



CROWN OFFICE  
& PROCURATOR  
FISCAL SERVICE

SCOTLAND'S PROSECUTION SERVICE



Victim Support Scotland

Scottish Courts  
and Tribunals Service



**POLICE**  
**SCOTLAND**  
Keeping people safe

## **Working Together for Victims and Witnesses**

Protocol between

**Crown Office and Procurator Fiscal Service**  
(COPFS)

**Scottish Courts and Tribunals Service**  
(SCTS)

**Police Scotland**

and

**Victim Support Scotland**  
(VSS)

**Revised 29 September 2017**

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## Purpose

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

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

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

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

13. Victim Support Scotland (VSS) is the lead voluntary organisation in Scotland helping people affected by crime. It provides emotional support, practical help and essential information to victims, witnesses and others affected by crime.
14. VSS receives information about victims of crime directly from Police Scotland in accordance with statutory provisions contained within the Criminal Justice (Scotland) Act 2003. VSS proactively seeks to engage with all victims referred to them but does not routinely provide specific information about the progress of their case. VSS seeks to carry out a needs assessment with every victim using an internationally recognised toolkit.
15. Victim Support Scotland's Witness Service (WS) is dedicated to providing information as well as emotional and practical support to victims, witnesses and bereaved relatives attending court. The WS provides a service in all High Court and Sheriff Court buildings.
16. There is a general presumption that WS personnel will conduct all Court Familiarisation Visits (CFVs) for Crown Witnesses. WS will provide feedback to VIA colleagues following a CFV where appropriate. They will also provide forms for witnesses to claim associated expenses from COPFS.
17. WS personnel will routinely be appointed to act as Supporters in cases involving children or vulnerable adult witnesses. They will only attend remote sites on the day of a trial if the court has specifically appointed them as the named supporter for a child or vulnerable adult witness.

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

18. The Scottish Courts and Tribunals Service (SCTS) is responsible for providing the staff, buildings and technology to support Scotland's courts and the work of the independent judiciary. SCTS aims to:

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

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

20. At the request of the prosecutor, court officials (court officers) are generally involved in excusing witnesses on the day of the trial and for providing them with information about progress during the trial.

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

Tel: 0141 302 8700  
Fax: 0141 559 4585  
[esdu@scotcourts.gov.uk](mailto:esdu@scotcourts.gov.uk)

## **Role of Police Scotland**

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

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

26. All parties understand the need to share information in order that the safety of victims and witnesses is not further compromised by their involvement with the criminal justice system and issues of intimidation can be addressed. This Protocol aims to build on the working relationships which already exist locally between SCTS staff, COPFS staff, Police Officers and VSS personnel. It provides a framework to further develop partnership working leading to improved service delivery.
27. The framework for the protection of victims and witnesses set out in the Victims and Witnesses (Scotland) Act 2014 makes clear that those involved in criminal proceedings have a right to request information about a case in which they are involved.
28. Many victims and witnesses will need support to deal with the information they are receiving particularly where a case has had a serious impact on them or their family. It is important that VSS can access information (where appropriate with the victim's or witnesses consent). This will ensure that victims and witnesses can receive the information within the context of a support or advice service where appropriate. COPFS, SCTS and Police Scotland will work with VSS to ensure that it receives the information it requires in such cases.
29. VIA staff will attempt to contact, by telephone, victims, certain witnesses and bereaved nearest relatives in all cases (which have been referred to them) on the same day in the following circumstances, where:
  - the accused appears from custody or by undertaking and is given special bail conditions relating to the victim or a witness;
  - there has been a variation or revocation of special conditions of bail; or
  - an accused has been released from custody.
30. If VIA staff are unable to contact any victim in such cases the police are asked to make personal contact with them.
31. In all other cases, for example after Intermediate or Trial Diets, VIA aims to have the results preferably the same day but no later than the end of the next working day.
32. To assist COPFS, SCTS has provided VIA staff with access to their Case Enquiry Application. This enables VIA staff to obtain information directly, timeously and with minimum inconvenience to court staff.
33. Where there are problems with IT systems contingency arrangements should be made locally. Requests for information may be made verbally but detailed or multiple requests should be in writing and submitted by fax or email. Any difficulties encountered by VIA in obtaining information should be raised with the local Sheriff Clerk or with a nominated person.



