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**Evidence and Procedure Review**

**CHILD AND VULNERABLE WITNESSES PROJECT**

**JOINT INVESTIGATIVE INTERVIEWS WORK-STREAM**

**PROJECT REPORT**

June 2017 

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**EXECUTIVE SUMMARY**

1. This report follows the publication of the [*Evidence and Procedure Review Report*](http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report---publication-version-pdf.pdf?sfvrsn=2)on 13 March 2015 and the [*Evidence and Procedure Review – Next Steps*](http://www.scotcourts.gov.uk/docs/default-source/SCS-Communications/evidence-and-procedure-report---next-steps---february-2016.pdf?sfvrsn=2)paper on 26 February 2016 and forms the next stage in the process of reforming the approach to taking the evidence of child and vulnerable witnesses in Scotland.
2. The *Evidence and Procedure Review Report* discussed, amongst other issues, current approaches to taking the evidence of children and vulnerable adult witnesses and compared practice in Scotland with that in other jurisdictions. The report concluded that the way in which these witnesses are treated in Scotland falls short of the standards set in some other jurisdictions. It recommended that a new structured scheme should be developed for taking the evidence of child and vulnerable adult witnesses, away from the court setting altogether.
3. The Next Steps paper explored this conclusion further and recommended that, initially for solemn cases, both the evidence in chief and subsequent cross-examination of child and vulnerable adult witnesses should be captured as early as possible in advance of trial in pre-recorded (that is, audio-visually recorded) form. It recommended that pre-recorded evidence should be used at trial, removing any need for child and vulnerable adult witnesses to attend court.
4. Following publication of the *Next Steps* paper, the Justice Board commissioned the Scottish Courts and Tribunals Service (SCTS) to lead further work to develop the recommended systematic approach to capturing and presenting evidence in pre-recorded form. Two work-streams were established, one focusing on the visual recording of evidence in chief, in particular existing approaches to conducting and recording Joint Investigative Interviews (JIIs) with certain child witnesses, and one focusing on the pre-recording of further evidence. Both Work-stream Groups were comprised of experienced justice system, child welfare and third sector practitioners. This report has been prepared by the JIIs Work-stream Group.
5. The JIIs Work-stream Group focused initially on current approaches to conducting JIIs, the extent of their use in proceedings and barriers to their use. The Group established that the primary barrier to the use of JIIs as evidence in chief is the quality of the interviews, either in terms of the way in which the interview is conducted by the joint investigative interviewers or in terms of the audio-visual quality of the recording. The Group identified steps that can to be taken to improve the quality of JIIs and to facilitate their more frequent use as evidence in chief. Recommendations include:

* Training of joint investigative interviewers (police officers and social workers) should be overhauled to improve the quality of interviewing and reflect the fact that forensic interviewing of child witnesses is a specialist skill.
* The approach to training should be standardised and become demand-led so that smaller numbers of interviewers are trained to a high standard and are able to develop expertise through regular practice. Assessment of and feedback on practice should be built in to an on-going training requirement.
* Funding should be provided to allow the urgent replacement of existing equipment for visually recording JIIs. Encryption of the recordings must be a standard feature of the new equipment.
* Funding should be provided to allow JIIs to be transcribed by professional transcribers, rather than by investigating police officers.
* Section 271 of the Criminal Procedure (Scotland) Act 1995 should be amended to facilitate the earlier submission of vulnerable witness applications, allow them to be considered sooner by the court and enable hearings for the taking of evidence by commissioner to be held earlier.
* The 2011 Scottish Government Guidance on JIIs should be reviewed and updated.

1. At present, JIIs are the only witness interviews that are routinely visually recorded. They are conducted only with children in relation to whom there is a concern that they are both a victim of or witness to criminal conduct *and* where there is information to suggest that the child has been or is being abused or neglected or may be at risk of significant harm. The second part of the JII report therefore looks at how the visual recording of investigative interviews and/or witness statements might be extended to a) child witnesses who are not subject to a JII and b) vulnerable adult witnesses. The recommendations include:

* Visual recording of investigative interviews and witness statements should be extended, in the first instance, to child and adult victims of the offences specified in section 271(1)(c) of the 1995 Act (i.e. victims who are deemed vulnerable by virtue of the nature of the offence they are alleged to be a victim of).
* Investigative interviews and witness statements should also be visually recorded in any instance in which the investigating officer determines that visual recording should be undertaken to allow the option for a vulnerable witness not to be cited to attend court.
* Detailed planning work on the introduction of visually recorded evidence in the summary courts should be undertaken.

1. The Group recognised that the resource implications of extending the use of visually recorded evidence in chief are significant. Substantial investment will be required, both in terms of training skilled forensic interviewers and in terms of providing up to date audio-visual recording equipment and suitable accommodation in which to conduct visually recorded interviews. The Group considered, therefore, that the extension of visual recording should be phased. In the first instance, effort should be focused on improving the training and practice of joint investigative interviewers to create a pool of skilled, expert forensic interviewers. Over time this will improve the quality of JIIs so that they can be used more commonly as evidence in chief. Once the quality of JIIs has been improved visual recording should be extended to child witnesses, initially in serious cases that are likely to be tried under solemn procedure, who are not subject to a JII. Thereafter, visual recording should be introduced for vulnerable adult witnesses in cases that are likely to be tried under solemn procedure.

**INTRODUCTION**

“I know I should feel better now he is in jail but I just keep having flashbacks of giving evidence. It’s time to think about what it’s like to be a child in a world designed for adults.” (Feedback provided to Children 1st by a 14 year old boy required to give evidence at a criminal trial, 2016)[[1]](#footnote-1)

1. In March 2016 the Justice Board agreed a new programme of work to take forward the recommendations of the *Evidence* *and* *Procedure* *Review* *Report*[[2]](#footnote-2) and the *Evidence* *and* *Procedure* *Review*: *Next* *Steps*[[3]](#footnote-3) report. The Programme Mandate split the work into two distinct projects governed by a single Programme Board comprised of members from the relevant Justice Board agencies. Project 2 (EPR2) focused on developing a new approach to taking the evidence of children and vulnerable adult witnesses, focusing on pre-recorded evidence.
2. EPR2 was further split into a number of work-streams, two of which were led by SCTS. These work-streams were:

* **Joint Investigative Interviews**, looking at how to improve the quality of the investigatory interviewing of children and vulnerable witnesses, so that recordings of these interviews can be readily used as evidence in court proceedings; and,
* **Further Pre-recorded Evidence**, exploring options for more systematic approaches to recording the further and cross-examination of children and vulnerable witnesses in advance of trial.

1. For each work-stream a working group was set up consisting of justice agencies, the legal profession and the third sector, facilitated by the SCTS project team. The Further Pre-recorded Evidence Working Group was chaired by the Lord Justice Clerk, Lady Dorrian.
2. This report summarises the consideration given by the JIIs Work-stream Group to the issues raised in the *Evidence and Procedure Review Report* and the *Evidence and Procedure Review - Next Steps* report. The multi-disciplinary Work-stream Group were comprised of members from the criminal justice sector agencies and from agencies concerned with the welfare of children in Scotland and met a total of nine times over a period of four months. Members of the Group participated in the discussions in their own right and contributed their own views based on their experience in the criminal justice sector. None of the members of the Group attended to represent the formal views of their organisation. The members of the Group are listed in Annex A.

**BACKGROUND**

1. In 2015 the judicially led Evidence and Procedure Review group published its report which contained a number of recommendations relating to the taking of evidence from children and vulnerable witnesses. In particular, the Review recommended that consideration should be

“…urgently given to the development of a new structured scheme that treats child and vulnerable witnesses in an entirely different way, away from the court setting altogether.”

1. In making this recommendation the *Evidence and Procedure Review Report* identified one of the options for a new approach as being

“a version of “the Full Pigot”, in which the standard practice would be for a Joint Investigative Interview to be used as the evidence in chief, and standardised procedures put in place for the pre-recording of cross-examination”

1. The report noted that the increasing use of JIIs as evidence in chief and the taking of evidence on commission are emerging in an ad hoc and unstructured fashion, which is undesirable. It proposed the development of

“A framework for the systematic use of audio-visually recorded Joint Investigative Interviews as the evidence-in-chief of a young or vulnerable witness. … Such recorded interviews should be the default option for such a witness’ principal evidence and should replace the use of other forms of prior statement as evidence in chief.”

1. The *Evidence and Procedure Review – Next* *Steps* report, published in early 2016, set out the findings from further discussions led by SCTS on obtaining best evidence from child and vulnerable witnesses. That report recommended that

“… initially for solemn cases, there should be a systematic approach to the evidence of children or vulnerable witnesses in which it should be presumed that the evidence-in-chief of such a witness will be captured and presented at trial in pre-recorded form; and that the subsequent cross-examination of that witness will also, on application, be recorded in advance of trial.”

1. The *Next Steps* report went on to suggest that such a system should be introduced in a phased way to ensure there is not an ‘insupportable surge in demand on the justice system’s limited resources’. It suggested that it may be appropriate to limit the first stage of work to children under a certain age who are witnesses in solemn cases.
2. Both the *Evidence and Procedure Review Report* and the *Next Steps* report drew attention to current approaches to conducting JIIs with children in Scotland. The reports noted that while comprehensive guidance exists on conducting JIIs it does not follow the National Institute for Child Health and Human Development (NICHD) Interview Protocol, which is regarded by many as representing best practice,[[4]](#footnote-4) and the guidance is not followed systematically, which impacts on the quality of interviews with child witnesses.
3. In response to the *Next Steps* report the Justice Board commissioned work aimed at developing proposals to achieve the systematic use of existing approaches to the pre-recording of evidence and the use of that evidence in subsequent criminal proceedings. This work was led by SCTS.
4. The JIIs Work-stream Group focused its deliberations on three phases of the JII process:

* Pre-JII, considering how consistency in decision making could be improved;
* JII, considering the quality of JIIs, training needs and evaluation of practice; and,
* Post-JII, considering the practicalities of using visually recorded JIIs as evidence in chief and whether there should be a presumption that JIIs will be used as evidence in chief unless there are specific reasons for them not to be.

1. The Group’s remit and scope, agreed in discussion at the outset of the work, were:

**Remit**

Initially, to develop detailed proposals for standardising the approach to the use and conduct of Joint Investigative Interviews (JIIs), improving their quality and creating a presumption that visually recorded JIIs will be used as evidence-in-chief in any subsequent proceedings unless the child requests otherwise.

Thereafter, developing proposals for extending the visual recording of investigative interviews to all children under the age of 18 years and vulnerable adult witnesses, with the aim of moving to a position where visually recorded investigate interviews are used as evidence-in-chief in every case, unless the witness requests otherwise. The proposals must be practicable and acceptable to all participants in the justice process.

**Scope**

The work will focus on all provisions required to facilitate the effective conduct and subsequent use in proceedings of visually recorded JIIs as they apply to child witnesses under the age of 18 years for whom child protection concerns exist. The provisions will apply to all such witnesses at the investigative interview stage regardless of the nature of the alleged offence or whether any subsequent proceedings are raised in the solemn or summary courts or at a Children’s Hearing.

**THE CURRENT POSITION**

1. JIIs are carried out jointly by police officers and social workers with some children under the age of 16 years at the time of initial interview in relation to whom there is a concern that they are both a victim of or witness to criminal conduct *and* where there is information to suggest that the child has been or is being abused or neglected or may be at risk of significant harm. They can also be carried out with 16 and 17 years olds who are already subject to a supervision order made by a children's hearing. The concerns can have been raised by any agency or individual and ‘core agencies’ (police, social work and health) will have conducted a multi-agency discussion in respect of the child in order to share information, assess risk and determine whether a JII is required. JIIs are visually recorded unless the child does not consent to recording or there are particular circumstances associated with the case which would make visual recording inappropriate.
2. It is important to note that JIIs are carried out *only* where child protection concerns – whether for the child in question, or any other child - exist alongside a potential offence. They are not carried out with child witnesses or victims for whom there are no child protection concerns and they are not carried out with vulnerable adult victims or witnesses. Single agency interviews are carried out with these witnesses and such interviews are not generally visually or audio recorded (although they may be in some circumstances). At present, therefore, visually recorded investigative interviews that can potentially be used as evidence in chief are routinely conducted with only a specific subset of all potential child witnesses. Estimates suggest that around 4,900 JIIs are conducted across Scotland annually.

