

**Inspectorate of Prosecution
in Scotland**

Witness Service

**JOINT THEMATIC REPORT ON THE
PROVISION OF SERVICES TO
WITNESSES**

DECEMBER 2005



INSPECTORATE OF PROSECUTION IN SCOTLAND
Corunna House, 5th Floor
29 Cadogan Street
Glasgow
G2 7AB



VICTIM SUPPORT SCOTLAND
15/23 Hardwell Close
Edinburgh
EH8 9RX

Joint Thematic Report on the Provision of Services to Witnesses

December 2005

CONTENTS

	<u>PAGE NOS</u>
CHAPTER 1 Background and Methodology	1 – 5
CHAPTER 2 Witness Service and Victim Information and Advice - A Background	7 – 14
CHAPTER 3 Liaison Arrangements – The System in Practice	15 – 39
Good Practice Points	38 – 39
CHAPTER 4 Diversity/Equality Issues	41 – 44
CHAPTER 5 Bonomy Review, Vulnerable Witnesses Legislation and Implications for Witnesses	45 – 66
RECOMMENDATIONS	67
ANNEX 1 List of Members of Reference Group	69
ANNEX 2 Being a Witness Leaflet	71 – 73
ANNEX 3 Victim Information and Advice Categories	75 – 76
ANNEX 4 Victim Information and Advice and Witness Service Protocol	77 – 86
ANNEX 5 Joint Statement on Crown Witnesses Crown Office and Procurator Fiscal Service and Scottish Court Service	87 – 89

CONTENTS (contd)

	<u>PAGE NOS</u>
ANNEX 6 Fiscal Service Questionnaire	91 – 93
ANNEX 7 Scottish Court Service Questionnaire	95 – 96
ANNEX 8 Victim Information and Advice Questionnaire	97 – 98
ANNEX 9 Witness Service Questionnaire	99 – 100

EXECUTIVE SUMMARY

Chapter 1 – Background and Methodology

This is the second report of the Inspectorate of Prosecution in Scotland and has been prepared in conjunction with the Witness Service, a branch of Victim Support Scotland.

As part of our wider remit to conduct a thematic inspection of the Crown Office and Procurator Fiscal Service's response on victim and witness issues (including the operation of Victim Information and Advice) it was decided that it would be useful for the Inspectorate of Prosecution in Scotland in conjunction with the Witness Service to look at and evaluate the liaison arrangements between Crown Office and Procurator Fiscal Service and the Witness Service regarding the provision of advice and assistance given to witnesses cited for the High Court and Sheriff Court.

Additionally the opportunity would be taken to look at and evaluate the arrangements made by Crown Office and Procurator Fiscal Service to implement the provisions of the Criminal Procedure (Amendment) (Scotland) Act 2004 (following the review by Lord Bonomy) and the Vulnerable Witnesses (Scotland) Act 2004.

The report is based on evidence obtained in a number of ways including the use of questionnaires, interviews with relevant staff, consultation with relevant bodies and on site visits. A Reference Group consisting of the relevant criminal justice partners met regularly to provide advice and assistance to the Inspectorate team.

Chapter 2 – Witness Service and Victim Information and Advice – A Background

This chapter looks at the history of the development of the Witness Service and the Victim Information and Advice Unit in Crown Office and Procurator Fiscal Service.

The history of the Witness Service from the early pilots in 1996 is traced through to their review and extension to all Sheriff Courts and now the High Court in Scotland. This development being based on a recognition during the 1980's that the needs of victims and witnesses had been largely neglected.

At about the same time the Victim Information and Advice service was developed (then called Victim Liaison Office) which was focused on the provision of information to victims and witnesses regarding the progress of cases.

We come to the conclusion that the development and the work of both organisations has had enormous significance in addressing the issues of

concern about victims and witnesses which had become prevalent in the previous 20 years and we recommend that consideration be given to extending the service to the District Court and in particular the Glasgow Stipendiary Courts.

Chapter 3 – Liaison Arrangements – The System in Practice

Chapter 3 looks at the actual liaison arrangements as they work in practice between the Witness Service and Crown Office and Procurator Fiscal Service including Victim Information and Advice.

Feedback from the various parties largely obtained by questionnaires and on site visits is analysed in the chapter. Specific areas covered are the arrangements for referrals (and the information) which is relayed by Crown Office and Procurator Fiscal Service to the Witness Service and includes an analysis of how well the existing operational protocol works. Further the exchange of information is examined both pre-court days and on the court day itself (and indeed beyond). The availability of facilities and training is also considered and finally all organisations were invited to supply comments and suggestions for improvement.

Based on the information supplied from the various parties we have collated a number of good practice points and more specific recommendations. These include training, the supply of information to the Witness Service in non-Victim Information and Advice cases, recommendations on the exchange of information and the use of the Court Officer/Macer as a conduit for the passing on of information between the prosecutor and the Witness Service in order to provide witnesses in waiting rooms with updates on the progress of cases. Finally we recommend that the time is right for the Crown Office and Procurator Fiscal Service and Scottish Court Service to revisit the joint statement and update it in line with recent developments.

Overall we were very impressed with the enthusiasm of all the various parties to make the system work and indeed good working relations seem to be the norm.

Although we do make some recommendations for improvement the system in practice does seem to work well and there is no doubt that the provision of a Witness Service fills a need which had previously gone unmet.

Chapter 4 – Diversity/Equality Issues

In this chapter we stress the importance of the Standard Police Report as being the main source of information on items such as language difficulties, disability, vulnerability etc.

On the race front the main thrust is the very robust prosecution policy of race crime (analysed in more detail in our first report) and the fact that witnesses

who do not use English as a first language are a Victim Information and Advice category. This should in turn mean that the Witness Service is advised of their presence in court.

It would appear from current research that language needs are by and large being met but there is some doubt as to whether or not disability is flagged up in enough cases.

In our conclusion we indicate that the system should work well if the correct information is supplied at the outset by the Police and that thereafter the various links informing the various agencies should operate.

Chapter 5 – Bonomy Review, Vulnerable Witnesses – Legislation and Implications for Witnesses

Chapter 5 is a look at the implications of the Vulnerable Witnesses (Scotland) Act 2004 and the Criminal Procedure (Amendment) (Scotland) Act 2004.

As the legislation is only beginning to take effect at the time of publishing our report it was impossible to carry out any evaluation of the actual impact so we looked instead at what had been anticipated by Crown Office and Procurator Fiscal Service and the systems which had been put in place to deal with the legislation.

The chapter looks at the Practice Statement issued by the Lord Advocate on disclosure. We comment on the Crown Office and Procurator Fiscal Service's response of issuing circulars and practice notes for staff informing them of the terms of the Crown's commitments in respect of the disclosure provisions and the fact that a training package had been rolled out to raise awareness.

We raise some issues of concern (as anticipated by the Crown) including the ability of the defence to challenge a witness if the witness deviates from the statement supplied to the Police and also to the guidance to Procurator Fiscals to be on guard to try and protect witnesses from undue harassment. There are some issues still in the air including whether or not witnesses will be aware of the fact that any previous convictions and pending cases may be put to them by the defence and how much information the defence may disclose to other parties such as a Crown witness's home address or place of employment.

We deal with the role of Victim Information and Advice in the new system such as checking on the availability of witnesses for court.

We comment on the huge impact that the Bonomy reforms have had on the High Court and the reduction on the number of witnesses who have had to attend as a result.

In the second half of the chapter we look at the impact of the Vulnerable Witnesses (Scotland) Act 2004 and the various special measures introduced by that legislation.

We comment on the Crown's reaction including a) training of staff, b) steps to be taken to comply with the terms of the legislation and c) issue of best practice guidance.

We look at issues of concern which at present are unresolved as the Act is only coming into effect in stages. One major issue is the unknown numbers of witnesses who may be affected by the Act and the implications this may have for the Witness Service and others.

We come to the overall conclusion based on the information supplied to us that all the various parties welcome the new legislation and are clearly actively engaged in joint activity to ensure its proper implementation and are indeed committed to effective delivery.

Joseph T O'Donnell
Chief Inspector
Inspectorate of Prosecution in Scotland

December 2005

Chapter 1

Background and Methodology

1. The Inspectorate of Prosecution in Scotland was launched in December 2003 with the task of inspecting the Crown Office and Procurator Fiscal Service. It carries out this function by a series of office inspections and thematic reports either singly or in conjunction with criminal justice service partners. All reports are published on our website to be found at www.scotland.gov.uk/Topics/Justice/ipis/Intro.
2. The Inspectorate was established following the Jandoo Report into the liaison arrangements between the Police, the Procurator Fiscal Service and Crown Office with the family of the deceased Surjit Singh Chhokar. Recommendation 8 of the Jandoo Report was that "*The Crown Office Inspectorate should conduct a thematic inspection of the Service's response on victim and witness issues (including the operation of Victim Information and Advice (then called the Victim Liaison Office)*". Since the Jandoo Report the Scottish Parliament has passed the Vulnerable Witnesses (Scotland) Act 2004 and it will take some time for all the provisions of that Act to become operational.
3. Pending these developments taking effect it was decided that it would be useful in implementation of Recommendation 8 of the Jandoo Report for the Inspectorate of Prosecution in Scotland to look at and evaluate the liaison arrangements between Crown Office and Procurator Fiscal Service and the Witness Service regarding the provision of advice and assistance given to witnesses cited for the High Court and Sheriff Court (Chapters 1 – 4).
4. Additionally the opportunity would be taken to look at and evaluate the arrangements made by Crown Office and Procurator Fiscal Service (including the Victim Information and Advice Division) to implement the provisions of the Criminal Procedure (Amendment) (Scotland) Act 2004 (following the review by Lord Bonomy) and the Vulnerable Witnesses (Scotland) Act 2004 (Chapter 5).
5. The Witness Service agreed to undertake this joint project with the Inspectorate of Prosecution and produce a report to be submitted to the Lord Advocate. Scottish Court Service agreed to participate in the preparation of the report so far as it affected their interest and responsibilities. The report therefore attempts a thematic cross cutting look at the issues in question particularly taking a consumer's perspective.
6. The Witness Service is a branch of Victim Support Scotland itself a recognised charity. It was initiated in Scotland in 1996 following 3 pilots. Its main objective is to provide a range of court based support services to witnesses to deal with the experience of attending criminal trials in Scottish courts. More information is contained in Chapter 2 and available on its website at www.victimsupportsco.demon.co.uk.

7. The Crown Office and Procurator Fiscal Service is a Department of the Scottish Executive. It is the sole prosecuting authority in Scotland and also investigates sudden deaths and complaints against the police of a criminal nature. The area of Crown Office and Procurator Fiscal Service work that is most well known by the public is the investigation and prosecution of crime.
8. Victim Information and Advice is part of Crown Office and Procurator Fiscal Service and has three main functions:-
 - 1) To provide information to certain victims, witnesses and bereaved next of kin about the criminal justice process.
 - 2) To keep victims, witnesses and bereaved next of kin informed about the progress of cases.
 - 3) Advise on and facilitate referral to other agencies for specialist support and counselling as required.
9. Victim Information and Advice was subject to an internal Crown Office review during 2005 and the results of that internal review were accepted by the Lord Advocate and work has commenced on implementing the recommendations.
10. More information is contained in Chapter 2 and on the website at www.crownoffice.gov.uk.
11. Scottish Court Service is an Executive Agency which is responsible for the speedy, efficient and cost effective administration of the Supreme and Sheriff Courts in Scotland. It is responsible for the administrative staff who deal with the day-to-day work of the courts and associated offices. Further information can be found at the website at www.scotcourts.gov.uk.
12. The Scottish Executive (the devolved government for Scotland) is committed to securing a criminal justice system that fully supports victims and witnesses. A Scottish Strategy for Victims was published in January 2001 and a dedicated Victims and Witnesses Unit has been created within the Justice Department. A wide range of information on child and other vulnerable witnesses is published on its website at www.scotland.gov.uk/Topics/Justice/criminal/18245/12291.

Issues for Report

13. A number of issues were identified including
 - The provision of information, advice and support to witnesses prior to attendance at court.
 - The provision of information, advice and support to witnesses at court.
 - The joint operational working required of Victim Information and Advice and the Witness Service prior to and on court dates.
 - The proposed arrangements by Crown Office and Procurator Fiscal Service regarding delivery of the new statutory procedures to vulnerable witnesses.

- In all cases diversity issues would be considered including race, disability etc.

Methodology

14. The review was carried out using a number of techniques.

- Preparation and planning
- Research
- On site visits (namely Procurator Fiscal Offices and Witness Service offices)
- Interviews
- Questionnaires
- Review of case papers
- Analysis of information
- Report writing

This involved

- Review of relevant Departmental policies
- Review of relevant Departmental internal protocols
- Review of relevant Departmental protocols with other criminal justice partners
- Interviews with representatives of criminal justice partners
- Interviews with Crown Office and Procurator Fiscal Service staff
- Use was also made of the considerable volume of information obtained in the preparation of the Inspectorate's first report on race issues including interviews with witnesses (published March 2005)
- On site visits to courts
- Contact with specialist agencies

Questionnaire Methodology

15. We were concerned with gathering information in relation to the following issues:

- Knowledge of the functions of the Witness Service
- How the Victim Information and Advice (Crown Office and Procurator Fiscal Service)/Witness Service Protocol operates in practice
- Arrangements in addition to the Protocol
- Whether all Victim Information and Advice category cases are in fact referred to Victim Information and Advice
- The exchange of information before the case comes to court
- The exchange of information on court days
- The exchange of information while the court is sitting
- Pre-court familiarisation
- Accommodation for the Witness Service
- Representation of the Witness Service on the Court Users' Group
- Training
- Suggestions for improvement

16. Questionnaires were issued to all organisations involved – the Witness Service, Crown Office and Procurator Fiscal Service, Victim Information and Advice and Scottish Court Service. Questionnaires were distributed and returned electronically (via e-mail).

Witness Service

17. Questionnaires were sent to 13 members of staff in the Witness Service; 12 were returned. To minimise the data provision burden on the service the 13 staff were chosen by virtue of geographical location (one from each of the main areas¹ across Scotland) to ensure coverage across Scotland.

Crown Office and Procurator Fiscal Service

18. Questionnaires were sent to all District Fiscals, of whom there are currently 31 spread across the country; the Glasgow office has a slightly different structure due to its size and hence has an Area Fiscal and 4 Divisional Procurator Fiscals, one for each Glasgow Division. Hence, for our purposes, each Divisional Procurator Fiscal was equivalent to a District Fiscal. 36 questionnaires were returned (the District Fiscal in Dundee made 2 returns separately in respect of the Sheriff and High Court in that area).

Victim Information and Advice

19. Questionnaires were sent to 16 Victim Information and Advice staff; 14 were returned. The 16 members of staff were also chosen by virtue of geographical location (based on Crown Office and Procurator Fiscal Service business area) in addition to their experience of dealing with the Witness Service.

Scottish Court Service

20. Questionnaires were sent to Scottish Court Service staff in all Sheriff and High Courts; 50 questionnaires were issued and 39 returned. It should be noted that although there were 11 questionnaires not returned from Scottish Court Service staff, returns were received from all areas in Scotland (based on Crown Office and Procurator Fiscal Service business areas).
21. As far as possible and where relevant, the same questions were asked of each organisation (from each organisation's perspective), to maximise comparability across questionnaires for analysis, in addition to questions asked which were specific to each organisation.
22. As the Inspectorate of Prosecution is currently conducting an audit of Crown Office and Procurator Fiscal Service offices on a 3-year cycle the opportunity was taken during these regular inspections to look at the issues raised in this report.

¹ These 'areas' equate to Crown Office and Procurator Fiscal Service business areas for analytical purposes

23. A Reference Group was established to take the work forward and we would like to record our thanks to all involved for the giving of their time and expertise. The names of the Group members are in Annex 1. The conclusions, recommendations etc remain, however, those of the Inspectorate of Prosecution in Scotland and the Witness Service.
24. Additionally we would like to thank the various agencies who gave of their time, knowledge and experience.

Joseph T O'Donnell
Chief Inspector
Inspectorate of Prosecution in Scotland

Neil Paterson
Director of Operations
Victim Support Scotland

December 2005

Chapter 2

Witness Service and Victim Information and Advice – A Background

Development of the Witness Service

25. During the course of the 1980s recognition developed among criminal justice agencies that the needs of victims had been largely neglected and there was professional and political concern with witness issues generally and in particular with victims as witnesses.

"I was terrified to go to court. I don't like it much, I don't think anybody likes to go to court. I cannot suggest anything that would make it better. If it is the law to come you have to come". (Witness, Glasgow, 2004)

26. It was recognised that there was value in exploring the difficulties experienced by victim witnesses and it was also evident that by the end of the 1980s Victim Support had established itself as a credible provider of practical and emotional support for victims of crime and particularly, in England and Wales, was beginning to argue for better treatment of witnesses in court. By the end of 1995 almost all Crown Courts in England and Wales had a Witness Service managed by Victim Support and directly funded by the Home Office.
27. The then Scottish Office commissioned research on the experience of witnesses and a Report was produced in 1992. As a result of an approach made to the Procurator Fiscal and the Sheriff Clerk at Hamilton by Victim Support Scotland, the Hamilton Sheriff Court Working Group was established. The working group produced a final report in 1994 entitled "Supporting Crime Victims Within the Criminal Justice System". The Report included recommendations and conclusions specifically for Hamilton Sheriff Court but also acknowledged that much of the problems encountered would be common to many courts. In addition to the detailed proposals for improvement at Hamilton Sheriff Court it was suggested that the improvements might have a more general application. On the basis of local initiatives in Ayr and Kirkcaldy, Victim Support Scotland organised a conference in 1995 to facilitate discussion of victim and witness needs and issues in court and from this conference emerged an inter agency steering group whose remit was to consider the needs of victims and witnesses in courts and consider ways to address them. The steering group also assisted in establishing the policies and codes of practice which underpinned three pilot projects to take place in Hamilton, Ayr and Kirkcaldy.
28. In 1996, Victim Support in Scotland received funding for the three pilot projects from the Scottish Office. The funding was originally to allow the projects to operate until April 1998 although funding for an additional six months was subsequently agreed. By the autumn of 1996, a full time coordinator for each of the three projects was in place and the projects were officially launched on 15 November 1996. Two models of service delivery were undertaken in the course

of the pilot projects; one model being provided by Ayr and Kirkcaldy and the other model being provided by Hamilton. The service at Ayr and Kirkcaldy was a general one where a coordinator was appointed to recruit and train volunteers to provide a witness support service within the Sheriff Court to all civilian witnesses and their families (this was similar to the lines along which Witness Support had developed in England and Wales). In Hamilton a co-ordinator was appointed to develop services for victims and witnesses which would be provided by trained volunteers from the local victim support schemes but the project was also, in the spirit of the inter agency working party, intended to coordinate the efforts of all relevant agencies to develop the level of service offered to victims, witnesses and their families. In summary, the service model envisaged at Ayr and Kirkcaldy was to be a general one whilst the model at Hamilton was more specific and focused on vulnerable witnesses in particular.

29. Broadly speaking, in Ayr and Kirkcaldy the co-ordinator of the scheme would be sent a list of witnesses cited to appear by the Procurator Fiscal and project staff would write to witnesses advising of the existence of the service and send letters to the relevant Police Officers in an attempt to ensure that any vulnerable witnesses were specifically offered help and assistance and advance arrangements to meet with witnesses would be made if requested. In both projects staff would have a presence in the court building and it was found that most contacts with victims and witnesses arose from the presence of the project staff in the court building on the day of the trial. It was clear that in both Ayr and Kirkcaldy substantial numbers of people attending court received some kind of service from the Witness Support teams. The main group contacted were prosecution witnesses of whom a minority were victims but other groups were not excluded by the service.
30. In Hamilton due to practical difficulties (lack of office space in court building and the involvement of coordinator in a serious road accident) progress was slow. Discussions were held with the Procurator Fiscal to make arrangements to identify victims, rather than all witnesses and the procedure for identifying victims among prosecution witnesses was initially time consuming although regarded as worthwhile by the Procurator Fiscal. The project was not in a position to accept referrals until May 1997 but during that month showed 42 recorded contacts. Overall at Hamilton, a much higher proportion of contacts was with known victims, as would be expected given the different focus.
31. It was apparent from the projects that what most people wanted from the service was answers to questions about the court generally, about procedures, facilities, waiting room arrangements and the duration of time they were expected to be required at court.

"It was a long time to wait. It would be better if you got a time. I missed an appointment with the doctor because I did not know I had to stay this long". (Witness, Glasgow, 2004)

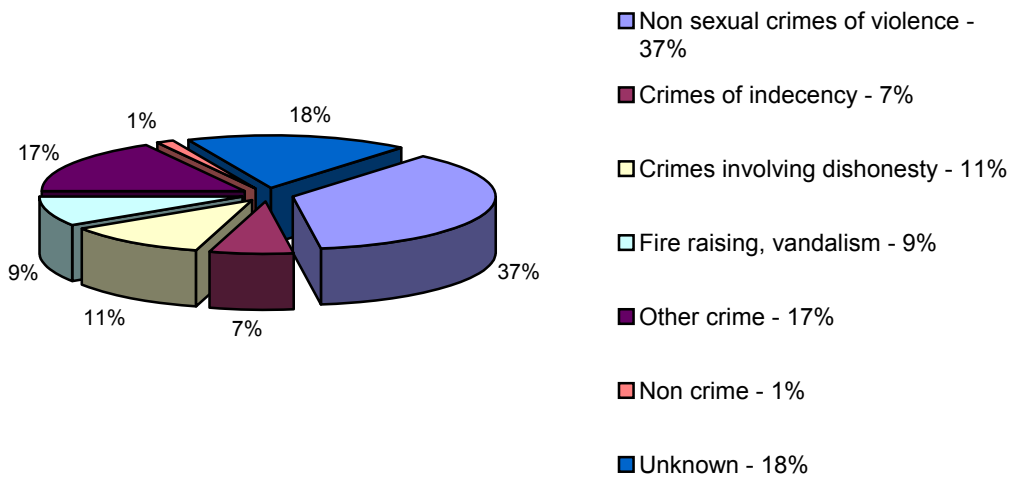
32. Some witnesses clearly valued simply having some one to talk to who offered a friendly face and was not directly related to the case. A number of witnesses also reported that contact with the witness service volunteers helped “put them at ease and relax them”.
33. Professionals interviewed about the project spoke very favourably of them and viewed the input of the service as being very valuable for witnesses.