34. Sheriff Clerks will provide COPFS with details of Appeals against custodial sentences and the granting of bail pending Appeal by the Sheriff. VIA should be told of any accelerated diets and applications to alter the conditions of bail processed administratively by SCTS.
35. Any sentencing statements made by a sheriff or judge will be published by the SCTS Head of Judicial Communications. VIA will issue a copy of the sentencing statement to the victim or bereaved nearest relatives in accordance with VIA guidance.
36. Special arrangements may be made with the Sheriff Clerk in relation to high profile or sensitive cases to ensure that the victim/witness receives information about the outcome as soon as possible.

## **Referrals to the Witness Service**

37. All vulnerable victims and witnesses will be referred by COPFS to the WS in advance of any trial using the form attached at **Annex C**.
38. Referrals by COPFS to the WS should take place during case preparation with sufficient time to allow the WS to prepare for the attendance of witnesses in court.
39. In all cases, all vulnerable victims and witnesses should be referred to the WS no later than 10 days prior to trial. Discussion should take place locally to determine the preferred time for referrals to the Witness Service to ensure efficient case preparation and planning for Court Familiarisation visits and witness attendance at court.
40. In High Court cases, referrals should be made as soon as possible following a preliminary hearing.
41. In solemn cases in the Sheriff Court, if a referral is not made at an earlier stage, referrals should be made as soon as possible following a first diet.
42. In summary cases, if a referral is not made at an earlier stage, referrals should be made as soon as possible following an intermediate diet.

## Court Familiarisation Visits (CFVs)

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

the referral form. It will be for WS to determine what, if any, efforts they make to contact the witness and for them to feedback to COPFS as appropriate. It is expected that WS will always attempt to contact a child witness.

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

witness brings their carer or support person WS should copy the claim form and note on it that the expenses are for a carer.

59. Where a child or vulnerable adult witness attends court for trial without WS having any prior knowledge of them, WS should bring this to the attention of their local VIA unit by email. If this is a regular occurrence WS should raise the matter with the Victim Support Scotland Director of Operations who will discuss this with the appropriate contact in COPFS.

## **Routine Information Provision at Court**

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

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

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

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

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

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

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

- Use of a live television link;
- Use of a Screen;
- A supporter

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

- Evidence in chief in the form of a recorded prior statement
- Evidence taken by a commissioner;
- Excluding the public from the court while the witness gives evidence (closed court);

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

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



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

81. If a non-standard special measure is being applied for (or the use of no special measures) the views of the witness (and those of the parent or guardian of a child witness) must be included in the notice.
82. VIA staff are responsible for referring witnesses to information on special measures for children, young people and information for the parents of child witnesses. They proactively seek the views of children and their parents in relation to special measures.
83. A Vulnerable Witness Notice must be lodged with the Court in relation to any child or deemed vulnerable witness for the use of standard special measures, for the use of non-standard special measures, a combination of standard and non-standard special measures, or for the giving of evidence without special measures. It may be that a child witness does not wish any special measures and their parent (or guardian) expresses the same view.
84. Where a child and their parent (or guardian) cannot be contacted, or they do not engage with COPFS, default special measures should be applied for:
  - Children aged under 12- live television link and witness service supporter.
  - Children aged 12-15 – screens and Witness Service supporter
  - Children aged 16-17 – Witness Service supporter
85. For children aged 7-11 in cases involving certain violent or sexual offences, the following default special measures should be applied for (where the parents (or guardians) cannot be contacted or do not engage with COPFS):

Live television link and Witness Service supporter with arrangements made for the link to take place from a remote site; or  
Evidence taken by a commissioner (depending on circumstances of the case)
86. For adult victims who are deemed to be vulnerable and entitled to use a special measure, and where the victim cannot be contacted or they do not engage with COPFS, default special measures should be applied for:
  - Victims of trafficking for exploitation or trafficking for prostitution- live television link and witness service supporter
  - Victims of domestic abuse, sexual offences or stalking- screens and witness service supporter.
87. COPFS has agreed that in summary cases, the Vulnerable Witness Notice will be lodged at least one week prior to the Intermediate Diet where

possible. Vulnerable Witness Notices and Applications must be lodged no later than 14 days before the trial diet in summary cases. In solemn cases, Vulnerable Witness Notices should be lodged:

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

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

89. Special measures can be reviewed at any stage until a witness completes their evidence. Any additional information received that might necessitate a review should be shared amongst partner agencies. If special measures are changed on the day the PF is responsible for advising both the witness and WS. Special measures that have previously been granted should not be dispensed with by trial deposes on the grounds of convenience. If this is a regular occurrence WS should raise the matter with the VSS Director of Operations who will discuss this with the appropriate contact in COPFS.

