



CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE

Scottish Courts  
and Tribunals Service



Victim Support Scotland



**POLICE**  
SCOTLAND  
Keeping people safe  
**POILEAS ALBA**

# Working Together for Victims and Witnesses

Protocol between

**Crown Office and Procurator Fiscal Service**

**Scottish Courts and Tribunals Service**

**Police Scotland**

and

**Victim Support Scotland**

Revised June 2021

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## Purpose

1. Victims and witnesses are the most important people in the Scottish criminal justice system. Every part of that system shares the responsibility to improve the rights, support, protection and participation of victims and witnesses in criminal proceedings. The experience of victims and witnesses is a measure of the effectiveness of our justice system and of our society as a whole. Victims and witnesses have legitimate interests and needs and must feel confident that their contribution to the criminal justice process will be worthwhile, valued and supported.
2. The Crown Office and Procurator Fiscal Service (COPFS), the Scottish Courts and Tribunals Service (SCTS), Police Scotland and Victim Support Scotland (VSS) all recognise the important role that victims and witnesses have in securing effective and efficient justice for the people of Scotland.
3. This Protocol has been agreed in order to identify best practice and obtain consistency of approach to improve victim and witness engagement and support. We will work together to understand and meet victim and witness needs, treating them appropriately, professionally and with respect at all times. We aim to avoid duplication and confusion so that we can improve certainty around the court experience.
4. The Protocol governs how we will:
  - share information;
  - arrange for victims and witnesses to look around a court before trial;
  - identify and explore the vulnerability of victims and witnesses;
  - consider the impact this may have on their ability to give their best evidence;
  - assess what special measures and/or additional support will make a difference; and
  - work together to ensure the safety of victims and witnesses throughout a case.
5. This protocol seeks to put in place appropriate support for victims and witnesses following the [Victims and Witnesses \(Scotland\) Act 2014](#) and the European Directive on the rights, support and protection of victims of crime.
6. Police Scotland, the Crown Office and Procurator Fiscal Service and the Scottish Courts and Tribunals Service have also agreed Standards of Service for victims and witnesses. The standards set out what victims and witnesses can expect from the criminal justice system in Scotland. A link to those standards which are contained within the overarching Victims' Code for Scotland can be found at **Annex A**.

## **Role of the Crown Office and Procurator Fiscal Service (COPFS)**

7. The Crown Office and Procurator Fiscal Service (COPFS) is responsible for the prosecution of crime in Scotland, the investigation of sudden or suspicious deaths, and the investigation of criminal complaints against the police.
8. COPFS has published commitments to victims and prosecution witnesses, a link to which can be found at **Annex A**. These commitments provide every victim, prosecution witness, their families and carers, and bereaved families in deaths reported to the Procurator Fiscal with clear guidance on the service they can expect to receive from COPFS.
9. Victim Information and Advice (VIA) is the dedicated service offered by COPFS to victims, witnesses and the bereaved relatives of those affected by certain crimes. VIA proactively provides information about the progress of the cases in which they are involved and helps them access sources of emotional and practical support. In all other cases information is provided on request.
10. VIA refers all witnesses who are vulnerable in terms of the Criminal Procedure (Scotland) Act 1995 (as amended) (the Act) to Victim Support Scotland who will arrange, where it is possible and should the witness wish, for them to look round a court before a trial, known as Court Familiarisation Visits (CFVs) or to arrange for a supporter from VSS to assist a witness when giving evidence.
11. The Act sets out a framework for the use of special measures in criminal and civil proceedings. Child witnesses and certain adult witnesses (deemed vulnerable witnesses) have a statutory entitlement to give their evidence with a standard special measure (see paragraph 77). Other adult witnesses assessed as vulnerable in terms of the Act may also be eligible to give their evidence with the use of a special measure.
12. VIA contacts child witnesses (and their parents or carers), and vulnerable adult witnesses to obtain their views on the most appropriate special measures. They assess whether adult witnesses identified as potentially vulnerable meet the criteria defined in the Act and explore what, if any, special measures are appropriate or additional needs they may have. They prepare Vulnerable Witness Notices and Vulnerable Witness Applications for consideration by the Court.

## **Role of Victim Support Scotland (VSS)**

13. Victim Support Scotland (VSS) is the lead voluntary organisation in Scotland helping people affected by crime. It provides emotional support, practical help and essential information to victims, witnesses and others affected by crime.
14. Police Scotland have a legal obligation to provide victims of crime with appropriate access to support whether it is referring a victim to victim support services where they request to be referred or by providing sufficient information to a victim to afford them the ability to self-refer as per section 3D Victims and Witnesses (Scotland) Act 2014. VSS proactively seeks to engage with all victims referred to them but does not routinely provide specific information about the progress of their case. VSS seeks to carry out a needs assessment with every victim using an internationally recognised toolkit.
15. Victim Support Scotland is dedicated to providing information as well as emotional and practical support to victims, witnesses and bereaved relatives attending court. VSS provides a service in all High Court, Sheriff Court and Justice of the Peace (JP) court buildings. VSS will also provide support to witnesses giving evidence from within Scotland in relation to proceedings in another jurisdiction where the support has been requested by the victim or witness personally or by COPFS on behalf of the victim or witness.
16. There is a general presumption that VSS personnel will conduct all Court Familiarisation Visits (CFVs) for Crown Witnesses. VSS will provide feedback to VIA colleagues following a CFV where appropriate. They will also provide forms for witnesses to claim associated expenses from COPFS.
17. VSS personnel will routinely be appointed to act as supporters in cases involving children or vulnerable adult witnesses. They will only attend remote sites or JP courts on the day of a trial if the court has specifically appointed them as the named supporter for a child or vulnerable adult witness. Any victim or witness can access support by contacting the VSS National Helpline 0800 160 1985 Mon-Fri 8am-8pm or via their website [www.victimssupportsco.org.uk](http://www.victimssupportsco.org.uk).

## **Role of the Scottish Courts and Tribunals Service (SCTS)**

18. The Scottish Courts and Tribunals Service (SCTS) is an independent body corporate established by the Judiciary and Courts (Scotland) Act 2008. Its function is to provide administrative support to Scottish courts and tribunals and to the judiciary of courts, including the High Court of Justiciary, Court of Session, sheriff courts and justice of the peace courts, and to the Office of the Public Guardian and Accountant of Court. SCTS is responsible for providing the staff, buildings and technology to support Scotland's courts and the work of the independent judiciary. SCTS aims to:

- ensure a clearly marked reception point for witnesses at Court;
- ensure that witnesses' attendance at court is recorded and that witnesses are directed to the appropriate waiting room; and
- provide adequate, secure and comfortable accommodation for all witnesses, sufficient clean toilet facilities and, where possible, refreshment facilities.

19. SCTS staff are responsible for the administration of the business going through the High Court, Sheriff Courts and JP Courts, managing the accommodation and the provision / operation of equipment for trials (and CFVs).

20. At the request of the prosecutor, court officials (court officers and macers, in consultation with the prosecutor) are generally involved in excusing witnesses on the day of the trial. They also provide witnesses who are waiting with information about progress during the trial.

21. The Electronic Service Delivery Unit (ESDU) is part of the SCTS. This unit is responsible for the allocation of sites where TV links form part of special measures. The contact details for ESDU are:

Tel: 0131 444 3333, select option 3 then option 1  
[esdu@scotcourts.gov.uk](mailto:esdu@scotcourts.gov.uk)

## **Role of Police Scotland**

22. Police Scotland have published standards of service for victims and witnesses in conjunction with the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Courts and Tribunals Service (SCTS), the Scottish Prison Service and the Parole Board for Scotland, as well as bereaved family members, where the death of the victim is believed to be the result of a crime. These standards detail what a victim or witness can expect from Police Scotland.
23. In particular, Police Scotland will discuss with victims and witnesses how they will be kept informed in a case; provide them with a Victim Care Card which makes clear where victims can access information on their rights and accessing support; they will also explain how they will deal with the case and what they may ask victims or witnesses to do to help them. Police Scotland will also consider the needs of victims to decide whether they are a vulnerable witness. They will then, with their partners, try to ensure those needs are met.
24. Police Officers are deployed in courts across Scotland and carry out a number of duties there, including proactive and intelligence led patrols. The objective of police deployment within courts is to provide public reassurance, maintain public order and prevent intimidation.
25. Where information is received by Police Scotland that there is a risk to the safety of any person attending court, the local Policing Division will liaise with the COPFS and SCTS to ensure that there is a prompt and proportionate response.