**Use in Criminal Proceedings**

1. Where the information gathered in a JII leads to a report of a crime and the prosecution determines that there is sufficient evidence and it is in the public interest to raise criminal proceedings, the prosecution can submit an application to the court under Section 271M of the Criminal Procedure (Scotland) Act 1995 (hereafter ‘the 1995 Act’) for the child’s evidence in chief to be given in the form of a prior statement. Where granted by the court this allows the visually recorded JII to be shown in court as the witness’s evidence in chief. Using a JII as evidence in chief removes the need for the witness to attend court to give evidence at trial either if no cross-examination or further examination is required or if that further examination is also carried out in advance of trial and visually recorded. At present the mechanism for doing this is by ‘taking of evidence by a commissioner’. The party citing the witness – usually the prosecutor – can submit an application to the court under Section 271I of the 1995 Act for the taking of evidence by a commissioner. If granted by the court a section 271I application can allow all of the witness’s evidence (i.e. evidence in chief, cross-examination and further examination) to be taken by a commissioner or, where a section 271M application for the use of prior statements as evidence in chief has already been granted, just the cross-examination and any further re-examination can be taken by commissioner.
2. The use of JIIs in criminal proceedings appears to be uncommon. The Work-stream Group was unable to establish with any degree of certainty how many of the approximate 4,900 JIIs recorded each year are submitted to the Procurator Fiscal (PF) and/or Children’s Reporter for potential use in proceedings; where JIIs are submitted to the PF and/or Children’s Reporter, how often they are used in proceedings; or, where they are used in proceedings, whether the child is still required to attend court to give additional evidence. Data are not collected on these issues. The Group was able to identify a limited number of High Court and sheriff solemn cases in which section 271M applications for the use of prior statements were granted by the court alongside section 271I applications for taking of evidence by a commissioner. Section 271M applications for the use of prior statements being made in the absence of a section 271I application appear to be very uncommon – only one example came to light of a case in which several JIIs (conducted in 2013) were used as evidence in chief and the witnesses attended the trial (in early 2016) for cross-examination by live TV link.
3. However, anecdotal evidence from court practitioners indicates that the use of JIIs as evidence in chief in criminal cases is increasing. Particularly in the High Court COPFS strive to remove the need for essential child witnesses, especially under the age of 12 years, to attend court to give evidence through the use of JIIs as evidence in chief. Between August 2015 and July 2016 at least 14 section 271M applications to use a prior statement (in the form of a JII) as evidence in chief were granted by the solemn courts. In the same time period at least seven of those JIIs were led as evidence at trial.

**Use in Children’s Hearings Proceedings**

1. A JII can result in a referral to the Children’s Reporter, as well as or instead of criminal proceedings, because of concerns about the welfare of the child or other associated children, or where the offence is alleged to have been committed by a child. Where the reporter decides to arrange a children’s hearing for the referred child and the grounds for doing so are not accepted by the child and/or the relevant person, then the Children’s Reporter will make an application to the Sheriff to determine whether the grounds are established. JIIs are said to be regularly used in the resulting Proof hearings in the sheriff court (although no data are collected on how often they are used). The Children’s Reporter can use the JII as hearsay evidence to prove the grounds of referral[[5]](#footnote-5) and will always try to ensure that young people do not have to attend court as witnesses unless it is absolutely necessary.[[6]](#footnote-6) It is common for the Children’s Reporter to rely on a JII for evidence even where the party against whom the allegation has been made seeks to call the child to the Proof hearing as a witness.
2. The absence of data on the use of JIIs has hampered the Group’s consideration of the scale of work required to increase the use of pre-recorded evidence in chief in cases involving child witnesses. The Group considered that each of the key criminal justice organisations – Police Scotland, Crown Office and Procurator Fiscal Service (COPFS), Scottish Children’s Reporter Administration (SCRA) and SCTS – should improve the collection of data on the use of JIIs and any other forms of visually recorded evidence in chief.

**Recommendation 1: Police Scotland, COPFS, SCRA and SCTS should commence the routine collection of data on the frequency with which investigative interviews (whether JIIs or single agency interviews) are visually recorded and used in proceedings.**

1. The *Evidence and Procedure Review Report* noted that there is currently no systematic approach to the use of JIIs as evidence in chief. The report also raised concerns about the training of joint investigative interviewers and about the national guidance on joint investigative interviewing. The Group identified a number of barriers to the use of JIIs as evidence in chief including: the quality of the interview; the visual or audio quality of the recording; quality of transcripts; the presence of irrelevant or inadmissible information in the interview; and attitudes towards the use of JIIs for older children. None of these barriers is insurmountable. Addressing the issues raised in the *Review* *Report* and the perceived barriers can be expected to impact positively on the use of JIIs as evidence in chief.

**SYSTEMATISING JOINT INVESTIGATIVE INTERVIEWS**

**Improving the Quality of JIIs**

1. A common barrier to the use of JIIs as evidence in chief is the quality or perceived quality of the interviews. A wealth of evidence[[7]](#footnote-7) shows that conducting effective forensic interviews with child witnesses is a specialist skill requiring dedicated training, regular practice and on-going evaluation and feedback.[[8]](#footnote-8) At present, JII training in Scotland takes the form of a five day training course during which students are required to undertake two mock JIIs. Their performance in conducting these interviews is assessed by the trainer and the student’s performance must be deemed satisfactory in order for them to ‘pass’ the course and become an approved joint investigative interviewer. Once the student has completed the course they return to their field and could conduct a real-life JII the following day, or weeks, months or years later, or not at all.
2. In most areas of Scotland staff are trained in the application of the Step-Wise Interview model[[9]](#footnote-9) (c.f. paragraph 42). However, one area of Scotland has taken a different approach to the provision and nature of training and has trained staff in the use of the NICHD interview protocol.[[10]](#footnote-10) Approaches to who should be trained have also varied – some local authority social work departments require many of their Children and Families social work staff to be trained, providing large numbers of staff who rarely or never have an opportunity to apply the skills learned in a real JII. Other local authorities have focused on training smaller numbers of staff. Similar variations applied in legacy police forces with some opting to train large numbers of officers at Constable level. Approaches to who should be trained continue to vary between divisions within the single force. Likewise, annual refresher training of both interviewers and managers/supervisors is provided in some areas and not others and evaluation of practice is undertaken in some areas and not others. At present responsibility for the provision and funding of training sits with local Child Protection Committees.
3. These variations in approach have developed in response to operational needs and considerations of how best to deploy staff. It appears that less consideration has been given to what approach best meets the needs of child witnesses. Other jurisdictions, most notably in Scandinavia where the ‘Barnahus’ (children’s house) model is in use, are considerably ahead of Scotland in the development of approaches to dealing with child witnesses that have the needs of the child at their centre. In Norway the Barnehus model relies on police interviewers, who are required to undertake a 12 month training course, including four weeks of specialist training provided by the Police Academy, practical work under guidance and examinations. Forensic interviewing is recognised as a specialist skill and as few as 20 trained interviewers are available in Oslo where the population numbers 1.5 million and 434 facilitated forensic interviews were carried out with children in 2015. This ‘Level 1’ training equips interviewers to undertake forensic interviews with children aged 6 to 18 years. Experience in other jurisdictions has demonstrated that a different approach is required for conducting forensic interviews with very young children. In Norway a ‘sequential interview’ model has been developed, based on the ‘Extended Forensic Interview’ approach developed at the National Children’s Advocacy Center in Alabama.[[11]](#footnote-11) Extended Forensic Interviews have been shown to be effective with children whose ability to participate in a single focussed interview is compromised by their very young age, developmental delays, cognitive disabilities or extreme trauma. In Norway several years’ practical experience and further in-depth training is required to undertake forensic interviews with children aged less than 6 years and at present there are just six fully qualified ‘Level 2’ practitioners in Oslo.[[12]](#footnote-12)
4. The Group considered that there needs to be a recognition and acceptance across all organisations involved in protecting children at risk of significant harm that forensic interviewing of children is a highly skilled, specialist role. It is not a task that can be carried out effectively by anybody on the basis of rudimentary training. Accepting that forensic interviewing is a specialism will require both Police Scotland and local authority social work departments, whose staff currently fill the role of forensic interviewers, to be willing to invest time and resources in training staff to an appropriate standard.
5. The majority of the Group considered that JII training in Scotland requires to be developed and extended to reflect the fact that effective forensic interviewing of child witnesses is a highly skilled specialist role. Developments to the training programme should be based on the most up-to-date evidence available on effective approaches to forensic interviewing of children of different ages. Extension of the training would allow more time to be spent on gaining an understanding of child development and communication skills, understanding the impact of particular types of offending on children and how this affects willingness to report, learning about and practicing age appropriate questioning techniques and could also include a focus on the practical operation of the required video recording equipment.[[13]](#footnote-13) Any extension of the training will require the National Curricula on Joint Investigative Interviewing of Child Witnesses Training in Scotland, published by the Scottish Government,[[14]](#footnote-14) to be reviewed and amended accordingly.

**Recommendation 2: The training programme for joint investigative interviewers should be developed and extended to enable more in-depth training of interviewers, recognising the degree of specialist skill required to secure best evidence from child witnesses.**

**Recommendation 3: The National Curricula on Joint Investigative Interviewing of Child Witnesses Training in Scotland should be reviewed and amended to reflect the development and extension required for joint investigative interviewing to become a specialist skill.**

1. Given the emerging body of evidence relating to the forensic interviewing of very young children,[[15]](#footnote-15) the Group considered that the current model of joint investigative interviewing employed in Scotland is unlikely to be fit for purpose for use with very young child witnesses or children with learning disabilities. Current evidence indicates that it is not effective to take a 'one size fits all' approach and that child forensic interviewing techniques require to be tailored to the age, cognitive development, communication needs and vulnerabilities of each individual child.[[16]](#footnote-16) Any development of the JII training programme should incorporate training on interview models that have been shown to be effective with children under the age of 6 years and children with learning disabilities. Staff undergoing JII training should be trained in the application of skills and techniques that can be adapted for use with children of different ages and with a range of different vulnerabilities.

**Recommendation 4: Development of the JII training programme should incorporate training on interview models that have been shown to be effective with children under the age of 6 years and children with learning disabilities.**

1. Given that the interviewing of child witnesses in a way that includes securing the best possible evidence is a specialist skill, it is important that practitioners trained in the application of this skill have sufficient opportunity to practice their skills and develop expertise. The approach taken to training in some areas of Scotland where large numbers of people have been trained does not lend itself to the building up of expertise by individuals, simply because the opportunity to conduct JIIs is not a regular occurrence. The Group considered that small cadres of practitioners should be trained to a high level and should be given the opportunity to conduct JIIs on a regular basis so that skills can be honed and expertise developed through practice. The Group recognised that each local authority across Scotland has its own social work department and that the strategic approach taken to date has been to train social workers in their own area to undertake JIIs. Likewise, some legacy police forces took the view that large numbers of officers should be trained in conducting JIIs so that there would always be someone available who was trained in the approach. However, there is little value in training people who never or rarely have an opportunity to practice their skills. The Group considered that the number of practitioners trained as specialist forensic interviewers in any given area should be commensurate with the demand for such skills. This means that there should be a move away from investing scarce resources in training large numbers of people, many of whom will never have an opportunity to use the skills taught. Local social work departments and Police Scotland will require to engage with local Child Protection Committees and other local partners to identify levels of service provision and models of service delivery most appropriate for meeting local needs.