"I was nervous today. I had been treated fine by the Procurator Fiscal and the staff here." (ie Witness Service staff) (Witness, Hamilton, 2004)

34. Evaluation of the projects in 1998 concluded that although it could not be said categorically that a universal witness service would increase the number of people prepared to be witnesses, it did appear that the presence of the service made the experience of going to court “not as bad as expected”². Overall it appeared that witnesses and criminal justice personnel were positive about the pilot projects and it appeared that if an advice support service were established in court for witnesses they would use it. Consideration was given to the question of who should provide a service to witnesses and Victim Support emerged as the most obvious candidate to provide a national service should a decision be made to introduce one on a permanent basis. There was also clear evidence to suggest that the most relevant and effective support would require a court-based service. It was subsequently agreed that the Service should be rolled out nationally and that responsibility for service delivery would remain with Victim Support Scotland. It was also agreed that the model of service delivery would be based on that developed at Ayr and Kirkcaldy courts during the pilot period and the organisation was quickly able to establish the service in “cluster” courts local to Ayr and Kirkcaldy. In June 2000 Victim Support appointed a Witness Service manager to oversee the expansion of the service to all courts and the final service was established in Rothesay in August 2002.

² Victim Witness Support Projects in Scotland: A Report on Three Pilot Schemes by David Lobleby and David Smith

35. **Types of Crime Referred (Witness Service), April 2003 to March 2004³**

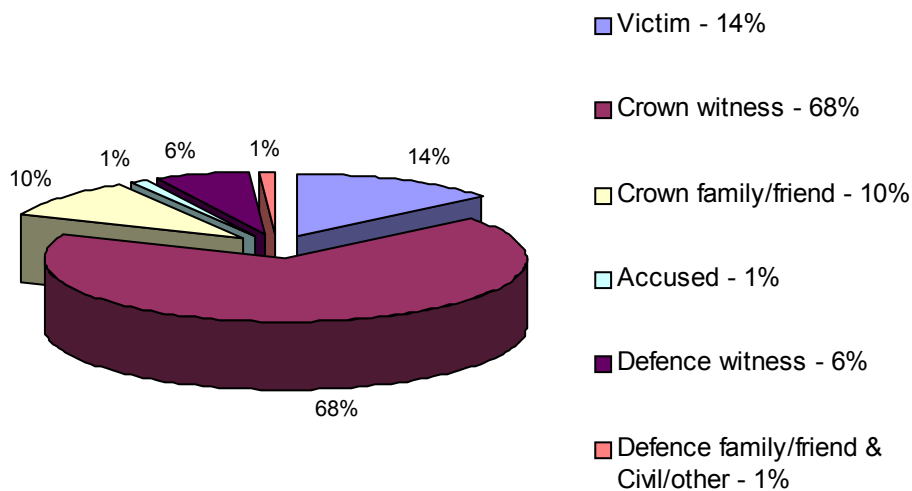


36. In 2003 an evaluation of the Witness Service was carried out by the Scottish Executive⁴ and established that the Witness Service was at the time provided in all 49 Sheriff Court locations, was staffed by 32 court-based co-ordinators and assistants in 23 offices, supported by a dedicated training officer and an administrative manager and organising approximately 300 volunteers at any one time. At that time staffing levels were set to increase in order to extend the operation of the Service to the High Court. Notices and leaflets had been produced advising of the remit and work of the Witness Service and it became clear from discussions with volunteers that many were initially surprised and impressed by the high standards and expectations set by the Witness Service. It was clear from the evaluation that the Witness Service had been successfully extended to every Sheriff Court in Scotland and had some contact, usually brief, with the majority of people who attended at court as witnesses. Most contact was in the form of providing basic information rather than intensive emotional support and the work of the service was typically (and perhaps appropriately) low-key. The Service would, where appropriate, arrange for anxious witnesses to have pre-trial court visits and would make themselves available where required to provide emotional support to witnesses, both in the waiting room and would also go in to the actual courtroom with the witness. The evaluation concluded that the great majority of witnesses valued the Witness Service and that the Service's volunteers were often seen as the only people in court to treat witnesses with consideration and respect.

³ Source: Victim Support Scotland 2004

⁴ Source: The Witness Service Five Years On: An Evaluation in 2003

37. **Status of Service User (Witness Service), April 2003 to March 2004⁵**



38. The opinions of other agencies were sought in the course of the Evaluation of the Witness Service and there was an overwhelming view any support or assistance that could be provided to "normal" witnesses would be welcomed. Indeed one member of the Procurator Fiscal Service commented that there had been "a screaming need" for some-one to take care of prosecution witnesses and that the Witness Service had "filled a void" created by a lack of resources and initiatives elsewhere in the system. A common view advanced was that the Witness Service had successfully established itself in the Sheriff Courts as a valuable resource which had good relationships with other court groups and which consisted of staff and volunteers who were unobtrusive, approachable and committed.

Victim Information and Advice

39. The Victim Information and Advice service developed from public concern in Scotland regarding the lack of the routine provision of information to victims regarding the progress of cases. Research was carried out in 1994 to examine the information needs of victims in Scottish criminal cases⁶. The finding of the research, published in 1995 confirmed that people did indeed want such information, particularly in serious cases. As a result of a proposal put forward by the then Lord Advocate, Lord Hardie, a feasibility study was undertaken in 1999 and the Victim Information and Advice service was first piloted in the Aberdeen Procurator Fiscal Office in November 2000 and then in the Hamilton Fiscal Office in May 2001. Certain commitments were given by the Scottish Executive in the terms of the "Scottish Strategy for Victims" which was published in January 2001.

⁵ Source: Victim Support Scotland 2004

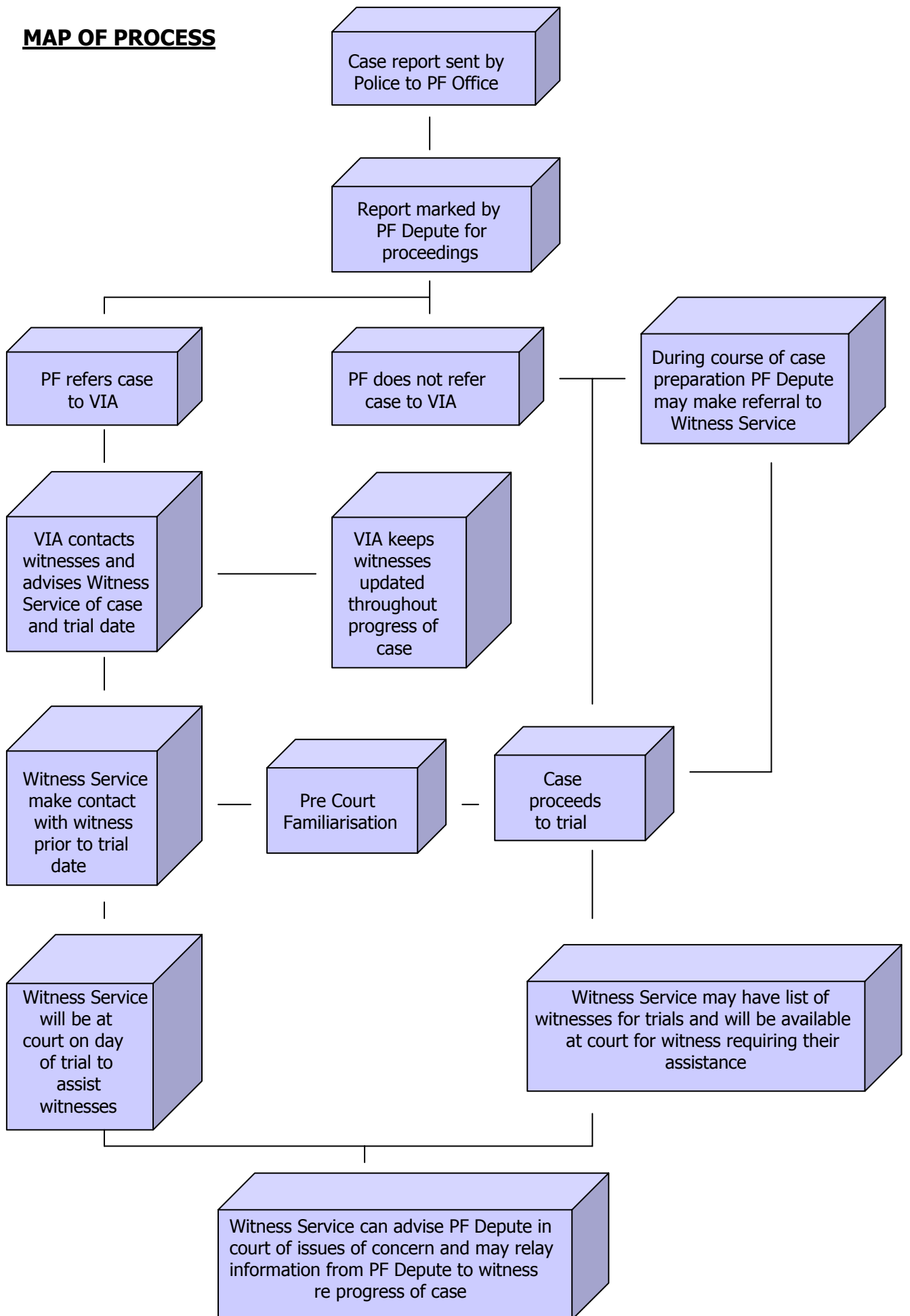
⁶ Source: Information Needs of Victims - The MVA Consultancy - The Scottish Office Central Research Unit - 1995

40. The aim of the pilot project was to improve services to victims, witnesses and next of kin by setting up a dedicated Crown Office victim and witness service. Victim Information and Advice was thereafter officially launched on 14 June 2002 and Victim Information and Advice teams were set up throughout Scotland with the roll out being completed on 30 December 2004. The provision meant that victims of serious crime, bereaved relatives and vulnerable witnesses could be referred by Procurator Fiscal Deputes to their local Victim Information and Advice team who in turn would be able to liaise between relevant bodies and convey information.
41. The Victim Information and Advice staff in addition to understanding the needs and concerns of people affected by crime are all specially trained and can provide a range of information and services. They can:-
- Provide information and advice about how the criminal justice system works and what victims and witnesses should expect;
 - Update victims and witnesses regarding the progress of their case;
 - Arrange a court visit if required in order that victims/witnesses can be familiar with the layout of a courtroom before the trial;
 - Arrange for victims/witnesses to be put in touch with other useful services and organisations which may be of assistance to the particular victim/witness (ie Witness Service).
42. Information about cases can be provided by Victim Information and Advice from the moment the case is first reported to the Procurator Fiscal through until final conclusion and disposal of the case.
43. Whilst Victim Information and Advice serves individual victims and groups of victims in all cases of domestic abuse, sexual offences and racial crime and those cases likely to be tried at Sheriff and Jury level, the service is also provided to all child witnesses, vulnerable witnesses and next of kin. Victim Information and Advice also works closely with other statutory agencies such as the Police and Scottish Court Service and with voluntary agencies such as Victim Support, Women's Aid and Witness Service.
44. As at 1 December 2005 it was recognised that over 74,000 victims and witnesses throughout the whole of Scotland had been assisted by Victim Information and Advice since its commencement. The main categories of referral to Victim Information and Advice have been and continue to be; victims in all serious cases where the nature of the charges are indicative of solemn proceedings, next of kin in cases involving death where criminal proceedings are possible and deaths where a fatal accident inquiry is to be held, next of kin in cases where there may be significant further enquiries or where in the circumstances it is considered that the assistance of Victim Information and Advice would be appropriate, victims in cases of domestic and racial abuse, victims in cases involving sexual abuse and cases involving child or vulnerable witnesses.

Relationship Between the Witness Service and Victim Information and Advice

45. The Witness Service and Victim Information and Advice have developed almost simultaneously and both in response to unmet needs identified regarding the information and support previously available to victims and witnesses involved in the criminal justice process. It was recognised that certain work and functions of both organisations could potentially overlap and an Operational Protocol between the organisations was established in July 2002 and has since been revised. The protocol did however recognise that "an overlap in certain activities will be required to ensure that the most effective service is provided" but also acknowledged the need to "minimise duplication".
46. Staff from both Victim Information and Advice and the Witness Service were interviewed in the course of the evaluation of the Witness Service which was carried out in 2003 and the staff from both organisations reported "amicable supportive relationships" and indicated that they worked in partnership. Victim Information and Advice Officers spoke of making referrals to the Witness Service for pre-trial visits and general support and appeared to recognise that the Witness Service was the "court based agency and had the time available". It was stressed that Victim Information and Advice is primarily an **information service**, making most contacts by letter or telephone, with a **clear and specific client group** whereas the Witness Service is available to provide **support to all victims, witnesses and their families**.
47. There was a general consensus that the Victim Information and Advice service and the Witness Service (along with Social Work) all had relevant roles and that so long as they each understood their specific remit they should be able to "mesh together to enhance the overall service to witnesses". A few of the professionals interviewed in the course of the evaluation considered the remit of Victim Information and Advice to be quite limited and thus not seriously impinging on the established supportive role of the Witness Service.
48. There is certainly a clear demarcation between the organisations in that the Witness Service is court based and can make general contact with all victims and witnesses for the purpose of providing information and support at court whereas Victim Information and Advice is attached to Crown Office and Procurator Fiscal Service, has specific categories of cases referred to them and may make and maintain contact with witnesses throughout the duration of the process for the purpose of providing information. From all accounts it appears the development and work of both organisations has had enormous significance in addressing the issues of concern about victims and witnesses that have become prevalent in the last 20 years.
49. The next logical development would be to extend the Witness Service to the District Court in particular the Glasgow Stipendiary Courts which have all the powers of a Sheriff sitting alone. This could perhaps be considered in the light of the statutory provisions in implementation of the McInnes Report in the forthcoming Summary Justice Bill.

MAP OF PROCESS



Chapter 3

Liaison Arrangements - The System in Practice

50. Witnesses are cited to court by the Crown Office and Procurator Fiscal Service either postally or by being served with a citation by a Police Officer. Information to witnesses is sent with the citation which includes a "Being a Witness" leaflet (see Annex 2 for a typical example) (the leaflet is being revised and will still include references to the Witness Service, but in a more user friendly format).
51. In serious cases (those likely to be tried by a jury in the High or Sheriff Court) the witness may have been seen by a member of Crown Office and Procurator Fiscal Service staff. This is called "precognition" where a statement is taken from the witness to better inform the prosecution of what the witness is likely to say in evidence. The opportunity would normally be taken at this stage to give the witness an idea of the process which would probably follow including being cited to court and the procedure at court.
52. As stated in Chapter 2 over the last 20 years or so there has been growing recognition of the need to put victims and witnesses at the centre of the criminal justice system and close the gaps which had become apparent. In particular the gaps in updating witnesses and providing support and information on the day in court are now largely met by the Witness Service and Victim Information and Advice. However, while the Witness Service deals potentially with all witnesses at court (including those cited by the defence) Victim Information and Advice deals with specific categories only. See Annex 3 for the list of categories covered by Victim Information and Advice.
53. To facilitate the exchange of information between Victim Information and Advice and the Witness Service an operational protocol was agreed by both parties (see Annex 4 for the protocol). This was reviewed as recently as November 2005.
54. In relation to the Scottish Court Service in an effort to provide a better service to Crown witnesses a joint statement was agreed between Crown Office and Procurator Fiscal Service and Scottish Court Service in 1998 (see Annex 5 for a copy of this). This joint statement followed the public declarations of the standards by both organisations in the Charter Standard Statements. The joint statement sets out the shared and individual responsibilities in relation to Crown witnesses by both partners and includes items such as the provision of foreign language interpreters and sign language interpreters where required and the updating of witnesses on the progress of their cases on court days. Also included is an obligation on the Procurator Fiscal to inform the Clerk of Court of any special needs of witnesses which would require special arrangements to be made. The implementation of these responsibilities was left to local management discretion both on the part of the Scottish Court Service and Crown Office and Procurator Fiscal Service. No national model was rolled out.

55. Accordingly as a result of the developments in the Witness Service and Victim Information and Advice and other initiatives a witness now cited to court whose case falls within the categories covered by the Victim Information and Advice protocol could unless he opts out be expected to be referred to the Witness Service. This would in itself trigger information supplied to the witness by the Witness Service including the offer of pre-court visits and support logistical or otherwise on the day in court. Victim Information and Advice send out a Witness Service information leaflet together with their correspondence.
56. In addition for a witness covered by the Victim Information and Advice remit the expectation would be to obtain regular updates on the progress of the case and referral as necessary to specialised support agencies.
57. However as Victim Information and Advice does not cover all cases prosecuted by the prosecution system we were concerned to find out if the Witness Service was obtaining adequate information regarding witnesses not covered by the Victim Information and Advice remit.
58. We were also concerned to see whether or not there were adequate facilities for the Witness Service in the various courts, this being the responsibility of Scottish Court Service.
59. In relation to the actual court day it was important to discover how easily information was exchanged between the various parties and to seek to make recommendations which might improve the cross transference of such information.
60. Accordingly questionnaires as well as face to face interviews took place involving all the four parties – Crown Office and Procurator Fiscal Service, Scottish Court Service and Victim Information and Advice and Witness Service – a copy of the questionnaires issued to all four organisations is attached at Annexes 6, 7, 8 and 9.
61. Details regarding the questionnaires and their administration are contained within the 'Methodology' section in Chapter 1. The table below shows a summary of the number of responses in each group:

The Witness Service	12
District Fiscals (Crown Office and Procurator Fiscal Service)	36
Victim Information & Advice (Crown Office and Procurator Fiscal Service)	14
Scottish Court Service	39

Issues

62. Knowledge of the Functions of the Witness Service

All of the Victim Information and Advice respondents and three quarters of fiscal staff indicated that they were aware of the full range of Witness Service functions. A quarter of Fiscal Service respondents indicated they were only partially aware. Given the importance of identification of likely cases for the Witness Service it is important that Crown Office and Procurator Fiscal Service staff have a good understanding of what is available. Anecdotal evidence to us would also tend to confirm that knowledge of the range of functions of the Witness Service can be sketchy especially for new staff. Accordingly

We recommend that an item on the Witness Service forms part of the introductory training of all Crown Office and Procurator Fiscal Service staff and also part of the Fiscal Deputes' Core Course.

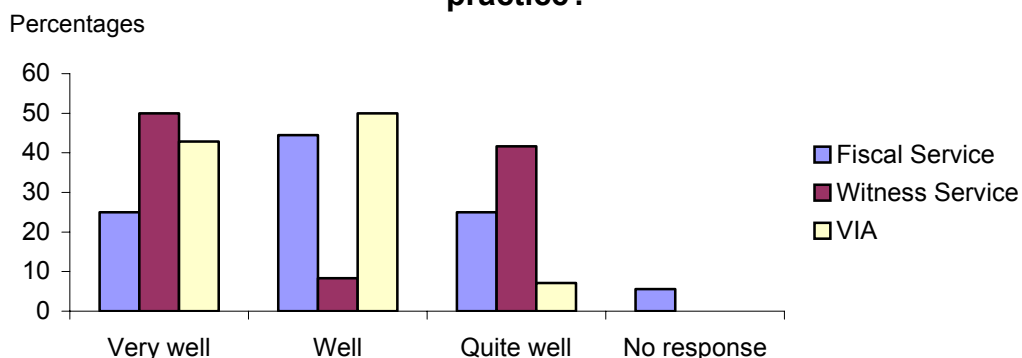
63. We also think it would be good practice for new Fiscal Deputes to spend some time (eg half a day) with their local Witness Service. Also it seems to us desirable (where possible) to "mainstream" it in other areas of training eg domestic abuse and include joint training initiatives (See also page 31, 'Training').

The Victim Information and Advice/Witness Service Protocol in Practice

64. The Witness Service, Victim Information and Advice and Crown Office and Procurator Fiscal Service were all asked to evaluate how well the protocol operated in practice. Replies from all relevant bodies (Fiscal Service, Victim Information and Advice and the Witness Service) were positive in this respect. 13 out of 14 (93 per cent) of Victim Information and Advice staff reported that the protocol worked either 'very well' or 'well'. Witness Service staff also responded positively, albeit with a larger proportion (5 out of 12, 42 per cent) reporting that the protocol worked 'quite well' as opposed to 'very well' or 'well'. Most Fiscal Service staff responses (44 per cent) fell into the 'well' category, with the remainder split evenly between 'very well' and 'quite well' (Chart 1).