## **Information Exchange Agreement – Specific Case Progress**

26. All parties understand the need to share information in order that the safety of victims and witnesses is not further compromised by their involvement with the criminal justice system and issues of intimidation can be addressed. This Protocol aims to build on the working relationships which already exist locally between SCTS staff, COPFS staff, Police Officers and VSS personnel. It provides a framework to further develop partnership working leading to improved service delivery. All parties are committed to ensuring that all personal data is handled fairly and lawfully with due regard to confidentiality.
27. The relevant legislation governing this area includes the EU General Data Protection Regulation (EU) 2016/679 (GDPR), the Data Protection Act 1998 (DPA), the 1950 European Convention on Human Rights (especially Article 9, right to respect for private and family life), the Human Rights Act 1998, the Freedom of Information (Scotland) Act 2002 (FOISA), the Environmental Information (Scotland) Regulations 2004 (EIR) and common law and employment law. It is also central to professional codes of conduct.
28. The framework for the protection of victims and witnesses set out in the Victims and Witnesses (Scotland) Act 2014 makes clear that those involved in criminal proceedings have a right to request information about a case in which they are involved.
29. Many victims and witnesses will need support to deal with the information they are receiving particularly where a case has had a serious impact on them or their family. It is important that VSS can access information (where appropriate with the victim's or witness's consent). This will ensure that victims and witnesses can receive the information within the context of a support or advice service where appropriate. COPFS, SCTS and Police Scotland will work with VSS to ensure that it receives the information it requires in such cases.
30. VIA staff will attempt to contact, by telephone, victims, certain witnesses and bereaved nearest relatives in all cases (which have been referred to them) on the same day in the following circumstances, where:
- the accused appears from custody or by undertaking and is given special bail conditions relating to the victim or a witness;
  - there has been a variation or revocation of special conditions of bail; or
  - an accused has been released from custody.
31. If VIA staff are unable to contact any victim in such cases the police are asked to make personal contact with them.
32. In all other cases, for example after Intermediate or Trial Diets, VIA aims to have the results preferably the same day but no later than the end of the next working day.



33. To assist COPFS, SCTS has provided VIA staff with access to their Case Enquiry Application. This enables VIA staff to obtain information directly, timeously and with minimum inconvenience to court staff.
34. Where there are problems with IT systems contingency arrangements should be made locally. Requests for information may be made verbally but detailed or multiple requests should be in writing and submitted by fax or email. Any difficulties encountered by VIA in obtaining information should be raised with the local Sheriff Clerk or with a nominated person.
35. Sheriff Clerks will provide COPFS with details of Appeals against custodial sentences and the granting of bail pending Appeal by the Sheriff. VIA should be told of any accelerated diets and applications to alter the conditions of bail processed administratively by SCTS.
36. [Sentencing statements](#) made by a sheriff or judge may be published on the Judiciary of Scotland website. VIA will issue a copy of the sentencing statement to the victim or bereaved nearest relatives in accordance with VIA guidance, where requested to do so by the victim or bereaved nearest relative.
37. Special arrangements may be made with the Sheriff Clerk in relation to high profile or sensitive cases to ensure that the victim/witness receives information about the outcome as soon as possible.

## Referrals to Victim Support Scotland

38. All vulnerable victims and witnesses will be referred by COPFS to VSS in advance of any trial using the form attached at **Annex C**.
39. Referrals by COPFS to VSS should take place during case preparation with sufficient time to allow VSS to prepare for the attendance of witnesses in court.
40. In all cases, all vulnerable victims and witnesses should be referred to VSS no later than 10 days prior to trial. Discussion should take place locally to determine the preferred time for referrals to VSS to ensure efficient case preparation and planning for Court Familiarisation visits and witness attendance at court.
41. In High Court cases, referrals should be made as soon as possible following a preliminary hearing.
42. In solemn cases in the Sheriff Court, if a referral is not made at an earlier stage, referrals should be made as soon as possible following a first diet.
43. In summary cases, if a referral is not made at an earlier stage, referrals should be made as soon as possible following a case being continued to trial.
44. Any changes in relation to a case, for example transfer to another court or changes to special measures must be notified to VSS by VIA 10 days in advance or as soon as possible after the change becomes known to VIA in situations where there is less than 10 days to the trial to allow VSS to plan resources.
45. Communications between VIA and VSS will primarily be conducted in writing via email. It is recognised that other methods of communication may be utilised in certain circumstances or as a result of local agreements but intimations relating to matters involving the provision of special measures or the calling of a case should be confirmed in writing as soon as reasonably practicable after any other form of communication.

## **Court Familiarisation Visits (CFVs)**

46. A map outlining the process to be adopted for CFVs is attached at **Annex D**.
47. In cases referred to VIA, all victims and witnesses identified as vulnerable or potentially vulnerable should be offered a CFV. This should be done in person where possible when exploring vulnerability. Witnesses should be referred to information about VSS.
48. There may be circumstances out with the control of all parties to this protocol which mean that a CFV cannot take place. In situations where it is not possible to hold a CFV the reasons for this will be explained to the relevant victims and witnesses.
49. COPFS highlights the importance of a CFV in communications with all victims and witnesses. VIA staff refer child and adult vulnerable witnesses to Scottish Government publications which provide information about going to Court. VSS will encourage all witnesses who contact them to have a CFV.
50. It is hoped that all child witnesses will have the opportunity to look around a court before trial. But we cannot compel them to do so.
51. For all vulnerable witnesses VIA will complete a referral form for VSS which will include details about whether a witness has requested a CFV, the referral form which is attached at **Annex C** should include details of:
- when the CFV is preferred;
  - the court where the CFV is wanted;
  - the witness' views on special measures;
  - any identification issues precluding special measures; and
  - any special measures applied for
52. In cases referred for CFVs, VSS will provide VIA with feedback from the court visit where appropriate. Where they have been unable to make contact with the witness they will note the efforts they made to make contact with them and advise VIA accordingly. Feedback should be made by email to VIA.
53. Arrangements for the appropriate equipment / supporters to be available should be made well in advance of trial. Many witnesses indicate that they would like to wait until it has been established that the case is likely to go to trial before having a CFV. All parties to this protocol respect these wishes.
54. Where a child or adult witness (who needs special measures) has indicated that they do not wish a CFV, the referral form will include that information along with information on the witness and details of any arrangements made for them should be provided to VSS using the referral form. This is so that VSS are aware that VIA has been in contact with them and arrangements are made at court for trial.

55. Where VIA has been unable to contact a child or vulnerable adult witness who may benefit from a CFV they will provide this information to VSS on the referral form. It will be for VSS to determine what, if any, efforts they make to contact the witness and for them to feedback to COPFS as appropriate. It is expected that VSS will always attempt to contact a child witness.
56. There is a general presumption that all CFVs for Crown Witnesses will be conducted by VSS in terms of the guidance on the [Conduct of Court Familiarisation Visits](#). VSS will arrange and attend at CFVs at remote sites in advance of trial. Where a CFV at a remote site is unachievable, a CFV at a court building showing a television link facility is a suitable alternative.
57. Where a witness has been referred for a CFV and it appears to VSS that an interpreter may be required they should liaise with the local VIA Office to determine the appropriate way to proceed. In these circumstances it would be normal for COPFS to instruct the interpreter and for VSS to conduct the CFV.
58. There may be rare occasions when COPFS may wish to conduct the CFV. In such cases COPFS will advise VSS and together they should agree in advance whether VSS will be in attendance. Likewise, there may be occasions when COPFS staff may wish to observe VSS personnel conduct a CFV. The individual not conducting the CFV will only observe. Issues of concern or differences of view between agencies may arise during the visit. These should not be discussed in front of the witness.
59. There are cases where CFVs may be conducted by VSS working in partnership with others either in a lead or observational role. These include:
- particularly sensitive cases where COPFS needs to manage all aspects of the case and will therefore wish to be present;
  - cases where another agency is already involved and it is agreed that it would benefit the witness for that agency to conduct or be present at the court familiarisation visit ; or
  - cases where the witness expresses a preference (as is their right) for another agency to conduct or be present at the visit.
60. In a very limited number of cases it may be necessary for COPFS to carry out the CFV without the involvement of VSS, e.g. where the case concerns issues of national security.
61. Witnesses and their carers who are referred by COPFS for a CFV are entitled to expenses for attending court.
62. VSS will retain blank copies of the expense form and complete as and when necessary when the CFV is carried out. **See Annex E** for copy of the form. The witness should complete details of the expenses incurred and submit the form to the local Procurator Fiscal's Office. Where a witness brings their

carer or support person VSS should copy the claim form and note on it that the expenses are for a carer.