**Recommendation 5: The volume of practitioners who are trained to undertake JIIs should be demand led, ensuring that trained interviewers are able to build up expertise through regular practice.**

1. Starting in early 2017, Police Scotland will launch an Investigator Development Programme which will see police officer training become demand led. Only police officers who are on the Investigator Development Programme will be able to undertake JII training. Local authority social work departments, together with Child Protection Committees are strongly encouraged to take a strategic view of demand led JII training for social workers.
2. Demand led training will inevitably mean that fewer people are trained, which is likely to impact operationally on the ability to provide JII-trained interviewers in a short space of time and in every geographical area. The Group recognised that the demand profile in the most remote areas of Scotland will be very different to the demand profile in non-remote areas and different approaches are likely to be required to ensure the same level of high quality service can be provided. A balance has to be struck between speed and quality of interview. The Group considered that, in order to minimise further trauma to child victims and witnesses, it is more important for carefully-planned, high quality JIIs to be conducted by trained and highly skilled interviewers than it is for interviews to be conducted as soon as possible after the incident is reported, by interviewers who, although JII trained, are not sufficiently skilled to secure the best possible evidence from the witness. Adopting a demand led approach to training might well mean that child victims and witnesses have to wait longer to be interviewed and/or that skilled interviewers might have to cover wider geographical areas. However, the majority of the Group considered that in the types of cases requiring a JII, this is an acceptable price to pay for securing a high quality interview that captures the witness’s best evidence and that can be used in proceedings.
3. In Norway, Barnehus exist in 10 locations across the country, with an 11th centre due to open in early 2017. The geographical spread of the centres means that it is not uncommon for children and their carers who are eligible for the services of the Barnehus to have to travel for up to two hours to get to their nearest centre. This is regarded by Norwegian practitioners as being acceptable in order for the child to be provided with a very high quality service. Of course, the geography of Scotland means that a demand led approach to service provision could result in some children being required to travel long distances.
4. Training police officers and social workers to become skilled joint investigative interviewers requires the investment of valuable resources, and the development of expertise requires regular practice of the trained skills. The Group considered that national governance should be applied to the discipline of specialist forensic interviewing and minimum requirements should be put in place for initial and continued accreditation as a forensic interviewer. National governance should assist in ensuring that the key organisations – Police Scotland and local authority social work departments – are able to maintain a supply of suitably trained and experienced interviewers. Governance could take the form of a national register of approved forensic interviewers, which could support a demand led approach to training if retention on the register is dependent on being able to demonstrate regular, good quality practice as an interviewer. The Group considered that multi-agency discussions and consultation would be required to identify the most appropriate body or structure to provide national governance of forensic interviewing.

**Recommendation 6: National governance should be applied to the discipline of specialist forensic interviewing. Consultation should be undertaken to determine the most appropriate body or structure to provide this national governance.**

**Improving Consistency of Approach**

1. One of the ways in which consistency in the approach to JIIs and the quality of the interviews themselves can be improved is through revising the approach to training provision for joint investigative interviewers. At present different approaches to training interviewers are followed in different parts of the country. A number of the pre-Police Scotland legacy police force areas use local police officers and social workers to organise and deliver basic JII training courses at local level. While these staff are trained to provide training, they are not dedicated trainers and undertake the role as just one part of their wider functions. Other areas have appointed regional JII training co-ordinators who organise, manage and deliver JII training courses across a region as a core element of their role.
2. Regardless of whether JII training is provided locally or regionally, the trainers themselves are trained centrally at the Police Scotland College at Tulliallan. The National Curricula for Joint Investigative Interviewing of Child Witnesses Training in Scotland is utilised and training is provided by members of the JII Practice and Development Group, of which the regional training co-ordinators are members. However, no national governance is applied to the training of trainers and there is no national oversight of how the training provided to the trainers is applied at local level. This allows approaches to vary across the country.
3. The Group considered it essential that the approach to training should be overhauled to enable a consistent approach to be developed across the country. Given that JIIs serve dual purposes of gathering information to address child protection concerns and gathering evidence for possible use in court or Children’s Hearings proceedings, the 32 local authorities and Police Scotland should be jointly responsible for funding a core training team. This might take the form of a JII national training centre with responsibility for developing training and delivery of that training, whether locally or nationally, by JII national training staff. The training staff do not need to be centrally based in a fixed location and training can continue to be provided in local or regional facilities as required. Of greater importance is a nationally consistent approach to training, which follows the agreed National Curricula and is delivered by experienced and effective trainers.

**Recommendation 7: A JII national training centre should be established with joint funding from Police Scotland and local authorities to enable the adoption of a nationally consistent approach to training.**

1. If forensic interviewing of child witnesses is a specialist skill that requires regular practice in order for expertise to be developed, it is essential that any interviewer’s practice is subject to on-going assessment by a trained assessor and practitioners are provided with constructive feedback. At present the National Curricula does not contain any requirement for on-going assessment of the practice of trained interviewers. It is possible, therefore, and in some parts of Scotland common for interviewers to be conducting JIIs with child witnesses and for their practice not to be assessed or for them to be provided with any feedback on their practice. Research evidence shows that police officers conducting JIIs in Scotland generally regard their interview practice to be more effective than independent assessment shows it to be.[[17]](#footnote-17) The Group considered that in order to support the development of expertise in forensic interviewing in Scotland, on-going assessment and evaluation of the practice of joint investigative interviewers should be built in to the National Curricula as a requirement of training. Responsibility for this on-going assessment and evaluation of practice could rest with the proposed JII national training centre.

**Recommendation 8: On-going assessment and evaluation of interviewer’s practice should be built in to the National Curricula as a training requirement.**

**Scottish Government Guidance on Joint Investigative Interviewing of Child Witnesses**

1. The Work-stream Group considered the Scottish Government’s Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland.[[18]](#footnote-18) The guidance is detailed and comprehensive but has not resulted in a standardised approach across Scotland to the way in which JIIs are conducted. Local variations in practice are thought to be a result of different areas interpreting the guidance in different ways. For example, the guidance requires planning meetings to be held in advance of the JII but practice varies in who is involved in these planning meetings, and how detailed they are.
2. The guidance is in need of updating to reflect recent changes in legislation and developments in practice. The guidance relates specifically to JIIs, which have a two-fold purpose - to assess risk and identify the child protection needs of the interviewee and establish whether there is evidence to suggest a crime may have been committed. The importance of these interviews for assessing child protection concerns means that those with expertise in child protection, as well as those with expertise in criminal justice and in supporting victims of crime, must be involved in any revision of the guidance.

**Recommendation 9: The Scottish Government’s 2011 Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland should be revised and updated.**

**Recommendation 10: As the national guidance cuts across the policy interests of victims and witnesses, child protection, children’s hearings and criminal justice each of these areas should feed-in to the revision of the national guidance.**

1. The current guidance focuses on the practicalities of conducting JIIs and the subsequent use of visual recordings in proceedings. It focuses on interview techniques but is silent on the approach to training of interviewers and the quality assurance of interview practice. Likewise, the National Curricula focuses only on the content of the core training courses. As such, there is a gap in the current guidance relating to requirements for ongoing assessment, evaluation of practice and refresher training and different approaches have evolved in different areas of Scotland. In Edinburgh, for example, annual refresher training is mandatory for both police and social work interviewers and annual training is provided for police and social work managers who make decisions about JIIs at inter-agency referral discussions. Evaluation of practice is also undertaken regularly by a person trained in providing constructive feedback, enabling interviewers to reflect on and learn from their practice. Other areas provide optional refresher training on an intermittent basis and still others have made no provision for refresher training of interviewers or managers.
2. Research evidence shows that “the traditional ‘‘one off’’ intensive training courses change actual interviewing behaviour very little”.[[19]](#footnote-19) It is not sufficient, therefore, to invest valuable resources in training police officers and social workers in forensic interviewing skills through a short, one-off course and to expect those skills to become embedded in everyday practice without reinforcement. To support the recommendation above that on-going assessment and evaluation of practice should be built in to the National Curricula (c.f. paragraph 32), the Group considered that the national guidance should be expanded to address the issue of how initial training should be reinforced and refreshed. In particular, requirements for trained joint investigative interviewers – both police officers and social workers, together with managers and supervisors involved in making decisions about whether and how to conduct JIIs - to undergo regular, preferably annual, refresher training should be built in to the national guidance.

**Recommendation 11: The national guidance should be expanded to address how initial JII training should be reinforced and refreshed. In particular, the guidance should include a requirement for annual refresher training for both interviewers and managers.**

1. Part 2 of the guidance addresses the importance of interview planning (c.f. paragraphs 21-27) and emphasises a)that planning must be carried out jointly between the police and social work services and b)that supervisors and managers must be involved in the process. Practice in relation to planning has evolved in such a way that interview plans in some areas focus predominantly on the practical arrangements for the interview. Other areas include a plan identifying the issues that the interviewers will cover within the interview but this is not routine practice in all areas. Practical arrangements are important to ensure that the interview proceeds but they do not address the question of what each agency needs to get out of the interview and how best to achieve that outcome. Experience in Police Scotland has shown that it can be highly beneficial to have the support of a skilled interview advisor in complex and/or challenging cases. A skilled advisor can work with the investigating officer on development of the detailed interview plan, advising on the most appropriate way to secure the witness’s best evidence. In cases where the witness has communication difficulties this is likely to include advice on the involvement of an intermediary to facilitate communication. The Group considered that Police Scotland should explore options for the provision and development of skilled interview advisors to assist in challenging cases involving child witnesses. The development of interview advisor skills could be supported by the JII national training centre.

**Recommendation 12: Police Scotland should explore options for the provision and development of skilled interview advisors to assist in challenging cases with child witnesses.**

1. Part 2 of the guidance places a strong emphasis on the importance of keeping the number of interviews of a child in connection with an allegation of an offence to an absolute minimum and wherever possible to ‘just one single interview’ (c.f. paragraphs 37-40). This approach emerged in Scotland, in large part, from the lessons learned from the Orkney Inquiry. The research literature indicates that it is not in the best interests of the child and can lead to system-induced trauma to have to repeat the same information on multiple occasions to different practitioners.[[20]](#footnote-20) Current evidence on forensic interviewing techniques, however, indicates that “…multiple interview sessions may allow reluctant, young, or traumatized children the opportunity to more clearly and completely share information”.[[21]](#footnote-21) The evidence indicates that multiple interviews can be beneficial where they are non-duplicative, are intended to allow the child to share information that they have not previously shared with professionals and are conducted by trained and skilled forensic interviewers. Research on interviews with child victims of sexual abuse shows that the information recalled in initial interviews is often incomplete and follow-up interviews often allow additional details to be recalled.[[22]](#footnote-22) The Group considered that the strong emphasis in the national guidance on ‘gathering all the necessary information from just one single interview’ places undue pressure on interviewers working on complex cases with significant child protection concerns or with very young children and does not reflect current good practice guidance. For this reason, Part 2 of the guidance relating to the number of interviews should be revised.

**Recommendation 13: Part 2 of the national guidance on the number of interviews should be revised and updated to reflect current thinking that multiple non-duplicative interviews can be useful in certain circumstances.**

1. Part 3 of the guidance covers the requirements of conducting a JII. It contains information on a range of procedural issues that should be addressed in order to enable the child to understand the purpose of the interview. These include issues such as interviewers introducing themselves and anyone else in the interview room and explaining why each person is there; establishing the child’s preferred name or mode of address; explaining that the interview will be visually recorded; showing the child the recording equipment in the interview and control rooms and showing them how the equipment works. The guidance requires these issues to be covered at the start of the interview and, therefore, they form part of the recording. They are elements of good practice in the conduct of forensic interviews. They are not legal requirements of an interview. The guidance also requires the interviewer to record information such as who is present at the interview, the name and age of the child and the location of the interview before the child enters the interview room.
2. Feedback from practitioners to JII trainers indicates that these requirements result in repetition of basic factual information at the outset of the interview. This creates an awkward start to the interview as both the child and the interviewer are required to repeat information that has already been given. This is particularly the case in instances where the interviewer has already met the child, often at the point when the allegation was made, and has begun the necessary process of rapport building. The Group considered that Part 3 of the guidance should be reviewed and wherever possible the procedural issues should be removed from the introduction phase of the interview itself so that they do not need to be repeated solely for the purpose of capturing them on the visual recording. The procedural issues are nevertheless important in helping the child to understand who is interviewing them and why. They should, therefore, continue to be addressed at the commencement of the interview process.