65. Chart 1

In your experience, how well does the operational protocol between Crown Office and Procurator Fiscal Service and the Witness Service actually operate in practice?



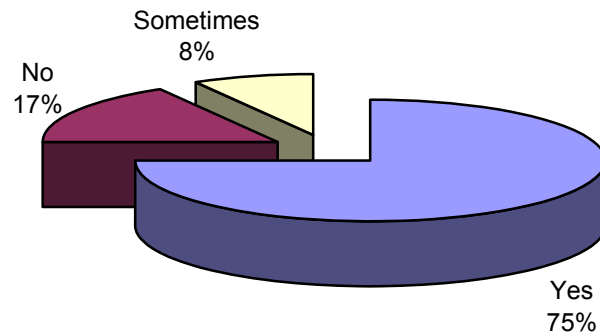
66. A good proportion of respondents from the three organisations volunteered further information to the effect that there was considerable goodwill in evidence among all the agencies. The Crown Office and Procurator Fiscal Service response in particular praised the contribution made by the Witness Service.
67. The Witness Service and Victim Information and Advice keep their protocol under review (as recently as November 2005 updated) and we have therefore no recommendation to make in that regard except to encourage such ongoing review.
68. However, in light of some comments made to us regarding the design and ease of use of the Witness Referral Form (used to transmit information between Victim Information and Advice and the Witness Service – see Annex 4) we thought that it might be appropriate to reconsider the design of the form. This would improve recording of data on categories of referrals. The Referral Form was revised in November 2005 to take account of Witness Service comments.

Arrangements in Addition to Protocol

69. As Victim Information and Advice do not cover all cases in court (albeit they do cover the most serious cases) we were keen to discover what, if any, mechanisms existed to advise the Witness Service of cases where witnesses might benefit from their services.
70. We asked Fiscal Service staff if there were arrangements in place locally to supply information to the Witness Service, in addition to referring those cases specified by the protocol. Almost half of responses indicated that there were, with the remaining half indicating there were none.
71. In respect of the Witness Service perspective, three quarters of respondents (9 out of 12) indicated they were informed of cases other than those covered by the protocol; the others either responded 'no' or 'sometimes' (Chart 2).

72. Chart 2

Are you made aware of cases other than those specified by the Victim Information and Advice protocol?



73. We feel there is a danger of the protocol masking as it were other cases not covered by it and that it is important for information to be given to the Witness Service by Crown Office and Procurator Fiscal Service in non-Victim Information and Advice cases. In the pilot schemes run before the roll out of the Witness Service this was done by all witness lists being sent by the Procurator Fiscal to the Witness Service and the latter writing to all the witnesses explaining its functions and offering help. This has proved too costly a mechanism (and with too low an uptake) to be continued.

74. A number of devices were cited as being used to convey information to the Witness Service including:-

- Meetings to discuss what cases were coming up. This was particularly the case in relation to the High Court and included representatives of the Witness Service, Victim Information and Advice, Victim Service and the Sitting Manager to discuss issues such as vulnerability.
- Referrals by Precognition Officers (members of Crown Office and Procurator Fiscal Service staff) to the Witness Service.
- Witness Service e-mailing Procurator Fiscals to enquire as to any special requirements.
- A local information sharing protocol between the Witness Service and Victim Information and Advice.
- The Witness Service being sent a copy of the indictment (this is the charge in solemn proceedings in the High Court and Sheriff Court which contains a list of witnesses).
- Regular meetings between Crown Office and Procurator Fiscal Service staff and the Witness Service to discuss running orders of trials etc.

- The Procurator Fiscal telephoning the Witness Service to indicate if trials were proceeding.
 - The Depute Fiscal referring non-Victim Information and Advice cases to the Witness Service.
 - In some cases the Police or Social Work Departments making a referral.
 - Witness lists being sent to the Witness Service.
75. Given that the advance giving of information to the Witness Service (in non-Victim Information and Advice cases) is crucial to the effective delivery of service by the Witness Service and while not wishing to be prescriptive about methods we accordingly

Recommend that all Crown Office and Procurator Fiscal Service Area Fiscals and the Witness Service agree to put in place arrangements for the giving of information to the Witness Service for cases other than Victim Information and Advice cases.

In particular the giving of witness lists to the Witness Service in summary cases should be routine.

76. In the event of witnesses being cancelled it would, of course, be helpful for the Witness Service to be advised of this.

Are All Victim Information and Advice Cases in Fact Referred to Victim Information and Advice?

77. Somewhat alarmingly nearly all the Victim Information and Advice responses (12 out of 14) were to the effect that they could not be sure that all cases which should be referred to them were in fact so referred (and by implication on to the Witness Service). In some cases the Victim Information and Advice staff use a "long stop" of looking at all the cases as they have "read-only" access to the Crown Office and Procurator Fiscal Service IT system. Other Victim Information and Advice devices included checking custody lists or running IT searches on the system (called GIPS). Only slightly more than half of Victim Information and Advice Offices do this kind of checking so it is important that Crown Office and Procurator Fiscal Service staff correctly identify such cases from the start as it is the trigger for so many subsequent steps.
78. However, this is likely to be less of a problem in future as the Crown Office and Procurator Fiscal Service IT system (FOS) including case marking now requires the Depute who "marks" (ie decides on what action to take) on a case has to select whether or not it is a Victim Information and Advice category of case. This of course depends on the marking Depute being familiar with the Victim Information and Advice categories and these are displayed on the screen but only after the Procurator Fiscal Depute selects it as a Victim Information and Advice case. It would be helpful if the FOS system could display the Victim

Information and Advice categories prior to having to be selected. It is important that Crown Office and Procurator Fiscal Service staff are familiar with the categories.

79. We understand that training on the Victim Information and Advice system and categories is included in basic training given to Crown Office and Procurator Fiscal Service staff. However in practice this may not take place until some time after commencing work hence our suggestion that new Deputes spend half a day or so with the local Witness Service.

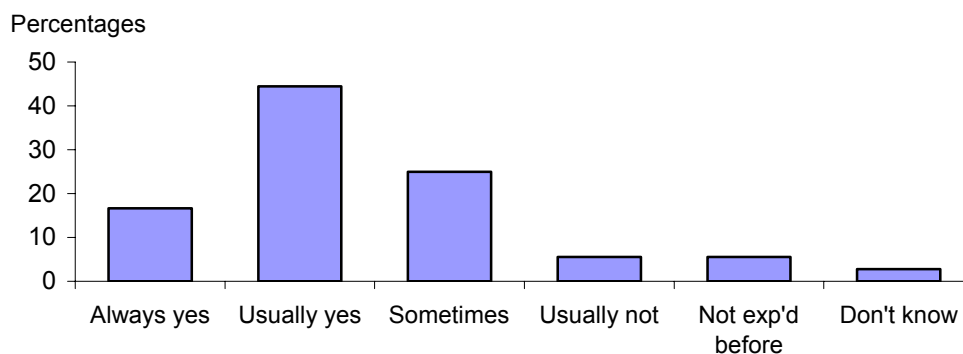
Exchange of Information pre Court Days

80. In some (usually sensitive high profile) cases Fiscal Service staff may wish to maintain close links with a witness such as at a pre-court visit. The nature of the work done by the three agencies Witness Service, Crown Office and Procurator Fiscal Service and Victim Information and Advice means there can be some overlap and we were interested to discover whether or not there was good communication between the parties when this happened.

81. We asked Fiscal Service staff if they notified the Witness Service (and Victim Information and Advice where relevant) when they wished to maintain close links with a witness in a case. A majority (61 per cent) of Crown Office and Procurator Fiscal Service staff responded to the effect that they would always or usually inform the Witness Service (and Victim Information and Advice where appropriate) (Chart 3). Only 2 out of 36 (6 per cent) indicated that would usually not.

82. Chart 3

In cases where Fiscal Service staff wish to maintain close links with a witness, are the Witness Service and Victim Information and Advice notified of this intention?



83. Victim Information and Advice staff were also asked if they received notification of when Fiscal staff wanted to maintain close links with a witness. While their replies largely mirrored those of Fiscal Service staff, with half indicating that they were always or usually told, proportionately more indicated that they were usually not told or had not experienced such a situation before (a total of 6 out of 14 replies; 42 per cent). It is not the intention of the Witness Service or

Victim Information and Advice to exclude continuing contact by Crown Office and Procurator Fiscal Service staff especially in sensitive cases. What is important is that the parties are aware of this intention and this seems to be the case. Treading on each other's toes can therefore be avoided.

84. The method of communication varied.
- E-mails
 - Telephone calls
 - Through Victim Information and Advice
 - By the Precognoscer in person
 - Court meetings
 - Discussions with Procurator Fiscal Deputes
85. There was some concern expressed to us that some Procurator Fiscal Deputes did not appear to be mindful of the need to communicate with the Witness Service. On the other side we received some concerns that the Witness Service organised court visits without telling Crown Office and Procurator Fiscal Service staff when the latter would have liked to be present.
86. Crown Office and Procurator Fiscal Service responses varied on the exchange of information pre-court from 'all information' being exchanged prior to the court day to 'very little being done until the court day'. One even indicated alarmingly that there was 'little exchange of information'.
87. Victim Information and Advice staff were asked if they had experienced any problems in the exchange of information between themselves and the Witness Service. Although 4 out of 14 replies indicated that problems had been experienced it appeared that mostly these were isolated incidents and/or had now been resolved.
88. In some cases Crown Office and Procurator Fiscal Service staff (Fiscals or Precognition Officers) might wish to continue personal contact with a victim/witness and be present at pre-court visits etc. This is especially true in child abuse cases and rape and other cases of a sexual nature where a 'bond of trust' can develop between the Crown Office and Procurator Fiscal Service members of staff and the victim/witness. This could continue to the trial stage and possibly beyond into post-trial appeals etc.
89. There is some danger of overlap here between the Crown Office and Procurator Fiscal Service staff on the one hand and the Witness Service staff or Victim Information and Advice on the other. The creation of Victim Information and Advice and the Witness Service was never intended to create 'silos' and definitive boundaries in the way victims/witnesses are treated. To obviate the danger of one or other party not being aware of this ongoing contact we accordingly

Recommend where Crown Office and Procurator Fiscal Service staff wish to have personal contact with a victim/witness at a stage where

Victim Information and Advice or the Witness Service would normally be involved that an exchange of information takes place between the parties.

We consider that how this is achieved is best left to local arrangement.

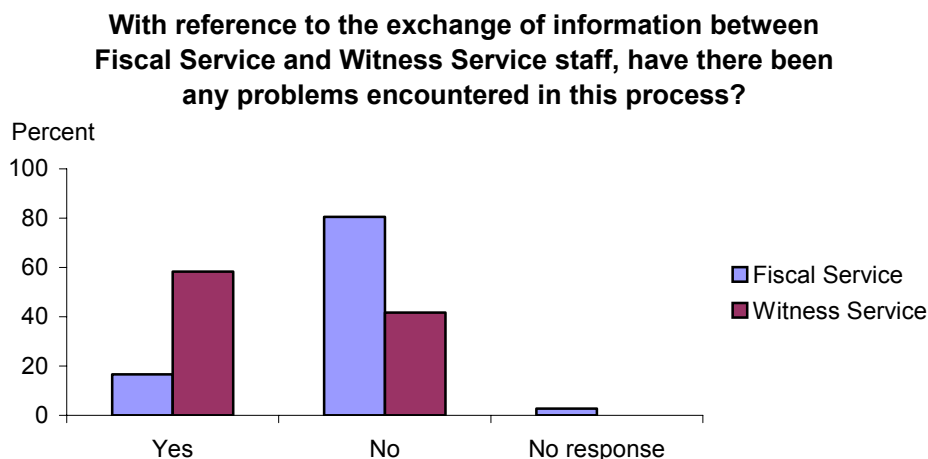
Exchange of Information on Court Days

90. Previous research shows that the biggest uptake of the services offered by the Witness Service is that taken up on the actual day in court. Even if no prior contact has been made with the Witness Service usually there will be some contact on the court day itself when Witness Service staff make themselves know to the witnesses in the court buildings.

"It's a bit mixed. I don't like coming but the people here do behave good, coming here is not good in itself". (Witness, Glasgow, 2004 when asked for his overall impression of the experience of being a witness)

91. This close contact with the witness on the actual day can yield useful information for the Depute in court and by extension be useful to the court itself. It is important therefore that any information gleaned can be passed on and hopefully utilised.
92. We were anxious to discover what information was passed between the Witness Service and Crown Office and Procurator Fiscal Service staff on court days and what problems there might be. Victim Information and Advice would not normally be present at court on court days.
93. However there is daily contact in the permanent High Court sites at Glasgow, Edinburgh and Aberdeen between Victim Information and Advice and the Witness Service. In particular next of kin are met on first arrival at the High Court by Victim Information and Advice staff and this takes place at all High Court locations.
94. We enquired what kind of information was exchanged on court days. Responses included the Witness Service alerting the Court Depute to the presence of the witnesses in the building, the attitude of a witness, feelings such as fear, anxiety etc, a witness wishing to have their address withheld, transport and babysitting problems, mobility problems. Sometimes even information on absent witnesses from those present. Crown Office and Procurator Fiscal Service does not give the witness's address in court unless it forms part of the charge – this is one of the Victim Standards.
95. For their part the Crown Office and Procurator Fiscal Service response included the Depute supplying information on the running order of business, the time when evidence was expected to be taken and how long it would last, the progress of cases and general updates including excusal of witnesses.

96. Generally both the Witness Service and Crown Office and Procurator Fiscal Service staff felt there were good channels of communication and that either party would take the initiative in this. The more serious the case the more exchange of information there was likely to be.
97. We were concerned to find out from the Witness Service if information they supplied appeared to be utilised. A standard 'blue' form is used for this purpose. Nearly all responses (11 out of 12) from the Witness Service indicated that it either always or usually was, only one respondent said 'sometimes' which is encouraging. Two Witness Service respondents went out of their way to say there was great rapport between Fiscal Deputes and the Witness Service staff which again is very encouraging. Examples from the Witness Service perspective of when this might fall down included no feedback on information supplied, concern over whether information given to Victim Information and Advice was fed through to trial Deputes, pressure of time on Deputes preventing them seeing witnesses, pressure of business and easier in some courts than others.
98. We asked both the Witness Service and Crown Office and Procurator Fiscal Service if they had encountered any difficulties in the process of exchanging information. Just over half of the Witness Service responses said they had encountered difficulties. Curiously the vast majority of Crown Office and Procurator Fiscal Service responses were to the effect that there had been no difficulties although the High Court was cited as a problem area because of late availability of information.
99. Chart 4



100. It was clear that in the vast majority of cases relationships between the various parties were extremely good and only isolated examples of problems such as "attitude" were reported by both Crown Office and Procurator Fiscal Service and Witness Service staff. Breakdowns in relationships were noticeable as exceptional highlighting (as ever) the importance of good relationships in making

any system requiring co-operation among different bodies work smoothly and effectively.

101. Particular problems identified by a minority of Crown Office and Procurator Fiscal Service staff included the following.

- Inexperienced Depute misunderstanding about witness timetabling
- Failure to communicate relevant information to the Witness Service
- Failure of the Witness Service to advise Depute that they were involved
- Incorrect information relayed to Depute in court
- Some Deputes trial focussed and not witness focussed and not communicating well with the Witness Service
- Exchange of information only taking place on the day

102. From the Witness Service perspective difficulties included:-

- Difficulties in speaking to the Fiscal Depute before the court started
- Poor feedback eg when a case was being adjourned
- Lack of training for Fiscal Deputes
- General access to Fiscal Deputes
- Difficulty in getting a running order from Fiscal Deputes
- Witnesses not updated every two hours in accordance with the joint statement
- Fiscal Depute's manner with witnesses
- Information passed on appeared not to be considered

103. We asked Crown Office and Procurator Fiscal Service what from their perspective use was made of the information given by the Witness Service in particular how did this information affect conduct on the day.

104. Responses indicated that the information could be used to:-

- Influence the running order of cases
- Give priority to nervous witnesses
- Extra information given by the Witness Service could affect plea negotiation
- Witnesses could be put on standby
- Depute could speak to a witness to try to allay concerns
- Information could affect the way a witness was treated within the court

105. Generally the responses were that the Fiscal Depute could receive helpful information about witnesses and would try to accommodate issues brought to their attention in their overall management of the court. However this depended on competing priorities.

106. We only too well appreciate the onerous duties on Fiscal Deputes on court days and the many conflicting demands on their time. However, given the importance of witnesses to the whole criminal justice system and the smooth running of the court we recommend that (as is good practice anyway)

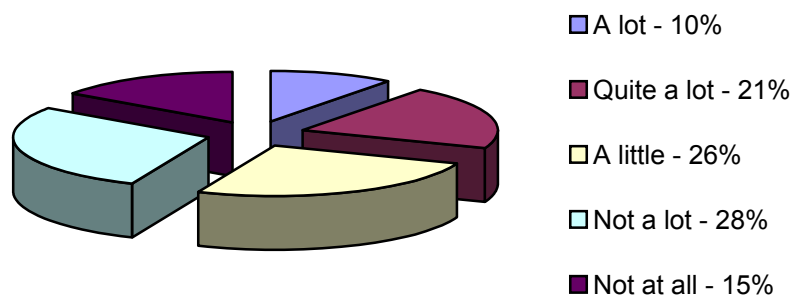
Wherever possible prior to the start of the court that there is an exchange of information between the Court Depute and the Witness Service staff to enable both parties to be as fully briefed as possible.

Passing of Information While Court Sitting

107. Once the court commences it normally continues until the lunch break typically 1.00pm. The Court Depute is normally "trapped" in the courtroom and not normally free to go into the witness room (which might itself raise a few problems after the court has started).
108. We asked Crown Office and Procurator Fiscal Service staff if they were directly involved in relaying information to witnesses during the court day. Only 6 respondents (17 per cent) from Crown Office and Procurator Fiscal Service indicated that they were 'directly involved' in relaying information to witnesses. The majority of responses were that they were 'sometimes involved' (64 per cent), with the remainder (19 per cent) indicating that they were 'not involved at all'.
109. Not surprisingly these comments were qualified to the effect that the Fiscal Depute tries to see vulnerable witnesses before and after a case and it also depended on the nature of the information, needs and other factors and whether the Fiscal Depute was able to get out of court. It was recognised that it was not always possible for a Fiscal Depute to get out of court and this was where the teamwork of other personnel came into play.
110. The responses from the Scottish Court Service personnel were interesting. Typically in court the Sheriff Clerk is present during court proceedings frequently in a similar situation to the Fiscal Depute and unable to leave the courtroom. In addition the Sheriff or Judge has a Court (or Bar) Officer employed by the Scottish Court Service who carries out various functions while the court is sitting including normally the calling in of the witnesses and handing productions to the witnesses as they are referred to.
111. Of the responses from the Scottish Court Service a sizeable number (17 replies; 44 per cent) indicated that there was either very little or no involvement by them in the exchange of information between the Fiscal Depute and Witness Service, while just under a third indicated that there was 'quite a lot' or 'a lot' of involvement by court staff. The remaining replies (around a quarter) indicated 'a little' involvement by court staff in the exchange of information between the Fiscal Depute and Witness Service. (Chart 5)

112. Chart 5

To what extent do court staff get involved in the exchange of information between the Fiscal and Witness Service?



113. The most frequently mentioned person on the staff of the Scottish Court Service who did get involved was the Court Officer. Uniquely the Court Officer has an opportunity to leave the courtroom and be a conduit for the exchange of information between the court and/or the Fiscal Depute and the witnesses and/or Witness Service.
114. We further enquired of the Scottish Court Service about whether or not they were aware of any problems in the exchange of information among the prosecutor, court staff and the Witness Service. The overwhelming response was that they were not aware of any problems in the exchange of information.
115. In response to a question about the involvement of court staff in relaying information to witnesses the majority of replies (90 per cent) were to the effect that court staff *were* involved in directly relaying information to witnesses. Again the Court Officer was cited most often as the member of staff directly involved in this activity.
116. In one case indeed it was explained that it was part of the Court Officer's duty to keep witnesses updated and inform them as to what was happening in cases.
117. In another case the Court Officer updated the witnesses on progress of cases and also discharged witnesses on the instructions of the Procurator Fiscal. There was only one direct 'no' reply regarding this direct involvement and that was qualified to the extent that change was on its way. One respondent went further and commented on the good relationship between the Witness Service and the Court Officers and noted that the Witness Service assisted the Court Officer in providing information as required.
118. We also enquired specifically of Crown Office and Procurator Fiscal Service staff as to who was responsible for directly relaying information to witnesses if not them and the replies included the Court Officer (most frequently), the Police Liaison Officer, the Witness Service itself or the Sheriff Clerk.

119. Keeping witnesses informed of the progress of cases during the court day is seen by us as a crucial matter for maintaining the goodwill of witnesses who come to court. The joint statements between the Crown Office and Scottish Court Service provide that there should be updates (subject to local arrangements) every two hours. It would appear that giving two-hourly updates is not done in many cases and that in any event we would wholeheartedly endorse the recommendation in Lord Bonomy's report that the updates should be at one-hourly intervals. Two hours to be left waiting "in the dark" as it were is far too long.
120. We understand and appreciate the willingness of Scottish Court Service to use the Court Officer as the main conduit of information in this regard.
121. This function is carried out by the Macer in the High Court but observed more often in the breach. We repeat Lord Bonomy's comment that it is good practice and should be the norm. We accordingly

Recommend that the Court Officer/Macer acts as a conduit for the exchange of information between the prosecutor in court and the Witness Service or the witnesses themselves and this should be done on an hourly basis.