63. Where a child or vulnerable adult witness attends court for trial without VSS having any prior knowledge of them, VSS should bring this to the attention of their local VIA unit by email. If this is a regular occurrence VSS should escalate the matter within VSS who will discuss this with the appropriate contact in COPFS.

## **Routine Information Provision at Court**

64. VIA, VSS and SCTS staff will work together to ensure that the information and support needs of victims and witnesses are met and that special measures are available.
65. Where VIA staff greet bereaved relatives or any other victims and witnesses when they arrive at court for the trial, VIA will facilitate their introduction to VSS and any other relevant agency to provide support.
66. Where there is not a permanent VIA presence in the court, VIA will notify VSS in advance of their proposed attendance and the details of the victim, witness or bereaved relative whom they intend to meet. It will not normally be necessary for VIA staff to remain with witnesses or bereaved relatives all day, even in High Court cases. VSS and any other relevant agencies will be advised of any intention to deviate from the normal practice in advance.
67. VSS will normally convey routine decisions made in court (but not the reasons for the decisions) to witnesses present in court. Where an explanation is sought VSS will ask for advice from VIA or other COPFS staff. VIA or other COPFS staff will normally provide explanations and give reasons and other information to witnesses in accordance with the Access to Information Protocol- A Guide for Victims and Witnesses. For a link to this please see **Annex A**.
68. VIA will provide information about decisions made in court (including bail, adjournments, verdicts and sentences) to all victims and witnesses who fall within their remit, even where these decisions have been previously conveyed by a VSS representative at court. In non-VIA cases COPFS staff will only provide such information on request.
69. There are VIA High Court Officers permanently based at Edinburgh and Glasgow High Courts. VIA High Court officers will also be present within other court buildings during a High Court sitting there. They will normally act as the main link between the Advocate Depute, the High Court Sitting Manager and witnesses once the trial has started. VSS should, where possible, discuss any issues relating to witnesses with the VIA High Court Officer in order that VIA can raise them with the Advocate Depute.
70. In High Court cases, any documentation provided by witnesses or issues raised by witnesses to VSS which may affect the case should be directed by VSS to the VIA High Court Officer or Sitting Manager (where VIA is not present). VSS should only approach Advocate Deputes if neither VIA nor the Sitting Manager is available in these circumstances.
71. In the sheriff court in both summary and solemn matters the trial Depute and VSS should, where practicable, introduce themselves to one another prior to the start of court business. Thereafter the Depute will advise the VSS of any particular issues e.g. change to the running order of cases; likely

adjournments etc. which may impact on the timing of the calling of trials during the course of the day.

72. At the request of the prosecutor, court officials (court officers and macers, in consultation with the prosecutor) are generally involved in excusing witnesses and for providing them with information about progress during the trial. Current standards of service require that witnesses are updated by court officers about the progress of their case on an **hourly** basis. Witnesses who are no longer required to give evidence should be released as soon as possible and given an explanation for their release.
73. At the conclusion of a witness's evidence, and subject to any other direction made by the court, the trial depute will advise (either directly or by means of a court officer) whether or not the witness may be released and excused from further attendance. This will enable the information to be given to the witness. This includes witnesses at any remote site.
74. Witnesses should only be excused on the instruction of the Procurator Fiscal or Advocate Depute.
75. VSS will update the trial depute with information about witnesses who appear to be vulnerable and may require special measures or help giving evidence. This will enable the depute to consider witnesses who may have previously failed to engage with COPFS and VSS at an earlier stage in proceedings and, if necessary, allow the Depute to make such enquiries as are appropriate to determine whether a late application for special measures should be made.
76. Where the information provided to the Depute results in an application for special measures requiring to be sought at short notice it is recognised that VSS may not possess the available resources to provide the requested support to the victim or witness and the case may require to be postponed or alternative arrangements sought.
77. On behalf of COPFS, the Sheriff Clerk will provide VSS with a copy of the witness list for each trial (including witnesses added by a section 67 notice in solemn procedure).
78. VSS will only use this information for the purposes for which it was given. All witness lists provided to VSS will be disposed of in accordance with their VSS Operational Practice Note and in compliance with GDPR.
79. In many Sheriff Courts, meetings are held with COPFS and VSS representatives in advance of a Sheriff and Jury Sitting commencing. This is to discuss the planning of the business and any particular witness related issues. Similar meetings are held daily in High Courts. This practice is recommended. Additionally, regular meetings between local VSS / SCTS and COPFS (VIA) are recommended to aid communication and address local issues. Matters of significant concern should be raised with senior managers who can address them at a national level.

## **The Criminal Procedure (Scotland) Act 1995 – Children and Deemed Vulnerable Witnesses**

80. For cases reported to the Procurator Fiscal on or after the 1<sup>st</sup> September 2015, child witnesses (aged under 18 at the commencement of proceedings) and adult witnesses who are deemed to be vulnerable are entitled to one or more standard special measures. In summary cases commencement of proceedings is the date of service of the complaint. In solemn cases this refers to the date of service of the Indictment. If cases are deserted and subsequently re-raised it is the date of service of the new complaint or Indictment that applies.

81. Adults who are deemed to be vulnerable in terms of the Act are those who are alleged to be victims of:

- Sexual offences (offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003), Link in Annex A;
- Trafficking for prostitution (an offence under section 22 of the Criminal Justice (Scotland) Act 2003);
- Trafficking for exploitation (an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004;
- an offence, the commission of which involves domestic abuse;
- an offence of stalking.

82. The following are the **standard special measures** which child and deemed vulnerable witnesses are entitled to:

- Use of a live television link either from the court building or from a remote site;
- Use of a screen;
- A supporter.

83. In addition the Act provides for **special measures** which are non-standard and can be requested but which there is no entitlement to:

- Evidence in chief in the form of a recorded prior statement;
- Evidence taken by a commissioner (this is now a standard special measure for a child under the age of 18 in all High Court cases – see paragraph 95 onwards);
- Excluding the public from the court while the witness gives evidence (closed court).

84. The views of a witness for whom special measures are being applied, and the parent (or guardian) of a child witness, must be considered when deciding which special measure(s) will be applied for.

85. For a child or deemed vulnerable witness, if a standard special measure only is being applied for, the views of the witness (and those of the parent



or guardian of a child witness) need not be included in the Vulnerable Witness Notice.