**Recommendation 14: Part 3 of the guidance on JIIs should be reviewed and procedural issues that are not required by law to be visually recorded should be removed from the introduction phase of the JII and undertaken at the commencement of the interview process.**

1. Provisions in Section 7 of the Victims and Witnesses (Scotland) Act 2014 place any guidance on vulnerable witnesses issued by Scottish Ministers on a statutory footing. If the Scottish Government’s national guidance on joint investigative interviewing is revised and re-issued, those carrying out JIIs with a child will be required to ‘have due regard to’ the guidance. This does not guarantee that practice will become more consistent as the guidance will still be subject to variations in interpretation across Scotland’s 32 local authority social work departments. Police Scotland, which has become a single police force since the guidance was issued, is in the process of standardising its approach to the planning and conduct of JIIs through the development of Standard Operating Procedures. Once agreed and implemented it is probable that these will improve consistency of approach between local policing divisions. Creating a consistency of approach between local authority social work departments is more difficult. Police Scotland is consulting on its draft Standard Operating Procedures as these will impact on the practice of local social work departments, but the social work departments are not obliged to accept the proposed approach. Creating local standards may continue to fall to Child Protection Committees in conjunction with other local partners. Given that the aim of the Standard Operating Procedures is to improve consistency of approach to forensic interviews based on up to date knowledge of best practice and in the best interests of child victims and witnesses, the Group considered that it would be highly desirable for the 32 local authority social work departments and Child Protection Committees to work constructively with Police Scotland partners to improve consistency of approach to planning and conducting JIIs.
2. The *Evidence and Procedure Review – Next Steps* report concluded that “…there is a very strong case that the current guidelines for interviewing children, which were issued in 2011, should be revised explicitly to require the use of the NICHD protocol.”[[23]](#footnote-23) The Group considered this conclusion and came to the view that they were not convinced that it is absolutely necessary for the NICHD interview protocol to be adopted in Scotland. The significant body of evidence showing that the NICHD protocol is effective stems from the collaborative approach adopted by those who developed the protocol. That there is less evidence of the effectiveness of other similar models is a reflection of the relative lack of research into those models. The Step-Wise Interview model used in Scotland is very similar in structure to the NICHD Protocol. Models in use in other jurisdictions, for example the Achieving Best Evidence model in England and Wales, the Dialogical Communication Method employed at the Barnehus in Norway and the CornerHouse RATAC interview protocol used in a number of states in America[[24]](#footnote-24) are also similar to the NICHD Protocol. Annex B identifies the steps followed in each of these forensic interview protocols.
3. A recent review of best practice in child forensic interviewing considered a range of evidence supported forensic interview models in use across America.[[25]](#footnote-25) The review authors noted that many influences such as developmental level, culture, disability and trauma impact on children’s experience of abuse and their ability and willingness to communicate information. While the research evidence clearly supports a multi-disciplinary approach to interviewing, non-duplicative interviews and supervision, peer review and on-going evaluation of interviewer’s practice, it also shows that the interview model used needs to be adapted to the needs of each child based on their unique situational variables. The review concludes that “Lack of adherence to a particular model does not, in and of itself, deem an interview forensically unsound”. It is essential that the model used has at least:

* an initial rapport building phase to allow the child to begin to trust the interviewer and become oriented to the interview process;
* a substantive phase in which the interviewer is as open-ended and non-suggestive as possible in exploring the allegations; and,
* a closure phase which addresses the emotional needs of the child and allows them to ask questions.

Provided these principles are followed, “…no one method can always be the best choice for every forensic interview.”

1. Given that the Step-Wise model currently used in most areas of Scotland contains these core elements and is otherwise very similar to the NICHD protocol, the group questioned whether adoption of the NICHD protocol in Scotland would represent an efficient use of limited resources. Those providing JII training would require to be re-trained, all course materials and the National Curricula would require revision and those currently trained as joint investigative interviewers would have to be re-trained. Given the very urgent need to improve the quality of JIIs the Group considered that it would be a more effective use of resources to focus on developing the skills and expertise of a limited, demand-led pool of interviewers and to support them to consistently apply the Step-Wise model they have already been taught. This presupposes that the current methods of capturing the evidence of vulnerable witnesses in advance of trial will continue to apply for the foreseeable future. Should the approach to capturing evidence change, for example as a result of implementation of some form of child’s-house model, training will require further review.

**INCREASING THE USE OF JIIs IN PROCEEDINGS**

**Children’s Hearings**

1. As previously noted (see paragraph 16) JIIs are regularly used as hearsay evidence in Children’s Hearings Proof hearings, although data on their use are not collected. The use of JIIs in these proceedings is not without problems – barriers to their use are common across Children’s Hearings proceedings and criminal court proceedings (c.f. paragraph 18). However, SCRA takes the view that visually recorded evidence captured close to the time of the allegation is likely to be better evidence than that given long after the event in a stressful court environment and seeks to overcome the barriers to the use of JIIs wherever possible. While the quality of transcripts can pose problems, access to the recording of the JII by solicitors representing the person against whom the allegation is made can be more straightforward in Children’s Hearings cases as arrangements to view the DVD do not have to be made so far in advance. Deciphering recordings of poor audio or visual quality can be easier in Children’s Hearings court proceedings where only small numbers of people are physically present in the court room than it is in solemn criminal trials, where large numbers of people need to view and hear the recorded interview. Removing the barriers that hinder the common use of JIIs in criminal proceedings will of course have a positive impact on their use in Children’s Hearings proceedings. An improvement in the quality of JIIs can be expected to not only increase the frequency with which they are used in Children’s Hearings proceedings but also reduce the incidence of the person against whom the allegation is made requiring the child to be further questioned.
2. A recent judgment from the Court of Session[[26]](#footnote-26) may make it more complex for Children’s Reporters to rely on JIIs in Children’s Hearings Proof hearings on the issue of testing through the use of special measures the particular credibility and reliability of the evidence. In that case the Reporter had been allowed to rely at a Proof hearing on statements made by children during JIIs but the Sheriff had refused requests from the parents to call the children as witnesses for the purpose of putting to them that their allegations of abuse were false. That refusal was held on appeal to have denied the parents a fair hearing. The full implications of the decision are not yet clear.

**Criminal Proceedings**

1. Given that in the region of 5,000 JIIs are visually recorded across Scotland in a year and only very limited evidence appears to exist of these being used in criminal proceedings, the Group explored perceived barriers to their use. Informal feedback from prosecutors suggested that the prosecutor’s first consideration will always be whether it is possible to prove the allegation without needing to call the child as a witness, particularly in cases in which the child is aged less than 12 years. Where it is essential to call a child as a witness in order to prove an allegation, the greatest barriers to the use of JIIs in criminal proceedings were regarded as being poor quality of the interview; poor audio and/or visual quality of the recording; quality of transcripts and the complexity of arranging for further evidence to be taken by commissioner in order to enable the attendance of the child at court to be dispensed with altogether.

**Interview Sites**

1. The recommendations set out above will, if adopted, improve the quality of JIIs and increase the frequency with which they can be used as high quality evidence in chief. The ability to use a high quality interview in criminal proceedings, however, will still be compromised if the audio or visual quality of the recording is so poor that the evidence cannot be clearly presented to the jury. Visual recording of JIIs commenced in 2012 following the purchase and installation of equipment, funded by the Scottish Government, in sites agreed by the partner organisations as being suitable locations for conducting interviews. According to the Scottish Government guidance visual recording equipment is deployed in three types of sites:

* Category A sites - 21 fixed sites where all of the necessary equipment is permanently installed in dedicated JII suites. These suites consist of a dedicated interview room, monitoring room and waiting room, are available 24 hours a day, seven days a week and are predominantly – but not exclusively – based in police stations.
* Category B sites - semi-permanent sites consisting of an interview room fitted with cameras and microphones. No PCs are installed, requiring the interviewers to bring a laptop to the site on which to record the interview. These sites are predominantly in locations other than police stations, such as schools and community centres.
* Category C sites - rooms which have been pre-identified as being suitable for the setting up of mobile equipment. No visual recording equipment is permanently fitted in them, rather, fully mobile equipment - cameras, microphones and a laptop – are brought to the interview by the interviewers.

1. Data are not collected on the frequency of use of each type of site. Anecdotal feedback from practitioners indicates that around half of all JIIs are conducted in Category A dedicated sites. The majority of the remainder are conducted in Category C fully mobile sites, with agreement being reached on the most appropriate location for the interview through discussion with all parties. Category B semi-permanent sites are thought to be not well used (some, apparently, have never been used), due to the fact that their location is often unsatisfactory. Although the partner organisations identified various sites as suitable interview locations on the basis of the best evidence available at the time, experience of visually recording investigative interviews has since shown that some of the locations are in environments that are simply too noisy during the day for investigative interviews to be conducted in rooms that are not sound-proofed, and/or where the likelihood of interruption is high and/or where the environment can be distracting for the child.
2. The Group considered that partner organisations should work together to undertake a comprehensive review of all sites currently used for recording JIIs to assess their suitability for purpose, based on current knowledge of the standards required to facilitate the capture of interviews of a high audio visual quality. Feedback from practitioners indicates that some of the current sites are not fit for purpose. Therefore, the partner organisations should work together to identify and bring into use interview locations across the country that are suitable for use with up to date visual recording equipment.

**Recommendation 15: Key organisations should work together to review current interview sites and ensure that all sites are suitable for use with up to date visual recording equipment.**

**Visual Recording Equipment**

1. The group was advised that across Scotland approximately 80 pieces of visual recording equipment are available for use in JIIs, comprising cameras, microphones, PCs and laptops. Some of the equipment is fixed in interview locations and some is mobile. The equipment used for visually recording JIIs has been in use for almost five years and is now past end of life. Equipment failure is common. Complete failure often has a highly detrimental impact on the interview process, causing interviews to have to be re-scheduled or to be recorded verbatim in writing with no visual or audio recording. Partial failures commonly impact on the audio or visual quality of the recording, rendering it unusable in a court setting. The Group considered that funding should be made available by the Scottish Government immediately to enable replacement of visual recording equipment.

**Recommendation 16: Funding should be made available immediately by Scottish Government to enable replacement of visual recording equipment.**

1. When the original equipment was purchased and sites were identified for use as JII interview rooms, decisions were made on the basis of evidence from several visual recording pilots in Scotland and best practice in other jurisdictions. The extensive experience gained since then and significant technological advances mean that different decisions would undoubtedly be made now, both in the choice of equipment and the choice of interview locations. For example, the equipment purchased was tested with adults and the microphones are sensitive to adult voices. They are not sufficiently sensitive to the ‘smaller’ voices of young children and as such, the recordings often fail to adequately pick up the child’s voice. These microphones were the best available at the time but significant technological developments have occurred since then. The Group considered that in procuring new equipment the key partner organisations involved in the conduct and subsequent use of JIIs (i.e. Police Scotland, local authority social work departments, COPFS, SCTS, SCRA and the legal profession), in conjunction with other local partners with expertise in supporting children, should undertake a comprehensive review of requirements to ensure that the most appropriate equipment for visually recording investigative interviews, and using those visual recordings in subsequent proceedings is identified for procurement.

**Recommendation 17: Key organisations should work together to ensure that the visual recording equipment that is most appropriate for use in court proceedings is procured.**

1. The Group considered that Appendix F of the national guidance should be updated to reflect changes to the accommodation and technical specifications of the facilities used for conducting visually recorded JIIs.

