

Report to the Vulnerable Witnesses Act Implementation Group – Three Month Review Results

December 2023

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Background

1. During passage of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 (the Act) it was deemed to be essential that roll-out of pre-recorded evidence should be undertaken in a managed and effective way to ensure that the intended benefits of the Act are realised, and the justice sector is not overwhelmed. To support this, a draft implementation plan (the Plan) was published. The Plan identified a six stage approach to roll out of the Act which would gradually extend the presumption in favour of pre-recorded evidence to different groups of vulnerable witnesses, starting with children, across two different court jurisdictions (High Court and Sheriff Court). Evidence can be pre-recorded for the purposes of the presumption by the production of a prior statement (normally in the form of a Joint Investigative Interview when children are concerned), the process of evidence by commission (EBC) or a combination of the two.
2. To help ensure the effective roll out of the presumption to each cohort of witness type, the Plan proposed a period of evaluation between each stage to ensure that the impact on the justice system was fully understood, and to allow consideration of what lessons could be learned from the process and used in subsequent roll out in so far as possible and practicable.
3. Due to pressures on the justice system arising from the Covid-19 pandemic in particular, the presumption has been extended to child witnesses under the age of 18 giving evidence in the High Court in certain criminal cases (Relevant Witnesses) only. This presumption (the Presumption) came into force on 20 January 2020.
4. At its meeting on 29 August 2022, the 2019 Act Implementation Group¹ (the Group) ultimately agreed to the commencement of a short term evaluation of the use of evidence by commission for Relevant Witnesses in accordance with the general approach envisaged in the Plan but with innovations to take account of the changing legal and operational landscape facing the criminal justice sector in 2022 (the Review). It was agreed that the Review would principally involve an initial 3 month period of data collection to assist understanding of how the Presumption is being implemented both on its own and in the context of other

¹ A Scottish Government led group, whose membership included representatives from SG, SCTS, COPFS, the Judicial Institute for Scotland, the Faculty of Advocates, the Law Society of Scotland, SLAB, and Police Scotland.

factors, but principally the ongoing use of commissions for other types of vulnerable witness using discretionary powers available to the courts as set out at Section 271 of the Criminal Procedure (Scotland) Act 1995 (1995 Act). Before approving the approach to be taken (the methodology adopted is discussed further below) the Group was made aware of, and assessed, alternative approaches and the various risks and challenges associated with them. This included consideration of the implementation of a shortened three month rather than six months period. In approving the approach, the Group was made aware of, and acknowledged that the full process or cycle of an application for a Relevant Witness EBC hearing being made to an application being granted and an EBC hearing taking place was unlikely to be capturable within a three month timeframe due to other practical and legislative timescales. It was nonetheless felt of value to commence the evaluation, and if necessary assess as part of its review at a future point the need to extend the time period covered following consideration of the data drawn from it. Such an extension was ultimately not required. The Group was also aware of the more extensive data collection and qualitative exercise that would be undertaken as part of the reporting requirements on Scottish Ministers in terms of section 9 of the Act. This would cover the first three years of the use of the Relevant Witness Presumption, and in addition to the collection and collation of data, would seek the views of a number of consultees.

5. What follows is a summary of the aims and methodology of the Review, the results captured during it, and the key observations and recommended further consideration, and steps, as applicable.

Evaluation aims

6. The key aims of the three month evaluation were to:
 - monitor the use and the operational impact of introducing the Presumption in the High Court (Stage 1) via the use of EBC on its own; and also against a backdrop of the continued application, and use of discretionary applications for commissions for other vulnerable witnesses using other provisions under the 1995 Act; and general case numbers which also impact operations and justice sector resources.
 - Identify any occurring themes, challenges and lessons learned or improvements or further steps or practices that could be adopted to assist in the further implementation and roll-out of the Act in the context of the use of EBC only.

Methodology

7. 24 data points were identified as the core metrics underpinning the Review and for collation over an agreed period of three months.
8. The data points used were aimed at looking at and collating information on the use of the current presumption, but also other applications made for commissions and other factors e.g. the number of cases being raised and trials taking place within the same window, to help visualise the other pressures and pulls of the criminal justice system in so far as possible and practicable. This was relevant given one intended consideration in the Plan was to avoid the justice sector becoming overwhelmed. One further focus was the identification and use of data to capture the type of environment that EBCs were taking place, giving the intended benefits of the process and resource implications hearings can have.
9. It was agreed that the review period would commence on 20 September 2022 and run up to and including 20 December 2022.
10. The data which underpins the Review and the conclusions within this report have been captured and manually collated by the SCTS through a number of techniques including review and use of different sources including applications lodged with the court, and information recorded by court clerks, or in court minutes. Understandably, and as associated with manual collection and recording it was accepted that the ultimate data produced may be subject to human error and would be subject to reasonable limits. To address this is so far as possible a 'second check' process, whereby a second individual would review and verify the data initially collected was used, in so far as possible and practicable.