86. If a non-standard special measure is being applied for (or the use of no special measures) the views of the witness (and those of the parent or guardian of a child witness) must be included in the notice.
87. VIA staff are responsible for referring witnesses to information on special measures for children, young people and information for the parents of child witnesses. They proactively seek the views of children and their parents in relation to special measures.
88. A Vulnerable Witness Notice must be lodged with the Court in relation to any child or deemed vulnerable witness for the use of standard special measures, for the use of non-standard special measures, a combination of standard and non-standard special measures, or for the giving of evidence without special measures. It may be that a child witness does not wish any special measures and their parent (or guardian) expresses the same view.
89. Where a child and their parent (or guardian) cannot be contacted, or they do not engage with COPFS, default special measures should be applied for:
  - Children aged under 12 – live television link and VSS supporter;
  - Children aged 12-15 – screens and VSS supporter;
  - Children aged 16-17 – VSS supporter.
90. For children aged 7-11 in cases involving certain violent or sexual offences, the following default special measures should be applied for (where the parents (or guardians) cannot be contacted or do not engage with COPFS):
  - Live television link and VSS supporter with arrangements made for the link to take place from a remote site; or
  - Evidence taken by a commissioner (depending on circumstances of the case).
91. For adult victims who are deemed to be vulnerable and entitled to use a special measure, and where the victim cannot be contacted or they do not engage with COPFS, default special measures should be applied for:
  - Victims of trafficking for exploitation or trafficking for prostitution – live television link and VSS supporter;
  - Victims of domestic abuse, sexual offences or stalking – screens and VSS supporter.
92. COPFS has agreed that in summary cases, the Vulnerable Witness Notice will be lodged at least one week prior to the Intermediate Diet where possible. Vulnerable Witness Notices and Applications must be lodged no

later than 14 days before the trial diet in summary cases. In solemn cases, Vulnerable Witness Notices should be lodged:

- 14 clear days before the preliminary hearing in High Court cases; and
- 7 clear days before the first diet in Sheriff and Jury cases.

93. Clerks of Court will intimate the outcome of a Vulnerable Witness Notice to COPFS (through VIA) on the day of the decision. VIA will always advise the witness and VSS of this result. If a member of VSS personnel is required to be a supporter VSS should be advised of this by VIA in advance of a Vulnerable Witness Notice being lodged.

94. Special measures can be reviewed at any stage until a witness completes their evidence. Any additional information received that might necessitate a review should be shared amongst partner agencies. If special measures are changed on the day the PF is responsible for advising both the witness and VSS. It is understood that depending on the nature of the change, this may mean that VSS does not have the available resources to provide support (e.g. last minute change from in-court television link to remote site). Special measures that have previously been granted should not be dispensed with by trial deputies on the grounds of convenience. If this is a regular occurrence VSS should escalate the matter internally and this will be raised with the appropriate contact in COPFS.

### **Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019**

95. The evidence of a child witness (aged under 18) in High Court proceedings in respect of one of the following offences requires to be recorded in advance of trial:

- Murder
- Culpable Homicide
- Assault to Danger of Life
- Abduction
- Plagium
- Sexual offences to which section 288C of the 1995 Act applies
- Offences in terms of section 1(1) of the Domestic Abuse (Scotland) Act 2018
- Offences aggravated in terms of section 1(1)(a) of the Abusive Behaviour & Sexual Harm (Scotland) Act 2016
- Offences which, had they been committed on or after 24 April 2017, would have been aggravated in terms of section 1 of the Abusive Behaviour & Sexual Harm (Scotland) Act 2016.
- Offences in terms of section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015
- Offences in terms of section 4 of the Human Trafficking and Exploitation (Scotland) Act 2015
- Offences in terms of section 1 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005

- Offences in terms of and section 3 of the Prohibition of Female Genital Mutilation (Scotland) Act 2005
- Attempts to commit any of the above listed offences

96. This requirement applies to relevant High Court cases where the accused appeared on petition on or after 20 January 2020. If there has been no appearance on petition by any accused person it applies in respect of which the indictment is served on or after 20 October 2020.

97. In these cases evidence taken by commissioner and evidence by way of a prior statement are standard special measures for the evidence of children aged under 18. In qualifying cases COPFS will apply for the use of either or both of these standard special measures depending on the particular evidential circumstances of the case.

98. VIA staff should ensure that the views of witnesses and their parents/persons with parental responsibilities are canvassed and noted. If the rule requiring pre-recording applies but a witness expresses a wish to give evidence at the trial it will be important to ascertain why they wish to do so in order to allow the court to assess whether that would be in the witness's best interests.

99. Should one of the exceptions to the rules requiring pre-recording of evidence apply the Vulnerable Witness Notice will specify that the rule requiring pre-recording applies and then explain why it is considered that one of the exceptions applies. The notice will go on to specify the alternative special measures which are sought to enable the witness to give evidence.

## Other Vulnerable Adult Witnesses

100. There is no automatic entitlement for other adult witnesses to give their evidence with the help of a special measure. It is for the court to decide whether an adult witness can give their evidence using any special measure(s).
101. Section 271(1)(b) of the Criminal Procedure (Scotland) Act 1995 provides that a person who is not a child or deemed vulnerable witness is a vulnerable witness where there is a significant risk that the quality of the evidence to be given by the person will be diminished by reason of:
- mental disorder (within the meaning of Section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003);
  - fear or distress in connection with giving evidence at the trial; or
  - where there is considered to be a significant risk of harm to the person by reason only of the fact that the person is giving or is to give evidence in the proceedings.
102. The reference to the quality of evidence relates to the quality in terms of completeness, coherence and accuracy.
103. COPFS has a duty to lodge a Vulnerable Witness Application, where it is considered:
- (a) that the witness is likely to be a vulnerable witness; and
  - (b) a special measure, or combination of special measures, ought to be used for the purpose of taking the witness's evidence.
104. Potentially vulnerable adult witnesses may be identified:
- By the police;
  - By COPFS staff from information contained in the police report or police statements;
  - By VSS;
  - Self-referral by the witness or referral by a representative (e.g. care worker, social worker) on receipt of the witness citation; or
  - By other agencies or organisations.
105. Following the identification of a potentially vulnerable adult witness, VIA will attempt to make personal contact with the witness to explain the process, assess any vulnerability (and its impact on the witness's ability to give evidence) and discuss which, if any, special measures might be appropriate.
106. The timescales for lodging and intimating the granting of Vulnerable Witness Applications are the same as those that apply to Vulnerable Witness Notices.

107. The Crown can only submit a Vulnerable Witness Application if it has obtained the views of the witness on special measures and assessed the effect on the witness's ability to give evidence without the assistance of the special measure.
108. Where a potentially vulnerable witness has failed to engage with COPFS and, consequently, no Vulnerable Witness Application has been lodged, VIA will inform VSS of the attendance of the witness at court. VSS will engage with the witness at court when they attend for trial. VSS will give the depute in court any information about the need for special measures in order that an Application can be considered.
109. Where a witness, who has not previously been identified as potentially vulnerable engages with VSS and may require special measures, VSS will provide feedback to the depute in court in order that an Application can be considered. SCTS staff may also bring a vulnerable witness to the attention of VSS or depute in court.
110. Every effort should be made to preserve the agreed trial diet. If this diet requires to be adjourned to obtain special measures arrangements should be made by the clerk of court to ensure that they will be available when the case next calls.

## **Applications for special measures (including for live TV links)**

111. SCTS (in association with the ESDU team) is responsible for the management, provision and operation of equipment and staff for live TV link sites. Live television link facilities and sites are finite resources which require careful allocation and management. SCTS will make every attempt to provide facilities at preferred sites on required dates but availability is limited. All organisations must be aware of the need to manage these resources appropriately and communicate effectively giving as much advance notice to ESDU as possible.
112. VSS personnel will only attend at a TV link site on the day of a trial if the court has specifically appointed them as the named supporter for a child or vulnerable adult witness.
113. COPFS must consider any difficulties that could be caused if label or documentary productions are to be presented to a witness giving evidence by live TV link, particularly if a site to be used may be at a location remote from the court building. They should discuss this with court officials at an early stage and highlight the issue in the information supplied along with the application / notice submitted to court. This will assist ESDU in consideration and allocation of a suitable link facility.
114. Relevant information should be provided by COPFS to SCTS, in the accompanying sheet, to enable careful consideration to be given to the allocation of a suitable site.
115. Most sites out with the court building cannot accommodate the congregation and waiting of multiple vulnerable witnesses prior to their giving evidence by live TV link. When an application or notice is approved by the court the intimation from the court will stipulate the location of the TV link facility and, where necessary stress that the site only has the capacity to handle one witness at a time. In such a case the trial depute will contact court officials, prior to arranging any attendance, to discuss facilities and how witnesses may best be managed to minimise inconvenience to those attending and to remove the risk of contamination of evidence.
116. SCTS will consider what *ad hoc* arrangements may be provided in more remote areas to reduce travel and inconvenience to witnesses. Where necessary ESDU will liaise directly with the local prosecutor in this regard.