## Other Vulnerable Adult Witnesses

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

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

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

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

## **Applying for special measures – Summary Cases**

107. Where the accused pleads not guilty at the calling of the case the court will assign a trial diet and an intermediate diet. The clerk of court will assign a suitable trial diet having regard to the availability of witnesses and the Crown's attitude to the granting of bail for the accused. Early diets of trial should always be sought for cases involving child witnesses.
108. COPFS will lodge a Vulnerable Witness Notice or Vulnerable Witness Application at least 14 days prior to the intermediate diet where possible and in any event no later than 14 days prior to trial diet. Where COPFS requires to convey supplementary information to SCTS about a witness' needs the notice or application will be accompanied by a covering sheet using the form at **Annex F** highlighting: vulnerability issues, disabilities, support needs, interpreter involvement, any requirement for exceptional arrangements for the witness' attendance at court, preference of remote or in court TV link facility and including local COPFS contact details. A process map showing how SCTS and COPFS will deal with Vulnerable Witness Notices and Applications is attached at **Annex B**.
109. Where the notice is for standard special measures the Sheriff Clerk will place same before the Sheriff forthwith for consideration, and intimate the outcome to COPFS and the defence.
110. With an application for non-standard special measures the Sheriff Clerk will hold the application for 7 days to allow for objections to be lodged. If no objections are lodged after the expiry of the 7 days, the Sheriff Clerk will send to the Sheriff for consideration. If objections are lodged, the Sheriff Clerk will assign a hearing and intimate the date to parties. Depending on the available time the objection hearing may be assigned for the same date as the intermediate diet hearing.
111. Where no objections are lodged the Sheriff Clerk will intimate the court's decision to COPFS and the defence. If the request is granted VIA will notify both the witness and WS.

## **Live Television Links**

112. ESDU play an essential part in the allocation and scheduling of facilities for the giving of evidence by live TV link. Where the notice or application relates to TV links, prior to placing the papers before the Sheriff, the Sheriff Clerk will contact ESDU to have a suitable facility allocated. The information supplied by VIA with the notice / application is key to this decision.
113. Though preference for a site may be requested, it should be noted that due to increased volumes it may not be possible to meet the terms of that

request. This should be made clear to witnesses by VIA in order to effectively manage expectations.

114. Once the Sheriff has considered the application the Sheriff Clerk will intimate the outcome to parties and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise if the remote site is one which is restricted to the attendance of one witness at any given time.
115. Where the use of a site becomes potentially difficult due to multiple witnesses requiring to give evidence at that site, ESDU will liaise with the relevant points of contact named in the covering sheets. It will be for COPFS and SCTS to work together to resolve the difficulties. .
116. At the Intermediate Diet the court must be satisfied that all matters relating to the vulnerable witness have been addressed. If the accused pleads guilty or the trial is postponed the clerk of court will notify ESDU that the remote site is no longer required for the agreed date. VIA must tell the WS if they are no longer required on the agreed date.
117. Where a trial is postponed or adjourned, the clerk of court will liaise with ESDU where necessary. Where a TV link facility is required for the adjourned diet, the Sheriff Clerk will intimate the outcome to parties and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise if the remote site is one which is restricted to the attendance of one witness at any given time. VIA should tell the WS if they are required to attend on the adjourned date.
118. VIA will provide the witness with details of how to get to the TV link facility, the facilities available and when they are required to be there.

## **Applying for special measures – Solemn Cases**

119. Unlike summary proceedings, jury trials are generally assigned to Sittings (which are a number of cases to call over a period of days or weeks) as opposed to a fixed trial date. The Sitting during which a case will call for trial, and the stage in the sitting at which any particular case will call, is determined by the Advocate Depute or PF.
120. High Court cases also present management challenges given the different types of trial that are fixed – some to float for a designated period and others with no definite High Court allocated. The effective management of live television link facilities is therefore dependent upon early intimation to ESDU and regular updates as cases proceed.
121. COPFS will lodge a Vulnerable Witness Notice or Application at least 7 days prior to first diet in proceedings on indictment in the Sheriff Court and at least 14 days prior to the preliminary hearing in the High Court. Where COPFS requires to convey supplementary information to SCTS about a witness' needs the notice or application will be accompanied by a covering sheet using the form at **Annex F** highlighting: vulnerability issues, disabilities, support needs, interpreter involvement, any requirement for exceptional arrangements for the witness' attendance at court, preference of remote or in court TV link facility and including local COPFS contact details. A process map showing how SCTS and COPFS will deal with Vulnerable Witness Notices and Applications is attached at **Annex B**.
122. Where the notice is for standard special measures the Sheriff Clerk/ Depute Clerk will place same before the judge forthwith for consideration, and intimate the outcome to COPFS and the Defence.
123. With an application for non-standard special measures the Sheriff Clerk/ Depute Clerk will hold the application for 7 days to allow for objections to be lodged. If no objections are lodged after the expiry of the 7 days, the application or notice will be placed before the judge for consideration. If objections are lodged, the court will assign a hearing and intimate the date to parties. Depending on the available time the objection hearing may be assigned for the same date as the preliminary or first diet hearing.
124. Where no objections are lodged the clerk will intimate the court's decision to COPFS and the Defence. VIA will notify both the witness and WS.