**Recommendation 18: Appendix F of the national guidance should be updated to reflect changes to the accommodation and technical specifications.**

**Interview Environment**

1. At the time when funding was provided for the procurement of JII visual recording equipment sufficient resource was provided only for the purchase of equipment. No resources were provided to enable JII interview rooms to be modified in ways that make them appropriate for use with children and young people. Consequently, JIIs are commonly conducted in locations that can be intimidating and might carry negative associations for children (i.e. police stations) and environments that are not child-friendly. Research evidence shows that the nature of the interview environment can have a significant impact on children’s experiences and on their willingness and ability to participate fully in investigative interviews.[[27]](#footnote-27) Harsh, intimidating interview environments can contribute to trauma. The Group considered that to facilitate the removal of child witnesses from court resources should be made available by the Scottish Government to enable the locations in which JIIs are conducted to be made child-friendly. Wherever possible dedicated locations away from criminal-justice settings such as police stations should be provided. Local Child Protection Committees, in conjunction with other local partners, should consider the most appropriate application of these resources in their local area, with the primary consideration being what best meets the needs of vulnerable children and ensuring that local provision meets the standards identified in good practice guidance.[[28]](#footnote-28)

**Recommendation 19: Resources should be made available by the Scottish Government to partner organisations to enable JII facilities to be made child-friendly.**

**Transcripts of JIIs**

1. In complex enquiries, which often involve more than one victim, transcriptions of JIIs are often required by the Senior Investigating Officer to inform the Police investigative strategy. Where a JII forms part of the evidence when a Standard Prosecution Report is submitted by Police Scotland to COPFS, or when a referral is made to the Reporter, it is common practice for COPFS or SCRA to request a full transcript of the JII. In general terms responsibility for providing transcripts of witness interviews rests with Police Scotland. As such, responsibility for transcribing the recorded JII currently falls to the investigating police officer who conducted the interview. Given that police officers are not trained transcribers and most are not trained touch typists, the process of transcribing is extremely time-consuming and errors in transcripts are said to be common. The Group considered that requiring police officers to transcribe JIIs does not represent an appropriate or cost effective use of police resources.
2. The Group explored why transcripts are felt to be necessary and whether they are an essential requirement to enable JIIs to be used as evidence in chief. Both COPFS and legal profession representatives advised that it would not be possible to use a JII as evidence in chief if a transcript of the interview was not available. The transcript is an essential reference point in framing charges in complex cases, to ensure legal requirements for offences are met. Pre-trial discussion and negotiation between the parties requires frequent reference to specific comments within the interview and it was suggested that this would be very difficult without a written transcript to work from. Given that these discussions often relate to the agreement of evidence or to acceptable pleas, it was suggested that not having a transcript available would hinder the process of trial preparation and impact on the likelihood of a guilty plea. Transcripts are routinely used in Children’s Hearings court proceedings and are seen as being extremely useful. It is possible that the JII could be used in Children’s Hearings court proceedings without a transcript being available to the court, however this is unlikely to be practical and would introduce a significant risk of delay where a sheriff (ex proprio motu or on the motion of other parties) requires one to be made available. The Group noted that visually recorded interviews conducted under section 27 of the Youth Justice and Criminal Evidence Act 1999 in England and Wales, which are used as evidence in chief, are always transcribed. Likewise, interviews conducted in the Norwegian Barnehus are always transcribed where criminal proceedings follow.
3. It was noted that the accuracy of the transcript is extremely important to the trial preparation process. Inaccurate transcriptions can change the meaning of statements made by the witness in the interview. A perception has developed within the legal profession that transcripts of JIIs, as they are currently produced, can be unreliable. This impacts on trial preparation by both Crown and defence. The defence team often require to view the recording of the interview before the agreement of evidence can be properly considered. Transcripts of visually recorded interviews could be produced more efficiently and with greater accuracy if the task was undertaken by trained transcribers. Were this to happen, it would continue to be necessary for the investigating police officer who conducted the JII to check the accuracy of the transcript. This would provide a degree of quality assurance. The Group could see no reason why responsibility for providing transcripts of witness interviews should not rest with Police Scotland but considered that resources should be provided by Scottish Government to enable transcripts of JIIs to be produced by trained, skilled transcribers rather than by police officers.

**Recommendation 20: As transcripts of JIIs are required to facilitate their effective use in court proceedings resources should be provided to Police Scotland by Scottish Government to enable those transcripts to be produced by trained, skilled transcribers.**

**Defence Access to Visual Recordings**

1. The law in Scotland requires prosecution evidence to be disclosed to the defence in advance of trial. Where a JII is to be used by the prosecution as evidence in chief, a transcript of the JII is provided by COPFS to the accused’s defence team. Where the recording of the interview is disclosable COPFS will provide disclosure by access in the majority of cases (i.e. defence solicitors are permitted to view the recorded interview at a PF office by prior arrangement. There has, in recent months, been a relaxation of this policy in respect of non-sexual cases). This approach is in accordance with the national guidance (c.f. Part 6) which specifies that ‘the default position will **always** be for two copies’ of the interview to be made, a working copy which is retained by Police Scotland and a master copy, or evidential copy, which is provided to COPFS. The guidance emphasises the sensitivity of the material contained in the recordings, the need to guard against inappropriate viewing, and the importance of being able to reassure child witnesses and their parents/carers about the security of any information they provide.
2. Section 164 of the Criminal Justice and Licensing (Scotland) Act 2010 requires the Lord Advocate to issue a Code of Practice in relation to the investigation and reporting of crime and sudden deaths. The Code of Practice (at paragraph 26.8) provides that where information is assessed as being material, copies should not be provided to the defence where the information is of a personal and highly sensitive nature and disclosure of copies (electronically or otherwise) may be extremely distressing to any individual ***or*** where the information consists of: i) indecent images of children or other images of extreme pornography; ii) visual (including audio) recordings of child or other vulnerable witnesses being interviewed; and iii) DVDs of VIPER parades. The Code requires arrangements to be made for the defence to view the recording at the relevant PF office or Police office. The rationale for this element of the Code of Practice is that the prosecutor’s duties to child and vulnerable adult witnesses include a duty to prevent circulation of recordings of those witnesses giving accounts of what are often very distressing and upsetting matters, including sexual matters.
3. Disclosure by access requires the defence solicitor to contact the relevant prosecutor to make arrangements to view the recording of the JII at a PF office at an agreed time during working hours. As specific rooms are set aside within PF offices for visual recordings to be viewed, it is necessary for defence agents to book a time slot around four days in advance. The process of disclosure by access is regarded by defence practitioners as being cumbersome and unhelpful. Having to book viewing slots four days in advance is difficult due to diary pressures and multiple bookings are often necessary if counsel and expert witnesses are instructed in the case, which impacts on the conduct of other business. Significant amounts of time can be taken up in travelling to and from the relevant PF office. More fundamentally, the defence solicitor is required to take notes as the recording is viewed and rely on those notes in preparing the defence case. This is in contrast to the unfettered access to the recording available to the PF in preparing the prosecution case.
4. Anecdotal evidence from court minutes of cases where the prosecution seek to rely upon a JII as evidence in chief, suggests that defence access to the recording of the JII is commonly the subject of legal argument and submissions to the court. In an appeal heard in 2015[[29]](#footnote-29) the then Lord Justice Clerk, Lord Carloway, determined that once a list of productions has been intimated to the court, the productions specified in that list are brought under the control of the court and the defence are entitled to apply to the trial court for permission to remove any production for the purposes of copying or inspection. It will be for the court to decide whether it is in the interests of justice to grant the application. Anecdotal evidence indicates that since then, on the occasions where applications have been made to the court by defence teams to be given access to a copy of a JII, these have been granted by the court subject to strict conditions.
5. The majority of the Group considered that the current approach to providing defence lawyers with access to recordings of JIIs can be unhelpful and can hinder trial preparation in cases where the prosecution seeks to use JIIs as evidence in chief. Many defence lawyers, particularly those representing clients in High Court cases, are well used to handling information of the most sensitive nature and are subject to the same data protection laws as all other criminal justice system practitioners. In the other UK jurisdictions (England, Wales and Northern Ireland) lawyers for the defence are provided with copies of visually recorded interviews, subject to signing an undertaking guaranteeing to safeguard the security of the recording. (An example of the undertaking in use in Northern Ireland is included at Annex C.) Work is underway in Scotland to develop a Digital Evidence and Information Vault for the storage of and cross-organisational access to digital evidence. Should the vault become a reality in the future secure access to visually recorded evidence by practitioners involved in criminal cases will be easily facilitated. In the meantime, however, the majority of the Group considered that the Lord Advocate should be invited to review the current policy of disclosure by access with a view to providing defence agents with a copy of the recording in cases where a JII is to be used as evidence in chief. It was recognised that there are important security and protection concerns that would have to be addressed, and a view was expressed that while JIIs continue to be recorded on unencrypted DVDs (and the current recording equipment does not permit encryption of the disks) copies should not be made available beyond what is permitted by the current Code of Practice.
6. The Group felt that the current process is not ideal and there is a need to look closely at the most appropriate way of making visually recorded evidence available equitably and securely. For as long as JIIs continue to be recorded on removable media devices encryption must be enabled and the receiving defence agent should sign an undertaking to safeguard against copying and inappropriate viewing. Part 6 of the national guidance should be updated to reflect any such change in approach and should specify in detail the steps that require to be taken to safeguard the copy of the recorded interview, including the requirements for eventual disposal of the copy.

**Recommendation 21: The Lord Advocate should be invited to review the policy of disclosure of JIIs by access, with a view to allowing defence agents to be provided with an encrypted copy of the recorded interview, subject to signing an undertaking to safeguard security of the recording.**

**Recommendation 22: If this change is introduced, Part 6 of the national guidance on handling and copying of recordings should be updated. The guidance must specify how recordings should be safeguarded.**

**Encryption of Discs**

1. It is currently the case that the DVDs on to which visually recorded JIIs are copied are not encrypted. This is because encryption technology was not readily available within the resources allocated at the point when the recording equipment was procured. The Group considered that, given the requirements of data protection legislation, it is not acceptable that DVDs containing highly sensitive interviews are stored by any of the criminal justice organisations or passed between partner organisations on unencrypted discs. In renewing the visual recording equipment encryption requirements must be addressed. It is essential that the solution adopted allows recorded interviews to be viewed by Police Scotland, COPFS, SCRA, SCTS and defence agents. The Group considered that the partner organisations responsible for conducting and/or using JIIs should engage with the work currently underway within Scottish Government and within the partner organisations on digital justice. The longer-term aim should be for visually recorded JIIs to be stored within a Digital Evidence and Information Vault.

**Recommendation 23: Visually recorded JIIs must always be encrypted in a format suitable for use by all potential users.**

**Presumption in Favour of Relying on JIIs**

1. Although vulnerable witness legislation permits the use of prior statements as evidence in chief and there has, for many years, been a presumption that children under the age of 12 years will not be required to appear in court in person, there has been no presumption in place that JIIs will be used as evidence in chief wherever practicable. Practitioners have described the reasons (recounted elsewhere in this report) why a decision may be taken to not use a JII as evidence in chief in criminal proceedings. It must be noted that relying on a JII is only one step in seeking to remove the need for a child witness to give evidence to the court (whether in person or via, for example, a remote link). It is only if the child’s cross-examination and any further examination is also visually recorded in advance of trial that the aim will be achieved. The process for this has, to date, been unclear and is regarded as being onerous to manage. Work underway elsewhere in the Evidence and Procedure Review programme aims to clarify and streamline these processes. If the barriers to using JIIs as evidence in chief identified above are addressed and the taking of evidence by commissioner becomes less onerous, the policy aim of keeping children out of court can be achieved. However, it is difficult to change cultures and impact on behaviours that practitioners are used to relying on. The Group considered that once the quality of JIIs has improved it would be helpful to create a presumption in favour of seeking to use JIIs as evidence in chief wherever practicable. One way in which this might be done is for the Lord Advocate to issue guidance to prosecutors once JIIs are of a sufficiently high quality to be confidently relied on as evidence in chief. This could be echoed in a Lord Justice General Memorandum.
2. A renewed emphasis on relying on high quality JIIs as evidence in chief could be reinforced by amendment of section 271A (14) of the 1995 Act which specifies the standard special measures. At present the use of prior statements as evidence in chief is a non-standard special measure, requiring the court to be satisfied that their use is appropriate before granting an application made under section 271M of the 1995 Act. If the use of prior statements as evidence in chief was specified in section 271A (14) of the 1995 Act as a standard special measure, child (and vulnerable adult) witnesses would be entitled to use this special measure on application to the court, without the court having to satisfy itself as to appropriateness. In other words, a legislative presumption would be created that it is always appropriate to use prior statements as evidence in chief where the witness is a child (or a vulnerable adult).