## Applying for special measures – Summary Cases

117. Where the accused pleads not guilty at the calling of the case the court will assign a trial diet and an intermediate diet. The clerk of court will assign a suitable trial diet having regard to the availability of witnesses and the Crown's attitude to the granting of bail for the accused. Early trial diets should always be sought for cases involving child witnesses.
118. COPFS will lodge a Vulnerable Witness Notice or Vulnerable Witness Application at least 14 days prior to the intermediate diet where possible and in any event no later than 14 days prior to trial diet. Where COPFS requires to convey supplementary information to SCTS about a witness's needs the notice or application will be accompanied by a covering sheet using the form at **Annex F** highlighting: vulnerability issues, disabilities, support needs, interpreter involvement, any requirement for exceptional arrangements for the witness's attendance at court, preference of remote or in court TV link facility and including local COPFS contact details. Process maps showing how SCTS and COPFS will deal with Vulnerable Witness Notices and Applications are attached at **Annex B1** and **Annex B2**.
119. Notwithstanding the current terms of the legislation, any vulnerable witness notice requesting ONLY standard special measures should be passed to the Sheriff/Judge immediately and does not require to be held for the 7 day period specified in S271A(5). Objections cannot be lodged in relation to notices which contain a request for standard special measures alone [S271A(4A)(a)].
120. With an application for non-standard special measures the sheriff clerk will hold the application for 7 days to allow for objections to be lodged. If no objections are lodged after the expiry of the 7 days, the sheriff clerk will send to the sheriff for consideration. If objections are lodged, the sheriff clerk will assign a hearing and intimate the date to parties. Depending on the available time the objection hearing may be assigned for the same date as the intermediate diet hearing.
121. There may be occasions where a notice includes both standard and non-standard special measures. When this occurs the notice must be held for 7 days to allow for any objections to be lodged.
122. Objections may also be lodged in relation to vulnerable witness applications lodged on behalf of victims and witnesses who are not deemed vulnerable under the act.
123. Where no objections are lodged the sheriff clerk will intimate the court's decision to COPFS and the defence. If the request is granted VIA will notify both the witness and VSS.

## Live Television Links

124. ESDU plays an essential part in the allocation and scheduling of facilities for the giving of evidence by live TV link. Where the notice or application relates to TV links, prior to placing the papers before the sheriff, the sheriff clerk will contact ESDU to have a suitable facility allocated. The information supplied by VIA with the notice / application is key to this decision.
125. Though preference for a site may be requested, it should be noted that due to increased volumes it may not be possible to meet the terms of that request. This should be made clear to witnesses by VIA in order to effectively manage expectations.
126. Once the sheriff has considered the application the sheriff clerk will intimate the outcome to parties and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise if the remote site is one which is restricted to the attendance of one witness at any given time.
127. Where the use of a site becomes potentially difficult due to multiple witnesses requiring to give evidence at that site, ESDU will liaise with the relevant points of contact named in the covering sheets. It will be for COPFS and SCTS to work together to resolve the difficulties.
128. At the Intermediate Diet the court must be satisfied that all matters relating to the vulnerable witness have been addressed. If the accused pleads guilty or the trial is postponed the clerk of court will notify ESDU that the remote site is no longer required for the agreed date. VIA must tell VSS if they are no longer required on the agreed date.
129. Where a trial is postponed or adjourned, the clerk of court will liaise with ESDU where necessary. Where a TV link facility is required for the adjourned diet, the sheriff clerk will intimate the outcome to parties and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise if the remote site is one which is restricted to the attendance of one witness at any given time. VIA should tell VSS if they are required to attend on the adjourned date.
130. VIA will provide the witness with details of how to get to the TV link facility, the facilities available and when they are required to be there.
131. Where a child or vulnerable witness application, seeking the use of a special measure in terms of section 271J (use of a live CCTV link) or section 271K (use of a screen) of the Criminal Procedure (Scotland) Act 1995 is lodged with SCTS, COPFS considers that a witness would benefit from any available local arrangements in order to avoid contact with the accused in or around the court building.



## Applying for special measures – Solemn Cases

132. Unlike summary proceedings, jury trials are generally assigned to Sittings (which are a number of cases to call over a period of days or weeks) as opposed to a fixed trial date. The Sitting during which a case will call for trial, and the stage in the sitting at which any particular case will call, is determined by the Advocate Depute or PF.
133. High Court cases also present management challenges given the different types of trial that are fixed (High Court trials are allocated to a specific High Court location but not a specific court room within that location and some trials float for a designated period.) The effective management of live television link facilities is therefore dependent upon intimation to ESDU and regular updates as cases proceed.
134. COPFS will lodge a Vulnerable Witness Notice or Application at least 7 days prior to first diet in proceedings on indictment in the Sheriff Court and at least 14 days prior to the preliminary hearing in the High Court. Where COPFS requires to convey supplementary information to SCTS about a witness' needs the notice or application will be accompanied by a covering sheet using the form at **Annex F** highlighting: vulnerability issues, disabilities, support needs, interpreter involvement, any requirement for exceptional arrangements for the witness' attendance at court, preference of remote or in court TV link facility and including local COPFS contact details. Process map showing how SCTS and COPFS will deal with Vulnerable Witness Notices and Applications are attached at **Annex B1 and B2**.
135. Where the notice is for standard special measures the Sheriff Clerk/ Depute Clerk will place same before the judge forthwith for consideration and intimate the outcome to COPFS and the Defence.
136. With an application for non-standard special measures the Sheriff Clerk/ Depute Clerk will hold the application for 7 days to allow for objections to be lodged. If no objections are lodged after the expiry of the 7 days, the application or notice will be placed before the judge for consideration. If objections are lodged, the court will assign a hearing and intimate the date to parties. Depending on the available time the objection hearing may be assigned for the same date as the preliminary or first diet hearing.
137. Where no objections are lodged the clerk will intimate the court's decision to COPFS and the Defence. VIA will notify both the witness and WS.

## Live Television Links

138. ESDU plays an essential part in the allocation and scheduling of facilities for the giving of evidence by live TV link. Once known which sitting the case is allocated to, Judiciary Office/Sheriff Clerk contacts ESDU to establish if a remote site is available where it is the preferred option. If there are any difficulties with availability ESDU will liaise with the COPFS contact to identify a suitable alternative.
139. Though preference for a site may be requested, it should be noted that it may not be possible to meet the terms of that request. This should be made clear to witnesses by VIA in order to effectively manage expectations.
140. Once the judge has considered the case the clerk will intimate the outcome to COPFS and the Defence and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise, in the case of a remote site, if the remote site is one which is restricted to the attendance of one witness at any given time.
141. In Solemn cases, COPFS, Sheriff Clerks and Depute Clerks of Judiciary must work together to ensure that ESDU colleagues are kept updated as to the need for their facilities or where they are no longer required. Where the use of a site becomes potentially difficult due to multiple witnesses requiring to give evidence at that site, ESDU will liaise with the relevant points of contact named in the covering sheets. It will be for COPFS and SCTS to work together to resolve the difficulties.
142. At the Preliminary hearing or First Diet the court must be satisfied that all matters relating to the vulnerable witness have been addressed. If the accused pleads guilty or the trial is postponed the clerk of court will notify ESDU that the remote site is no longer required for the agreed date. VIA must tell VSS if they are no longer required on the agreed date.
143. Where a trial is postponed or adjourned to a specific date or sitting, the clerk of court will liaise with ESDU where necessary. Where a TV link facility is required for the adjourned diet, the Sheriff Clerk or Depute Clerk of Judiciary will intimate the outcome to parties and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise if the remote site is one which is restricted to the attendance of one witness at any given time. VIA should tell VSS if they are required to attend on the adjourned date.
144. VIA will provide the witness with details of how to get to the TV link facility, the facilities available and when they are required to be there.
145. Where a child or vulnerable witness application, seeking the use of a special measure in terms of section 271J (use of a live CCTV link) or section 271K (use of a screen) of the Criminal Procedure (Scotland) Act 1995 is lodged with SCTS, COPFS considers that a witness would benefit

from any available local arrangements in order to avoid contact with the accused in or around the court building.