## **Live Television Links**

125. ESDU play an essential part in the allocation and scheduling of facilities for the giving of evidence by live TV link. Where the notice or application relates to TV links, COPFS should contact ESDU by email prior



to the Notice or Vulnerable Witness Application being lodged in court. This will enable ESDU to:

- Liaise with the prosecutor in relation to the preferred dates and availability of suitable sites or viable alternatives;
- Diary requirements to avoid potentially conflicting demands from other Sheriff or High Courts

126. Though preference for a site may be requested, it should be noted that due to increased volumes it may not be possible to meet the terms of that request. This should be made clear to witnesses by VIA in order to effectively manage expectations.

127. Once the judge has considered the case the clerk will intimate the outcome to COPFS and the Defence and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise, in the case of a remote site, if the remote site is one which is restricted to the attendance of one witness at any given time.

128. In Solemn cases, COPFS, Sheriff Clerks and Depute Clerks of Justiciary must work together to ensure that ESDU colleagues are kept updated as to the need for their facilities or where they are no longer required. Where the use of a site becomes potentially difficult due to multiple witnesses requiring to give evidence at that site, ESDU will liaise with the relevant points of contact named in the covering sheets. It will be for COPFS and SCTS to work together to resolve the difficulties.

129. At the Preliminary hearing or First Diet the court must be satisfied that all matters relating to the vulnerable witness have been addressed. If the accused pleads guilty or the trial is postponed the clerk of court will notify ESDU that the remote site is no longer required for the agreed date. VIA must tell the WS if they are no longer required on the agreed date.

130. Where a trial is postponed or adjourned to a specific date or sitting, the clerk of court will liaise with ESDU where necessary. Where a TV link facility is required for the adjourned diet, the Sheriff Clerk or Depute Clerk of Justiciary will intimate the outcome to parties and include intimation to the applicant of the details of the TV link site to enable the applicant to cite the witness to the specified location. Intimation will also advise if the remote site is one which is restricted to the attendance of one witness at any given time. VIA should tell the WS if they are required to attend on the adjourned date.

131. VIA will provide the witness with details of how to get to the TV link facility, the facilities available and when they are required to be there.

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

### **Standards of Service for Victims and Witnesses:**

<https://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/standards-2015.pdf?sfvrsn=2>

### **Crown Office and Procurator Fiscal Service Commitments to victims and witnesses:**

[http://www.copfs.gov.uk/images/Documents/Victims\\_and\\_Witnesses/Our%20Commitments%20to%20Victims%20and%20Prosecution%20Witnesses%20-%20Information%20Booklet%20-%20June%202015.pdf](http://www.copfs.gov.uk/images/Documents/Victims_and_Witnesses/Our%20Commitments%20to%20Victims%20and%20Prosecution%20Witnesses%20-%20Information%20Booklet%20-%20June%202015.pdf)