Review and amendment of the criteria

11. At the time of collation of the data the High Court as a generality programmed commissions on a two hearings slots per day per designated EBC location basis (as applicable). The allocation of slot or slots needed for a witness to give their evidence are dependent upon a number of factors, but predominantly the estimated length of time for the witness provided by the parties to the court. During the course of the initial data collation process the SCTS team progressing the review identified a greater than anticipated propensity for parties (Crown, defence or both) to request, or for the Court to appoint in discussion with them, more than one witness evidence to be taken by commission at a single hearing slot. This approach is and was used with particular frequency where witnesses, especially children (the subject of the Presumption), from the same family or

other group or unit who wish to stay together for mutual support in so far as possible. Allocating more than one witness in the same case to give their evidence on the same day (subject to appropriate protocols and practices being in place) not only supports the witness but it is also a means of enhancing the efficiency of business within the courts; and the preparation and work commitments associated with commissions for COPFS and defence counsel. Consequently, it became clear that, to support the aims and objectives of the Review, the originating metrics required to be updated to include and focus on the number of witness /Relevant Witness commissions rather than just 'hearings', in so far as possible.

12. The metrics were updated. The SCTS Team undertaking the data collection thereafter reviewed the data in more substantive detail and captured the number of witnesses who had a commission scheduled during the three month period of the evaluation; if the commission took place; if it concluded; and the applicable reasons (taken from a list agreed between SCTS, COPFS and Scottish Government) if it did not take place or conclude.

13. Where the reason from the agreed category of reasons was not otherwise readily identifiable for the information available to the SCTS, 'Other' was used.

The Review Data

14. The data collected, demonstrates the considerable number of vulnerable witnesses, both children and adults who have or will have benefited from having their evidence taken by the EBC process. Allowing for better evidence to be captured earlier, in alternatively managed environments to that of a trial; while supporting reduced evidence giving journey times and recovery. It also evidences the considerable efforts that have been made by all justice partners to support the use of EBC hearings generally, not only those which derive from the Presumption in favour of pre-recorded evidence for relevant witnesses, at a particularly challenging time for the criminal justice sector which is seeking to recover from the pandemic. The evaluation highlights a staggering increase both in the number of applications lodged and hearings which took place², when compared to the number of EBC applications lodged and hearings which took place prior to the introduction of the Act and the coming in to force of the child presumption in January 2020. A narration of the key data collected and applicable observations follow.

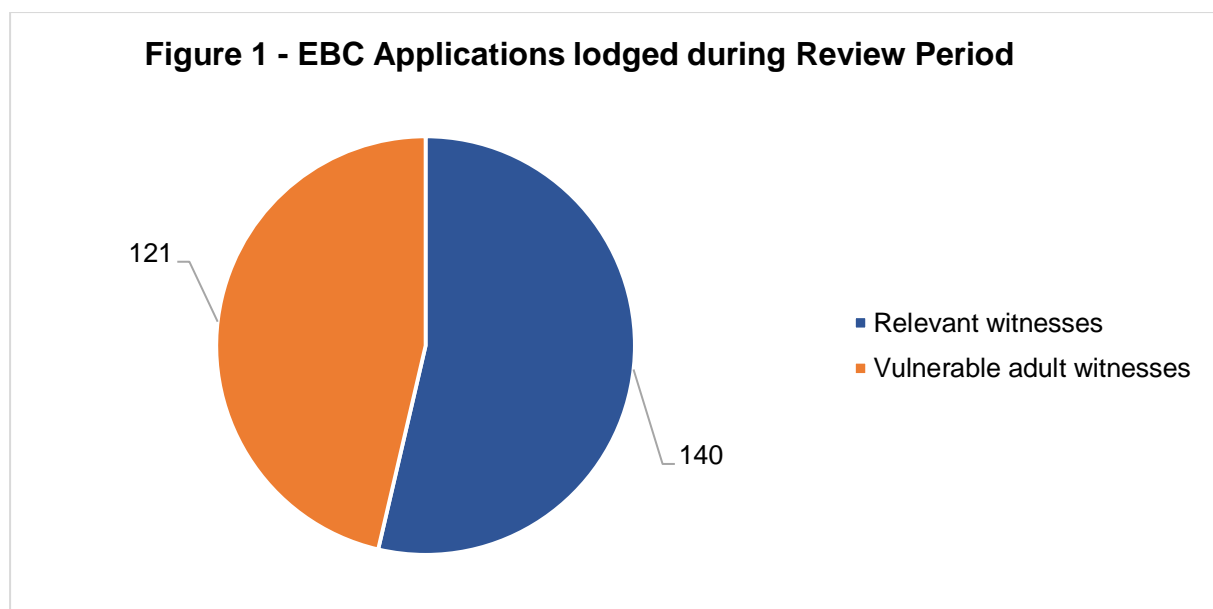
² See SCTS [Evaluation Report No 2](#) (Dec 2018 – SCTS). The report indicates that for the 2017 calendar year a total of 50 applications were received for a witness to provide evidence on commission in High Court cases, 133 applications were made to the High Court in the first 10 months of the 2018 calendar year, and that this growth was largely seen as being attributable to the impetus gained through the issuing of the new Practice Note, [Practice Note No 1 of 2017](#).