## **Annex A- Links to other documents**

**[Victims and Witnesses \(Scotland\) Act 2014](#)**

**[Victims Code for Scotland](#)**

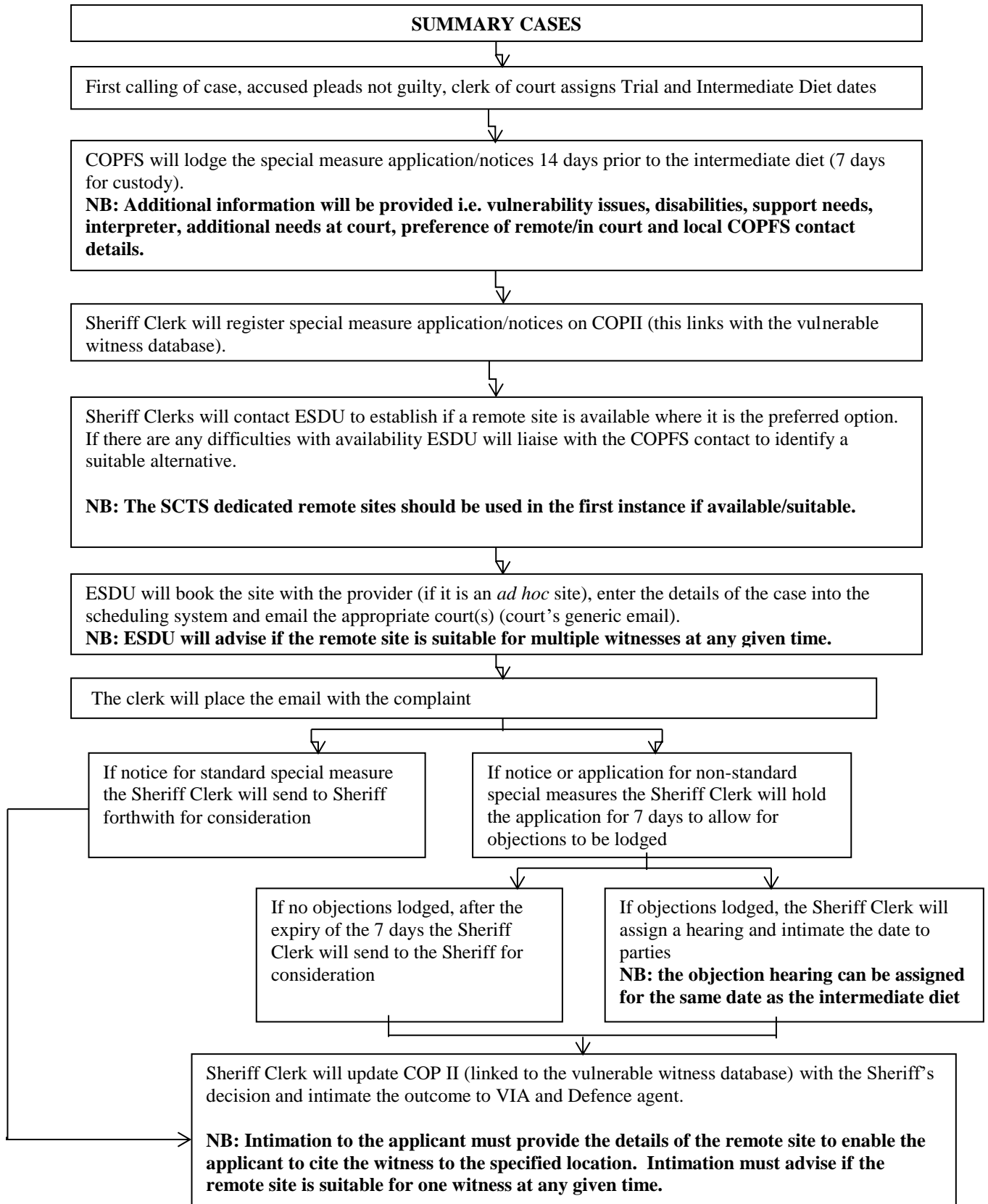
**[Standards of Service for Victims and Witnesses](#)**

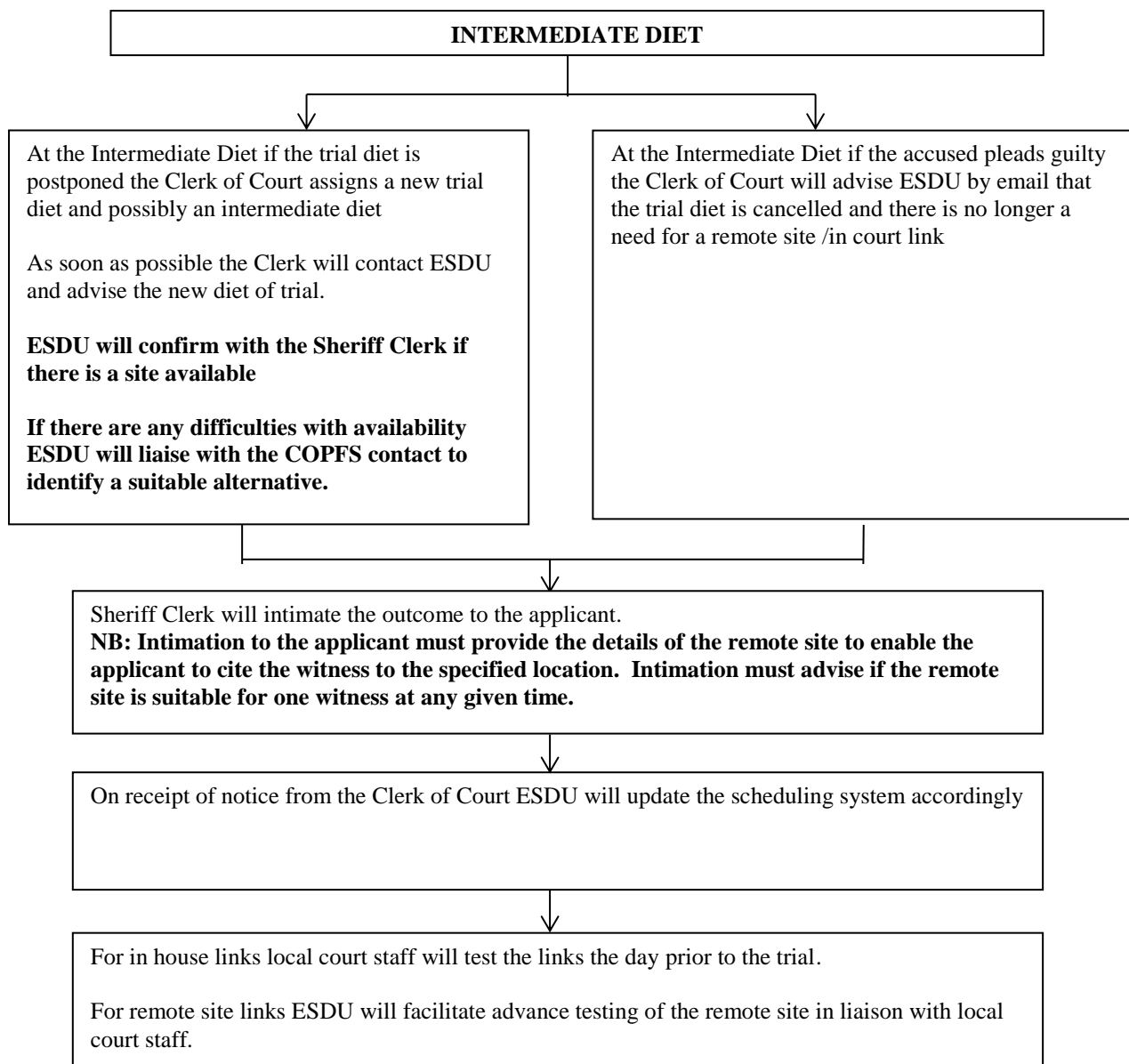
**[Crown Office and Procurator Fiscal Service Commitments to Victims and Prosecution Witnesses](#)**