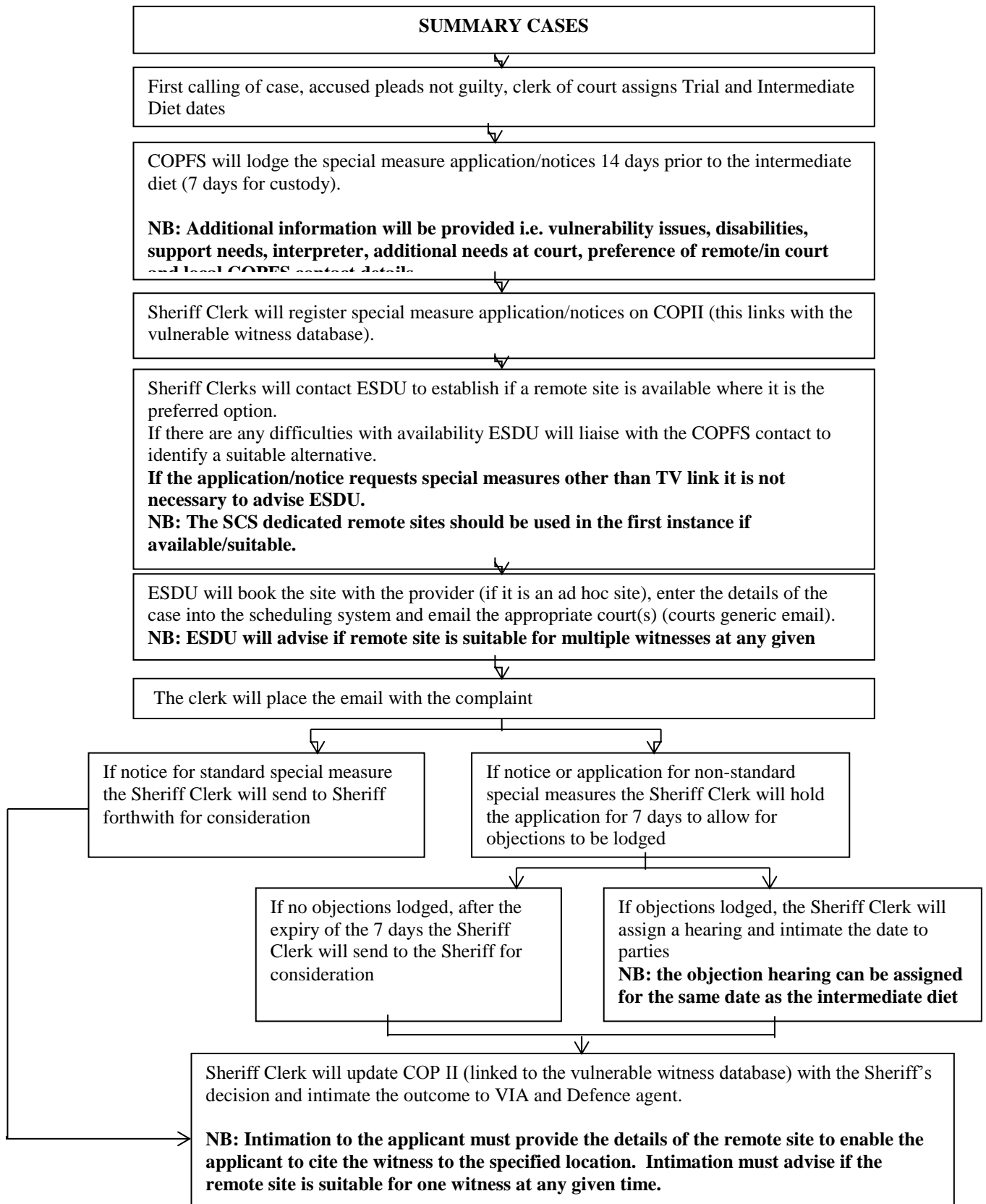
### **Access to Information Protocol- a guide for victims and witnesses:**