The criminal justice environment within which the Review and supporting the provision of commissions took place

15. The period of the Review (the Review Period) covered 65 court sitting days in the High Court during which time 258 indictments were registered. During the months of October, November and December more than 213 cases were called for trial, and 256 indictments³ called for their first Preliminary Hearing (PH)⁴. Evidencing the enormity of the various other commitments and associated resources needed to support the High Court solemn criminal justice system alone, over and above that associated with the provision of commission hearings, and associated processes; all of which will have to be considered as part of any further roll out is proposed.

Applications

16. **261** applications for evidence by commission⁵ were recorded as lodged in the High Court during the Review Period, with October and November having the highest (and same) number of applications recorded. 54% (**140**) of all applications recorded were for child witnesses to which the Relevant Witness presumption was deemed to apply. The remaining **46%** consisted of applications for vulnerable adult witnesses, granted under discretionary powers contained in the 1995 Act.



³ See SCTS monthly management information published: accessible [here](#).

⁴ See SCTS monthly management information published: accessible [here](#).

⁵ It is common for an application lodged seeking the use of a commission under the applicable provisions under the 1995 Act to also seek the use of other special measures e.g. supporter, use of a prior statement as all or part of examination in chief. For the purposes of this report the term application has been used for all applications seeking a commission.

17. During the Review Period **156** applications were granted. **0** applications were refused. It is important to note that while an application for an EBC may be lodged in the High Court prior to a PH , the party that lodged it may not ask the court to consider it at the earliest scheduled PH from the date it is lodged. The party may in fact never ask the court to consider it at any hearing or may formally withdraw it due to, for example, an agreement that further evidence from the child or witness is no longer needed, a prior statement can be used in entirety or for a variety of other reasons and/or changes in circumstances. In practical terms applications lodged on the last day of the Review Period would not have the opportunity to be granted. Such situations can therefore help explain the disparity between the number of applications lodged and those granted over the 65 court sitting Review Period.

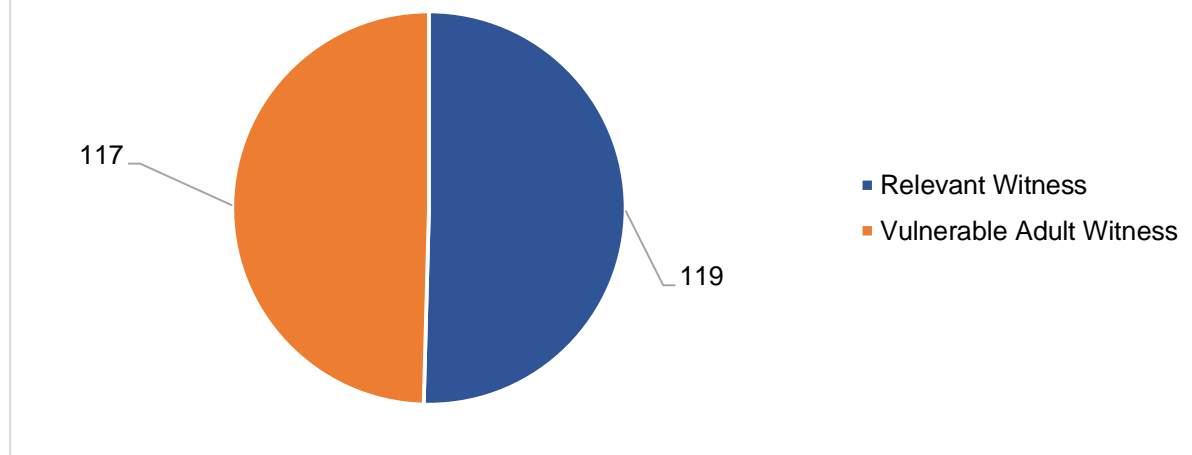
Applications for Evidence by Commission Hearings prior to service of the indictment

18. During the Review Period **0** applications using the special provisions introduced under section 5(4) of the Act (which amended the terms of section 271 of the 1995 Act) were lodged seeking an EBC prior to service of the indictment. This provision was one of a number of changes, including the Presumption, introduced by the Act which came in to force in January 2020.