122. We appreciate that in practice this may pose difficulties but it should be the main aim in all courts and is the least witnesses can expect. It will of course mean that the trial prosecutor needs to communicate this information on this regular basis to the Court Officer or Macer.
123. As the Joint Statement on Crown Witnesses between the Crown Office and Procurator Fiscal Service and Scottish Court Service is now 7 years old and much legislation and developments (such as Victim Information and Advice and the Witness Service) have taken place we

Recommend that the time would be ripe for the Crown Office and Procurator Fiscal Service and Scottish Court Service to re-visit the joint statement and update it in line with these developments.

Pre-Court Familiarisation

124. An important device in making the process of appearing in court as a witness easier is the offering of a pre-court visit especially in serious cases where witnesses may be particularly vulnerable for whatever reason. The expectation given the new legislation is that demand for such visits will increase. One Witness Service office visited commented on increased demand since the Vulnerable Witnesses (Scotland) Act 2004 came into force and anticipated that this will continue as more parts of the Act come into force.
125. The provision of a pre-court visit is something which the Witness Service would offer to any witness. Occasionally as noted above members of Crown Office and

Procurator Fiscal Service may wish to either conduct the pre-court visit or at least be present during it and our above comments apply to that situation.

126. By definition pre-court visits involve the Scottish Court Service and we were interested to see whether or not contact arrangements were adequate for this purpose.
127. In responses from the Scottish Court Service staff no-one indicated that they were not made aware of pre-court visits and that there were a variety of methods of making court staff aware of these. Inevitably the suppliers of the information to the court service varied between the Witness Service and occasionally either the Procurator Fiscal's Office or through Victim Information and Advice.
128. In only two cases was there a reply to the effect that little contact was made in terms of notification of pre-court visits and that was due to the fact that the Witness Service knew of the court commitments and had access to the court without the assistance of the Clerk. The overwhelming majority of contacts however came from the Witness Service.
129. We looked at what action was required of the court service to accommodate these visits. In the majority of cases positive action was taken by court staff in either clearing the court, fixing a date when the court was not sitting, meeting the Witness Service and the witness, showing people around, keeping the court diary clear for the visit and even demonstrating the live TV link where required. In another case a member of staff would be available to demonstrate the use of screens if that was required in the case and another response added that the court visit would be used as an opportunity to discuss any special problems such as disabled access.
130. We were given information at one location that there could be difficulties on occasion arranging court visits if on the day of the trial as one local Sheriff objected to that. (He was concerned about possible contamination issues such as identification of an accused who might be in court at that time.) There would also on occasion be difficulty with the timing of a visit especially for witnesses who have far to travel.
131. It would appear, however, that generally there are no logistical problems in allowing witnesses access to courts in advance of the court date to familiarise themselves with the surroundings and to some extent the procedure.
132. We accordingly have no specific recommendation to make regarding access to courts.

Accommodation for the Witness Service

133. We were keen to find out whether or not facilities were provided for the use of the Witness Service in the various courts. As previously stated the vast majority

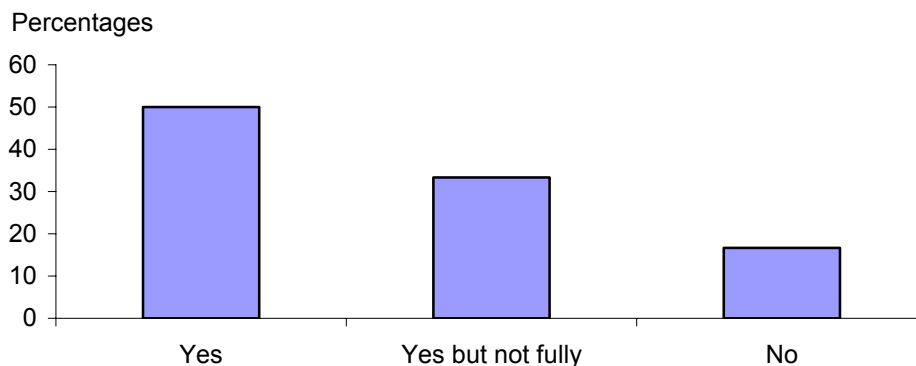
of contact for the Witness Service happens on the court day and clearly access to witnesses by the Witness Service is crucial in that regard.

134. All the Witness Service respondents indicated that there was space provided for them in the court building although in some cases it might have to be shared.

135. We asked further if the facilities provided in court were adequate – half of all respondents indicated that they were. Another third also said they were adequate although there could be a problem for volunteers and witnesses where confidentiality of communication could be an issue (Chart 6).

136. Chart 6

Are the facilities provided for your use in court buildings adequate for your needs?



137. Two respondents said that accommodation wasn't adequate and they cited in support of that:-

- Lack of space for volunteers and witnesses;
- Accommodation too small;
- Stuffy rooms;
- Lack of adequate toilet facilities;
- No restriction on movement of accused persons;
- Poor refreshments in court;
- Health and safety issues not passed on from Scottish Court Service to the Witness Service.

138. We similarly asked the Scottish Court Service personnel to comment on the facilities provided by them for the Witness Service. Nearly all (36 out of 39 responses) indicated that they did provide facilities although again they echoed the sentiment of the Witness Service that in a small number of cases these facilities had to be shared with for example Social Work and Police. Three replies indicated that there were no such facilities available although all said that a new court building was being constructed and this problem would be addressed in the new building.

139. Both the Witness Service and Scottish Court Service are well aware of the need for adequate accommodation and it would appear within the confines of the existing court buildings that these needs are being addressed as well as they can be. In addition where future buildings are being constructed the needs of the Witness Service are being factored into the design. Clearly we would hope that that would continue to be the case.

Representation of the Witness Service on the Court Users' Group

140. Most courts have a Court Users' Group which includes the various professionals who either use or contribute to the court and typically includes local Sheriffs, local Defence Solicitors, the Procurator Fiscal's Office, the Police, Social Work, Sheriff Clerk and usually the Witness Service.
141. Given the importance of the Witness Service in providing a service to witnesses in the court it seems to us desirable that the Witness Service is represented on Court Users' Groups. Accordingly we asked the Witness Service if they were indeed represented on these groups. The majority indicated that they were although there were one or two locations in which they were not represented but in one of these the Sheriff Clerk had an open door policy where they could discuss matters and in addition to that there were quarterly meetings with the Sheriff Clerk.
142. The same question being answered by the Scottish Court Service produced a very similar level of reply not surprisingly. The responses indicated that in two courts the Witness Service were not represented although in one of these they were represented on a sub-group of the group itself and in another case membership was under active consideration.

Training

143. We have already commented on what we see as a need for increased input into induction training for all Crown Office and Procurator Fiscal Service staff on the Witness Service as training can play a crucial role in the delivery of a service and the effective use of what is available.
144. In this section we were concerned to find out to what extent the Witness Service and Crown Office and Procurator Fiscal Service assist each other in their respective training.
145. To that end we asked the Witness Service whether Crown Office and Procurator Fiscal Service had an input into Witness Service training.
146. The vast majority (11 out of 12) responded that they did. One even volunteering information that the training was wonderful.
147. Not surprisingly the majority of responses from the Crown Office and Procurator Fiscal Service also indicated that they got involved in Witness Service training. The forms of training included:-

- Victim Information and Advice providing regular input to Witness Service training.
- Procurator Fiscal Deputes providing training on the role of the Fiscal and court procedure. This in the form of PowerPoint presentations, lectures and question/answer sessions.
- Procurator Fiscal meeting new recruits to the Witness Service as part of their induction.

148. We would certainly encourage training provided by each organisation for the benefit of the other on their respective roles, functions etc and that this be on an ongoing basis.

Suggestions for Improvement

149. As the best judges of what improvements can be needed and might be effective are the people actually involved in the day-to-day delivery of the service we took the opportunity of asking all four organisations for their suggestions for improvements. We received a considerable number of these and they are broken down into the various organisations.

Victim Information and Advice

150. More than half of the Victim Information and Advice respondents volunteered suggestions for improvements and other comments. These included:-

- Witness Service are invited to some Victim Information and Advice meetings and Victim Information and Advice staff give some input to the training of Witness Service staff. This is found to be helpful in raising Victim Information and Advice's profile and awareness of processes. It is suggested that other areas might do the same.
- The management of the Witness Service Referral Form could be improved as it's time consuming e-mailing back and forth and it is not a "live" document (the Referral Form was revised in November 2005 and the most recent version is at Annex 4).
- Some joint training particularly in relation to the Vulnerable Witnesses Act would be welcome.
- It would be useful to meet Witness Service staff occasionally.
- Witness Service should develop a better working relationship with the Clerks in court to be better able to track cases. Occasionally the Witness Service are unaware of when new dates are set at the intermediate diet stage or when adjournments are granted.
- The Witness Service needs a higher profile in particular a desk at reception in courts. The current arrangements don't encourage a witness to request help.
- It would be helpful for the Witness Service if someone could negotiate on their behalf the possibility of doing morning court visits.
- There are difficulties experienced regarding missed or late referrals to the Witness Service. This was seen not as a failure of existing procedures but rather an internal training issue but had been identified thanks to the local excellent

working relationship between Victim Information and Advice and the Witness Service.

151. On the more negative side there were two responses as follows:-

- The paperwork is cumbersome.
- Liaising with the Witness Service is generally a very time consuming process.

Scottish Court Service

152. By far and away the responses here were positive reflecting the existing practices and good working relationships between the various parties.

153. The court service respondents supplied a few suggestions for improvement.

- It was suggested that there could be improved lines of communication.
- It was suggested that the Witness Service had not been proactive enough in evaluating the performance of their volunteers on information provided by court staff. This was qualified however to the effect that following the appointment of a full-time dedicated officer that the situation had improved.
- Another suggestion was to set up local working groups to agree local protocols.

154. There was one fairly lengthy comment from Scottish Court Service which detailed points as follows:-

- There was a lack of information on when there might be "vulnerable witnesses" beyond the statutory definition of such.
- Both Crown Office and Procurator Fiscal Service and Scottish Court Service relied too much on e-mails as a principal method of cascading information which wasn't good enough given the risks involved. Joint face-to-face training including local representatives of all the organisations was suggested. In particular this would be helpful so that all parties understood what was expected of them and they were "all singing from the same hymn sheet".

Witness Service

155. Several suggestions were received from the Witness Service for improving the existing arrangements some of which echoed previous sentiments. These included:-

- To continue to include victim/witness training to Fiscal Deputes and Victim Information and Advice staff.
- Training on the role of the Witness Service and its developments.
- Police to ensure that they record the correct information eg contact numbers.
- Procedures to be put in place so that people don't slip through the net.
- Procurator Fiscal Offices to provide a witness list to the Witness Service.
- More open communication.
- Flagging up possible witness issues at the marking stage in non-mandatory referrals.

- Streamlining of Fiscal staff in any one case.
- Routine update of progress of trials.
- It would be helpful to know what is going on in court (ie progress of work).
- Useful to know if witnesses are countermanded as it has an effect on the Witness Service's resources.
- Read-only access to Scottish Court Service data to get dates and outcomes.
- Improved multi-agency communication.
- Share good practice eg one area attends solemn team briefings which allows information to be shared. This same area had a "on-call" system where vulnerable witnesses could be called to attend when needed.
- It would be useful to know if interpreters are involved.
- All posters (that is of the Witness Service) are in English and it might be helpful to have translations of these.
- The court to provide information on why witnesses are to be released.
- Ensure Fiscal Deputes are in court on time so that there is no delay.
- Priority to be given in child witness cases (Policy anyway).
- Ensure witnesses are countermanded in time to save them travelling to court when they are not required.

156. Again although this was a list of comments there was a general acknowledgement in the responses that the Victim Information and Advice staff worked very hard and co-operate with the Witness Service.

Crown Office and Procurator Fiscal Service

157. A large number of suggestions were received from Crown Office and Procurator Fiscal Service staff. These included:-

- Members of Crown Office and Procurator Fiscal Service staff could spend a morning with the Witness Service to get a better idea of what they did. This had been done recently in one office with success.
- General training for new Depute Fiscals/trainees on the role of the Witness Service and Victim Information and Advice.
- Awareness raising of the role of Victim Information and Advice for new Fiscal Deputes and Precognoscers and a brief guide regarding role/timeline of Victim Information and Advice and the Witness Service once a referral has been made.
- Local joint training including arrangements for children and court visits.
- Fiscal input to Witness Service training and more formal liaison between Sitting Manager and Witness Service before sittings.
- An annual meeting/more formal contact between the Area Procurator Fiscal and Witness Service Co-ordinator to ensure arrangements are working well and to look for ways to improve.
- Additional staff for Crown Office and Procurator Fiscal Service to allow time for such liaisons.
- Better recording on Crown Office and Procurator Fiscal Service papers regarding what happened with witnesses at court.
- The Witness Service providing feedback to Victim Information and Advice about cases they are involved in so that the Crown Office and Procurator Fiscal Service system can be updated.

- One service rather than many so that there would be one point of contact for witnesses.
- Depute Fiscals making more time to consult with the Witness Service and extending witnesses the courtesy of advising them regarding a running order of business.
- The Witness Service should be more proactive in getting time with the Fiscal Depute.
- A suggestion for training could be a case study where everything that could go wrong did go wrong and showing how things should be done.
- The Witness Service should attend the Court Users' Group.
- The sending by the Witness Service of a form showing the results of a pre-court visit.

158. Having made these specific points a number of respondents went on to emphasise that it was recognised that the giving of evidence and coming to court is a daunting experience for the witnesses and that the criminal justice system did not sufficiently take care of them in the past. It was pointed out that the Fiscal Deputes do not always have time to speak to witnesses and that the Witness Service have taken work from Deputes' shoulders. In addition the Witness Service provided a valuable presence in court for witnesses needing a friendly face or someone to give advice. The needs of witnesses had often been neglected through pressure of business and the Witness Service was a valuable resource to counteract that. In addition the Witness Service was very helpful in assisting Fiscal Deputes to resolve witness related problems on the day of the trial.

159. All these suggestions for improvement, comments etc from the four agencies have been listed to give a flavour of the areas of concern felt by the various parties. There is considerable overlap among these and many of the points have been covered in the previous issues.

Further Analysis of Questionnaires

160. The information gathered from the questionnaires was fundamental to the production of this report. In order to fully utilise this information, additional forms of analysis were considered and/or carried out.
161. Initially we considered each questionnaire to examine whether the responses to particular questions were predictive in any way of responses to others. This involved cross-tabulation of each question with every other (for each questionnaire). This allowed us to consider questions and responses where we anticipated there might be an effect in addition to those where relationships between questions and responses were unknown eg were Witness Service respondents more likely to say 'no' if asked about problems in the exchange of information with Fiscal staff if they answered 'very well' to the question about how well the protocol operated in practice?
162. There were no such predictive relationships found and this was true for all questionnaires. The one exception was where we found that Fiscal staff who were in an office where staff had been involved in the training of Witness Service staff were slightly more likely to have a full awareness (as opposed to only partial awareness) of the functions of the Witness Service than staff who were not.
163. We then considered questionnaire responses on an area-level basis, in addition to the fundamental Scotland-level analysis we had carried out, looking for congruity of responses (or otherwise) on comparable questions.
164. Based on Crown Office and Procurator Fiscal Service business areas, we were able to group returns for organisations that had more than one return per area, to facilitate cross-analysis on relevant questions.
165. The Crown Office and Procurator Fiscal Service business areas are:
 - Argyll & Clyde
 - Ayrshire
 - Central
 - Dumfries & Galloway
 - Fife
 - Glasgow
 - Grampian
 - Highlands & Islands
 - Lanarkshire
 - Lothian & Borders
 - Tayside
166. Analysis was carried out on those questions that had been asked 'across' organisations to examine whether there was congruity of responses amongst agencies on an area basis.

Results⁷

167. We considered the answers to the question put to District Fiscals about whether there were arrangements in place locally (in addition to the Crown Office and Procurator Fiscal Service (Victim Information and Advice) protocol) to provide information to the Witness Service and the answers to the question put to the Witness Service about whether they were made aware of cases other than those specified by the protocol, on an area by area basis.
168. It was apparent that in areas where Fiscals did not have specific local arrangements in place to provide information to the Witness Service, Witness Service staff nonetheless reported that they *did* still get information about cases other than those specified by the protocol (this was true in all but one area).
169. We considered also the responses from all relevant agencies (Witness Service staff, District Fiscals and Victim Information and Advice staff) to the question asking how well the protocol actually operates in practice.
170. It was reassuring to find that agencies were broadly in agreement as to their perception of how well the protocol actually operated in their area. However, bearing in mind that no totally negative replies were received from any agency in response to this question (the most negative replies were those who said 'quite well', rather than 'well' or 'very well'), this would be expected.
171. Another question asked about any problems experienced in the exchange of information between agencies – specifically Fiscals were asked about the exchange between themselves and Witness Service staff on court days, and vice versa. We considered the responses from both agencies, by area.
172. Bearing in mind that taken as a whole the Fiscal responses were generally more positive in this respect, it was therefore worth considering the area perspective to examine whether there were problems perceived by both agencies in particular areas. Interestingly, both agencies indicated that they had experienced problems in the exchange of information in 3 of the 13 areas. In a further 4 areas, both the Fiscals and Witness Service staff agreed that there were no such problems. In the remaining 4 areas there were differences in perception such that the Witness Service staff felt there were problems while the Fiscals did not. While not seeking to find reasons why, it is likely that the perspective of a Fiscal, with often many considerations re business in court on any given day (communication with the Witness Service being only one), may well be different from the perspective of a member of Witness Service staff whose considerations are focussed on witnesses only.
173. We considered also the responses from Scottish Court Service and Fiscal staff to the question asking each whether they were involved in relaying information direct to witnesses in court. We knew that there had only been one definite 'no' response from Scottish Court Service staff – the majority said 'yes', with a few

⁷ Results cannot be presented on an area basis due to the protection of confidentiality of individuals

reporting that they relayed information direct to witnesses 'sometimes'. Interestingly, the one 'no' response was from an area where Fiscal staff said 'no' also. However, we were pleased to note that the Scottish Court Service 'no' response was qualified to the effect that change was on its way.

Good Practice Points

174. **A number of good practice points arise from these and we would suggest that all four organisations take note of these points and try to disseminate them as good practice. The main ones identified by us are as follows:-**

- **In solemn cases (ie those tried by a jury in the High or Sheriff Court) the holding of regular meetings involving Sitting Managers, Depute Fiscals, Victim Information and Advice and Witness Service representatives to discuss cases coming to court in the course of a sitting in order that issues of vulnerability and potential difficulties can be identified and addressed.**
- **The existence of a local information sharing protocol between the Witness Service, Area Fiscal and Victim Information and Advice. This may involve developing e-mail contact for the purpose of flagging up special requirements, maintaining a practice of sending the Witness Service a copy of the indictment when it is sent for service upon the accused and routinely sending the Witness Service a list of civilian witnesses for cases set down for trial.**

However care needs to be taken that local arrangements reflect national agreement and protocols and relate to local delivery of these.

- **The Witness Service attending the Court Users' Group and having adequate accommodation within the court building, preferably with a reception desk at a prominent place within the court.**
- **Annual meetings/more formal contact between the Area Procurator Fiscal and the Witness Service Co-ordinator to ensure arrangements are working well and to identify areas for improvement.**
- **Provision of feedback to Victim Information and Advice from Witness Service about cases they are involved in so that Crown Office and Procurator Fiscal systems can be updated.**
- **Standby arrangements being considered where practical.**
- **Prosecutors whenever possible making an effort to speak to vulnerable witnesses before and after the case is heard in court.**
- **Depute Fiscals being introduced to and being involved in the training of new members of Witness Service staff.**

- **The Witness Service being involved in the induction of a new Depute Fiscal at local office level, ie the new Depute spending a morning with the Witness Service.**
- **Witness service staff providing an input to Fiscal Office training days.**
- **The Witness Service and Victim Information and Advice should explore ways of effectively managing the Witness Service Referral Form as the current system of amending and passing the document back and forth is thought to be cumbersome.**
- **The Witness Service should consider increasing their advertising within courts (eg bigger, brighter posters at entrance of court buildings).**

Conclusion

175. Although we have made some recommendations for improvement the system in practice works well and the various parties work together to provide a good support service for victims and witnesses attending court. There is no doubt that the provision of a Witness Service fills a need and goes some way to making appearing in court as a witness a less unpleasant experience than it might otherwise be.