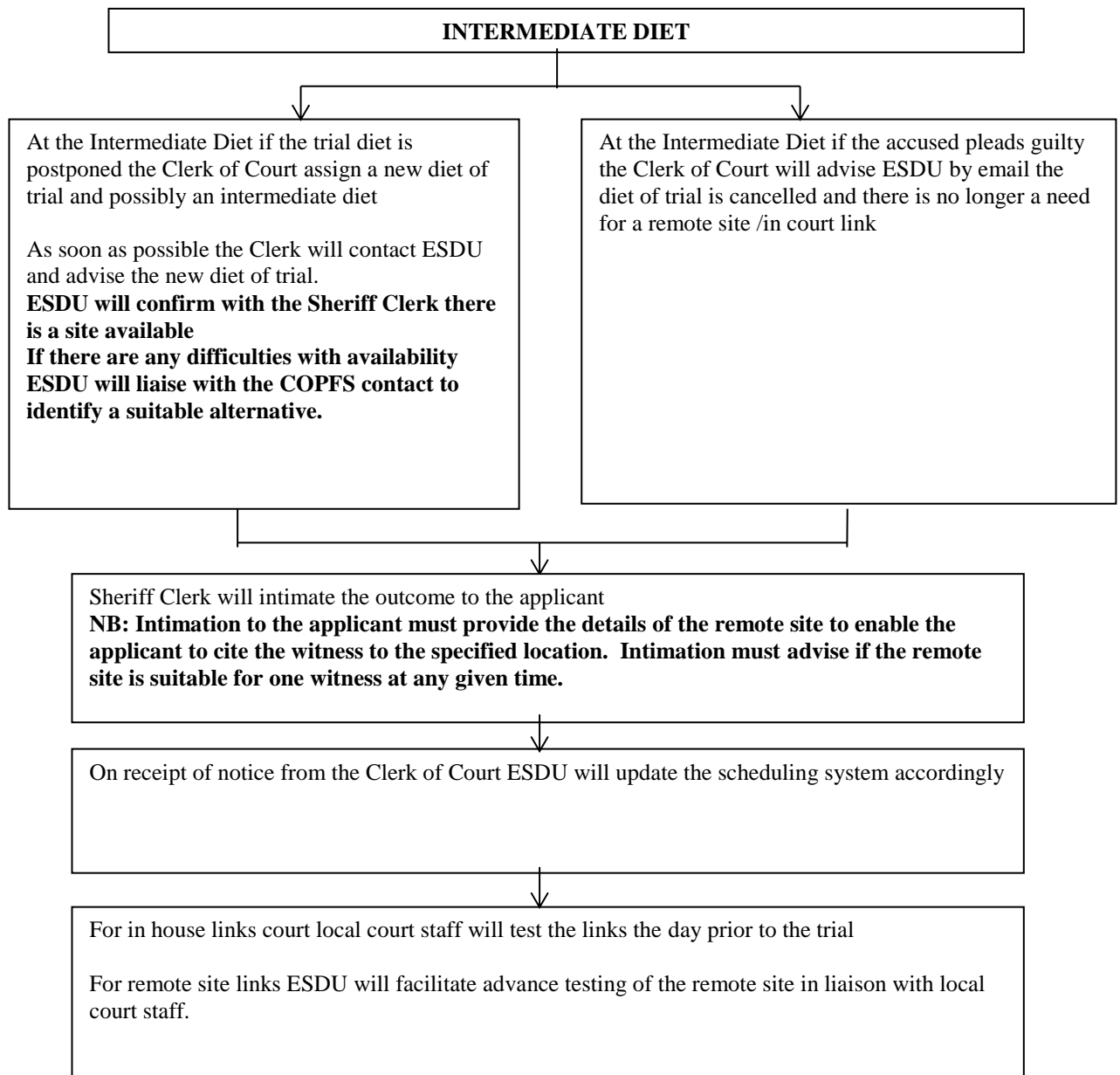
[http://www.copfs.gov.uk/images/Documents/Victims\\_and\\_Witnesses/accesstoinformationprotocoljuly2015.pdf](http://www.copfs.gov.uk/images/Documents/Victims_and_Witnesses/accesstoinformationprotocoljuly2015.pdf)

