECTIONS D AND E MUST BE COMPLETED EVERY TIME THIS FORM IS UPDATED*

**SECTION C: REFERRAL**

REFERRAL TYPE

Automatic - witness agreement

DATE WITNESS CONTACTED

CFV DATE

WS SUPPORT PROVIDED

OTHER ORGANISATION INVOLVEMENT AND CONTACT DETAILS

**SECTION D: CONTACTS**

COPFS STAFF MEMBER

WS OFFICIAL

DESIGNATION

DESIGNATION

TEL

TEL

FAX

FAX

E-MAIL

E-MAIL

**SECTION E: UPDATE DETAILS**

DATE LAST UPDATED

UPDATED BY



## ANNEX D



CROWN OFFICE & PROCURATOR FISCAL SERVICE

  
Victim Support

# Witness Service

### **Details of Adult Vulnerable Witnesses not referred to Witness Service**

The following vulnerable adult witnesses attended Name of Court Court without prior notice having been given to the Witness Service:

Date	PF Reference	Name of Accused	Name of Witness	Details of Vulnerability

Name:

Date:

This form should be completed and emailed to: [John.Fox@copfs.gsi.gov.uk](mailto:John.Fox@copfs.gsi.gov.uk) and [bob.wigley@copfs.gsi.gov.uk](mailto:bob.wigley@copfs.gsi.gov.uk) with a copy to [frussell@victimsupportscotland.demon.uk](mailto:frussell@victimsupportscotland.demon.uk).

**Date:**

**VULNERABLE WITNESSES (SCOTLAND) ACT 2004**

**Advance Notice of Request for Special Measures Involving TV Links**

Case Reference Number(s):

Name of Case:

Court where hearing/trial to be heard:

High/Sheriff Court

Date of trial/hearing (where known):

Witness Name & Address:

Special Measures being sought :

Preference of remote site location :  
(where applicable)

Date & time evidence of witness to be given :  
(where known)

Likely duration of evidence :

Applicants contact details (incl. telephone) :

Child Witness Notice /

Vulnerable Witness Application due to be submitted to .....Court on

(date).....

This form to be submitted to Scottish Court Service, Electronic Service Delivery Unit,  
High Court of Justiciary, Saltmarket, GLASGOW G1 5NA (0141 559 4590) where  
possible **by Fax: 0141 559 4585** or **email [esdu@scotcourts.gov.uk](mailto:esdu@scotcourts.gov.uk)**

**VULNERABLE WITNESSES (S) ACT 2004**  
**SOLEMN PROCEEDINGS**  
**SPECIAL MEASURES INVOLVING TV LINKS**  
(from vulnerable witness rooms and remote sites)

