

Crime and Justice

Turning up the Volume: The Vulnerable Witnesses (Scotland) Act 2004

Patsy Richards, Sue Morris & Eddie Richards; MorrisRichards Ltd

The Vulnerable Witnesses (Scotland) Act 2004 introduced a range of measures intended to help child and adult vulnerable witnesses give their best evidence in court. This research examined a 3 year period including the year preceding the Act, and its first two phases of implementation.

Main Findings

- The Vulnerable Witnesses (Scotland) Act 2004 (the VWA) is contributing to increased awareness of the needs of child and vulnerable adult witnesses within the Scottish justice system. It has made it more straightforward to seek use of a range of 'special measures' (SMs).
- Data collection at courts suggested that around 280 children are being cited each year in the High Court and that in the first 7 months of child year 1, child witness notices (CWNs) were being submitted for around 60% of children. In 6 study sheriff courts including Edinburgh and Glasgow, indictments and witness lists were examined for all solemn cases indicted. Around 200 children were being cited to give evidence each year including up to 60 under-12 year olds, with some 40-50 children giving their evidence each year. Vulnerable witnesses (largely children) were identified in around 5-6% of sheriff and jury cases each year. In child year 1 around 80% of children in the study sheriff courts had no CWN or other application made for SMs, but by child year 2 this had fallen to around half.
- In the first two-thirds of adult year 1 of implementation, over 50 VW applications were made in the High Court, but very few adult vulnerable witness (VW) applications were made in the study sheriff courts. The identification of adult VWs remains difficult for the agencies involved.
- In the year before the Act came into force, two thirds of children who gave evidence in sheriff and jury trials did so without any special measure. This fell to half of all children who gave evidence in child year 1, and to 14% by child year 2. Of the 'standard' special measures under the Act, CCTV was consistently popular and screens became less common after the child baseline period in all study courts. There were very few applications for the non-standard special measures, apart from remote links and supporters alone. There were no examples of remote links being used successfully in the High Court. Some non-statutory measures were highly valued (cleared courts, Witness Service) by witnesses. Use of screens was more common than CCTV for adult VWs.
- There are serious limitations to the data collected by the major Scottish justice agencies. The total number of witnesses cited in the Scottish justice system remains unknown, as are, without undertaking lengthy data collection from case papers, the numbers of child or adult vulnerable witnesses cited, CWNs submitted or VW applications made, and special measures granted.

The Act

1. The Vulnerable Witnesses (Scotland) Act 2004 (VWA) introduced a range of measures intended to help child and adult vulnerable witnesses give their best evidence in court. Many were already available through application to the court, alongside non-statutory measures. But the Act aimed to make it more straightforward for SMs to be granted, particularly for children (aged under 16).

2. 'Standard' SMs under the Act are the use of a live television link, screen, or a supporter in conjunction with one of these, to which children have an almost automatic entitlement. 'Non-standard' SMs are the taking of evidence on commission, and prior statements (e.g. a visual recording), which have a higher test applied to their use. The Act introduced child witness notices (CWNs) to accompany all child witnesses, to inform the court of their presence and specify which SMs (if any) are sought. It created a new definition of adult vulnerable witness (VW), and VW applications to seek the use of SMs for these witnesses.

3. The intention of the Act is that children aged under 12 in certain cases should not be required to attend any court building. Appropriate SMs in such cases are evidence on commission or a live TV link to a remote site, not within a court building. The Act abolished the much criticised 'competence test' for witnesses.

4. The Act came into force in April 2005 and was implemented in phases. This research examined a 3 year study period. From April 2004 to end March 2005 was the study 'baseline' year. Phase 1 or 'child year 1' ran from 1 April 2005, when measures came into force for children in High Court and sheriff solemn proceedings, and in hearings by the sheriff to establish the grounds for referral to Children's Hearings. In phase 2, from 1 April 2006, measures were extended to adults in solemn proceedings. The Act's extension to summary proceedings was specifically excluded from the evaluation.

5. The Act referred to children aged under 16 on or after 1 April 2005, and the expectation of many professionals interviewed for this study was that CWNs would be submitted for all children attending court after 1 April 2005. However, the commencement orders for the Act brought its effects into force for solemn proceedings 'with proceedings being taken to have commenced when a report of the case has been received by the procurator fiscal' (PF) after that date. Adult provisions commenced in the same way after 1 April 2006. This meant it was impossible to define a time after which all child witnesses should have been accompanied by a CWN, or a vulnerable adult witness by a VW application. So

CWNs or VW notices did not begin to be seen until later than the implementation dates of 1 April each year.

Summary of findings

6. Data collection was undertaken from case papers covering over 10,000 indictments at 6 study sheriff courts including Edinburgh and Glasgow, and all High Court cases. 74 justice professionals and 11 vulnerable witnesses or their representatives were interviewed; data held by the major criminal justice agencies and the Scottish Children's Reporter Administration (SCRA) were explored to recommend a monitoring framework, and a literature review was undertaken.