Chapter 4

Diversity/Equality Issues

176. The Inspectorate of Prosecution looked at the response of the Crown Office and Procurator Fiscal Service on race issues in our first report at www.scotland.gov.uk/Topics/Justice/ipis/reps. We looked in particular at the provision of interpreting and translation services to those who do not speak English as a first language. As we mentioned there the various criminal justice partners (ie the Police, Scottish Court Service, Crown Office and Procurator Fiscal Service, the Scottish Legal Aid Board and the Law Society of Scotland) have formed a working group to deal with interpreting/translation issues – the Working Group for Interpreting and Translation Provision in the Criminal Justice System in Scotland (WGIT).
177. One of the aims of WGIT is “to consider, assess and offer recommendations on a co-ordinated approach towards the instruction of interpreters within the criminal justice system, including a joint protocol on monitoring and vetting, minimum standards and a code of practice including conditions of employment”. It is a good example of a “joined up” approach to dealing with problems in the criminal justice system.
178. Additionally Crown Office and Procurator Fiscal Service is a member of the Scottish Executive established Translation, Interpreting and Communications Support Group (TICS).
179. The prosecution of race crime is a high priority for the Crown Office and Procurator Fiscal Service. A robust policy of having a presumption in favour of prosecuting race crimes where the evidence is sufficient has been put in place and a system of monitoring established. Our office inspections monitor the implementation of this policy and (reports on our website above) and its importance is reflected in the fact that the Victim Information and Advice categories include “victims in cases with a racial aggravation and cases where it is known to the Procurator Fiscal that the victim perceives the offences to be racially motivated” (this latter point covers the “Lawrence” definition accepted in Scotland by the Scottish Executive).
180. In addition the Victim Information and Advice categories include cases involving “vulnerable witnesses” ie (among others) those who have physical disabilities, suffer from mental health problems, are asylum seekers or have language difficulties. The referral form used by Victim Information and Advice staff to refer witnesses to the Witness Service (see Annex 4) includes a section on additional support measures/provisions. This is the opportunity to relay information on such matters as non-English speaking or a victim with a disability or a special need. This in turn depends on Victim Information and Advice having accurate information about these matters and can itself depend on what is contained in the Standard Police Report (SPR) which is the report (in electronic form) given by the Police to the Procurator Fiscal. In accordance with

agreements between Crown Office and Procurator Fiscal Service and the Police (as represented by the Association of Chief Officers of Police, Scotland – ACPOS) this report should include details of any known disability or special need. In addition in accordance with instructions given by the Lord Advocate to the Police on reporting of race crime the report should indicate whether or not any victim/witness is not an English speaker and any additional cultural issues which might arise.

181. In summary cases (ie those tried without a jury) in particular this Standard Police Report is vital and frequently the only source of information on victims/witnesses given to the Procurator Fiscal as victims/witnesses are not usually seen by Crown Office and Procurator Fiscal Service staff. Principal witnesses will usually be seen in solemn cases (ie those tried by jury in the High Court or Sheriff Court) which gives a second opportunity as it were to be aware of any particular needs.
182. Police compliance with the Lord Advocate's Guidelines on race crime is monitored by Crown Office and Procurator Fiscal Service and shows an improving picture. We did receive some evidence, however, that information on disability or special needs can be more sketchy and parties can be surprised to learn of the additional needs sometimes only on court days.
183. Support for witnesses who may have difficulty in seeing, hearing or because of mobility problems should be routinely available. The Disability Discrimination Act 1995 imposes a proactive duty to make services accessible rather than simply a duty to react to a particular need. It is nevertheless important that those responsible for the care of witnesses at court have as much prior knowledge of individual needs as possible. Again we cannot emphasise too strongly the importance of the Police Report containing adequate detail as this is the "trigger" for subsequent action by Crown Office and Procurator Fiscal Service, Victim Information and Advice and the Witness Service.
184. The Scottish Court Service has carried out an audit of all its property to assess how its buildings etc affect court users with a physical disability and to identify changes required to comply with the Act. The need for training has also been reviewed. It supplies information in Braille, in large type and on audio tapes. Victim Information and Advice provides information in large print or audio. The Witness Service can provide information in Braille.
185. So far as language needs are concerned the responsibility for providing an interpreter for non-English speaking accused lies with the Scottish Court Service (since April 2002). In custody cases (those where the accused appears in court on the first court day after arrest) the Police arrange for the interpreter on behalf of the Scottish Court Service. In other cases Crown Office and Procurator Fiscal Service staff have the duty of advising the court of the need to bring an interpreter for an accused person.
186. So far as victim/witnesses are concerned the responsibility for arranging for an interpreter lies with Crown Office and Procurator Fiscal Service.

"Because they arranged an interpreter for me.....I could speak in my own language and understand clearly." (Witness, Paisley, 2004)

187. For defence witnesses the responsibility lies with the defence. We feel it is vital for the Witness Service to know when an interpreter is required as it enables them to use the interpreter to convey messages about the service they can offer to the non-English speaking witness.

"It puts everyone at their ease if you speak to them. The interpreter is the only lifeline for them. Most of the time they cannot talk at all not even to ask where the toilets are. You can speak to them with a member of the Witness Service and that is them doing their job." (Interpreter, Glasgow, 2004)

188. In one meeting we had with Witness Service staff they indicated that while they did not have many such cases in their particular court nevertheless there could be problems. Usually either Victim Information and Advice or the Procurator Fiscal would bring such cases to their attention but this was not always the case. In addition although there was a screen in court advising of existence of the Witness Service with information about it, it was only in English. They indicated that they had no particular procedure in place to deal with witnesses from an ethnic minority and felt their knowledge in this area was limited.
189. Scottish Court Service is about to engage in developing a language plan and as part of that there will be an examination of provisions for guidance material, court signage etc. This will involve examining what other language requirements may exist.
190. Witness Service staff indicated that if interpreters were present they would actively seek them out but were not aware of any system in place for the Witness Service being made aware that an interpreter was involved in a case and not surprisingly asked for advance notice.

"I think that when an interpreter is involved they try to take the case first, it's much better than it was 3 years ago. Three years ago they did not keep you informed." (Interpreter, Glasgow, 2004)

"I have had mostly positive experiences in court, the only occasion which, I won't say was negative, was sometimes you don't know the order, you don't know whether the witness is there, or whether the accused is there." (Interpreter, Glasgow, 2004)

191. It seems sensible that where an interpreter has been asked to attend that the Witness Service should be able to make use of this to explain their functions to

the witness. If this means the contract between Crown Office and Procurator Fiscal Service and the Interpreting Agency requires amending then we would suggest that this be done. It is of even more importance to a non-English speaking witness to be offered the support the Witness Service can supply.

192. In relation to disability the Witness Service staff in one court reported that there was no system in place for them being alerted that a witness was disabled and they had to rely on Victim Information and Advice (or Crown Office and Procurator Fiscal Service) staff being aware that a witness was disabled and secondly and just as importantly communicating that information to them in advance of the trial. Although this was only one particular court we feel that it is likely to be a difficulty across the whole country.

Conclusion

193. The service which can be offered by the Witness Service is only as good as the information it receives. In turn the information supplied by Crown Office and Procurator Fiscal Service and Victim Information and Advice to the Witness Service is dependant on the quality of information input by the Police. Provided the requisite information is supplied in the Police Report the various steps should be in place to provide for any special needs of victims and witnesses.

Chapter 5

Bonomy Review, Vulnerable Witnesses Legislation and Implications for Witnesses

Introduction

194. The aim of this chapter is to provide a succinct overview of the new provisions arising from **Lord Bonomy's review of the High Court** and the **Vulnerable Witnesses (Scotland) Act 2004** with regard to the changes for witnesses attending court and their involvement generally in the criminal justice process. It is also intended to examine what measures have been put in place by Crown Office and Procurator Fiscal Service to ensure that the new provisions are identified, met and adhered to.
195. The chapter will be dealt with in two parts, the first part dealing with the changes arising from Lord Bonomy's review which will be subdivided into a) **the Crown Practice Statement on Disclosure** issued by the Lord Advocate and b) **The Criminal Procedure (Amendment) (Scotland) Act 2004** which is the statutory provision largely arising from the recommendations contained in Lord Bonomy's Report. The second part of the chapter will deal with matters relating to the **Vulnerable Witnesses (Scotland) Act 2004**.

Lord Bonomy's Review

196. Lord Bonomy's review of the practice and procedure of the High Court which was carried out in 2002 concluded that one of the frequent causes of adjournments in the High Court was that the defence were not prepared for trial due to being unable to gain access to material which was necessary for proper preparation of the defence case. Lord Bonomy recommended a number of specific changes to High Court procedure that now are incorporated in the **Criminal Procedure (Amendment) (Scotland) Act 2004** (to be dealt with below) which makes numerous amendments to the **Criminal Procedure (Scotland) Act 1995**. Very broadly speaking, the amendments to the **1995 Act** are intended to avoid delay in criminal procedure and to speed up the criminal justice process. In addition to the recommendations that have now been placed on a statutory footing, Lord Bonomy made certain recommendations regarding disclosure of Crown material to the defence. Again the purpose of these recommendations was to speed up the criminal justice process by ensuring that the defence were given early access to the details of the witness evidence upon which the Crown case was based. In response to the recommendations on disclosure the Lord Advocate has issued the **Crown Practice Statement on Disclosure** to support the overall programme of reform in the High Court, the principles of which are in the process of filtering down to the lower courts.

Crown Practice Statement on Disclosure

197. The **Crown Practice Statement** took full effect on 1 January 2005 and provided that there was an obligation by the Crown to disclose to the defence within 28 days from the date of the accused's first appearance in court all witness statements in the possession of the Crown. Additional statements received after initial disclosure has been made will be forwarded to the defence as soon as practicable as is the case of the statements of witnesses subsequently added to the indictment by **s67** notice. This provision applies to all cases where the date of the accused's first appearance was on or after 6 December 2004 and the case is identified as being one which is likely to be indicted in the High Court. It is the Crown's intention to extend the principle of disclosure to all solemn cases by April 2006 and a pilot scheme in respect of Sheriff and Jury cases began in Central area on April 2005. Where the accused's first appearance in court was prior to 6 December 2004 disclosure would not be made routinely but Solemn Legal Managers would ensure that the defence were supplied with a provisional list of witnesses.
198. The Crown are in terms of the **Practice Statement** also obliged to provide the defence with a copy of a provisional list of witnesses within 14 days of first appearance. The list is indeed a provisional list and the **Practice Statement** recognises that it may be necessary to withhold disclosure of the details of a particular witness pending further investigation or if there is good reason for doing so (eg in a sensitive case involving a sexual offence the Crown may wish firstly to precognosce the complainer and explain matters more fully before the defence has the witness's details and can proceed to precognosce). Additionally there are issues of operational security to be borne in mind and for that purpose it may be undesirable to reveal the details of a particular witness until the issues are resolved. On public interest grounds it may sometimes be necessary to completely withhold the details of the witness and this is recognised in the terms of the **Practice Statement**. In these circumstances the details of the witness will only be withheld on the explicit instructions of the Area Procurator Fiscal or a senior manager.
199. **The Practice Statement** provides for disclosure of material to a solicitor who has intimated to the Crown, in writing, that he/she has been instructed by the accused. (See **sections 8 and 12 of Criminal Procedure (Amendment) (Scotland) Act 2004** for full provisions regarding solicitors). Disclosure **would not** be made in the absence of such intimation and disclosure **would not** be made to accused persons not legally represented. The solicitor for the accused is required to give the Crown written notice if he/she ceases to be instructed by the accused and every office has been instructed to have robust procedures in place for the receipt of mail to ensure that the new rules regarding engagement of solicitors operate effectively. There is an additional benefit in this regard as the terms of the statutory amendments provide for service of documents, including indictments, upon solicitors who have intimated that they are instructed by the accused.

200. The duty of disclosure as provided for in terms of the **Practice Statement** is supplementary to the Crown's duty of disclosure to the defence of material which supports any known or statable defence or would undermine the Crown case. (See **McLeod v HMA 1998 SCCR 77 and appeal cases of Sinclair 2005 SCCR 446 and Holland 2005 SCCR 417. See also Maan Petitioner 2001 SCCR 172.**)
201. The duty of disclosure is a continuing one and requires to be assessed as the process develops and the Crown require to keep matters under review, in particular should a special defence be lodged by the accused. Subject to the general exceptions contained in the **Practice Statement**, which will be examined in detail, all statements made by a witness that are in the possession of the Crown should be disclosed and any material alteration of the witness's position from the time of the original statement to the Police should be apparent.
202. Precognitions are confidential and will not be disclosed. In any event the court would not order disclosure of precognitions as they are not admissible in evidence. (**Ward v HMA 1993 SCCR 1202**) Witnesses may say something different in precognition from what they said in their original police statement and in the **exceptional** circumstances that the variation is a material alteration or inconsistency on a material matter or suggests something that may exculpate the accused the information would require to be disclosed to the defence. The overall principle however is that precognitions are confidential in nature and only in the exceptional circumstances highlighted would information be disclosed to the defence who would be advised to precognosce the particular witness.
203. In addition to making the criminal justice process more efficient by early disclosure of witness details and statements, certain other advantages have been identified from this new practice. The agreement of a witness's evidence can readily be identified and the necessity for defence precognition can be avoided. This is always particularly desirable in the case of a child witness and has long been recognised. There is the added benefit that full awareness by the defence of the Crown evidence against the accused can in many cases result in an early plea of guilty.
204. Although the provisions of the **Practice Statement** are new and relatively far reaching, the position is that copies of police statements have routinely been provided to the defence for some time and disclosure of civilian witness statements to the defence has been permitted where the evidence is routine or technical or where the defence have had difficulty in locating and precognosing a particular witness. If it were to be the case that the statement was to be disclosed as opposed to a verbal summary of the witness's statement being provided, steps would be taken to ensure that nothing of a confidential nature were disclosed. This practice of redacting (blacking out material) statements to remove anything of a confidential nature has been reaffirmed by the terms of the **Practice Statement** which provides that redaction is permitted to obscure material considered to be of a confidential nature and not necessary for the preparation of the defence case. Any such redaction should however be obvious

and will usually be achieved by generating a new copy of the statement that has been blacked out electronically.

205. In terms of the **Practice Statement** there have been certain measures to ensure that effective and appropriate disclosure of witness statements takes place and that witnesses can rest assured on confidentiality issues. In particular, changes are being made to the way Crown Office and Procurator Fiscal Service and the Police deal with witness statements. The changes follow from extensive work that has taken place between representatives of The Association of Chief Police Officers (ACPOS) and Crown Office and Procurator Fiscal Service and new guidance and new statement forms have been prepared for the benefit of all Police Officers in Scotland in order to address outstanding current concerns about quality, consistency and reliability of statements. The Association of Chief Police Officers are aware of the need to ensure that all Police Officers are wholly familiar with this guidance. A National Standard Statement has been designed and is being introduced by all Scottish Forces as soon as possible.
206. The National Standard Statement is in two parts. The first part is the witness's statement itself and is designed to be disclosed. In addition to containing basic details of the witness and the witness's narrative about the particular incident, there is a section providing details about the taking of the statement itself, essentially by whom, where and when. This is a particular element of the statement that had often been omitted in the past and is essential for provenance of the statement, particularly now in light of the **Practice Statement**. The second part which contains information about the witness, does not form part of the "disclosable" statement and contains information about the witness purely for the Procurator Fiscal, including further personal details, details of availability for court and further detail which the Police Officer considers may be relevant to the Fiscal but not materially relevant to the case. Either part however may contain information which should not be disclosed and the Procurator Fiscal will consider both parts of the statements and decide whether the first (disclosable) part does contain something that should not be disclosed to the defence.
207. In addition to providing exception to witnesses being disclosed immediately to the defence, the **Practice Statement** also makes provision for the Crown to withhold disclosure of statements where the Crown does not intend to rely on the witness and such disclosure may represent a risk to the life of an individual or to other investigations or proceedings. The Crown must however adhere to obligations where something in the statement points to the innocence of the accused and must consider providing a redacted statement to ensure anonymity of the witness or simply disclosing the fact to the defence. It would be highly exceptional to withhold statements in this way and decisions to do so would only be taken on the instruction of the Area Procurator Fiscal.
208. Before statements are disclosed to the defence they will be reviewed and it will be ensured that any personal data not relevant to the case and any material that may compromise the security of an individual is removed. This would include

details such as mobile phone numbers, security aspects of domestic or business premises, medical details or information about an ongoing police operation. A further example of this may be the information tending to identify the home address of a witness who fears intimidation.

209. In summary, the **Practice Statement** whilst providing in principle for disclosure of all statements within 28 days of the accused's first appearance in court and disclosure as soon as practicable thereafter of statements subsequently coming into the possession of the Crown, permits the following options;

Disclose
Redact and disclose
Withhold temporarily
Withhold permanently

210. The **Practice Statement** also commits the Crown to disclosure of copies of important documents at the earliest possible stage and this again is to enable defence preparation, as late delivery of documents was identified by Lord Bonyon as being another factor contributing to the number of adjournments in the High Court.

Crown Office and Procurator Fiscal Service Reaction

211. Crown Office and Procurator Fiscal Service has issued circulars and practice notes for staff fully informing of the terms of the Crown's commitments in respect of the disclosure provisions of the **Practice Statement**. A training package dealing with aspects of the Bonyon Reforms has been rolled out to all staff with those having responsibility for the High Court cases receiving the training prior to the **Practice Statement** coming into effect. The Crown Agent has also issued a General Minute providing direction on steps to be taken by the Crown to facilitate the provisions of the **Practice Statement**.
212. Changes have been made to Crown Office and Procurator Fiscal Service IT systems to support the changes in procedure and in particular a new Disclosure Category field has been added to allow the disclosure marking of a witness's details or statement to be recorded and amended. The whole issue of disclosure and IT is currently being considered by Crown Office and Procurator Fiscal Service Business Improvement and Innovation Unit.
213. Each Area Fiscal has been instructed to identify the appropriate person in each office who will have primary responsibility to ensure that the terms of the **Practice Statement** are complied with. This person will most likely be the Solemn Legal Manager for a dedicated solemn team who will already have responsibility for the strategic direction of a precognition.
214. As previously stated, detailed discussions have taken place between Crown Office and Procurator Fiscal Service and the Association of Chief Police Officers' representatives in order that police could assist the disclosure process by

providing statements of an appropriate format and quality and the Standard Statements Template has been produced.

Issues of Concern

215. The new provisions mean that the terms of a statement made by a witness to police at the time of an incident will now be in the hands of the accused's solicitor at trial. There is a concern that it may be open to the solicitor to seek to challenge the witness's credibility in terms of **s263 of the Criminal Procedure (Scotland) Act 1995** if the witness's evidence in court does not accord with the narrative of the statement. Given that the trial may take place some months or even years after the event there is every likelihood that, for various innocent reasons, (eg further detail coming to memory with the passage of time) the witness will narrate matters differently from the police statement and there is a concern that this leaves the witness vulnerable to challenge and a general undermining of the evidence. It is not clear at this stage if anything will be done to counter this situation which could in effect produce an "inequality of arms" position for Crown witnesses. Given that the witness makes a statement to police which is often signed by the witness and will then be produced to the defence, it may be appropriate that the witness is provided with a copy of their statement which is arguably the best reflection of the witness's evidence as it was made whilst the memory was fresh. It is arguable that police witnesses are able to refresh their memory from statements and notebooks, that defence agents have a copy of the civilian witnesses' statements and in the interests of fairness Crown witnesses should perhaps likewise have access to their police statement.
216. Additionally, there will be a greater need for Deputes conducting trials to ensure that if a witness is being challenged by the defence in relation to a difference between their statement to the police and their evidence in court, that the defence properly put the statement to the witness in terms of **section 263 of the 1995 Act** and **HMA v Jamieson 1994 SCCR 610** and that the foundation is properly laid if the defence seek to go down this route. It is anticipated that Crown witnesses could be subjected to particularly rigorous cross examination by defence solicitors in relation to any departure from a prior statement and trial Deputes will undoubtedly require to focus their minds fully on ensuring that witnesses are not subjected to unfair or inappropriate cross examination by the defence in regard to what was or was not said to the police by the witness and that if the witness is being cross examined on this point, that any such departure is a material one.
217. Deputes have however been reminded (more particularly in relation to use of prior statements as per the Vulnerable Witnesses Act) that they should be alert to the effect on a witness on a line of questioning and should object where the questioning is "unduly harassing". Reference is made to the case **B v Ruxton 1998 SLT 1282**.
218. Further concerns have been identified regarding the duty on the Crown to routinely provide details of a Crown witness's previous convictions and pending

cases to the defence. There is as yet no Crown Office and Procurator Fiscal Service instruction as to whether potential witnesses should be made aware at any time that there is a possibility that previous convictions and pending cases could be put to them by the defence in the course of cross examination, although the issue is under consideration. Fiscal Deputes will have to be alert to this possibility and if appropriate take steps to ensure that previous convictions of the accused are brought to the attention of the court, whether the accused elects to give evidence or not. (See **Criminal Procedure (Scotland) Act 1995, s 266 and s 270.**)

219. Recently an issue has arisen as to how confident the Crown can be that defence solicitors will not disclose to their client certain information provided to them by the Crown (ie a Crown witness' home address or place of employment). It is understood that the Law Society is considering dealing with this in the code of conduct for solicitors. In the meantime defence solicitors have been required to provide the Crown with a written personal undertaking that any such personal information relating to a Crown witness will not be disclosed to the accused. This is a matter that has been discussed and is being monitored at the most senior levels of Crown Office and Procurator Fiscal Service. The whole issue is particularly concerning in light of police advising that, in the course of searching homes of accused in execution of a search warrant, it is not unusual to find full witness statements and precognitions of Crown witnesses, which may have simply been given to the accused by the defence practitioner.