Evidence by commission hearings scheduled and witnesses being supported

19. **131** EBC hearings were scheduled to take place during the Review Period to support **236** witnesses give their evidence. Indicating that just under two thirds of commission hearing slots accommodated more than one witness, supporting witnesses and the justice sector in the ways mentioned above. Just over half, **50.4%** of the witnesses being supported were categorised as children/Relevant Witnesses. The remaining 117 witnesses being supported were adult vulnerable witnesses.

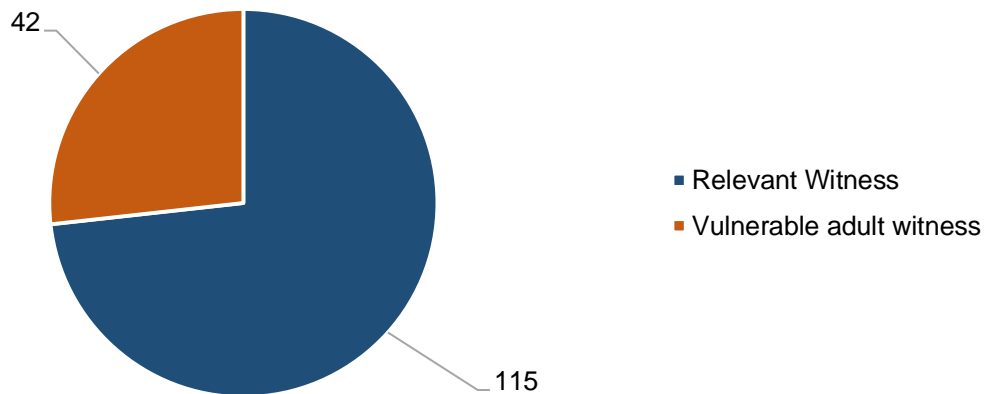
Figure 2 - Number of commission hearings scheduled by reference to witness type



20. Of the 236 witnesses scheduled to have their evidence taken by commissioner, **163 (69%)** had their commission called (i.e. started) for the purposes of evidence being taken. All but **6** of those **163** witnesses (3.7%), **4** of which were Relevant Witnesses, had their evidence completed during that period. Thus during the period **157** vulnerable witnesses (of which **115** were deemed as children/Relevant Witnesses) effectively had their involvement with the criminal justice system in terms of giving evidence concluded earlier than would otherwise be the case if they had to physically give at trial.⁶ The reasons for the adjournments for those 6 witnesses were, using the categories agreed for use, included 1 part heard due to parties running out of time, indicating an inaccuracy with the estimate provided. As a consequence a further commission required to be fixed. The remaining **5** witnesses who had their EBC adjourned were categorised as 'Other' with this being used when e.g. the witness became distressed or when the reason could not otherwise be readily identified. None of the other categories identified in the metric applied in this instance.

⁶ It is possible that there may be instances where further evidence from the witness may be required for a variety of reasons. The method by which this is captured is a matter for the party citing the witness.

Figure 3 - Number of commissions called and completed by witness type



Commissions not proceeding on the day

21. Of the **236** witnesses scheduled to have their evidence taken, **62** witnesses had their EBC hearing adjourned on the day of the hearing before starting to take evidence. This represents over **26%** of those scheduled to take place during the review period not proceeding on the allocated day, with associated implications on the witness, justice partners and resources available, discussed further below. **58%** of applicable witnesses were categorised as Relevant Witnesses.