7. In the High Court, the research identified around 200 children being cited each year, of whom around 30 were aged under 12, and 50-60 gave evidence. At least 9% of cases in child year 2/adult year 1 included child or adult VWs. However, sampling was based on cases where applications had been made only, so the true numbers are higher. A 7 month period at the start of child year 1 during which all indictments and witness lists were examined indicated that up to 280 children are being cited each year in the High Court and that CWNs were being submitted for around 60% of children.

8. In the 6 study sheriff courts, indictments and witness lists were examined for all solemn cases indicted over the 3 year study period. Around 200 children were being cited to give evidence each year including up to 60 under-12 year olds, with some 40-50 children giving their evidence each year. Vulnerable witnesses (largely children) were identified in around 5-6% of sheriff and jury cases each year.

9. There are concerns about the identification of adult vulnerable witnesses, who proved largely impossible to identify in case papers in the absence of VW applications being made for them. In the High Court in the first two thirds of adult year 1, over 50 VW applications for adults had been made. In the sheriff courts very few VW applications were submitted.

10. The Act requires that all children cited in solemn cases reported to the procurator fiscal on or after 1 April 2005, and witnesses in children's hearings court proceedings which were lodged on or after that date, should have CWNs submitted for them. In child year 1 around 80% of children in the study sheriff courts had no CWN or other application for SMs, but by child year 2 this had fallen to around half.

11. In the year before the Act came into force, two thirds of children who gave evidence in sheriff and jury trials did so

without any SM. This fell to half of all children who gave evidence in child year 1, and to 14% by child year 2.

12. The number of specialist reports submitted to support SM applications has fallen drastically, and as a direct result, the length of time courts spend in total waiting for such reports has been decreased. Applications were rarely refused before the Act, and this remains the case.

13. Of the standard special measures, CCTV seems consistently popular and screens became less common after the child baseline period in all study courts. There were very few applications for the non-standard special measures, apart from remote links and supporters alone. However, there were no examples of a remote link being used successfully in the High Court. Some non-statutory measures were highly valued (cleared courts, WS help and information provision) but some seemed less important to witnesses (removal of wigs and gowns). For adults, screens were more common than CCTV.

14. The police are flagging up to COPFS over 22,000 children a year in the standard prosecution report, but because CWNs are not always submitted, children continue to attend at court unexpectedly, with court staff and Witness Services citing frequent examples.

15. As would be expected given SCRA policy not to cite child witnesses wherever possible, there were few SM applications from reporters. However, in some courts applications from reporters rose sharply in child year 2, suggesting either that the provisions of the Act had started to be more widely adopted by reporters in some areas or that citations had risen. Very few defence vulnerable witnesses or vulnerable accused persons were identified by the research. No system exists for the police to notify the defence of vulnerability.

Conclusions

16. The Act is contributing to an increasing awareness of the needs of vulnerable witnesses, and the number of children giving evidence without SMs decreased during early implementation.

17. The professionals and witnesses interviewed for this study perceive that witnesses attending Scottish courts continue to be treated poorly, although witnesses interviewed had experience of solemn proceedings only. Some relatively recent policy developments have worked well in this regard; the personal service provided by the WS is highly valued by agencies and by witnesses. VIA has a key role in keeping witnesses informed, yet provides information mainly by letter, often with a considerable time-lag.

18. By the end of the field period, when around two thirds of cases in child year 2/adult year 1 of implementation had completed, the research found children were still attending at court without having had CWNs submitted on their behalf, and there remained concerns about the identification of adult vulnerable witnesses, and vulnerable defence witnesses or accused persons.

19. One most often raised problem in implementing the Act was the state of readiness and small number of remote sites away from courthouses, for under 12s to give their evidence away from a courthouse in certain cases. Interviewees reported that links from within other courthouses were being used instead, and reported technical problems when trying to use existing remote sites.

20. The total number of witnesses cited or giving evidence in the justice system remains unknown, including the number of child or adult vulnerable witnesses. To monitor the Act effectively, further information would be needed including the number of CWNs and VW applications submitted and SMs granted. By the end of the research period, the agencies involved were still not able to collect these data.

21. The participation of witnesses is essential to the delivery of justice, and in these early days this evaluation shows that witnesses are starting to be treated more considerately. Many outstanding issues cannot be addressed by legislation alone, but the Act is having a positive effect both on attitudes and through introducing mechanisms designed to help vulnerable witnesses give their best evidence in court.

This document, along with “Turning up the Volume: The Vulnerable Witnesses (Scotland) Act 2004” the full research report of the project and further information about social and policy research commissioned and published on behalf of the Scottish Government, can viewed on the Social Research website at: www.scotland.gov.uk/socialresearch. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or telephone 0131 244 7560.



Social Science in Government

ISBN 978-0-7559-7181-7