Criminal Procedure (Amendment) (Scotland) Act 2004

220. The purpose of the above mentioned Act is to give statutory effect to the principal recommendations of Lord Bonomy's Report. The provisions of the 2004 Act were brought into effect by the **Criminal Procedure (Amendment) (Scotland) Act 2004 (Commencement, Transitional Provision and Savings) Order 2004**. Broadly, the provisions now affect cases calling in court from 1 April 2005.
221. The principal reforms brought about by the Act are;
- Certain requirements are now imposed on solicitors instructed by the accused to intimate to the Crown in writing that they are nominated to act. This requirement also facilitates service by the Crown of documents on the accused via their solicitor at the solicitor's place of business. **(sections 8 and 12)**
 - The introduction of a mandatory preliminary hearing in High Court proceedings so that the court may ascertain the readiness of the parties to go to trial. **(section 1)**
 - Provision that preliminary matters such as objection by any party to the admissibility of evidence must now be dealt with at the Preliminary Diet in High Court cases or the First Diet in Sheriff and Jury cases. Objections to admissibility of evidence raised after the first Diet will only be heard if the

court grants leave to raise the objection on being satisfied that it could not reasonably have been raised before that time. Written notice of intention to raise the objection must be given to the other party. **(sections 13 and 14)**

- A requirement that parties must be in a position to confirm at the Preliminary or First Diet which witnesses on the list of witnesses will be required by them in order that witnesses do not have to attend court unnecessarily. Previously the Crown were obliged to produce all the witnesses detailed on the Crown list of witnesses on the indictment. **(section 19)**
 - An extension of the time limit for the commencement of trial in custody cases in the High Court from 110 days to 140 days (the 80 day time limit for service of the Indictment remains). **(section 6)**
 - A change to the time limits for High Court bail cases, requiring indictment to a preliminary hearing commencing within 11 months of the first appearance on petition. **(section 6)**
 - The replacement of the present system of trials within sittings with a system of trials on dates appointed by the court, to create greater certainty as regards when a trial will commence. **(section 1)**
 - A change to the consequences of breach of custody time limits - an accused will be "entitled to be admitted to bail" and not "forever free". **(section 6)**
 - Provision for trial in absence of the accused in certain circumstances. **(section 10)**
 - New provisions to facilitate action to ensure attendance of reluctant witnesses. **(sections 11 and 22)**
 - A reduction in sentence for an early plea. **(section 20)**
222. The above list of reforms is not exhaustive but is intended to highlight those reforms which should directly or indirectly impact on the experience of a witness called to give evidence at court.
223. Whilst the more specific provisions in relation to witnesses will be examined in detail, broadly speaking, in relation to witnesses, the above provisions should have the effect of improving the procedure up to and including trial in that there should now be more certainty and efficiency around the whole process which is of course desirable from the point of view of witnesses. While the main purpose of the legislation relates to High Court proceedings, many of the provisions also affect Sheriff and Jury proceedings from 1 April 2005.

Sections of Act Relating to Witness Issues

224. **Section 1** in addition to amending **section 66 of the 1995 Act** in providing for the accused to be cited to a preliminary hearing instead of a trial diet, also replaces **sections 72 to 73A in the 1995 Act** which deal with matters relating to the preliminary hearing and the state of preparation generally of all parties. In addition it will now be the court and not the Prosecutor that determines the trial date in every case in the High Court. **Sections 72 and 72A** set out the chronology of the procedure to be followed by the court at the preliminary hearing and **section 72A** deals with the procedure to be adopted by the court when appointing a trial diet which can be a fixed diet or a floating diet. **Section 72 (2) and (6) (a)** deals with ascertaining where the accused is charged with sexual offences that a solicitor has been engaged by the accused as the accused is prohibited from conducting his own defence in such cases. **Section 72 (3)** deals with preliminary pleas.
225. **Section 72 (6) (b) to (f)** imposes upon the court certain duties in relation to ascertaining preparation and provide that
- the court must dispose of preliminary issues of which notice has been given including objections to admissibility of evidence.
 - the court must ascertain which Crown witnesses from the list are required by the Crown and the defence to attend the trial. The Crown is obliged to cite those witnesses.
 - consideration will be given to the written record. (see section 2 below)
226. **Section 2** relates to the written statement of preparation (which is indirectly relevant for witnesses) and creates a new section **72 E to the 1995 Act** which requires parties to “communicate” with each other prior to the Preliminary Hearing but stops short of prescribing the method of communication. From whatever form of discussion that takes place the parties are required to prepare a written record of their discussions and lodge this with the Clerk of Justiciary. The form and content of the written record are to be prescribed by the Act of Adjournal and will cover matters that require to be resolved/ considered at the Preliminary Diet.
227. **Section 4** has the effect of extending prohibition on personal conduct of his/her defence by an accused to preliminary hearings.
228. **Section 7** amends **section 66 of the 1995 Act** to provide that the Act is sufficient warrant for citation of the accused, witnesses and jurors to diets in the High Court and Sheriff Court on any day the courts are sitting (**section 66(1)**). It also cures difficulties in existing provisions for service of a notice on accused in lieu of an indictment in that it provides for service at the accused’s domicile/place of business instead of dwelling house. (**66(4) (b)**)
229. **Section 10** amends **section 92 of the 1995 Act** to make new provisions for the trial to proceed in the absence of the accused in certain circumstances. Again this section is indicative of provisions in the Act designed to avoid

unnecessary delay of the overall process which is of course desirable from a witness's position.

230. **Section 11** introduces new **sections 90A to 90E** into the 1995 Act making provision in relation to warrants to apprehend witnesses in solemn proceedings. This replaces existing common law procedures in relation to warrants for absconding witnesses and also makes provisions in relation to bail for such witnesses. **Section 90A** provides that in any proceedings on indictment the court may issue a warrant for apprehension of a witness where; having been cited to attend a witness deliberately and obstructively fails to attend (the test is presumed to be met in absence of evidence to the contrary); or the court is satisfied by evidence on oath that the witness is being deliberately obstructive and is unlikely to attend without being compelled to do so. Upon apprehension the witness must be brought before the court that granted the warrant and where possible this should be on the first day thereafter on which the court is sitting. In relation to the witness the court can; a) detain the witness until conclusion of the diet at which he is to give evidence; b) release the witness on bail; c) liberate the witness.
231. Arguably this section has the effect of setting out exactly the court's authority in regard to reluctant witnesses and provides a degree of certainty for witnesses regarding their requirement to attend at court.
232. **Sections 13, 14 and 16** whilst not directly relating to witnesses streamlines the process of dealing with objections to admissibility of evidence and unjustified challenge to uncontroversial evidence which again is beneficial for witnesses in that the avoidance of delay and uncertainty about the progress of trials should be achieved by the implementation of these sections.
233. **Section 19** inserts **subsection 71 (1C) into the 1995 Act** stating that the court must ascertain which of the witnesses included in the list of witnesses on the indictment are required for trial by the prosecutor or the accused. This will have the effect of avoiding a witness's unnecessary attendance at court when their evidence is not required.
234. **Section 22** of the Act inserts a new **section 267A into the 1995 Act** which consolidates and extends existing provisions regarding citation by the prosecutor of the witness for precognition. The principal effect of this section is that the Act now provides statutory authority to precognosce before commencement of proceedings and there are penalties for failing to attend/speak up.
235. **Section 23** inserts a new **subsection (5) into section 260 of the 1995 Act** which removes the uncertainty that had existed previously regarding the production status of a witness statement should **section 260 of the 1995 Act** require to be invoked. Subsection (5) provides that a prior statement given by a witness is not inadmissible in proceedings on indictment only for the reason that it is not included in any list of productions in the case.

Crown Office and Procurator Fiscal Service Reaction

236. All staff primarily affected by the changes at the various commencement stages of the legislation have completed a detailed training programme which was rolled out to all staff in the course of 2005. Amendments will in due course be made to the Book of Regulations and the Precognoscer's Handbook and detailed Policy Guidance and instruction has been and will continue to be issued in the form of Circulars and General Minutes.
237. IT systems have been updated to take account of the changes ie the **Act of Adjournal** prescribes a form of citation for precognition in terms of **section 22 of the 2004 Act** and this has been added to the system. The system has also been amended to take account of the requirement for details of the accused's solicitor to be included.
238. Procedures have also been put in place to ensure that in High Court cases a "Witness Availability Letter" is lodged to ensure that when fixing a date for trial the court is given full information about the availability of witnesses. This issue relates to the formulation of the new "Police National Standard Statement" (discussed in the **Practice Statement** on disclosure part of this chapter).
239. Victim Information and Advice has been highlighted as playing a clear and important role in maintaining contact with witnesses referred to them, many of whom will be vulnerable witnesses, for the additional purpose of ascertaining and updating information regarding their availability for court where this is not known. Victim Information and Advice will now formally check on a witness's availability for court to ensure compliance with the legislation.
240. Provision has been put in place for the maintenance of a Witness Availability Report which will include a calendar of dates upon which the witness would have a difficulty in attending court.
241. New witness information leaflets have been created to take account of the fact that witnesses in High Court cases may be cited to a "floating" or a "fixed" trial diet.

Issues of Concern

242. Even at this relatively early stage, figures released by the Scottish Executive show that the Bonomy reforms are already starting to have a real impact on High Court cases. It has been recognised that during the first six weeks of implementation of the new procedures more than 1,000 witnesses who would normally have been required by the Crown to attend court did not have to be cited to come to court. Preliminary Hearings have also been hailed as a success and figures released for the period 4 April 2005 to the week ending 13 May 2005 show that of a total of 107 cases which called at Preliminary Hearings 39 (34%) pled guilty, 44 (41%) were continued to another date and trials were fixed in only 24 (22%) cases. A plea of guilty was expected in some of the cases that were continued to another date and in those which did not plead guilty

witnesses would not be cited until the case was set down for trial, thereby resulting in a significant reduction in the inconvenience and stress which would have been caused in the past. Most recent figures indicate that the number of adjourned cases has fallen from 1,000 last year to 125 in the first six months since introduction of the reforms – but many of these are pre-Bonony adjourned cases and the true rate of adjournment of trials seems to be much smaller. Crown Office and Procurator Fiscal Service estimate that on current projections up to 50,000 witnesses may be spared court attendance in the course of the first year of the reforms. Figures now indicate that half of the accused are pleading guilty in the new preliminary hearings.

243. Clearly the overarching principle of Lord Bonomy's reforms is that of preparation and flowing from that principle would be the preparation time allocated to the Procurator Fiscal Deputes who are ultimately to conduct the solemn trials. There appears to be a fairly common practice whereby Procurator Fiscal Deputes routinely have access to papers for up to two weeks before the Sheriff and Jury sitting (and longer by arrangement if required) and therefore have adequate time to properly prepare the trials. We would naturally encourage this practice in all offices to enable proper preparation time for court staff.

Vulnerable Witnesses

244. **The Vulnerable Witnesses (Scotland) Act 2004** (hereafter referred to as the Act) came into force on 1 April 2005 and amended the **Criminal Procedure (Scotland) Act 1995**. It in turn was amended by the **Criminal Procedure (Scotland) (Amendment) Act 2004**. The Act is being commenced in stages from April 2005 to October 2007 with the first stage of commencement of special measures largely relating to child witnesses in solemn criminal proceedings.
245. **Section 1** of the Act amends **section 271 of the 1995 Act** in that it makes provisions that are designed to make it easier for children (under 16) and vulnerable adult witnesses to give their best evidence in court and aims to introduce greater certainty regarding the measures that are available for those witnesses. The amended **section 271 of the 1995 Act** now consists of section **271A to 271M** and defines a child witness as a person under the age of 16 years when the indictment is served upon the accused and sets out the special measures available to such witnesses. It also provides a definition of a vulnerable adult witness for the purpose of considering the requirement for special measures where there is a significant risk that the quality of their evidence will be diminished by reason of mental disorder or fear or distress in connection with giving evidence at the trial. Additionally the Act provides that Scottish Ministers have the power to make provision for other special measures by statutory instrument. The Act applies to criminal and civil proceedings, including Fatal Accident Inquiries and court proceedings in relation to children's hearings. **Section 2** of the Act amends **section 71 (1A) of the 1995 Act** in that it imposes a duty on the court to consider at a preliminary hearing whether there are any child or vulnerable adult witnesses. This duty must be fulfilled by the court at a first diet in a Sheriff and Jury case and at a preliminary hearing in

a High Court case. Where an order is made at a preliminary hearing it may not be the subject of appeal.

246. Until April 2006 most provisions will apply only to solemn cases involving child witnesses, which were reported to the Procurator Fiscal on, or after 1 April 2005. There are a number of provisions which relate to both sheriff summary and solemn cases which were also implemented in April 2005 and these are;
- Identification evidence was brought within the ambit of the routine evidence provisions under **section 281 A of the Criminal Procedure (Scotland) Act 1995**. This applies in solemn cases where the Police Report is received on or after 1 April 2005 and to all Sheriff summary cases on or after 1 April 2005 regardless of the date of receipt of the Police Report. **Section 4 of the Act** provides that if a child has previously identified the accused in an identification procedure before the start of the trial, a report is lodged which has to be served upon the accused in accordance with notification periods set out by the Act. If not challenged by the accused, the identification evidence will be received in evidence and there is no need for the witness to make a dock identification.
247. (**NB.** The new VIPER parade has recently been introduced which should greatly enhance the potential benefit for child witnesses of the use of the above section as it facilitates possible identification of the accused via video as opposed to the witness having to view the accused in a "live situation".)
- In respect of all complainers (not just children) there is now a provision for expert psychological or psychiatric evidence for the limited purpose of rebutting an adverse inference about the credibility or reliability of the complainer arising from the subsequent behaviour of a complainer in sexual offences. (**Section 5**) The provision applies to cases reported as detailed above.
 - Abolition of the competence test for all witnesses in criminal and civil proceedings. This applies to cases reported as detailed above. (**Section 24**)
248. There have been further stand alone provisions implemented which relate to solemn cases only and they are as follows:
- An accused is prohibited from conducting his/her own defence in solemn cases involving a child witness under the age of 12 years where the offence involves certain violent offences and where the Police Report was received on or after 1 April 2005. (**Section 6**)
 - An accused **may be prohibited by the court** from conducting his/her own defence in solemn cases involving a child witness where the offence involves certain violent or sexual offences and where the Police Report was received on or after 1 April 2005. (**Section 6**)
 - Pre-trial procedures are introduced in solemn cases involving certain violent or sexual offences to determine whether the accused has instructed a solicitor and whether there is a child witness. This enables the court to consider whether a

Child Witness Notice should be lodged and to consider special measures. The provision applies to solemn cases where the Police Report was received on or after 1 April 2005. **(Section 7)**

- An accused is prohibited from conducting the precognition on oath of a child witness under 12 in certain violent offences in solemn proceedings where the Police Report was received on or after 1 April 2005. **(Section 6)**

The Special Measures

249. The Act consolidates three of the special measures currently in use being;

- Use of screens **(s 271K)**
- Use of live TV link within the courthouse **(s 271J)**
- Use of a supporter in court **(s 271L)** (in conjunction with above measures)

250. These measures are described as **“standard special measures”** in the Act and are now available in every Sheriff and every High Court location to relevant prosecution and defence witnesses, including the accused, who are under 16 years. Child witnesses will now automatically, on notice having been given to the court, have the right to one or more of these standard special measures as opposed to the situation in the past where, in order to secure any of the special measures an application in terms of **section 271 of the 1995 Act** had to be made to the court, within whose discretion the decision lay. It would have been necessary to produce a report to the court setting out specific reasons why the child witness would require use of the special measures to give their evidence and the application was frequently opposed by the other party.

251. Three **“further special measures”** are also provided for in terms of the Act for children under the age of 12 years. One of the further special measures, the taking of evidence by a commissioner expands the circumstances when this might be used beyond the previous provision for evidence taken on commission. Two new further special measures introduced are;

- Evidence from a site outwith the courthouse where proceedings are taking place (available to children under 12 in certain sexual and violent offences) **(s 271B)**
- Evidence in chief in the form of a recorded prior statement **(s 271M)**

252. The terms of the provisions in effect provide for a “two tier” system of measures for child witnesses, being the “standard special measures” to which there is an automatic entitlement for child witnesses under the age of 16 years and “further special measures” which requires a specific application to the court. There is a general rule that children under the age of 12 are to give evidence away from the court building in which the accused is appearing where the alleged offence involves crimes of a sexual or violent nature, abduction and plagium.

253. The party calling the child to give evidence (and the court) will have to consider the opinion of the child when deciding which special measure would be in the best interests of the child and the views of the child witnesses and their

parents/guardians are to be taken into account. The views of the parent/guardian will be considered so long as the parent is not the accused. If the views of the parent/guardian differ from that of the child then it is the views of the child that will be preferred (**s 271E**). Children over the age of 12 are presumed to be able to give a view and in the case of children under 12 the age and maturity of the child is to be taken into account when determining whether they can express a view.

254. Regarding child accused, the Act sets out provisions for allowing the child to give evidence with the use of special measures but subject to modifications. The factors to be taken into account to assess vulnerability are amended to take account of the fact that the child will have legal representation. Also the child accused is not entitled to use screens when giving evidence.

Child Witness Notice

255. There is now a requirement for notices for witnesses under 16 (Child Witness Notices) to be lodged with the Sheriff Clerk or Clerk of Justiciary and intimated to other parties at least 14 clear days before the preliminary hearing in High Court cases and 7 clear days before the first diet in Sheriff and Jury cases. (**s 271A of 1995 Act** and in accordance with the procedures prescribed in the **Act of Adjournal (Criminal Procedure Rules Amendment No 3) (Vulnerable Witnesses (Scotland) Act 2004) 2005**). The court must consider the Child Witness Notice within 7 days of it being lodged. (**s 271(5)**)
256. The Child Witness Notice should specify the special measure(s) considered by the party citing the child to be appropriate or, if considered appropriate should state that the party considers that the child should give evidence without special measures. If the Child Witness Notice relates to a "standard special measure", it will be granted without the need for a hearing. Where the Child Witness Notice relates to further measures and the court is satisfied with the terms of the notice, the further measure will be granted without the need for a hearing. However, if the further special measure is sought but the court is not satisfied that it is appropriate in the circumstances a hearing will be needed to address the question of the requirement for any further special measures sought.
257. In situations where the party citing the child considers that the child should give evidence without any special measures and this accords with the views of the child, the court if satisfied can authorise the child to give evidence without any special measures and a hearing will not be required. If however the party citing the child takes the view that the child should give evidence without special measures and there is no such view expressed by the child, a hearing will be necessary.
258. If the court is not satisfied with the terms of a Child Witness Notice it will fix a date for a hearing and ordain the parties to appear. The party not calling the witness cannot object to the fact that special measures are to be used but where a hearing is fixed the parties will be given the opportunity to be heard. Where a hearing is fixed the court may:-

- authorise further special measures in addition to standard special measures authorised already;
- authorise the use of such special measures as the court considers appropriate;
- authorise that the child shall give evidence without any special measures but again only if the child has expressed such a wish and the court deems this to be appropriate **OR** the child has not expressed such a wish but the court deems that the use of any special measure would give rise to a significant risk of prejudice to the fairness of the trial or to the interests of justice **AND** that risk significantly outweighs the risk of prejudice to the interests of the child.

259. There is provision for review of the arrangements for the taking of the evidence up to and including the giving of that evidence by the child and the court can make an order regarding the arrangement both at the request of the party calling the witness or of its own motion. It can add a special measure or substitute a measure considered to be more appropriate. It can also make an order that the special measure no longer be used if the child indicates such a wish or it becomes clear that there may be a risk of prejudice.

Overview of Phasing in of Provisions of the Act

- **APRIL 2005**....Special measures for child witnesses in solemn cases (and Children’s Hearings court proceedings) but not as regards evidence on commission. Introduction of provisions relating to identification procedures, use of expert witnesses and abolition of the competency test in Sheriff summary and solemn cases.
- **NOVEMBER 2005**... Partial commencement of taking evidence by a commissioner for child witnesses in solemn cases (and Children’s Hearings court proceedings).
- **APRIL 2006**.....Special measures for Vulnerable Adults in solemn cases.
- **APRIL 2007**....Special measures for child and vulnerable adult witnesses in Sheriff summary cases. (Subject to Summary Justice Reform timetable)
- **OCTOBER 2007**....Commencement of special measures for vulnerable witnesses (including child witnesses) in civil cases, including Fatal Accident Inquiries.

260. The Act extends the definition of a vulnerable adult witness as being a witness where there is a significant risk that the quality of their evidence will be diminished by a) a mental disorder or b) fear or distress in connection with giving evidence at trial. **(Section 271 (1) (b))**

Crown Office and Procurator Fiscal Service Reaction

261. The Act clearly has far reaching implications for Crown Office and Procurator Fiscal Service regarding identification of vulnerable witnesses, complying with the provisions of the Act in relation to them and ensuring that all facilities are put in place to enable use of the measures to be made available to witnesses in terms of the Act. Indeed at this stage there appears to be a presumption in favour of a child having the use of at least one special measure when giving

evidence in court. In response to all of this, Crown Office has embarked on a significant programme of work to seek to ensure that the provisions of the Act can be implemented.