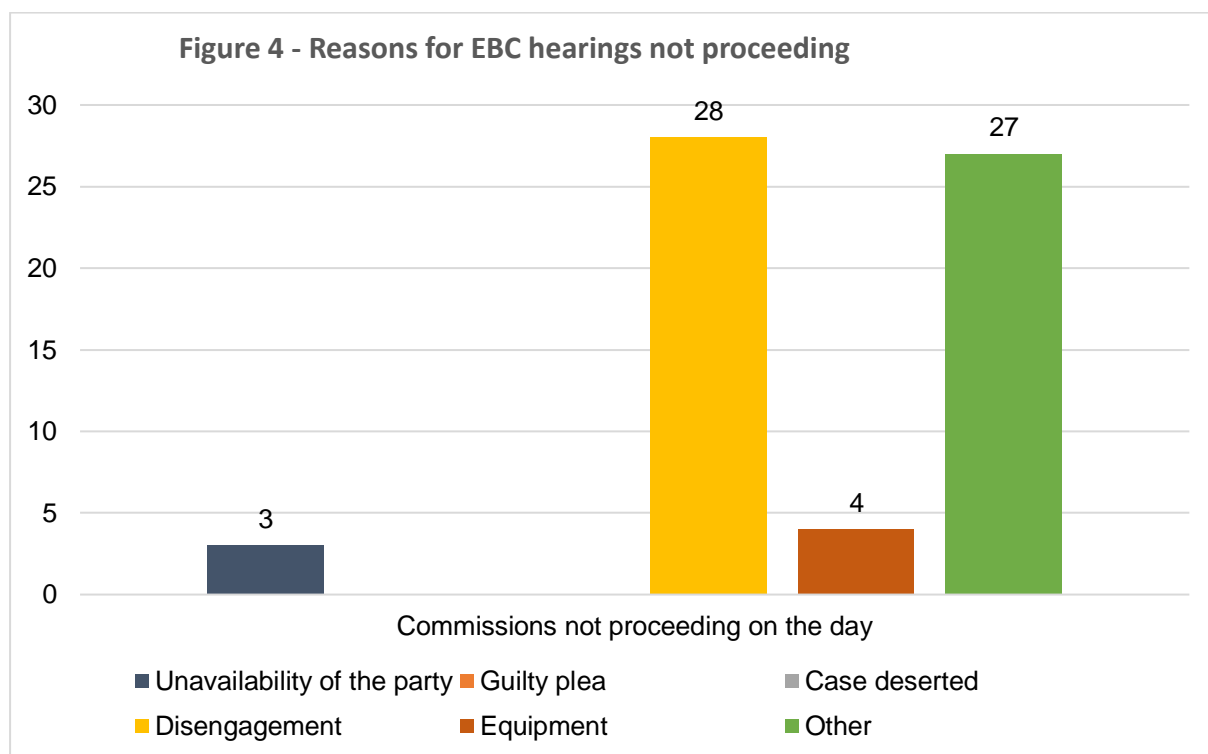
22. The most common reason/category identified for adjournment of commissions on the day for all witness types during the Review Period was **'Disengagement of witness'**. Being the reason for **45%** of all witness' commissions not proceeding. This category was principally used to record instances where the witness failed to attend the hearing, with or without communication to the citing party as the reasons for that in advance of, or on the day scheduled for the EBC hearing.

23. The split between the other agreed category of reasons to identify why commissions did not proceed on the day, were as follows:

- 'Unavailability of a party': 3
- 'Guilty Plea': 0
- 'Case deserted': 0
- 'Equipment/venue': 4. Upon exploration the majority of the reasons for this included matters outwith the control of the key parties involved in the commission and/or not otherwise reasonably anticipatable. One could not proceed due to a power outage at the remote site from which a witness was linking to the commission from. Another example included the failure of a live

link from another jurisdiction’s court into the room in which the commission was taking place.

- ‘Other’: 27. Further discussion on this category is contained below.



Cancellations

24. In addition to a commission hearing being cancelled on the day, it is also possible for it to be cancelled in advance of the actual date. Data on this was accordingly sought. In total, of the **236** witnesses scheduled to have their evidence taken by commission, **11** witnesses had their EBC dispensed with/cancelled before the day of the EBC hearing. 9 (81.8%) of which were identified as children/Relevant Witnesses. The reasons for this cancellation for all witnesses, using the agreed categories in the metric table, were as follows:

“Guilty plea”: 2- of which both related to Relevant Witnesses

“Other”: 9⁷- of which 7 related to Relevant Witnesses. Examples included positive reasons helping minimise any further trauma a witness may have experience, through agreement between the parties that further evidence from a witness was no longer required.

⁷ Where a category from the metrics produced is not referenced within the body of the text, it had ‘0’ results attributed to it.