**[Access to Information Protocol - A Guide for Victims and Witnesses](#)**

**[Schedule 3 to the Sexual Offences Act 2003](#)**

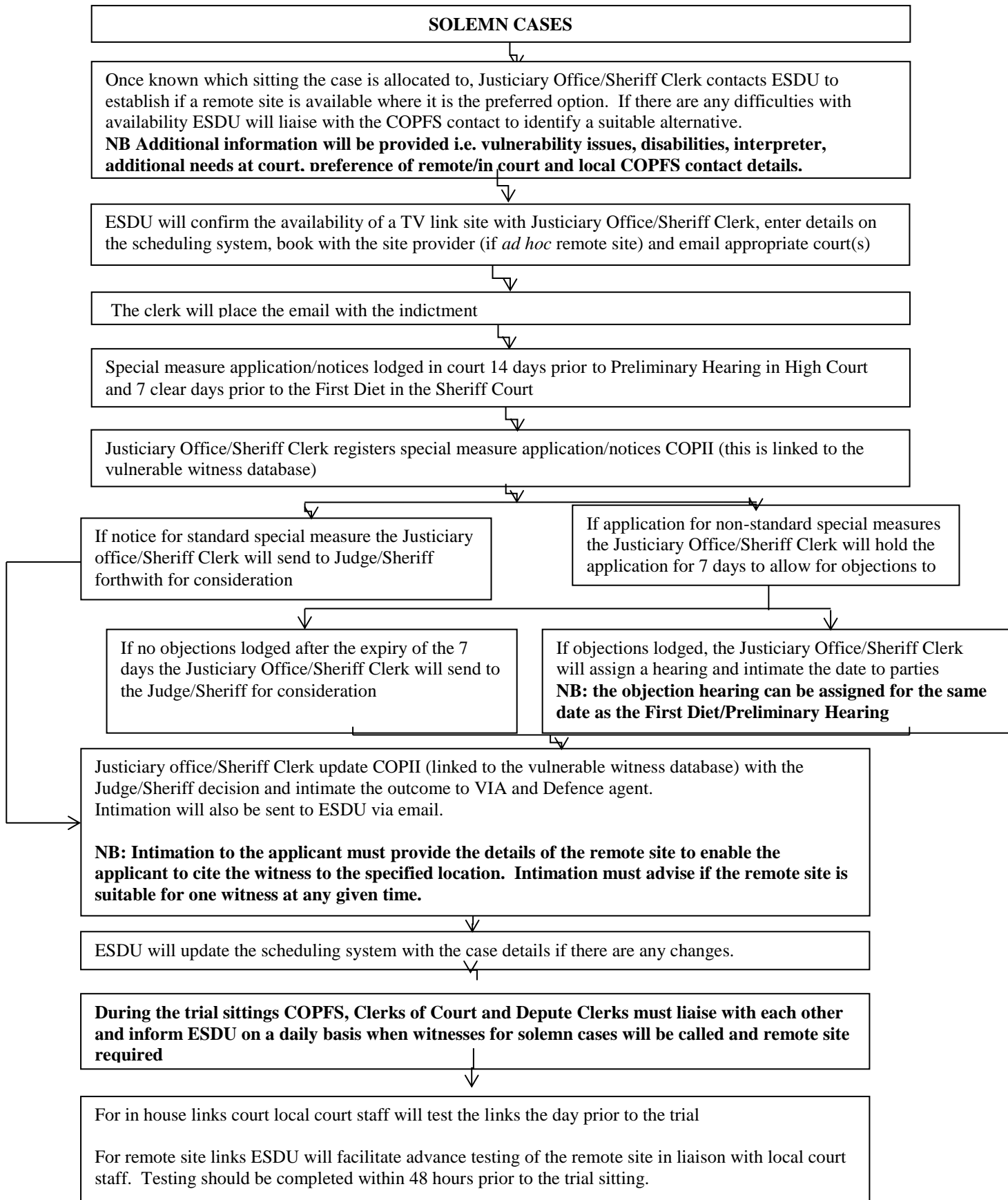
## Annex B1- Process Map Vulnerable Witness Notices/Application





## Annex B2- Process Map Vulnerable Witness Notices/Application

### PROCESS MAP OF VULNERABLE WITNESS APPLICATIONS/NOTICES



## Annex C- Form for Referrals to Victim Support Scotland

### Section A – Case Details

<b>Case Against</b>	<subj_name>
<b>PF Ref</b>	<casenum>
<b>Details of Charge(s) Brief description</b>	[Ask Details of Charge - ie domestic sexual assault, homicide, assault to injury etc]
<b>Case Process</b>	<court_type>
<b>Date of ID/FD/PH</b>	<first_court_date>
<b>Trial Location</b>	<court_name>
<b>Date of Trial (if known)</b>	<court_date>
<b>Bail Status</b>	<custody_status>
<b>Identification Issues?</b>	[Ask Identification issues any of the witnesses in this case - give details]

### Section B – VIA Contact Information

<b>VIA Officer</b>	[Ask VIA officer name]
<b>Telephone</b>	0844 561 [Ask ext no]
<b>Email address</b>	[Ask mailbox name]@copfs.gsi.gov.uk
<b>Date of Referral</b>	<system_date>

This shows the information that will be given from the VIA minute sheet

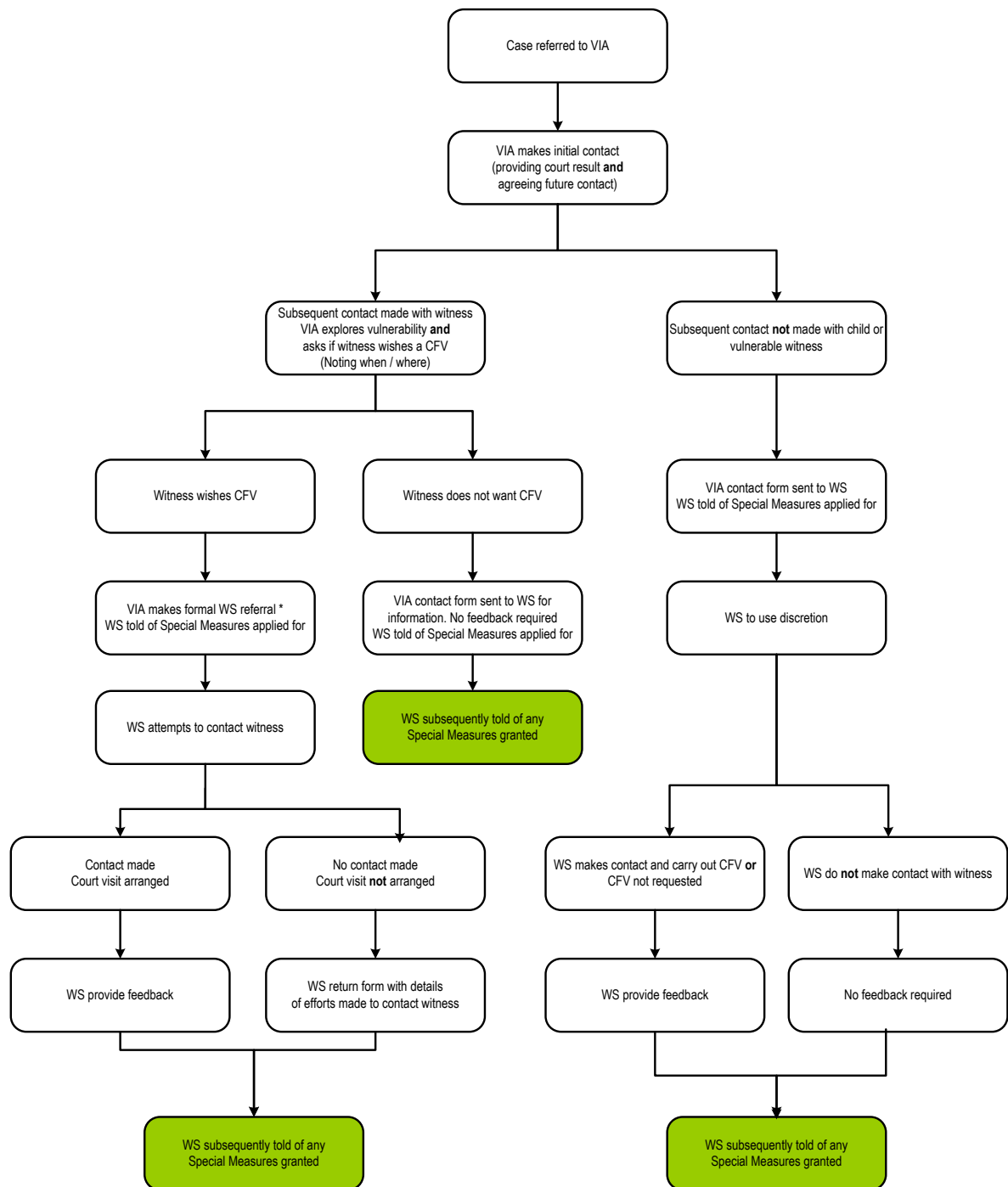
### Section C – Witness Contact Information