262. A number of working groups have been set up by Crown Office to deal with a) training of staff in relation to vulnerable witness issues; b) steps to be taken to comply with the terms of the legislation; c) issue of best practice guidance.
263. A Protocol has been devised between Crown Office and Procurator Fiscal Service and Scottish Court Service in order to set out principles to ensure the smooth and effective conduct of proceedings involving the giving of live TV evidence by children.
264. IT systems have required to be updated to provide templates for the Child Witness Notice and Vulnerability Report which is completed by Victim Information and Advice in every petition case.
265. Training for staff has commenced and is presently being rolled out to all staff in Crown Office and Procurator Fiscal Service. Additionally, discussion forums have been set up for the purpose of identifying problems/gaps in guidance, to obtain feedback in relation to experiences of the impact of the Act and to identify good practice.
266. Policy Group at Crown Office are currently working on revising the relevant chapters of the Book of Regulations to take account of the legislative provision of the Act and it is expected that the updating of these chapters will be completed by the end of 2005.
267. Detailed guidance has been issued to staff in the form of circulars and minutes which will continue to be issued as each part of the Act is phased in. Instructions have been issued to staff not to wait until phase three of the Act but that they should implement guidance contained in Chapter 16 of the Book of Regulations and current circulars and minutes which outline special measures currently available for summary cases.
268. The responsibility of each member of staff has been identified in relation to addressing vulnerable witnesses and dealing with issues arising and this has been stipulated to include:-
 - Case markers who have responsibility for identifying when a case has a child or adult vulnerable witness, referral to Victim Information and Advice and consideration of whether there is a need for identification procedure to be invoked.
 - Precognoscer who must form a view as to whether it is likely that the child will be required to give evidence, assess the child's ability to give evidence using the precognition process and decide in consultation with Victim Information and Advice which measure/s may be appropriate. The precognoscer must also draft and prepare the Child Witness Notice and advise Victim Information and Advice

to update the Vulnerability Report if necessary. Close liaison between the precognoscer and Victim Information and Advice will be essential.

- Solemn legal managers who must oversee the progress of the case and ensure compliance with the legislation. Appropriate pre-precognition instructions must be issued, dates set and liaison undertaken with Scottish Court Service regarding arrangements for special measures. The legal manager must also ensure that adequate liaison takes place between Victim Information and Advice and the precognoscer and should consider the need for expert reports. The solemn legal manager must also ensure that Child Witness Notices are dealt with and must authorise any action taken by the precognoscer and Victim Information and Advice re special measures.
- Victim Information and Advice who also have a role in ensuring that the child and parents/guardian are aware of the special measures available and should ascertain the views of the child and the parents regarding the special measures. Victim Information and Advice must obtain information from the witness regarding vulnerability, open and update Vulnerability Report, liaise with Witness Service re pre-trial visit and make decision with the precognoscer re appropriate special measures.
- High Court Indicters must revise the Child Witness Notice, arrange for lodging and service, serve ID Parade Report if appropriate and also if appropriate serve notice on accused that he is barred from representing himself.
- Sitting managers in the High Court must instruct any follow up work and advise Victim Information and Advice and precognoscer of the outcome of any court decision regarding special measures.
- Deputes conducting hearings and trials must be fully aware of the terms of the vulnerable witness provisions, ensure that all steps are complied with until conclusion of the case, check with Victim Information and Advice regarding any changes or additional information and be aware of requirements should case be re-indicted. The Trial Depute must also ensure to check that the Child Witness Notice is lodged and dealt with, check feedback from pre trial visit, review special measures and if appropriate ask for non-statutory measures.

269. Crown Office and Procurator Fiscal Service have also worked closely with the Scottish Executive in various groups dealing with implementation of the provisions of this Act. In the interim new insert leaflets for child witnesses going to court have been devised by Crown Office and Procurator Fiscal Service, are in circulation and advise of special measures available. Child witness information booklets have been published by the Scottish Executive and a CD Rom (for parents and children) has been prepared which provides further information and includes a virtual tour of a courtroom and further information about special measures. A guidance pack on the Act has also been produced for practitioners. An adult vulnerable witness information booklet is also being produced. The information booklets for witnesses will be used by Victim Information and Advice staff to assist parents and children (and eventually vulnerable adult witnesses)

when forming their views. Work is ongoing with the Association of Chief Police Officers in Scotland (ACPOS) in order to develop guidance to assist Police Officers in identifying vulnerability as a significant challenge for Crown Office and Procurator Fiscal Service will lie in identifying those adult witnesses who may be entitled to a special measure. Work is nearly completed on developing practitioner guidance on identifying vulnerability for the purposes of the Act in recognition of the fact that a significant challenge will lie in identifying those adult witnesses who may need special measures. This is being undertaken with the involvement of the Crown Office and Procurator Fiscal Service together with other stakeholders including Victim Information and Advice, the Witness Service, the Scottish Court Service and the Association of Chief Police Officers in Scotland (ACPOS). The phase of the Act extending to vulnerable adult witnesses in solemn cases and Children's Hearing court proceedings will commence in April 2006 and consultations are being arranged through the Scottish Executive Justice Department Working Group, with a wide range of interest groups eg Scottish Women's Aid, Rape Crisis.

Issues of Concern

270. The implementation of this Act is in the early stages and review of developments will be very closely monitored. There remain many issues which Crown Office and Procurator Fiscal Service continues to give active consideration to with a view to developing guidance and best practice. Indeed there are many new issues to be considered which will undoubtedly require very difficult judgement calls at various stages of the process. The terms of the Act introduce new untested ground where there is no guiding case law and whilst in theory the provisions should assist children and vulnerable adult witnesses in giving evidence, there are concerns as to possible practical difficulties developing in the actual trial setting. Even before the case reaches the trial court there is a concern that child and vulnerable adult witnesses may have expectations about the range of special measures available, only to find out as the trial approaches that for whatever reason the court has refused the use of an additional special measure in the particular circumstances of the case.
271. Witnesses failing to attend for precognition is a very common problem that precognoscers have to deal with and it is unclear how a precognoscer can deal with framing a Child Witness Notice in situations where a child witness has, for whatever reason, failed to attend for precognition and their views could not be obtained.
272. The issue of identification may be particularly difficult later in the process if a special measure is to be used and an identification parade has not taken place. In these circumstances the court would have to be persuaded that use of the special measures amounted to circumstances such as would justify the granting of a warrant for an ID parade to be held, or may impact upon the availability of certain special measures in some cases. Consideration will have to be given to corroboration of the child's identification of the accused.

273. The practical implications regarding the use of a prior statement of a child cause concern as it is unclear whether the prior statement will be the only evidence from the child or whether the child will give evidence in court in addition to the prior statement being presented in evidence. The defence obviously have a right to cross examine and there are concerns as to conduct of cross examination when the evidence in chief has been in the form of a prior statement. If a prior statement is used **and** the child gives evidence does this mean that the defence can cross examine on both and what effect would this have on the child and the impression of the child's evidence? Again, Deputes in court will have to be very aware of ensuring that a witness is not subject to "unduly harassing" cross examination in relation to a prior statement and specific guidance has been issued in relation to this point (as referred to above in relation to disclosure of a witness's police statement).
274. The legislation is silent as to whether a witness should be allowed access to the prior statement in advance of giving evidence in court and there is understood to be a divergence of judicial opinion on this matter. The Crown will therefore require to proceed cautiously in the use of a prior statement and seek the appropriate guidance if it proposed to use this special measure. It is understood that any potential admissibility issues in relation to the prior statement should be dealt with at the preliminary hearing.
275. The taking of evidence by a commissioner was partly commenced in November 2005. It is unclear what will happen in this situation if the defence ultimately take an objection to the admissibility of certain parts of the evidence and at what stage in the process this would be done. It is unclear whether objections would be dealt with at the stage when the evidence is being taken on commission or whether it would be at the point when the evidence was being led in court. Practitioner guidance was published in November 2005 (Crown Office guidance issued in December 2005) which seeks to clarify a number of matters for those who might select this special measure and be responsible for making it work. The guidance was drawn up with assistance from the Crown Office and Procurator Fiscal Service and the Law Society, along with other stakeholders and covers issues such as ruling on admissibility, the presence of the accused at proceedings and different approaches to holding a commission. Additionally if **sections 274 and 275 of the 1995 Act** are to be invoked it would appear that evidence on commission would not be appropriate as an additional special measure. In announcing the partial commencement the Scottish Executive also stated that it would be remedying this problem by amending the legislation during 2006.
276. Certain difficulties may present themselves if the child is giving evidence from a remote site (ie if the witness is required to refer to documentary or label productions).
277. Clearly the requirement for full information regarding vulnerability of child and other witnesses will exert pressure on Police Officers to ensure they provide all relevant information about the witnesses in the terms of the Police Report and police statements. It is understood that Scottish Executive guidance is available

to Police Officers in regard to this and this will be built upon by the Lord Advocate's guidance to the Police. It is anticipated that a revised Standard Prosecution Report will in due course provide "tick boxes" of vulnerability and mandatory fields dealing with issues such as "fear and distress". These fields would normally be in the confidential remarks material annexed to statements so as not to be disclosed automatically to the defence, although the prosecutor would always require to consider whether such material ought to be disclosed.

278. The relevant part of the Act relating to vulnerable adults in solemn cases is due to be introduced in April 2006 and at this stage is an unknown quantity given the very narrow definition of an adult vulnerable witness as stated in **section 271 (1) (b)** of the Act (.....those whose quality of evidence will be diminished by a) a mental disorder or b) fear or distress in connection with giving evidence). It is conceivable that a huge number of witnesses could fall within the latter part of the definition as civilian witnesses are commonly fearful of or distressed by the prospect of giving evidence in the relatively alien environment of the courtroom.
279. As a result of the Bonomy reforms from the point of view of the Witness Service there are concerns that although the number of witnesses they would normally require to deal with has fallen by 17 per cent during this same period, however, the volume of Witness Service work with children under 16 has risen by 20 per cent. This is presumed to be due to the implementation of Phase I of the **Vulnerable Witnesses (Scotland) Act 2004** and revisions made to the Victim Support Scotland/Victim Information and Advice Protocol to take account of same. Additionally the 'go live' date for implementation of Phase II of the **Vulnerable Witnesses (Scotland) Act 2004** approaches in the absence of the supply of any meaningful information to the Witness Service regarding the numbers of witnesses who might potentially be eligible for special measures and hence the Witness Service cannot make the appropriate arrangements to be in a position to accommodate and support affected witnesses. However, we understand that an early output of the monitoring and evaluation of the Act will be an estimate of the numbers of vulnerable adult witnesses that pass through the system.
280. The provisions of the **Vulnerable Witnesses (Scotland) Act 2004** have implications for information gathering and sharing for the Police, Crown Office and Procurator Fiscal Service including Victim Information and Advice and for the courts and the Witness Service. Given that the Act only came into force in April 2005, there have been no cases which have proceeded to trial at this moment in time although cases involving child witnesses affected by the Act should be proceeding through the courts in the very near future and will undoubtedly be very closely scrutinised and monitored in order to continually assess the effect and implications of the **Vulnerable Witnesses (Scotland) Act 2004**. Victim Information and Advice figures from April to September 2005 indicate that 728 child witnesses were referred to them.

Conclusion

281. All parties welcome the new provisions and are actively engaged in joint activity to ensure their proper implementation and are committed to effective delivery. The terms of the reforms resulting from Lord Bonomy's review of the High Court (Disclosure and changes to the **Criminal Procedure (Scotland) Act 1995**) along with the **Vulnerable Witnesses (Scotland) Act 2004** seek to make far reaching improvements to the criminal justice system from the point of view of witnesses. In addition to there being a significant reduction in the number of witnesses who will be required to attend at court and give evidence, the whole court process should be less intimidating and stressful for those witnesses who do ultimately have to attend at court and give evidence. It is clear that the overall package of reform requires, and is being given very careful consideration by the criminal justice partners charged with delivery. The introduction of the reforms is at a very early stage and many benefits and concerns have been anticipated. Whilst the Crown Office and Procurator Fiscal Service have embarked on a wide and detailed programme of work to facilitate the reforms it is apparent that close monitoring and scrutiny will be required at each stage of the "phasing in" of the reforms which will take place over the next few years.

RECOMMENDATIONS

- 1. We recommend that an item on the Witness Service forms part of the introductory training of all Crown Office and Procurator Fiscal Service staff and also part of the Deputes' Core Course.**
- 2. We recommend that all Crown Office and Procurator Fiscal Service Area Fiscals and the Witness Service agree to put in place arrangements for the giving of information to the Witness Service for cases other than Victim Information and Advice cases.**

In particular the giving of witness lists to the Witness Service in summary cases should be routine.

- 3. We recommend where Crown Office and Procurator Fiscal Service staff wish to have personal contact with a victim/witness at a stage where Victim Information and Advice or the Witness Service would normally be involved that an exchange of information takes place between the parties.**

We consider that how this is achieved is best left to local arrangement.

- 4. We recommend wherever possible prior to the start of the court that there is an exchange of information between the Fiscal Depute and the Witness Service staff to enable both parties to be as fully briefed as possible.**
- 5. We recommend that the Court Officer/Macer acts as a conduit for the exchange of information between the prosecutor in court and the Witness Service or the witnesses themselves and this should be done on an hourly basis.**
- 6. We recommend that the time would be ripe for the Crown Office and Procurator Fiscal Service and Scottish Court Service to re-visit the joint statement and update it in line with these developments.**

List of Members of Reference Group

Ms Shona Barrie

Crown Office and Procurator Fiscal Service, Policy Division, Head of Team (Victim, Witness and Vulnerable Accused)

Mr Robert Gordon

Scottish Court Service, Head of Court Services Branch (Operations and Policy Unit)

Ms Sue Moody

Crown Office and Procurator Fiscal Service, Director of Victim Information and Advice Division

Mr Neil Paterson

Victim Support Scotland, Director of Operations

Dr Paul Smart

Scottish Executive, Head of Victims and Witnesses Unit

BEING A WITNESS LEAFLET

As a witness you have a key role to play in the Criminal Justice system. We understand that you may be unfamiliar with how the court works and may feel nervous about giving evidence. We hope that this leaflet helps to answer some of your questions and gives you information about people who can help you through the court process.

ARRIVING AT COURT

Remember to take your Citation and Expenses Form with you to court. Ask any court official where you should go. Show the official your Citation and you will be directed to the correct waiting room for witnesses. You must not go into the courtroom itself before you have given evidence. By arriving promptly and going to the correct waiting room you will help the court to start on time. Take something to pass the time, as you may have to wait for a while before being called into court.

HOW LONG WILL IT TAKE?

It is not possible to predict how long proceedings will take. You must be prepared to stay all day if necessary. A court official will keep you informed about the progress of your case. If you are no longer required to give evidence, for example because an accused person has changed their plea to guilty on the day of the trial, you will be released as soon as possible. Until you are advised by a court official that you can leave, you must stay in the court building.

WHAT WILL HAPPEN?

When it is your turn to give evidence a court official will call your name and show you to a witness box in the court. The Judge will ask you take an oath before God to tell the truth. If you prefer not to take an oath you may ask to affirm that you will tell the truth. In the Sheriff Court the Judge is called "my Lord" or "my Lady" and in the District Court the Judge is called "Your Honour". You should stand when giving your evidence unless this would be difficult for you, in which case ask the Judge if you can sit down.

GIVING EVIDENCE

The first person to ask you questions will be the Procurator Fiscal who represents the prosecution. You will be asked your name, address, age and occupation. If you do not wish your address to be given out in court ask the Judge if you can write it down.

The Procurator Fiscal and then the defence lawyer will ask you questions about the case. In cases with more than one accused the defence lawyer for each accused may ask you questions. Sometimes the Judge may also ask questions.

It will help the court and your confidence if you listen carefully to what you are asked. Take your time in answering and say if you do not understand or do not know the

answer. It is your duty to answer all of the questions asked truthfully and as accurately as you can. Speak slowly and clearly.

The Judge will tell you when you are free to go after you have given evidence. You can stay and listen to the rest of the case if you wish. You must not return to the witness room after giving evidence in court or discuss your evidence with other witnesses who have still to give their evidence.

EXPENSES

Use the Expenses Claim Form on the back of the Citation to claim travelling expenses to and from court and money for meals. Please follow the instructions on the Expenses Form if you require to claim for loss of earnings or child minding expenses.

You may claim your expenses by posting the completed form to the Procurator Fiscal's Office. Prepaid envelopes and instructions on how to complete the claim are available at the court.

DISABLED AND ELDERLY WITNESSES

If you are disabled or elderly and restricted in your movements you may hire a taxi for your journey to and from court. You must obtain a receipt from the driver in order to claim the expenses for your fare.

PEEBLES SHERIFF COURT

TRAVEL DIRECTIONS

Peebles Sheriff Court sits at the Sheriff Court House, Rosetta Road, Peebles, EH45 8JG. A map is attached with information about buses and car parking.

EXPENSES

There is no facility to pay expenses from the Peebles Court. The Procurator Fiscal's office is at the Sheriff Court House, Ettrick Terrace, Selkirk, TD7 4LE. You can post your completed Expenses Form to the Procurator Fiscal's office and your expenses will be sent to you. Prepaid envelopes are available at the Peebles Court.

DISABLED ACCESS

There is easy access to the courthouse. The courtrooms are on the ground floor. You can contact the Sheriff Court on 01721 720204 if you want more information.

REFRESHMENTS

There are no facilities in the courthouse. The court normally shuts for lunch between 1.00 pm and 2.00 pm and you will be able to go for lunch at that time. There are places to eat nearby.

HELP AND ADVICE FOR WITNESSES AND VICTIMS OF CRIME

VICTIM SUPPORT SCOTLAND: Provides practical advice, emotional support and assistance to people affected by crime. The service is free and confidential. To contact your nearest service call 0845 603 9213 or look under Victim Support in the telephone directory.

THE WITNESS SERVICE: The Witness Service exists to help people through the judicial process by providing practical and emotional support. The facility is set up in the Sheriff Court building and is provided by trained volunteers managed by paid staff. The Service is free and confidential and is available to all witnesses attending court. The Service also supports families and friends of witnesses. To contact your local Witness Service call 0131 220 1550 or when you arrive at court on the day of the trial ask a court official to direct you to the Witness Service.

DATA PROTECTION ACT

The Crown Office and Procurator Fiscal Service holds data about you as a witness for the Crown for the purpose of prosecuting offenders. Your name and address will be disclosed to the Witness Service to enable them to offer you assistance. You do not have to take up this offer of support, and involvement with the Witness Service is on a purely voluntary basis.

Victim Information and Advice

CATEGORIES OF CASES WHICH MUST BE REFERRED:-

1. Victims in all **serious** cases, where the nature of the charge(s) is indicative of solemn proceedings.

If, however, a case is only to proceed on indictment because of the status of the accused, as opposed to any feature of the victim, that victim will not be eligible. Thus the car owner in a case of theft will not be entitled to the service if the case is on petition by reason of the accused's record and/or the volume of the charges only, unless s/he comes within the terms of category 8 below.

2. The **next of kin** in cases involving deaths which are reported for consideration of criminal proceedings and death cases where a Fatal Accident Inquiry is to be held.
3. The **next of kin** in all cases where there were likely to be or it becomes clear after initial investigation that there will be significant further inquiries, or where, in all the circumstances, it is considered that the assistance of VIA would be appropriate.
4. Victims in cases of **domestic abuse**.
5. Victims in cases with a **racial aggravation and cases where it is known to the Procurator Fiscal that the victim perceives the offences to be racially motivated**.
6. Cases involving **children**.
7. Victims in cases involving **sexual offences**.
8. Cases involving **vulnerable witnesses**, ie witnesses who:

Have learning difficulties;
Have physical disabilities;
Suffer from mental health problems;
Are Asylum Seekers or witness with language difficulties;
Are terrified of accused and/or of reprisals;
Are victims in cases where sexual orientation/gender identity may give rise to vulnerability, eg homophobic crime (Lesbian, Gay, Bisexual, Transgender);
Other.

Age is not recognised by Victim Information and Advice as automatically suggesting vulnerability. Older people will only be regarded as vulnerable if they come under one of the categories listed above. The 'other' criterion leaves it open to the discretion of the person dealing with the case to decide

that a particular witness is vulnerable, even if they do not fall within the terms of any of the specific categories.

**REFERRALS AND INFORMATION EXCHANGE:
AN OPERATIONAL PROTOCOL
BETWEEN
VICTIM INFORMATION AND ADVICE (VIA)
AND
THE WITNESS SERVICE (WS)**

Revised November 2005

BACKGROUND

This protocol is supplemental to the agreed "[Operational Protocol between Victim Information and Advice and Victim Support Scotland](#)". In conjunction with that protocol, it sets out agreed arrangements between Victim Information and Advice (part of the Crown Office and Procurator Fiscal Service) and the Witness Service (part of Victim Support Scotland) covering referrals and related information exchange between Victim Information and Advice Officers and Witness Service representatives. Both protocols are intended to form the basis of a developing working relationship between Victim Information and Advice and Victim Support Scotland (including the Witness Service) and will be the subject of regular review to improve their terms and practicability.

AGREEMENT

1. Relevant provisions of the agreed "[Operational Protocol between Victim Information and Advice and Victim Support Scotland](#)" apply at all times. This protocol has been agreed at a national level and local staff should not enter into any local agreements that are contrary to the terms of this document.

ROLES

2. There is a presumption that all Crown witnesses will be referred to the Witness Service who will carry out any pre-trial court visit (sometimes referred to as "PTV").
3. However, there are occasions when this will not happen. In such cases the Crown Office and Procurator Fiscal Service and the Witness Service should agree in advance who will be conducting the visit. Other staff present during the visit should have the role of observing only. Any issues of concern or differences of view between agencies that arise during the visit should not be discussed in front of the witness.
4. Examples of cases where the Witness Service may not conduct or be the only agency present during the visit include:
 - Very sensitive cases where Crown Office and Procurator Fiscal Service needs to manage all aspects of the case and will therefore wish to be present;
 - Where another agency is already involved and it is agreed that it would be to the benefit of the witness that this agency conduct or be present at the pre-trial court visit;
 - Where the witness expresses a preference for another agency to conduct or be present at the visit; and/or
 - In certain cases calling at the High Court in Edinburgh and Glasgow where Social Work Services staff will carry out the visit.
 - In a very limited number of cases it may be necessary for Crown Office and Procurator Fiscal Service to carry out the pre-trial court visit without the involvement of the Witness Service, eg where the case concerns issues of national security.