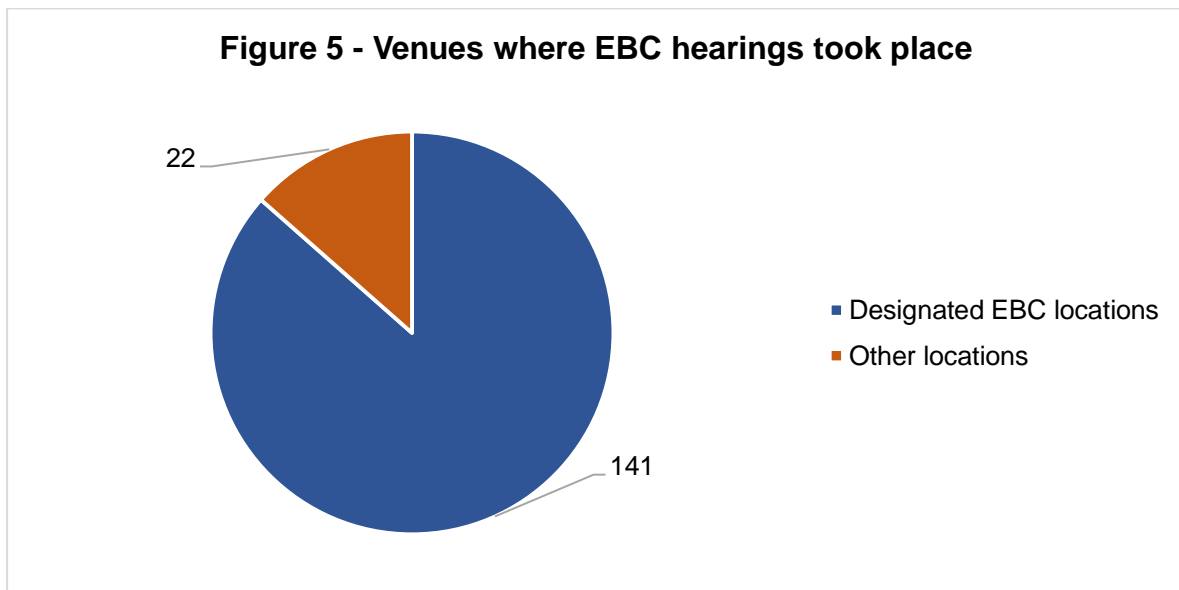
25. The category of 'Other' for both cancelled or adjournments on the day included a number of miscellaneous or otherwise unanticipated or unique reasons, which as a generality could apply in any type of court/evidential hearing. They included e.g. the withdrawal of legal representation for a party to the action; the failure of an essential party to attend the commission; and the vulnerable witness becoming or being ill. 'Other' was also used where the reason was not otherwise readily identifiable for the information available to the SCTS.

Venues for commission hearings

26. As part of the Review, the Group wished to reflect on the physical resource and accommodation implications deriving from the expansion of the use of commissions under both the Presumption and under discretionary powers in the 1995 Act in so far as practicable. In particular, data on the use of purpose built and bespoke evidence by commissioner/evidence giving facilities constructed by the SCTS; in contrast to the alternative- court rooms- was sought.
27. The purpose built SCTS EBC hearing facilities include bespoke waiting and breakout facilities for vulnerable witnesses. The hearing rooms contain discreet inbuilt cameras operated remotely and viewing rooms- all used to support the giving of evidence in a trauma-informed manner by reducing the number of physical attendees in the room.
28. The use of court rooms for EBC hearings, in addition to reducing the number of courts then available to support other business e.g. trials, requires physical cameras and camera men at additional cost to be employed by the party citing the witness and be present in the court room to record the EBC hearing. The physicality and set up of the location in which the evidence is given is an essential element when consideration is being given as to how best to support the taking of a witness's 'best evidence' and ensuring a fair trial.
29. It is important to note that it is the party making the EBC hearing application in the first instance who proposes the geographical location and, as applicable, the venue from which the witness is to give evidence for court approval, following consideration of the witnesses circumstances and in discussion with them in so far as possible. When granting an application, the court will need to be assured that: the venue is fit for purpose and that all participants can be kept safe and secure and there is capacity for the accused to view accordingly.
30. At the point of commencement of the review period on 20 September 2022, two designated and purpose built EBC hearing facilities were in operation- one in Glasgow and one at Inverness Justice Centre. A further purpose built facility for Edinburgh High Court became operational during the review period, specifically from October 2022 onwards. An additional dedicated High Court judicial

resource was also allocated by the Lord Justice General and Lord Justice Clerk and commenced in conjunction with the opening of this facility in October 2022. This allowed High Court evidence by commissions to run concurrently in both the designated and bespoke evidence giving facilities in Glasgow and Edinburgh, Monday to Friday. Subsequent to the conclusion of the Review period the SCTS has completed one further purpose built facility to support EBC hearings in Aberdeen. A fifth location in Dundee is currently in development.

31. Of the **163** EBC hearings that called during the review period, **141** (86%) took place within one of the three designated bespoke facilities that ultimately became available during the Review Period. All but two took place in the designated Glasgow or Edinburgh facilities, the two remaining having taken place in Inverness. Of the **22** that took place in another venue, **17** (of which 11 were Relevant Witnesses) took place in September 2022, before the new facility was available, in an adapted court room in Edinburgh. A key reason for this is understood to be that Edinburgh had already been identified and booked some notable time in advance with reference to the needs of the parties concerned. Alternative court locations using a variety of approaches including the witness 'live linking' in to an adapted court room were used for the remaining 5 adult witness; the approach used reflecting the specific needs and/or location of the witness or the case in general.



