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Dear Convener,

Stage 1 Report on The Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill

I read with great interest the Stage 1 Report on the Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill published by the Justice Committee on 24 January 2019.

As a number of matters arise in the report that relate directly to my function as the independent head of the system of prosecution of crime in Scotland I feel it is important that I address those matters with you directly in your role as Convener of the Justice Committee.

Disclosure

At paragraph 170 the report states *"unless the Crown Office and Procurator Fiscal Service meets its disclosure obligations in good time, the defence cannot properly prepare for a commission."*

The Bill makes provision for a 'Ground Rules Hearing' in every case prior to an 'Evidence by Commissioner hearing'. This ensures that there is judicial oversight of the process and offers the parties an opportunity to advise the court of their respective states of preparation. Any delay in disclosure may be raised by the accused person's representative at that hearing and the Judge or Sheriff can take the necessary steps to ensure that the rights of the accused person are protected.

Whilst there are challenges in making early disclosure, not least the need to ingather, assess and redact relevant evidence during the investigatory period between first appearance on petition and the service of an indictment, prosecutors strive to meet the relevant statutory obligation. That duty requires the prosecutor to review all relevant information and then disclose all material information as soon as practicable after the first



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court appearance or recording of a plea. The need to be mindful of the additional time pressure in cases likely to involve evidence by Commissioner hearings will be highlighted to prosecutors.

However, the ability to comply with the statutory requirement timeously is, to a large extent, dependent on the stage at which other agencies involved in the investigatory process provide relevant information to COPFS. In the case of forensic science investigations, for example, these naturally take time to complete and thus the relevant information is often received by COPFS a considerable time after the first appearance or recording of a plea.

Greater use of pre-recording out with the scope of the legislation

In paragraphs 175 and 176 the report recommends greater use of the existing provisions for pre-recording evidence in summary proceedings and asks what steps can be taken to increase use of these measures for other categories of vulnerable adults.

COPFS staff assess the needs of vulnerable witnesses on a case by case basis and seek to put in place the special measures best suited to the circumstances of each witness. In those cases which fall out with the scope of the new rule, I assure you that COPFS staff shall continue to follow this process and, where pre-recording is appropriate, shall apply to the court for authority to use the special measures which facilitate it.

Expeditious processes

In paragraph 268 the report notes that many 'Evidence by Commissioner' hearings are likely to take place after the service of an indictment and therefore a sustained effort must be made to expedite the process, particularly in cases involving child witnesses.

In August 2018 the Crown Office and Procurator Fiscal Service secured additional in-year funding in the amount of £3.6 million from the Scottish Government. Following on from that announcement, in December it was confirmed that COPFS baseline budget for 2019-20 will be £5 million more than in the current financial year.

That additional funding has allowed COPFS to create 41 additional posts in the High Court team with a view to allocating greater resources to tackle our most serious cases and reducing the overall journey times between the receipt of a police report and service of an indictment. To date 22 of those posts been filled, 10 posts have new post-holders identified who will take up post in the coming weeks and the remaining 8.5 posts remain vacant but are subject to an ongoing recruitment processes. The additional staff who have taken up their posts are now undertaking a period of training and induction within the High Court team.

Further, plans have been developed to facilitate earlier indictment of new cases whilst also effectively managing the throughput of the existing caseload. For example, COPFS is in the process of implementing new processes in order to fulfil Recommendation 6 of the Inspectorate of Prosecution's Thematic Review of the Investigation and Prosecution of Sexual Crimes which stated, "COPFS should take account of any period of pre-petition





investigation when allocating reporting dates for cases to be reported to NSCU for a final decision”.

I am optimistic about the ability of COPFS to deliver reduced journey times but I must emphasise that this is a gradual process that will take time to come to fruition. It has always been anticipated that it will take approximately 18 months from receipt of the additional resource to transition to the new model of performance. However, during that period COPFS will, and already are, placing particular priority on cases involving children, particularly those who are aged under 12.

Feedback on JIIs

In paragraph 305 the report suggests that feedback be provided to police and social work regarding the quality of Joint Investigative Interviews (JIIs) on an ongoing basis.

The quality of JIIs is of fundamental importance to the effective investigation and prosecution of crime, and assumes even greater importance in the context of the move towards routine use of pre-recorded evidence as evidence in chief.

The Procurator Fiscal for High Court Sexual Offences has recently collected feedback from frontline prosecutors who intromit with JIIs on a regular basis. COPFS has provided that feedback to officials in the Justice Department of the Scottish Government and I have directed that it also be provided to the JII Project Team managed jointly by Police Scotland and Social Work Scotland. Going forward the Procurator Fiscal for High Court Sexual Offences will continue to monitor the quality of JIIs on an ongoing basis and will provide feedback to identified points of contact within the Police Service of Scotland and Social Work Scotland.

Contact with victims and witnesses

In paragraph 331 the Committee requests an update regarding improvements to frequency of contact with victims and witnesses.

COPFS has recently implemented recommendation 7 of the Inspectorate of Prosecution's Thematic Review of the Investigation and Prosecution of Sexual Crimes in all High Court sexual offences cases. The recommendation states that, *"COPFS should ensure that VIA pro-actively offer to contact the victim every eight weeks, as a minimum, unless more frequent contact is required or requested or a victim expressly opts out."* Initial analysis indicates a very high level of compliance.

The recommendation did not extend to sexual offences cases which are indicted in the Sheriff Court but COPFS are currently working with Police Scotland regarding the introduction of a pilot project in Sheriff & Jury cases in one part of the country.

Views of witnesses

In paragraph 415 the report asks whether further requirements are necessary to ensure that witnesses are able to make informed decisions about special measures and that their





views are routinely sought, particularly under the new streamlined procedure.

All deemed vulnerable witnesses, both children and adults, are referred to VIA. Other vulnerable witnesses, who may require additional support or the assistance of special measures when giving evidence, are also referred to VIA.

At an early stage VIA writes to vulnerable witnesses to explain their role and the services that they can offer. One of VIA's key roles is to arrange appropriate special measures to support vulnerable witnesses when giving evidence in court. VIA's initial letter highlights the availability of special measures and seeks to encourage the witness to make their wishes known. This will continue to happen when the new, simplified application process comes into effect. I must emphasise that, whilst COPFS staff will seek to obtain and give due consideration to the wishes of witnesses, the prosecutor will decide which special measures should be applied for. Thereafter, the court will decide whether to grant that application.

I acknowledge, however, that more can be done in this area. COPFS are currently engaged in reviewing all of the written communications that VIA sends to witnesses to ensure that the appropriate information is communicated in clear terms so that witnesses understand the support that is available to them.

I trust that this information will be of assistance to you and the other members of the Committee and the Parliament. If I can provide any further information please make contact with my office.

Yours sincerely

W. JAMES WOLFFE QC