5. Victim Information and Advice will flag the importance of pre-trial court visits in any communication with witnesses where this is relevant (including appropriate letters and leaflets). The Witness Service will provide Victim Information and Advice with adequate supplies of the general Witness Service leaflet, which Victim Information and Advice will send out to witnesses in all relevant cases.
6. The Witness Service will encourage all witnesses who fall within Victim Information and Advice's remit to undertake a pre-trial court visit.
7. Victim Information and Advice may greet certain witnesses/bereaved next of kin when they arrive at court diets and facilitate their introduction to the Witness Service and any other relevant agency, but will normally not remain with them all day. The Witness Service and any other relevant agencies will be advised of any such arrangements in advance.
8. The Witness Service will convey decisions made in court proceedings to witnesses who are in court but will not normally convey the reasons for case decisions. The Witness Service may however facilitate communication with Victim Information and Advice or other Crown Office and Procurator Fiscal Service staff where the witness wishes an explanation. Victim Information and Advice and/or other Crown Office and Procurator Fiscal Service staff will normally provide explanations/give reasons to witnesses where that is permitted.
9. Victim Information and Advice will provide information about decisions made in court proceedings (including bail, adjournments, verdicts and sentences) to all witnesses who fall within their remit, including where these decisions have been previously conveyed by a Witness Service representative at court.

REFERRALS

Referral by Victim Information and Advice – 'Opt-Out'

10. Where there is a possibility that a 'special measure' may be applied in relation to a witness for the purposes of them giving evidence an opt-out system of referral to the Witness Service will be used by Victim Information and Advice Officers. Such witnesses will include, but will not be restricted to, all child witnesses, all victims/survivors in cases involving sexual offences (including historical abuse cases), all witnesses with learning difficulties and next of kin in crime related deaths. Victim Information and Advice Officers should also include in the opt-out system any witnesses who may be subject to significant fear or distress in connection with giving their evidence. Separate provisions will apply to witnesses under the Vulnerable Witnesses (Scotland) Act 2004.
11. Under the opt-out system, Victim Information and Advice will advise the witness in writing at least (where possible) four weeks before the Trial Diet that their details will be passed on to the Witness Service on/after a specific date (normally two weeks from the date of the letter) unless they indicate that they do not wish this to happen.

12. Where there is a possibility that a 'special measure' may be applied in relation to a witness for the purposes of them giving evidence, Victim Information and Advice will advise the witness as above, but send the relevant letter at least (where possible) six weeks prior to the Trial Diet.
13. In these cases, where the witness does not opt out, Victim Information and Advice will provide the Witness Service with a completed "[Witness Service Referral](#)" form (as referenced in Paragraphs 16 to 20) at least (where possible) four weeks prior to the Trial Diet for cases where there is a possibility of special measures and two weeks prior to the Trial Diet for all other cases. Attempts should be made to include as much information as possible and, where mobile telephone numbers are quoted, they should identify to whom the number belongs. Details of any known vulnerability or disability should be passed to the Witness Service as this may affect the manner in which they approach the witness.
14. A Witness Service leaflet will be included with all letters sent by Victim Information and Advice detailing the opt-out or opt-in (see below) systems of referral.

Referral by Victim Information and Advice – 'Opt-In'

15. Any witness who asks Victim Information and Advice to refer them to the Witness Service and/or to arrange a pre-trial court visit for them will be referred to the Witness Service, using the "[Witness Service Referral](#)" form (as referenced in Paragraphs 16 to 19), subject to the restrictions outlined in Paragraph 3.

All Referrals by Victim Information and Advice

16. Where Victim Information and Advice is making a referral to the Witness Service, the Victim Information and Advice Officer should complete the "[Witness Service Referral](#)" form, a copy of which is attached at Annex A. This should include information about the witness' vulnerability and/or additional support needs unless the witness is not willing for this information to be divulged. A copy of this form will be saved electronically in order to be able to access and amend it later in the case if required. A hard copy will be printed out and placed on file, with the file minutes updated as appropriate. An electronic copy will be sent to the relevant Witness Service representative, thereby effecting the referral.
17. Where the Victim Information and Advice Officer becomes aware of any additional relevant information the appropriate "Witness Service Referral" form should be updated and copied as in Paragraph 16. This process should be repeated as many times as appropriate.
18. Where the Witness Service representative becomes aware of any additional relevant information they should update the appropriate "Witness Service Referral" form sending an electronic copy to the relevant Victim Information and Advice Officer. This process should be repeated as many times as appropriate.

but must be completed immediately following any pre-trial court visit, even where no additional observation has been made.

19. If the Witness Service representative is unable to make contact with the witness, or for some reason a pre-trial visit does not take place, notification of this must be relayed to the Victim Information and Advice Officer.
20. Information recorded on the "Witness Service Referral" form will be shared by Victim Information and Advice with other Crown Office and Procurator Fiscal Service colleagues as appropriate.
21. Where no referral is made through the 'opt-out' system or by witness request, Victim Information and Advice can only discuss limited information with the Witness Service. This information is restricted to basic case details, the name of the witness and whether the witness is an adult or under 16 years of age. No other personal information regarding the witness can be shared without explicit permission from the witness.
22. Both agencies will keep records of the number and category of referrals made and will carry out periodic checks jointly to ensure that these records are being maintained satisfactorily.
23. Witness Service staff will periodically notify the Victim Information and Advice Business Managers of cases in which child witnesses have presented at court without a referral having been made using the form at Annex B. The Victim Information and Advice Business Manager will thereafter make enquiries to ascertain the reason for the non-referral.
24. Victim Information and Advice and Witness Service staff should monitor the quality of the information contained in the forms received and should bring examples of bad practice their line manager so that corrective action can be taken.

Self-Referrals

25. Victim Information and Advice will ensure that details of the Witness Service are communicated to all witnesses within their remit, so that each individual has the opportunity to contact the Witness Service directly. Victim Information and Advice will, however, in all cases offer to make a referral on behalf of the individual and follow the process referred to above.

Referrals in respect of cases to which the provisions of the Vulnerable Witnesses (Scotland) Act 2004 apply

26. Phase 1 of the Vulnerable Witnesses (Scotland) Act 2004 introduced an entitlement to one or more special measures for child witnesses (aged 16 or under at the commencement of proceedings) when they give evidence in Solemn proceedings. The views of the child and parent/guardian must be

considered when deciding which special measure is in the best interests of the child.

27. Victim Information and Advice staff are responsible for issuing the Scottish Executive's "Being a witness" booklet to children and for ascertaining the views of children and their parents in relation to special measures. This is normally done following precognition when the Victim Information and Advice Officer will meet with the child and demonstrate the "Being a witness" CD ROM.
28. When meeting with children and their parents/guardians the Victim Information and Advice Officer should ascertain if there has been any contact with any other Agency as they may have information about support needs or vulnerabilities that could be important.
29. The Victim Information and Advice Officer should make the child and parents/guardians aware at this stage that, notwithstanding the terms of the legislation, the ultimate decision as to which special measure should be granted is a matter for the court and what is sought may not always be granted or appropriate for evidential reasons.
30. The Victim Information and Advice Officer should discuss the role of the Witness Service with the child and parents/guardians and, at this stage, determine whether they are content for a referral to be made subsequently to Witness Service should the child be required as a witness.
31. If consent is obtained, the Victim Information and Advice Officer, at this stage should then complete the Witness Service Referral Form and pass it to the Witness Service on the understanding that the referral is not to be actioned until such times as the Preliminary Hearing or First Diet have been held. The Victim Information and Advice Officer will contact the Witness Service as soon as the result of any initial hearing is known.
32. However, with the consent of all concerned the Victim Information and Advice Officer will have the discretion to make a formal referral earlier if it is considered to be in the best interests of the child or if there has been a specific request by the child or parent/guardian to see special measures in operation.
33. The Witness Service will have staff available for familiarisation visits at any remote sites and will also be available on the day of the trial to provide emotional and practical support if required.

IMPLEMENTATION

34. The terms of the original Victim Information and Advice/Victim Support Scotland Referrals and Information Exchange Protocol became effective on 5 January 2004 and were subsequently revised on 29 November 2004. **This revised protocol and accompanying materials are to take effect from 9 January 2006.**

Agreed November 2003

Revised November 2004

Further revised November 2005

"WITNESS SERVICE REFERRAL" FORM

SECTION A: CASE DETAILS		
PF REFERENCE	<u>DATE OF ID / FD / PD</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>

**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>			
<u>NAME</u>			<u>CONTACT DETAILS</u> <i>If witness under 16, also enter guardian name and details</i>
<u>STATUS</u> Victim and witness	<u>GENDER</u> Female	<u>AGE</u>	
<u>OBSERVATIONS/VULNERABILITY</u>	<u>ADDITIONAL SUPPORT MEASURE/PROVISION</u>		<u>DATE GRANTED</u>
<u>WITNESS REQUEST</u>	<u>ADDITIONAL SUPPORT MEASURE/PROVISION</u>		<u>DATE GRANTED</u>
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		
<u>REFERRAL TYPE</u> Automatic – witness agreement	<u>DATE WITNESS CONTACTED</u>	<u>PTV DATE</u>
<u>WS SUPPORT PROVIDED</u>		
<u>OTHER ORGANISATION INVOLVEMENT AND CONTACT DETAILS</u>		

SECTION D: CONTACTS	
<u>COPFS STAFF MEMBER</u>	<u>WS OFFICIAL</u>
DESIGNATION	DESIGNATION
TEL	TEL
FAX	FAX
E-MAIL	E-MAIL

<u>SECTION E: UPDATE DETAILS</u>	
<u>DATE LAST UPDATED</u>	<u>UPDATED BY</u>



DETAILS OF CHILD CASES NOT REFERRED TO WITNESS SERVICE

The following children attended (**Name of Court**) Court without prior notice having been given to the Witness Service:

Date	PF Reference	Name of Accused	Name of Witness	Age	Crown Witness Y/N

Name:

Date:

This form should be completed and emailed to:
John.Fox@copfs.gsi.gov.uk for cases in the West of Scotland
Rosemary.Lester@copfs.gsi.gov.uk for all other cases.

**CROWN OFFICE AND PROCURATOR FISCAL SERVICE
SCOTTISH COURT SERVICE
JOINT STATEMENT ON CROWN WITNESSES**

INTRODUCTION

The Crown Office and Procurator Fiscal Service and the Scottish Court Service are committed to upholding the principles set out in the Justice Charter for Scotland.

We have made public declarations of our standards in separate Charter Standard Statements.

Providing proper and efficient service and care to witnesses is a fundamental part of our commitment.

This Statement sets out our shared and individual responsibilities in relation to Crown witnesses.

SHARED RESPONSIBILITIES

We share responsibilities to:

1. Meet the standards set out in our respective Charter Standard Statements in relation to witnesses;
2. Treat witnesses with courtesy and deal sensitively and efficiently with their enquiries;
3. Treat all witnesses fairly and give consideration to their interests whatever their race, sex, religion, age or other special need;
4. Be particularly sensitive and responsive to the needs of vulnerable witnesses including children, witnesses with learning difficulties, witnesses with physical disabilities, deaf and dumb witnesses and witnesses who do not speak English;
5. Co-operate and liaise in the provision of pre-trial visits for vulnerable witnesses, where appropriate;
6. Co-operate and liaise in relation to sensitive cases where special arrangements may be required;
7. Co-operate and liaise to ensure that, so far as is reasonably practicable, witnesses at court are regularly advised of the progress of their cases; and
8. Ensure that witnesses at court who are no longer required to give evidence are released as soon as possible and provided with an explanation for their release.

INDIVIDUAL RESPONSIBILITIES

Procurators Fiscal will:

1. Give witnesses as much notice as possible of their requirement to attend court and, in particular, in summary cases where the accused is not in custody, will endeavour to send citations to the Police for service no less than six weeks before the trial;
2. Provide to each witness cited an explanatory leaflet about being a witness and, in particular, will provide special leaflets to child witnesses and witnesses with learning difficulties;
3. In fixing trials, have regard to the commitments of witnesses, where these are known to them;
4. Deal sympathetically with reasonable requests by witnesses to be excused;
5. Give a prompt and courteous response to witnesses' enquiries both at the office and at court;
6. Comply with the duty imposed on them by the Criminal Procedure (Scotland) Act 1995 Section 257 to seek agreement of evidence unlikely to be disputed;
7. So far as is reasonably practicable, serve statements of fact in relation to uncontroversial evidence, as provided by the Criminal Procedure (Scotland) Act 1995 Section 258;
8. Provide foreign language interpreters and sign language interpreters where required;
9. Inform the Clerk of Court of any special needs of witnesses which are known to them and which require special arrangements to be made;
10. Liaise with the Clerk of Court to ensure, so far as is reasonably practicable, that witnesses at court are kept advised of the progress of their cases; and
11. Pay witness expenses promptly.

Clerks of Court will:

1. Ensure a clearly marked reception point for witnesses at court;
2. Provide adequate, comfortable witness accommodation, with access to a public telephone, sufficient clean toilet facilities and, where possible, refreshment facilities;
3. Liaise with Procurators Fiscal in making arrangements to meet the special needs of witnesses where these are known to them;

4. Liaise with Procurators Fiscal to ensure, so far as is reasonably practicable, that witnesses at court are kept advised of the progress of their cases.

FISCAL SERVICE QUESTIONNAIRE

Instructions for completion – please read before commencing:

- Some questions have a list of possible answers below them. For these questions, you should choose from this list and then type your answer in the space below the list. Depending on the answer you choose, please also give details if requested.
- Some questions do not have a list of possible answers. For these questions, please simply type your response in the space below the question.
- Please feel free to give any further details you may wish to in relation to any question, even if the question does not specifically ask you to provide details.

- 1.** Are there any specific arrangements in existence locally, in addition to the operational protocol between Crown Office & Procurator Fiscal Service (the Victim Information and Advice protocol) and the Witness Service, to provide information to the Witness Service?

Possible answers

- Yes
- No

- 2.** If you answered yes to question 1, please give details in respect of the following categories:

(a) High Court cases

(b) Sheriff and Jury cases

(c) Sheriff Summary cases

- 3.** Are you aware of the full range of functions of the Witness Service?

Possible answers

- Yes
- No
- Partially

4. In your experience, how well does the operational protocol between the Witness Service and Crown Office and Procurator Fiscal Service (the Victim Information and Advice protocol) actually operate in practice?

Possible answers – please also give details

- Very well
- Well
- Quite well
- Not well
- Not at all well

5. In cases where Fiscal staff wish to maintain close links with a witness (eg at pre-trial court visit) are the Witness Service (and Victim Information and Advice where relevant) notified of this intention?

Possible answers – please also give details

- Always yes
- Usually yes
- Sometimes
- Usually not
- Never

6. How are these parties notified? **Please give details.**

7. What information is exchanged between the Fiscal and the Witness Service representative(s) during court days? **Please give details.**

8. In your experience, with reference to the exchange of information between the Fiscal and the Witness Service staff, have there been any difficulties encountered in this process?

Possible answers

- Yes – **please give details**
- No

9. How does the information the Fiscal receives in court affect his/her conduct on that day? (eg is order of business altered?) **Please give details.**

10. Are Fiscal staff directly involved in relaying information to witnesses regarding progress of cases in court?

Possible answers

- Yes

- No - please go to question 11
- Sometimes

11. If not, in your experience, who is responsible for this? **Please give details.**

12. Are members of Crown Office and Procurator Fiscal Service staff in your office involved in the training of Witness Service staff?

Possible answers

- Yes
- No – please go to question 14

13. What form did the training take? **Please give details.**

14. Do you have any suggestions for improving the existing arrangements between the Witness Service and the Fiscal Service (including Victim Information and Advice)? **Please give details if so.**

15. Please use the space below to tell us about anything else in relation to these issues not already covered by the preceding questions.

SCOTTISH COURT SERVICE QUESTIONNAIRE

Instructions for completion – please read before commencing:

- Some questions have a list of possible answers below them. For these questions, you should choose from this list and then type your answer in the space below the list. Depending on the answer you choose, please also give details if requested.
- Some questions do not have a list of possible answers. For these questions, please simply type your response in the space below the question.
- Please feel free to give any further details you may wish to in relation to any question, even if the question does not specifically ask you to provide details.

- 1.** Are facilities provided for the Witness Service in your court (whether High Court or Sheriff Court)?

Possible answers

- Yes
- No

- 2.** Are you aware of any difference(s) in practice with regards the Witness Service, in respect of the High Court?

Possible answers

- Yes – please give details
- No

- 3.** Is the Witness Service represented on your Court Users' Group?

Possible answers

- Yes
- No
- Don't know

- 4.** To what extent do court staff get involved in the exchange of information between the prosecutor and Witness Service representative(s)?

Possible answers – please also give details

- A lot
- Quite a lot
- A little
- Not a lot

- Not at all

5. Are you aware of any problems in the exchange of information among prosecutor, court staff and Witness Service representative(s)?

Possible answers

- Yes – please give details
- No

6. Are court staff directly involved in relaying information to witnesses regarding progress of cases in court?

Possible answers

- Yes
- No – please go to question 7
- Sometimes

7. If not, in your experience, who is responsible for this? Please give details.

8. How are court staff made aware of a pre-court visit request? Please give details.

9. What action(s) is required of court staff following on from notification of a pre-court visit request? Please give details.

10. Do you have any suggestions for improving the existing arrangements among the Scottish Court Service, prosecutor and the Witness Service? Please give details if so.

11. Please use the space below to tell us about anything else in relation to these issues not already covered by the preceding questions.

VICTIM INFORMATION & ADVICE QUESTIONNAIRE

Instructions for completion – please read before commencing:

- Some questions have a list of possible answers below them. For these questions, you should choose from this list and then type your answer in the space below the list. Depending on the answer you choose, please also give details if requested.
- Some questions do not have a list of possible answers. For these questions, please simply type your response in the space below the question.
- Please feel free to give any further details you may wish to in relation to any question, even if the question does not specifically ask you to provide details.

1. Are you aware of the full range of functions of the Witness Service?

Possible answers

- Yes
- No
- Partially

2. In your experience, how well does the operational protocol between the Witness Service and Crown Office & Procurator Fiscal Service (the Victim Information and Advice protocol) actually operate in practice?

Possible answers – please also give details

- Very well
- Well
- Quite well
- Not well
- Not at all well

3. Can you be sure that all relevant Victim Information and Advice cases are referred to you by Fiscal staff?

Possible answers

- Yes
- No

4. Is any check carried out by you to confirm that you receive all relevant cases?

Possible answers

- Yes – please give details of what this involves

- No

5. In cases where Fiscal staff wish to maintain close links with a witness (eg at pre-trial court visit) are Victim Information and Advice notified of this intention?

Possible answers – please also give details

- Always yes
- Usually yes
- Sometimes
- Usually not
- Never – please go to question 7

6. How are Victim Information and Advice notified of this intention? **Please give details.**

7. What information is exchanged between Victim Information and Advice and the Witness Service representative(s)? **Please give details.**

8. In your experience, with reference to the exchange of information between Victim Information and Advice and the Witness Service staff, have there been any difficulties encountered in this process?

Possible answers

- Yes – please give details
- No

9. Do you have any suggestions for improving the existing arrangements between Victim Information and Advice and the Witness Service? **Please give details if so.**

10. Please use the space below to tell us about anything else in relation to these issues not already covered by the preceding questions.

WITNESS SERVICE QUESTIONNAIRE

Instructions for completion – please read before commencing:

- Some questions have a list of possible answers below them. For these questions, you should choose from this list and then type your answer in the space below the list. Depending on the answer you choose, please also give details if requested.
- Some questions do not have a list of possible answers. For these questions, please simply type your response in the space below the question.
- Please feel free to give any further details you may wish to in relation to any question, even if the question does not specifically ask you to provide details.

- 1.** Are you made aware of cases other than those specified by the operational protocol between the Witness Service and Crown Office & Procurator Fiscal Service (the Victim Information and Advice protocol)?

Possible answers

- Yes
- No

- 2.** In your experience, how well does the operational protocol between the Witness Service and Crown Office and Procurator Fiscal Service (the Victim Information and Advice protocol) actually operate in practice?

Possible answers – please also give details

- Very well
- Well
- Quite well
- Not well
- Not at all well

- 3.** In respect of the exchange of information between the Court Depute and yourself on court days (eg re progress of cases), is the information you provide utilised?

Possible answers - please also provide details

- Always yes
- Usually yes
- Sometimes
- Usually not
- Never

- 4.** In respect of the exchange of information between the Court Depute and yourself on court days (eg re progress of cases), have you encountered any difficulties in this process?

Possible answers

- Yes – please give details
- No

- 5.** Are facilities provided for your use in court buildings?

Possible answers

- Yes
- No – please go to question 7

- 6.** Are the facilities adequate for your needs?

Possible answers

- Yes
- No – please provide details

- 7.** Is the Witness Service represented on the Court Users' Group?

Possible answers

- Yes
- No

- 8.** Has the Fiscal Service had any input to your Witness Service training?

Possible answers

- Yes
- No

- 9.** Do you have any suggestions for improving the existing arrangements between the Witness Service and the Fiscal Service (including Victim Information and Advice)? Please give details if so.

- 10.** Please use the space below to tell us about anything else in relation to these issues not already covered by the preceding questions.