Conclusions – lessons learned and recommended points for further consideration and action

32. As narrated earlier the key aims of the Review were to monitor the use of the presumption and to help consider, analyse and evaluate the impact it is having on services, against a background of ongoing discretionary applications for

commission and criminal justice work generally; all with a view to identifying what, if any, practices or lessons can be learned to support the further roll out of the Act, within the context of the use of evidence by commission. Key observations and proposed further considerations and conclusions follow.

Use and its impact

33. The Act takes forward the findings of the judicially-led Evidence and Procedure Review (EPR), which made clear the importance of taking a new approach to ensuring children and vulnerable adult witnesses can give the best quality of evidence as early as possible while protecting them from further trauma in so far as possible.
34. The data collected during the Review Period demonstrates the considerable number of vulnerable witnesses both children and adults who have or will have benefited from having their evidence taken by the EBC hearing process. Allowing for better evidence to be captured earlier, in alternatively managed environments to that of a trial; reducing their time for engagement with the justice sector; and witness recovery. Supporting the aims of the EPR and Act.
35. The data alone shows the extensive and commendable efforts and resource commitments made by all justice partners to support the use of EBC hearing generally, not just the Presumption. This has been made against a background of increasing pressures placed on them all, as a consequence of the pandemic and extensive court recovery programme which has been in place since September 2021, and was extended further in April 2023. When the data is compared against the number of applications made and commissions proceeding recorded in independent reviews that predate the introduction of the Presumption, the numbers are exceptional. For example the number of commissions that took place during this 3 month Review Period window exceed the total number (**29**) that took place in the 2017 calendar year⁸.
36. Notwithstanding the Presumption the data indicates that during the Review Period, vulnerable adult witnesses made up a significant proportion of EBC hearings scheduled and commissions that took place (called), with an evitable consequential impact on capacity and resourcing for the justice sector. This is a trend that the SCTS can confirm has been in place for some time, with the number of vulnerable adult applications in fact exceeding those made under the Presumption on more than one occasion in recent years. It evidences that important inroads have been made by the Justice system via a number of factors

⁸ See SCTS [Evaluation Report No 2](#) (Dec 2018 – SCTS). The report indicates that for the 2017 calendar year a total of 50 applications were received for a witness to provide evidence on commission in High Court cases, with 29 witnesses having had their evidence recorded by commission in that calendar year.

and influences including the Evidence and Procedure Review⁹, and the subsequent 2017 and 2019 High Court Practice Notes¹⁰, to support the most vulnerable in society to give their evidence in advance of the trial, notwithstanding the fact that a presumption for this category of witness is not yet in place. This in turn highlights that there are already potential resource and capacity limits which will require to be further discussed and assessed, if further roll out in this jurisdiction of presumptions is to be achieved.

Seeking the use of commissions pre-service of the indictment

37. A key benefit arising from the greater use of pre-recorded evidence is the ability for witnesses to conclude their involvement in relation to the evidence giving process with the criminal justice system earlier than would otherwise be the case if they had to attend or otherwise give evidence at an actual trial in the future. During the period October to end December 2022, which covered the vast majority of the Review Period the average journey time in the High Court from first plea to evidence lead trial was 48 weeks.¹¹ As identified in the 2017 Pre-recorded evidence work stream of the Evidence and Procedure Review report¹² there is a considerable body of evidence demonstrating that the process of giving evidence in criminal trials, and in particular the delays commonly encountered in cases reaching trial, can have adverse mental, physical and psychological effects on child witnesses. Furthermore that research on memory and witness testimony shows that while all witnesses forget information over time, younger children are more susceptible to forgetting than older children and adults; with children more likely to confuse memories from similar sources and more willing to guess the answers to questions when their memory has deteriorated.
38. In addition to the Presumption, the Act also introduced (per section 271I(4A) of the Criminal Procedure (Scotland) Act 1995), the ability for an application to be made, and for a commission to take place prior to service of a court indictment on the accused. The use of this provision was therefore one of the additional metrics which the Review sought to capture. The justice system has experienced unprecedented challenges in the three years since the provisions were introduced, including the pandemic and associated increase in journey times, notwithstanding the efforts of the justice sector. **0** of this type of application were recorded during the Review Period. Given the acknowledged limits of drawing conclusions on the use of this provision from the relatively short period of the Review, consideration was given to any data on the use of the provision more generally since its introduction. The SCTS had no record of the provision being

⁹ For more details of which access the SCTS's dedicated web page: accessible [here](#).