**Recommendation 24: Section 271A (14) of the 1995 Act should be amended to specify the use of prior statements as evidence in chief as a standard special measure.**

**Additional Guidance**

1. Guidance on JIIs exists in the form of the national guidance, which focuses largely on how JIIs should be conducted and how the recordings should be stored and handled. Police Scotland is in the process of developing a Standard Operating Procedure on JIIs to provide guidance to police officers on internal processes. Guidance exists for prosecutors in considering the use of JIIs (or other recorded statements) as evidence in chief. This guidance addresses how matters such as inadmissible statements should be treated. The Group considered that the COPFS guidance on the use of evidence in chief by prior statement will need to be updated to reflect the adoption of the recommendations in this report. This should include guidance on the practicalities of ensuring the DVD of the JII (or the recording in any future format) is watched, in advance of trial and ideally on in-court equipment, to make sure there are no issues with the visual and/or audio quality of the recording.

**Recommendation 25: COPFS should update guidance for staff to support them to use JIIs as evidence in chief in criminal proceedings.**

1. As previously noted, the existence of a visually recorded JII – even one that is high quality in terms of interview technique and of good technical quality – is not on its own sufficient to remove child witnesses from court. At present a good quality JII used as evidence in chief must be supplemented by visually recorded cross-examination and further examination taken by commissioner if the child is to be spared attendance at court. The Group acknowledged that an associated work-stream is addressing procedures for taking of evidence by commissioner but was concerned about the length of time that generally passes between the gathering of evidence in chief at JII and the visual recording of cross and further examination at commission. The limitations of memory, particularly children’s memory in recalling the details of traumatic events are well documented.[[30]](#footnote-30) Likewise, it is unrealistic to expect a child to remember, many months later, the details of what they said during their JII.
2. Although section 271 of the 1995 Act is silent on both the start and end point for the taking of evidence by commissioner in any criminal proceedings, the terms of section 271A (5A) (a) of the Act and the practical application of the provisions combine to create the position that applications for the taking of evidence by commissioner are only ever considered and decided by the court at the preliminary hearing. As a result, commission hearings do not take place until after the preliminary hearing and often only shortly before trial diet and many, many months after the child witness’s JII. The Group considered that, in accordance with the views of the Work-Stream Group addressing the pre-recording of further evidence, section 271 of the 1995 Act should be amended in a way that enables vulnerable witness applications to be submitted and decided by the court earlier in the case preparation process and facilitates earlier commission hearings for the visual recording of cross and further examination.

**Recommendation 26: Section 271 of the 1995 Act should be amended in line with the views of the Pre-recorded Further Evidence Work-stream Group to facilitate the earlier taking of evidence by commissioner.**

1. The practical implications of any such change will require detailed consideration. The Group acknowledged that legislative amendment alone will not be sufficient to bring forward the taking of evidence by commissioner. Current practice, particularly in relation to the gathering and disclosure of evidence, will require to evolve for any such amendment to have the desired effect. Consideration will also need to be given to the point at which vulnerable witness applications are made and mechanisms available to the court to allow earlier consideration of applications.
2. The Group’s view that forensic interviewing of children is a specialist skill requiring specific training has been set out earlier in this report. The recommendations relating to joint investigative interviewers are intended to improve the quality of JIIs and impact on the experience of child witnesses by enabling them to give their best evidence soon after an allegation is made. In the immediate future child witnesses will continue to be cross-examined in cases going to trial, albeit work is underway to enable more cross-examination to take place in advance of trial. As such, prosecution and defence lawyers and judges will continue to interact with child witnesses. The Group considered that it should be recognised throughout the Scottish criminal justice system that securing best evidence from child witnesses requires specialist skills. Criminal justice professionals (including court practitioners) filling roles that require them to take evidence, or oversee the taking of evidence from child witnesses should be trained in appropriate techniques for interviewing children of different ages and development levels.

**Recommendation 27: The specialist skills required to secure the best evidence from child witnesses should be recognised and applied throughout the criminal justice system.**

**EXTENDING VISUAL RECORDING OF VULNERABLE WITNESS INTERVIEWS**

1. In his closing speech to the Getting it Right for Child Witnesses conference the Cabinet Secretary for Justice stated:

“My view is that children should be spared the trauma of giving evidence in a formal court environment. Indeed, I want to eliminate the need for children to attend court at all during the trial.”[[31]](#footnote-31)

Achieving a position where a child witness does not have to attend court during trial requires either a completely different approach to collecting their evidence to that currently used, or all of their evidence, that is, their evidence in chief, cross-examination by the defence and further examination by the prosecution, to be collected in advance of trial and presented in court by some means other than personal appearance. Whatever means are used to put the evidence before the court must comply with the accused's Article 6 right to a fair trial.[[32]](#footnote-32)

1. The most consistent, and potentially robust, way to do this is through the visual recording of evidence gathering interviews. While achieving this for every child witness under the age of 18 years in every criminal case regardless of the seriousness of the alleged offence is the longer term aspiration, significant investment is required to get there, necessitating a phased approach. Resources should be focused in the first instance on ensuring that the most vulnerable child witnesses and those who are witnesses in the most serious cases do not have to attend court during trial. This means focussing initially on eliminating the need for the attendance of children under the age of 18 years in cases which relate to the most serious offences (i.e. those normally prosecuted before a jury, whether in the High Court or the Sheriff Court).[[33]](#footnote-33) Subject to what we say later (c.f. paragraph 79) about cases of domestic abuse, the focus can then shift to summary cases, where the alleged crimes are less serious, but where the volume of cases in which children are currently cited as witnesses is much higher.
2. As noted in the first part of this report, investigative interviews with the most vulnerable children who are thought to be victims of the most serious crimes (i.e. those who are subject to JIIs) are already visually recorded. Investigative interviews with children who are victims of serious crime but for whom no child protection concerns exist can also be visually recorded but for the most part are not. There is no consistent Scotland-wide policy on which child witnesses will and will not have their investigative interviews recorded and approaches vary in different parts of the country. For example, varying policy approaches mean that in some areas of Scotland children who are witnesses to domestic abuse within their own home will be subject to a visually recorded JII, while in other areas such witnesses will give a notebook statement to an investigating police officer.
3. A mechanism already exists to allow prior statements, including visually recorded investigative interviews (whether JIIs or police-only interviews), to be used as evidence in chief but this mechanism is not commonly used for a variety of reasons. The main barriers to the use as evidence in chief of interviews that are currently visually recorded are the quality of the interviews (in terms of the questions that are asked and the way in which they are asked by the interviewer); the technical quality of the interview (in terms of the visual and audio recording); and, the perceived difficulty of arranging for cross-examination and further examination also to be recorded in advance of trial through the use of procedures for the taking of evidence by commissioner. Evidence suggests that despite the existing provisions that allow the use of pre-recorded evidence, in the region of 100 children gave evidence in High Court trials in the year from June 2015 to May 2016.[[34]](#footnote-34)
4. The recommendations in the first part of this report apply to JIIs and are intended to improve consistency of approach to visual recording of the most vulnerable children in the most serious cases and improve the quality of the interviews. The Group considered that in the first instance this is where effort and resources should be focused. If the recommendations are put into practice they should lead to an increase in visually recorded interviews with the most vulnerable child victims of the most serious crimes and an increase in the use of those interviews as evidence in chief. Evidence suggests that in the 12 months from August 2015 to July 2016, 17 children gave evidence in High Court cases by way of commissioner and 13 of these children had given prior statements in the form of visually recorded JIIs.[[35]](#footnote-35) The effect of the recommendations should, in due course, be apparent in the numbers of children giving evidence in High Court cases by way of prior statement and commissioner.
5. The *Evidence* *and* *Procedure* Review *Report* was clear in its recommendations that ‘a new structured scheme’ for witnesses should apply to both child and vulnerable adult witnesses. Likewise, the *Evidence* *and* *Procedure* *Review* – *Next* *Steps* report was also clear that its principal recommendation – that there should be a systematic approach to capturing and presenting at trial the evidence in chief of witnesses in pre-recorded form – should apply to children and vulnerable adult witnesses. To fulfil the second part of its remit (c.f. paragraph 10) the Group considered which witnesses other than the most vulnerable children who are already subject to visually recorded JIIs, should have their investigative interviews or witness statements visually recorded.
6. It is important to note that while the recommendations in the first part of this report might lead to an increase in the frequency of JIIs by improving the consistency of approach across Scotland, the Group did not consider that JIIs should be extended to other vulnerable witnesses. It would be an inappropriate use of social work resources to extend JIIs to vulnerable witnesses for whom child protection concerns do not exist, even where those witnesses are deemed vulnerable due to their age. This does not mean that interviews with other child witnesses or vulnerable adult witnesses cannot or should not be visually recorded. Any targeted increase in visual recording of witness interviews and/or statements will require investigating officers – who will almost always be police officers – to undertake that visual recording. As the primary purpose of visual recording will be to capture the witness's best evidence in a way that can be used as evidence in chief, thus removing the need for the witness to attend court (if followed up with the taking of evidence by commissioner), this will have implications for the way in which investigating officers conduct witness interviews. Police Scotland will require to give careful consideration to the training provided to investigating officers who will become responsible for securing the witness’s best evidence in many more cases than at present.
7. Estimates provided by Police Scotland indicate that in 2015-16 around 17,000 complainers under the age of 18 years were interviewed by police officers. In addition, statements were taken from around 34,000 witnesses under the age of 18 years. Around 5,000 of these child complainers/witnesses were subject to a JII. Many of the cases in which witnesses under the age of 18 years are interviewed will never make it to court. Data provided by COPFS indicate that in 2015-16 approximately 8,500 child witnesses aged less than 18 years were cited to give evidence in criminal proceedings. Around half of these witnesses were aged less than 16 years while approximately half were aged 16 or 17 years. Many of these witnesses will ultimately not be required to give evidence for a wide range of reasons, including agreement of evidence, guilty pleas and desertion of proceedings. Anecdotal evidence suggests that up to half of all witness citations are countermanded.
8. Visually recording around 50,000 investigative interviews and/or witness statements with child witnesses each year in order to ensure that no child under the age of 18 years ever has to appear in court as a witness is a significant undertaking. Taken together the data suggest that to visually record every interview or statement of every child witness would not be an efficient use of finite resources since most will never need to be used in proceedings. However, the investigating officer cannot know, at the time of interview or taking of a statement, whether proceedings will follow or not or whether any particular witness’s evidence will be essential for proving a case. This makes it difficult to filter out, at the point of interview or the taking of a statement, cases that are unlikely to proceed.
9. The Group considered that visual recording should be rolled out beyond the most vulnerable children in the most serious cases who are already subject to visually recorded JIIs, to child and adult victims of the most harmful offences. The Group agreed that the ultimate aim should be to keep every child and vulnerable adult witness out of court. At present the visual recording of evidence in chief requires to be followed up by the taking of evidence by commissioner if an essential witness whose evidence cannot be agreed in advance is to be kept out of court. The Group were aware that work underway in a related Evidence and Procedure Review work-stream could result in changes to this approach and, therefore, has stepped back from recommending the large scale and long-term investment that would be required in equipment, training and facilities to enable all child and vulnerable adult witnesses to have their full evidence visually recorded under existing approaches.
10. While the current mechanisms for using prior statements as evidence in chief and separate cross examination by commissioner continue to be in place, however, the Group considered that visual recording should be rolled out in a phased way, commencing with the visual recording of witnesses against whom the offences specified in section 271(1)(c) of the 1995 Act are alleged to have been committed (i.e. child and adult victims of sexual offences, trafficking, domestic abuse and stalking).[[36]](#footnote-36)

**Recommendation 28: Visual recording should be extended to investigative interviews with and witness statements of child and adult victims of offences specified in section 271(1)(c) of the 1995 Act.**

1. It is highly likely, but presently not absolutely certain, that most child victims of these offences (with the exception of domestic abuse incidents) will currently be subject to a visually recorded JII. A more consistent approach to JIIs and an improvement in their quality should lead to an increase in their use in proceedings. The impact of a roll-out of visual recording to these types of offences is difficult to assess as data are not available on the number of victims involved in cases that are prosecuted. However, data show that in 2014-15 1,632 people were proceeded against for sexual crimes;[[37]](#footnote-37) 403 people were proceeded against for trafficking or stalking offences;[[38]](#footnote-38) and 15,452 offences had a charge proved with a domestic aggravator.[[39]](#footnote-39) These figures are, of course, only a proportion of all such offences that are investigated by Police Scotland. Data show that in 2014-15 9,671 sexual offences and 1,235 stalking offences were recorded by Police Scotland, along with approximately 34,000 domestic abuse incidents which resulted in a crime report.[[40]](#footnote-40) This gives some indication of the scale of visual recording that will be required to ensure that the victims of such offences can be kept out of court.
2. The Group regarded it as being important that any roll-out of visual recording to victims of sexual offences should encompass cases of historical sexual abuse. Such cases have always been reported but there is a perception that reporting is increasing and the investigative process can be complex and lengthy. The Group was clear that the passage of time does not necessarily diminish the trauma experienced by alleged victims in having to give evidence and be cross-examined at trial.