### **Schedule 3 to the Sexual Offences Act 2003:**

<http://www.legislation.gov.uk/ukpga/2003/42/schedule/3>

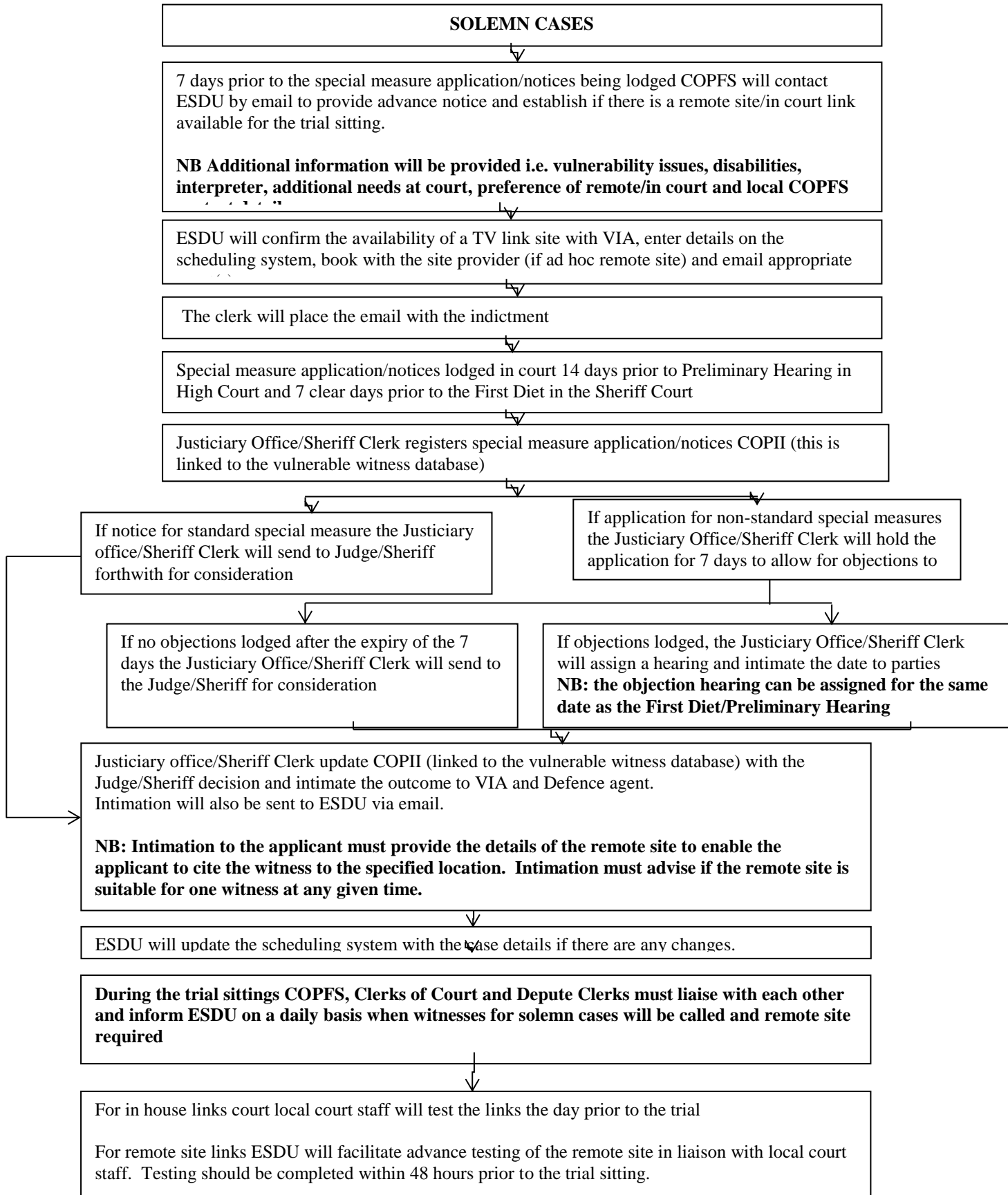
## Annex B1- Process Map Vulnerable Witness Notices/Application





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

### PROCESS MAP OF VULNERABLE WITNESS APPLICATIONS/NOTICES



## Annex C- Form for Referrals to the Witness Service

### Section A – Case Details

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

### Section B – VIA Contact Information

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

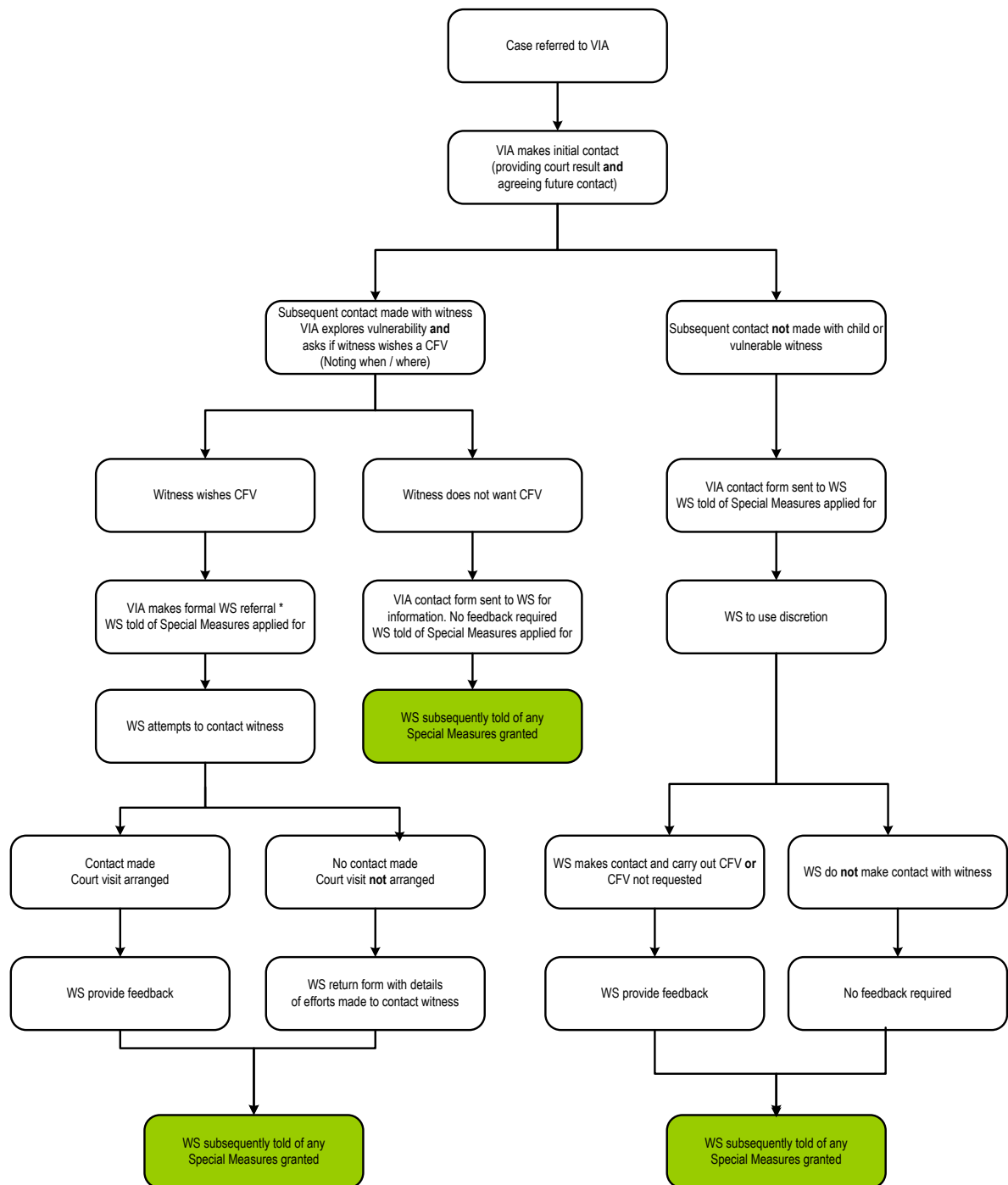
This shows the information that will be given from the VIA minute sheet