¹⁰ The [High Court Practice Note 1 of 2017](#) and [High Court Practice Note No 1 of 2019](#)

¹¹ See SCTS monthly management information published: accessible [here](#).

¹² At page 11, accessible [here](#).

used. As the terms of the Explanatory Notes to the Act, narrate however “the circumstances of each individual case will determine whether or not it is appropriate” for justice partners to utilise these provisions. There are acknowledged challenges with the use of such provisions particularly if the full extent of the charges are not known to the prosecutor, resulting in the potential for further evidence to be required from the witness. This may explain its lack of use. Such challenges will have to be balanced against the benefits of taking the evidence early, a matter for consideration of the relevant legal representative preparing and presenting the case.

The adjournment/cancellation of EBC hearings

39. The cancellation or otherwise adjournment of a vulnerable witness’s evidence being taken has a number of significant implications for the vulnerable witness and the justice sector generally. Delays can cause uncertainty and further trauma for witnesses, with the potential for attrition. It will also result in the loss of valuable finite court and legal professional time in terms of preparation and attendance. Cancellation of a commission in the days before or on the day of the commission, are particularly problematic, making reallocation of court resources to another witness/case particularly challenging, if not impossible. It is therefore essential both for the continued utilisation of the Presumption and discretionary powers in the High Court; and for any subsequent roll out of a presumption to other categories of witness that justice partners have awareness of the implications of, and take steps and adopt practices to ensure or otherwise minimise the need for late cancellation of commissions in so far as possible, but with cognisance that it may not always be possible to do this given the practical realities of the justice system. Such steps should be taken forward.
40. During the Review Period just under 5% of all witnesses scheduled to have EBC hearings had that hearing cancelled before the scheduled date. Some were for positive reasons e.g. guilty pleas being accepted, therefore removing the need for further evidence to be taken from, and ending that witness’s evidence giving journey.
41. More notable however, and one area requiring further consideration and discussion from the Review was the level of commissions and therefore witnesses- **26%**- who were scheduled to have their evidence taken, but had the commission cancelled on the day; and the reasons for those cancellations. During the Review Period cancellations occurred most commonly once all parties, and resources were in place at the EBC hearing location on the day. The majority reason for this, for both Relevant Witnesses and vulnerable adults during the Review Period, was the category of ‘disengagement of the witness’. Within this context, this category was used when a witness just failed to attend on the day; but also included when they or their guardian advised the party citing

them on the evening morning of or during the time when the commission was scheduled to take place that they would not be attending, or were unwilling to co-operate. It was not used on occasions when for example the witness did not attend due to ill health.

42. Disengagement of a witness generally, and specifically through failure to attend court to give evidence is not a new concept, or unique to commissions. Unfortunately the propensity of its occurrence generally and in the equivalent of High Court evidence led trials at the time of the Review Period is not available for the purposes of comparison with commissions or otherwise. What is known is that disengagement or failure to attend to give evidence can occur for a whole variety reasons, some of which may be out-with any justice partners' control. As a generality failure to attend can occur because the witness has forgotten to attend or due to a diary/communication failure on the date. Disengagement is more commonly seen as a proactive decision made not to attend. Given the finite resources available to the justice sector, the extensive preparation that goes in to preparing for and the purpose and intended benefits of, EBC hearings it is suggested that the prevalence of non-attendance (at least during the review period) it is worthy of further discussion and exploration in so far as possible. Such further exploration may include. Consideration of its propensity and available data and potential reasons and solutions for it e.g. improved/earlier communication on what the process involves and the date assigned for proceedings, consideration of what further support the witness may require to maintain engagement and attend.
43. In summary, to support the aims of the Review, including to support, the roll out of further presumptions under the Act in so far as they apply to EBC hearings, it is suggested that the following should be considered further by the newly formed Pre-recording of evidence implementation group and SG policy team leading on the Act, as applicable:
- Given the high utilisation of commissions in the High Court for vulnerable witness types not covered by the Presumption, further discussion and consideration of the potential resource and capacity limits created by this and of any extension of the Act generally should form an essential part of the work to be undertaken to support further roll out under the Act.
 - Concerted effort by all applicable parties should be taken to minimise the potential for EBC hearings to be adjourned or cancelled at the last minute, including advising the court as soon as possible, in so far as possible and practical.
 - Further discussion, consideration and exploration of the propensity and identification of any information/data on, and the reasons for, non-attendance/disengagement of witnesses for evidence giving sessions, should take place.



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