**Recommendation 29: The visual recording of investigative interviews and/or statements of alleged victims of sexual offences must extend to cases of historical sexual abuse.**

1. The Group recognised and accepted that rolling out visual recording to alleged victims of particular types of offences means that witnesses in cases that are prosecuted in the summary courts will be captured in the provisions. This is likely to apply particularly (but not exclusively) to domestic abuse cases and stalking offences. The Group considered this to be acceptable, particularly for child witnesses, for whom being a witness in such cases is likely to be traumatic regardless of the level of jurisdiction at which the case is prosecuted. The Group recognised that rolling out visual recording for use as evidence in chief to cases that are prosecuted in the summary courts will, under current approaches, have implications not only for Police Scotland but also for judicial resources, SCTS, COPFS and the defence profession. The Group was not aware of taking of evidence by commissioner procedures being used in summary proceedings. As such, guidance and training will undoubtedly be required and the experience of those who have conducted and managed commissioner procedures in the solemn courts can be built on. The Group considered that detailed discussions will be required between the key criminal justice organisations, the defence profession and third sector support organisations to agree practical approaches to using visually recorded evidence to keep child and vulnerable adult witnesses out of the summary courts.

**Recommendation 30: Detailed planning work on the introduction of visually recorded evidence in the summary courts should be undertaken by a multi-agency group on which the defence profession and third sector support organisations should be represented.**

1. The Group was concerned that the visual recording of investigative interviews and/or statements should not be regarded as applying only to vulnerable witnesses who are alleged victims of the offences specified in section 271(1)(c) of the 1995 Act. The Group fully accepted that a witness can be vulnerable as a result of some personal characteristic that exists regardless of the nature of the offence they are alleged to have experienced. The Group considered that investigative interviews and witness statements should be visually recorded in any instance where the investigating officer determines that visual recording should be undertaken to facilitate the option for a vulnerable witness not to be cited to attend court. The criteria to be applied by investigating officers in deciding whether to visually record a witness’s interview or statement should be the victim’s vulnerability, age, and the nature of the offence. This would allow the evidence in chief of alleged victims of any offence to be visually recorded where the investigating officer determines that the vulnerability or age of the victim is likely to mean that they will not be able to give their best evidence at trial in court. The Group considered that a catch-all provision of this nature would be particularly useful in facilitating visual recording of investigative interviews with elderly witnesses suffering from dementia. Allowing the investigating officer discretion to determine, on the basis of their professional judgment, that individual witnesses should have their interview or statement visually recorded should increase opportunities for vulnerable witnesses to give their best evidence in advance of trial.

**Recommendation 31: Investigative interviews and witness statements should be visually recorded in any instance where the investigating officer determines that visual recording should be undertaken to allow the option for a vulnerable witness not to be cited to attend court.**

1. A decision made by an investigating officer to visually record a witness’s investigative interview or statement would not mean that witness’s evidence would *have to be* presented to the court in visually recorded form in the event of any proceedings. The investigating officer’s decision to visually record would be primarily an operational decision on the most appropriate way to secure the vulnerable witness’s best evidence. The Group envisaged that it would continue to be necessary for the Crown to consider whether a vulnerable witness application requires to be submitted to the court in respect of any witness over the age of 18 years whose investigative interview or statement has been visually recorded.
2. Allowing investigating officers discretion to determine whether individual witnesses should have their investigative interviews or witness statements visually recorded will inevitably give rise to the risk of inconsistent practice in different areas of the country. The Group considered that Police Scotland will require to give careful consideration to training requirements for investigating officers and the allocation of resources. Guidance and common standards will require to be developed to support investigating officers in deciding which vulnerabilities might merit the witness's interview being visually recorded.

**Recommendation 32: Guidance and common standards should be developed to support investigating officers in deciding which vulnerable witnesses other than those who are alleged victims of offences in section 271(1)(c) of the 1995 Act should be visually recorded.**

1. Any roll-out of visual recording of investigative interviews and witness statements to witnesses other than children who are subject to JIIs will have significant resource implications in terms of the volume of recording equipment required. The Group also considered that the environments in which the majority of investigative interviews with vulnerable witnesses are carried out at present are not sufficiently witness friendly or conducive to securing the witness’s best evidence (c.f. paragraphs 49-51 and 55). Detailed multi-agency consideration needs to be given to the type of environment in which it would be most appropriate to interview vulnerable witnesses. Interview environments other than police stations already exist in some areas and work should be undertaken to review the full range of possible options. The Group considered that the investment required to provide sufficient recording equipment and to create a suitable supply of witness-friendly interview environments is likely to be substantial. As such, consideration should be given to allocating resources to the development of vulnerable witness interview centres which can meet the needs of a range of child and adult vulnerable witnesses.

**Recommendation 33: Consideration should be given to investing resources in the development of vulnerable witness interview centres.**

1. The child’s house model developed in Scandinavia and being adopted in a number of European countries lends itself to being adapted to meet the needs of all vulnerable witnesses. The model supports the development of highly skilled forensic interviewers who are able to capture the child’s experiences in a way that can be used in court proceedings and in an environment in which other skilled professionals are available to support the child’s health and welfare needs. In some jurisdictions, such as Norway, children’s houses have evolved to provide a service to vulnerable adult victims of certain types of offences. There is no reason why consideration should not be given in Scotland to designing centres of excellence to support the needs of all vulnerable witnesses. The adoption of such a policy, which would represent a fundamental change to the way in which vulnerable witnesses are currently dealt with, would require to be funded by the Scottish Government.

**SUMMARY OF RECOMMENDATIONS[[41]](#footnote-41)**

1. **Police Scotland, COPFS, SCRA and SCTS should commence the routine collection of data on the frequency with which investigative interviews (whether JIIs or single agency interviews) are visually recorded and used in proceedings.** (Paragraph 20)
2. **The training programme for joint investigative interviewers should be developed and extended to enable more in-depth training of interviewers, recognising the degree of specialist skill required to secure best evidence from child witnesses.** (Paragraph 26)
3. **The National Curricula on Joint Investigative Interviewing of Child Witnesses Training in Scotland should be reviewed and amended to reflect the development and extension required for joint investigative interviewing to become a specialist skill.** (Paragraph 26)
4. **Development of the JII training programme should incorporate training on interview models that have been shown to be effective with children under the age of 6 years and children with learning disabilities.** (Paragraph 27)
5. **The volume of practitioners who are trained to undertake JIIs should be demand led, ensuring that trained interviewers are able to build up expertise through regular practice.** (Paragraph 28)
6. **National governance should be applied to the discipline of specialist forensic interviewing. Consultation should be undertaken to determine the most appropriate body or structure to provide this national governance.** (Paragraph32)
7. **A JII national training centre should be established with joint funding from Police Scotland and local authorities to enable the adoption of a nationally consistent approach to training.** (Paragraph 35)
8. **On-going assessment and evaluation of interviewer’s practice should be built in to the National Curricula as a training requirement.** (Paragraph 36)
9. **The Scottish Government’s 2011 Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland should be revised and updated.** (Paragraph 38)
10. **As the national guidance cuts across the policy interests of victims and witnesses, child protection, children’s hearings and criminal justice each of these areas should feed-in to the revision of the national guidance.** (Paragraph 38)
11. **The national guidance should be expanded to address how initial JII training should be reinforced and refreshed. In particular, the guidance should include a requirement for annual refresher training for both interviewers and managers.** (Paragraph 40)
12. **Police Scotland should explore options for the provision and development of skilled interview advisors to assist in challenging cases with child witnesses.** (Paragraph 41)
13. **Part 2 of the national guidance on the number of interviews should be revised and updated to reflect current thinking that multiple non-duplicative interviews can be useful in certain circumstances.** (Paragraph 42)
14. **Part 3 of the guidance on JIIs should be reviewed and procedural issues that are not required by law to be visually recorded should be removed from the introduction phase of the JII and undertaken at the commencement of the interview process.** (Paragraph 44)
15. **Key organisations should work together to review current interview sites and ensure that all sites are suitable for use with up to date visual recording equipment.** (Paragraph 54)
16. **Funding should be made available immediately by Scottish Government to enable replacement of visual recording equipment.** (Paragraph 55)
17. **Key organisations should work together to ensure that the visual recording equipment that is most appropriate for use in court proceedings is procured.** (Paragraph 56)
18. **Appendix F of the national guidance should be updated to reflect changes to the accommodation and technical specifications.** (Paragraph 57)
19. **Resources should be made available by the Scottish Government to partner organisations to enable JII facilities to be made child-friendly.** (Paragraph 58)
20. **As transcripts of JIIs are required to facilitate their effective use in court proceedings resources should be provided to Police Scotland by Scottish Government to enable those transcripts to be produced by trained, skilled transcribers.** (Paragraph 61)
21. **The policy of disclosure of JIIs by access should be reviewed with a view to allowing defence agents to be provided with an encrypted copy of the recorded interview, subject to signing an undertaking to safeguard security of the recording.**  (Paragraph 67)
22. **If this change is introduced, Part 6 of the national guidance on handling and copying of recordings should be updated to reflect this.** (Paragraph 67)
23. **Visually recorded JIIs must always be encrypted in a format suitable for use by all potential users.** (Paragraph68)
24. **Section 271A (14) of the 1995 Act should be amended to specify the use of prior statements as evidence in chief as a standard special measure.** (Paragraph 70)
25. **COPFS should update guidance for staff to support them to use JIIs as evidence in chief in criminal proceedings.** (Paragraph 71)
26. **Section 271 of the 1995 Act should be amended in line with the views of the Pre-recorded Further Evidence Work-stream Group to facilitate the earlier taking of evidence by commissioner.** (Paragraph 73)
27. **The specialist skills required to secure the best evidence from child witnesses should be recognised and applied throughout the criminal justice system.** (Paragraph 75)
28. **Visual recording should be extended to investigative interviews with and witness statements of child and adult victims of offences specified in section 271(1)(c) of the 1995 Act.** (Paragraph 86)
29. **The visual recording of investigative interviews and/or statements of alleged victims of sexual offences must apply in cases of historical sexual abuse.** (Paragraph 88)
30. **Detailed planning work on the introduction of visually recorded evidence in the summary courts should be undertaken by a multi-agency group on which the defence profession and third sector support organisations should be represented.** (Paragraph 89)
31. **Investigative interviews and witness statements should be visually recorded in any instance where the investigating officer determines that visual recording should be undertaken to allow the option for a vulnerable witness not to be cited to attend court.** (Paragraph 90)
32. **Guidance and common standards should be developed to support investigating officers in deciding which vulnerable witnesses other than those who are alleged victims of offences in section 271(1)(c) of the 1995 Act should be visually recorded.** (Paragraph 92)
33. **Consideration should be given to investing resources in the development of vulnerable witness interview centres.** (Paragraph 93)

**ANNEX A**

**GROUP MEMBERS**

Diane Machin, Scottish Courts and Tribunals Service, Work-stream lead

Rebecca Lawson, Scottish Courts and Tribunals Service, Executive support

Tim Barraclough, Scottish Courts and Tribunals Service

Shona Barrie, Crown Office and Procurator Fiscal Service

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Susanne Goetzold, Edinburgh Napier University