### Section C – Witness Contact Information

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

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

## Annex D- Court Familiarisation Visit Process



\*WS Referral to include details of:

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

## Annex E- Witness Expenses

### Expense Form for CFV

#### Expenses for Witnesses Attending Court for Court Familiarisation Visits

<b>Case Against:</b>	<b>PF Reference:</b>
<b>Name of Witness:</b>	
<b>Address:</b>	
<b>Telephone Number:</b>	
<b>Date of VIA Referral:</b> <b>VIA Representative who made Referral:</b> <b>Address</b> <b>Telephone Number:</b>	

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#### FOR WITNESS SERVICE USE ONLY

**Date of Court Familiarisation Visit:** -----

**Time of Visit**      *From:* ----- *To:* -----

**Court Attended:** -----

*WS Rep who conducted CFV:* -----

*Signed:* ----- *Date:* -----

*The witness should take this form to the local Procurator Fiscal's Office*

*If loss of earnings are to be claimed the employer is required to complete the form where appropriate and the witness should return the form to the Procurator Fiscal's Office above.*





Address of Substitute .....

**TOTAL**

**CHILDMINDING / CARER EXPENSES:** - See the Being a Witness Booklet for details. Payment will be

within prescribed rates.

**\*LESS Advance by  
Procurator Fiscal**

\_\_\_\_\_

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

I declare that to the best of my knowledge and belief the information I have given on this form is correct..

I have received an advance\* of £.....from the Procurator Fiscal.

\_\_\_\_\_

.....  
**AMOUNT DUE  
SIGNATURE OF CLAIMANT**

**CONTACT TELEPHONE NUMBER.....**  
(If posting claim)

**PLEASE ENSURE THAT YOUR CURRENT ADDRESS IS SHOWN OVERLEAF**

**CASHIER.....**

**PRINT**

**NAME.....**

**DATE.....**

## Annex F- Vulnerable Witness Notices and Applications

### Additional Information for the Court

**PF Reference:** <casenum>

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

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

[Add list of vulnerable witnesses]

Note any relationships between witnesses giving evidence in this case	
Advise if it is desirable/appropriate that these witnesses give evidence from the same place	
Are there any risks anticipated from any witnesses (including risk of violence)?	
Do any witnesses have additional support needs? (e.g. disabilities, interpreter required etc.)	
For Live Television links: have any witnesses expressed a preference for a remote site or to give evidence from within the court building?	
Are there any specific needs or concerns expressed by any witness about attending at court requiring exceptional arrangements to be considered?	
Legal Point of Contact Telephone: Email:	[Name of sitting manager/ summary legal manager] [legal point of contact direct telephone number] [legal point of contact email address]
Lodged by	[Name of person lodging notices and applications]