*(Cut and paste the information for all vulnerable witnesses directly from the VIA Minute Sheet)*

<b>Witness Name and address</b>	<b>Date of Birth &amp; Gender (include gender if WS)</b>	<b>Telephone &amp; Email address</b>	<b>Vulnerability/Special Measures</b>		<b>Referral to WS</b>
			<b>Status</b>	Complainer <input type="checkbox"/> Witness <input type="checkbox"/>	
			<b>Vulnerability Type</b>		<b>Consent Given for Referral?</b>
			<b>Vulnerability Explored?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/>
			<b>Contact with Witness?</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	No <input type="checkbox"/>
			<b>Special Measures Applied For – (specify if supporter from WS)</b>	Live television link <input type="checkbox"/> Screen <input type="checkbox"/> Supporter <input type="checkbox"/>	
			<b>Date Measures Granted (if known)</b>		
			<b>Additional Support Needs? (details below)</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>Court Visit Requested?</b>
					Yes <input type="checkbox"/>
					No <input type="checkbox"/>
					<b>Preferred CFV Date</b> <date>
			<b>Other Information (including attitude on special measures)</b>		<b>Preferred Location</b> <place>



## Annex D- Court Familiarisation Visit Process



\*VSS Referral to include details of:

- When the CFV is preferred
- The Court where the CFV is wanted
- The witness' views on special measures
- Any identification issues precluding special measures
- Any special measures applied for

# Annex E- Witness Expenses

**WARNING: ANY PERSON PROVIDING FALSE INFORMATION WILL BE PROSECUTED**

## CLAIM FOR WITNESS ALLOWANCES

Please read the following guidance and the "Being a witness" booklet before completing this form

After attendance as a witness you may apply to the Procurator Fiscal for payment of expenses, compensation for loss of earnings, subsistence costs etc. You will be expected to provide documents such as receipts, pay slips and tickets to support your claim.

Payment will be made by BACS. Please supply bank details below. This is the quickest and most secure form of payment. If bank details are not provided, payment will be made by cheque to the address overleaf (please amend this if it is not correct). If you do not have a bank account then the payment can be made payable to your partner or a trusted friend upon your instruction.

TRAVEL AND SUBSISTENCE COSTS				
		£	Pence	For Official Use only
By public transport	Bus fares			
	Rail fares (standard class only)			
	Air fares (requires PRIOR authorisation by Fiscal)			
By private car / motorcycle	Number of miles			
Other travel expenses (please specify)				
Subsistence				
Left home (date / time)				
Returned home (date / time)				
It is unlikely that there will be public parking at the PFO / Court. COPFS will not pay car parking charges. Subsistence: (Meals and Snacks): We pay a fixed amount based on the time you are away from home. If you need to stay away from home overnight please contact the Procurator Fiscal's office prior to the date you are cited to appear in Court, as detailed in the "Being a Witness Booklet" found at <a href="http://www.copfs.gov.uk/publications/victims-and-witnesses">www.copfs.gov.uk/publications/victims-and-witnesses</a> .				
OTHER EXPENDITURE				
Details of expenditure eg child care costs	Signature and telephone number of person being paid	£	Pence	For Official Use only
LOSS OF EARNINGS (FOR COMPLETION BY EMPLOYER)				
If you intend to claim loss of earnings in respect of your attendance as a witness, please ask your employer to complete the declaration below and to provide a copy of your pay slip and details of their business by way of a stamp / letterhead / copy invoice, (if you are self-employed please see the Being a Witness booklet).				
Company name:				
Number of hours lost	Rate paid per hour (net of statutory deductions)	£	Pence	
Employer's declaration: _____ ( Employee's Name) is employed by me and will lose wages as a result of attending court				
Employer's Signature			Employer's Stamp:	
Name				
Designation				
AMOUNT OF CLAIM				
		Sub-total		
		Less imprest/advance		
		Amount of claim		
WITNESS DECLARATION, BANK DETAILS and E MAIL Address (for payment notification)				
Account Holder Name / Payee Name				
Bank sort code		Account number		
Roll Number				
International Payments : BIC/SWIFT Code				
IBAN				
E mail				
I declare that to the best of my knowledge and belief the information I have given on this form is correct. The amount that I am claiming is net of any imprest / advance received.		Witness signature:		

CA SHIER: Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Annex F- Vulnerable Witness Notices and Applications

### Additional Information for the Court

**PF Reference:** <casenum>

**To:** Clerk of Justiciary/ Sheriff Clerk (*delete as appropriate*)

Please find enclosed Vulnerable Witness Notices and Applications for this case relating to the following witnesses:

- [List full names of all vulnerable witnesses included on the indictment]

1. Note any relationships between:

- the listed witnesses, and
- the listed witnesses and any other witnesses giving evidence in this case

of which the court should be aware.

*If there are none, please state "N/A" below.*

2. Is it appropriate for the witnesses named above to give evidence from the same place?

*If not, please state the reason(s) below; if not applicable, please state "N/A".*

3. Is it desirable for any witnesses named in answer box 1 above to give evidence from the same place, other than from the court building?

*If so, please provide a brief explanation below; if not applicable, please state "N/A".*

4. Is it necessary for any witnesses named in the first answer box to be kept apart and/or located in separate witness rooms?

*If so, please provide a brief explanation below; if not applicable, please state "N/A".*

5. On the basis of the information contained within the case papers are COPFS aware of any specific risks of violent or disruptive behaviour during the process of attending to give and giving evidence, which may be presented by any witnesses listed above? (NB. This does not include consideration of any record of prior convictions any witnesses may have.)

*Please answer Yes/No; and if 'Yes', please provide details.*

6. Do any witnesses have additional support needs? (eg disabilities which are relevant, interpreter required, communication difficulties, access requirements, etc.)

*Please answer Yes/No; and if 'Yes', please describe the additional support needs and explain what additional support is required as a result.*

<b>7. For Live Television Link Requests Only:</b>	
Using the columns below, list which witnesses would prefer to give evidence from within the court building and which would prefer to give evidence from a remote site. For witnesses giving evidence from a remote site, specify your preferred site/location.	
From Within Court Building	From Remote Site & Preferred Location(s)
•	•
<b>8. Are there any specific needs or concerns expressed by any witness about attending at court requiring exceptional arrangements to be considered?</b>	
Legal Point of Contact: Telephone: Email:	[Name of sitting manager/ legal manager] [legal point of contact direct telephone number] [legal point of contact email address]
Lodged by:	[Name of person lodging notices and applications]