Andy Jeffries, Social Work Scotland

Detective Inspector Graeme Lannigan, Police Scotland

Pauline McIntyre, Children and Young People’s Commissioner for Scotland

Anne Mitchell, Joint Investigative Interviews Practice and Development group

Anna O’Reilly, Children 1st

Grazia Robertson, Law Society of Scotland

James Stephenson, Law Society of Scotland

Sheriff Charles Stoddart

Kingsley Thomas, Scottish Legal Aid Board

**Scottish Government observers in attendance at meetings**

Judith Ainsley, Head of Child Protection

Orla Davey, Criminal Justice Reform Unit

**ANNEX B**

**STRUCTURE OF CHILD FORENSIC INTERVIEW PROTOCOLS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Step-Wise Model** | **NICHD Protocol** | **Achieving Best Evidence (England and Wales)** | **Dialogical Communication Method (Barnehus)** | **CornerHouse RATAC®** |
| Introduction | Introduction |  | Preparation |  |
| Rapport | Rapport Building | Establishing Rapport | Building trust | Rapport |
| Practice Interview | Training in Episodic memory |  | Formalities | Anatomy Identification |
|  |  |  | Case/theme introduction | Touch Enquiry |
| Free Narrative | Substantive interview | Free Narrative Account | Narrative interview | Abuse Scenario |
|  | Break |  |  |  |
| Questioning | Eliciting further information (questioning) | Questioning | Probing |  |
| Closure | Closure | Closing the Interview | Closure | Closure |

**ANNEX C**

**FORM OF UNDERTAKING – NORTHERN IRELAND**

**UNDERTAKING GIVEN TO THE PUBLIC PROSECUTION SERVICE**

**NAME OF ACCUSED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PPS REF: \_\_\_\_\_\_\_\_\_\_\_**

**Form of Undertaking recommended by the Law Society\* of Northern Ireland and the Bar of Northern Ireland for use by members when receiving recorded evidence of child/adult witnesses prepared to be admitted in evidence at criminal trials in accordance with Article 15 of the Criminal Evidence (Northern Ireland) Order 1999.**

I/we acknowledge receipt of a copy of an evidential video recording marked:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I/we undertake that whilst the recording is in my/our possession, I/we shall:-

1. not permit any other person to make a copy of the recording;
2. not release the recording to[[42]](#footnote-42) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. not make or permit any disclosure of the recording or its contents to any person except when in my/our opinion it is necessary in the course of preparing the prosecution, defence, or appeal against conviction and/or sentence;
4. ensure the recording is always kept in a locked secure container when not in use;
5. return the recording to you when I am/we are no longer instructed in this matter.

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

For and on behalf of[[43]](#footnote-43):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position in firm[[44]](#footnote-44): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\* Complaints in relation to breach of this undertaking may be referred to the Law Society to consider disciplinary action.

1. Children 1st – It’s time to transform our justice system. At: <https://www.youtube.com/watch?v=nCH6PmRxh3c> [↑](#footnote-ref-1)
2. Scottish Court Service (2015) – Evidence and Procedure Review Report. At: <http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report---publication-version-pdf.pdf?sfvrsn=2> [↑](#footnote-ref-2)
3. Scottish Courts and Tribunals Service (2016) – Evidence and Procedure Review – Next Steps. At: <http://www.scotcourts.gov.uk/docs/default-source/SCS-Communications/evidence-and-procedure-report---next-steps---february-2016.pdf?sfvrsn=2> [↑](#footnote-ref-3)
4. When the guidance was developed in 2011 the multi-agency group responsible for its development took a conscious decision to not state that the NICHD model should be followed since it was felt to be too rigidly structured for the Scottish context. [↑](#footnote-ref-4)
5. This applies where the grounds of referral do not relate to an offence allegedly committed by the child. In such cases the rules of criminal evidence apply. [↑](#footnote-ref-5)
6. See Scottish Children’s Reporter Administration, Going to Court at: <http://www.scra.gov.uk/young_people/going-court-film-young-people/> [↑](#footnote-ref-6)
7. For example, Coulborn Faller, K (2014) - Forty Years of Forensic Interviewing of Children Suspected of Sexual Abuse, 1974–2014: Historical Benchmarks. Social Sciences 2015 4(1), 34-65. At: <http://www.mdpi.com/2076-0760/4/1/34> [↑](#footnote-ref-7)
8. A child forensic interview can be defined as: “… a developmentally sensitive and legally sound method of gathering factual information regarding allegations of abuse or exposure to violence….” See Newlin, C.; Steele, L. C.; Chamberlin, A.; Kenniston, J.; Russell, A.; Stewart, H. and Vaughn-Eden, V. (2015) – Child Forensic Interviewing: Best Practices. Office of Juvenile Justice and Delinquency Prevention. Juvenile Justice Bulletin. At: <https://www.ojjdp.gov/pubs/248749.pdf> [↑](#footnote-ref-8)
9. Yuille, J. C. (Ed.) (2002) - The Step-Wise Interview: Guidelines for Interviewing Children. At: <http://redengine.lawsociety.sk.ca/inmagicgenie/documentfolder/ac2062.pdf> [↑](#footnote-ref-9)
10. NICHD Protocol and Translated Versions. Available online: <http://nichdprotocol.com/the-nichd-protocol/> [↑](#footnote-ref-10)
11. National Children’s Advocacy Center (2014) – Extended Forensic Interview Protocol. At: filecache.drivetheweb.com/.../Tuesday,+Faller+**NCAC**+**Extended**+**Forensi**... [↑](#footnote-ref-11)
12. Barnehus – the Police experience – Superintendent H Blomfeldt, Oslo Police at: Getting it Right for Child Witnesses Conference, Police Scotland Training College, 12th October 2016. [↑](#footnote-ref-12)
13. A minority view was expressed in the Group that while the quality of the training should be improved, it is not necessary to extend the formal training as a five day, classroom based training course is sufficient. It was felt that any extension beyond five days could impact negatively on wider service provision as staff would be required to be away from their primary role for longer. [↑](#footnote-ref-13)
14. Scottish Government (2013) – National Curricula. Joint Investigative Interviewing of Child Witnesses Training in Scotland. [↑](#footnote-ref-14)
15. See, for example, Marchant, R. (2013) - How Young is Too Young? The Evidence of Children Under Five in the English Criminal Justice System. Child Abuse Review 22(6). <https://www.researchgate.net/publication/259536085_How_Young_Is_Too_Young_The_Evidence_of_Children_Under_Five_in_the_English_Criminal_Justice_System> [↑](#footnote-ref-15)
16. Newlin et al. (2015) - *Op. cit.* [↑](#footnote-ref-16)
17. La Rooy, D.; Lamb, M.E. and Memon, A. (2010) - Forensic Interviews with Children in Scotland: A Survey of Interview Practices Among Police. Journal of Police and Criminal Psychology, Vol. 26(1) pp.26-34. [↑](#footnote-ref-17)
18. Scottish Government (2011) – Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland. At: <http://www.gov.scot/Resource/Doc/365398/0124263.pdf> [↑](#footnote-ref-18)
19. La Rooy, D.; Nicol, A.; Halley, J. and Lamb, M. E. (2012) – Joint Investigative Interviews With Children in Scotland. Scots Law Times, Issue 18. [↑](#footnote-ref-19)
20. Poole, D. A. and Lamb, M. E (1998) – Investigative Interviews of Children: A Guide for Helping Professionals. American Psychological Association. [↑](#footnote-ref-20)
21. Newlin, C. et al. *Op. cit.* [↑](#footnote-ref-21)
22. La Rooy, D.; Katz, C.; Malloy, L. C. and Lamb, M. E. (2010) – Do we Need to Re-think Guidance on Repeated Interviews? Psychology, Public Policy and Law 2010, Vol. 16 (4), pp.373-392. At: <http://larooy.net/LKML2010.pdf> [↑](#footnote-ref-22)
23. SCTS (2016), paragraph 75 (4). *Op.* *cit.* [↑](#footnote-ref-23)
24. Anderson, J.; Ellefson, J.; Lashley, J.; Miller, A. L.; Olinger, S.; Russell, A.; Stauffer, J. and Weigman, J. (2010) – The CornerHouse Forensic Interview Protocol: RATAC®. In T. M. Cooley Journal of Practical and Clinical Law Volume 12. At: <https://www.cornerhousemn.org/images/CornerHouse_RATAC_Protocol.pdf> [↑](#footnote-ref-24)
25. Newlin, C. et al. *Op. cit.* [↑](#footnote-ref-25)
26. (1) JS and (2) CS against The Children’s Reporter, [2016] CSIH 74. At: <http://www.scotcourts.gov.uk/search-judgments/judgment?id=717e1fa7-8980-69d2-b500-ff0000d74aa7> [↑](#footnote-ref-26)
27. Jones, L. M.; Cross, T. E.; Walsh, W. A. and Simone, M. (2007) – Do children’s advocacy centers improve families’ experiences of child sexual abuse investigations? Child Abuse and Neglect, 31, 1069-1085. [↑](#footnote-ref-27)
28. See, for example, National Children’s Alliance (2017) – Standards for Accredited Members. At: <http://www.nationalchildrensalliance.org/sites/default/files/downloads/NCA-Standards-for-Accredited-Members-2017.pdf> [↑](#footnote-ref-28)
29. HMA v (First) AM and (Second) JM [2016] HCJAC 34. At: <http://www.scotcourts.gov.uk/search-judgments/judgment?id=55bf11a7-8980-69d2-b500-ff0000d74aa7> [↑](#footnote-ref-29)
30. See, for example, Lamb, M. E.; Sternberg, K. J., and Esplin, P. W. (2000) - Effect of age and Length of Delay on the Amount of Information Provided by Alleged Abuse Victims in Investigative Interviews. Child Development, 71(6), pp.1586-1596. At: <http://onlinelibrary.wiley.com/doi/10.1111/1467-8624.00250/full> [↑](#footnote-ref-30)
31. Cabinet Secretary for Justice, Keynote speech at Getting it Right for Child Witnesses, Justice for Children Conference 12th October 2016. [↑](#footnote-ref-31)
32. European Convention on Human Rights. At: www.**echr**.coe.int/Documents/Convention\_ENG.pdf [↑](#footnote-ref-32)
33. Where Children’s Hearings proof hearings rather than criminal proceedings follow in any such cases the visually recorded evidence should still be used to keep the child out of court. [↑](#footnote-ref-33)
34. Indicative data collected from High Court case papers by SCTS staff to inform the deliberations of the Work-stream Group. [↑](#footnote-ref-34)
35. Cf footnote 32. [↑](#footnote-ref-35)
36. The offences specified in section 271(1)(c) of the 1995 Act are:

    (i) an offence listed in any of paragraphs 36 to 59ZL of Schedule 3 to the Sexual Offences Act 2003,

    (ii) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.),

    (iii) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation),

    (iv) an offence the commission of which involves domestic abuse, or

    (v) an offence of stalking,

    See: Section 10 of the Victims and Witnesses (Scotland) Act 2014. At: <http://www.legislation.gov.uk/asp/2014/1/contents> [↑](#footnote-ref-36)
37. Scottish Government (2016) - Criminal Proceedings in Scotland 2014-15. At: <http://www.gov.scot/Publications/2016/02/6001> [↑](#footnote-ref-37)
38. Data provided by Scottish Government Justice Analytical Services from the Criminal Proceedings Database. [↑](#footnote-ref-38)
39. Scottish Government (2016) - *Op. cit.* [↑](#footnote-ref-39)
40. Police Scotland (2016) - Management Information. Force Report: Quarter 4 2015/16. At: <http://www.scotland.police.uk/assets/pdf/138327/232757/management-information-report-quarter4-2015-16> [↑](#footnote-ref-40)
41. The JIIs Work-stream Group was aware that adoption of its recommendations will require a number of formal Impact Assessments to be undertaken. The Group was not in a position to undertake these during the course of developing its recommendations. [↑](#footnote-ref-41)
42. Name of accused. [↑](#footnote-ref-42)
43. The signature must be that of a principal in the firm of solicitors. [↑](#footnote-ref-43)
44. If applicable. [↑](#footnote-ref-44)