

Sarah Champion MP
House of Commons
Westminster
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10 June 2021

Dear Sarah

Public Bill Committee evidence session

I am writing to thank you for your questions at the Public Bill Committee session scrutinising the Police, Crime, Sentencing and Courts Bill. I hope you found my evidence on behalf of the Law Society helpful. There were two points I offered to come back to the Committee on, including provisions within the Bill defining the age of a child and on your amendment for special measures for witnesses giving evidence.

Defining the age of a child

You asked about provisions in Clause 36(10) in Chapter 3 of the Bill that would define an adult as over the age of 16 with regards to the extraction of data from an electronic device. The Law Society does not have concerns around the intention of this, which affects how the police go about examining the phone of a 16 or 17-year-old to seek evidence in the event of a crime or where a child or vulnerable adult is at risk.

However, we do note a possible anomaly in the way that the Bill has been drafted. Clause 36 (2) sets out when the police can extract data from a phone, including: (c) protecting a child or an at-risk adult from neglect or physical, mental or emotional harm. We believe that the redefinition of child and adult, which applies to all of Chapter 3 of the Bill, will also apply to this clause. This seems unlikely to have been intended, and we would suggest clarification is sought over what the consequences would be of defining “vulnerable adult” to mean “vulnerable person over the age of 16” here, as it may be necessary to change the definition of a child for this clause.

Special measures for vulnerable witnesses

You also asked me about your proposed amendment that would mean that once witnesses are determined to be eligible for special measures, they would be informed of all provisions and able to decide which option best suits them, rather than relying on the court to decide this.

I have sought the views of our committee of criminal practitioners on the amendment. They feel that it is right that the court continues to determine what is in the interests of justice. An example of why witnesses might not themselves be best placed to make a decision is that special measures may in some cases make their evidence less impactful, which they of course cannot be expected to know or take responsibility for, but which would nevertheless not serve the interests of justice.

The Law Society’s view is that discretion on special measures should remain with the judge or magistrate to decide which measures are most appropriate, taking into account the views of the witness. In practice, our members’ experience is that there are generally few objections made in court and that judges tend to allow the special measures that have been applied for.

I would like to thank you again for giving us the opportunity to give our views on these matters. I have sent a copy of this letter to the Committee clerk to share with the other members.

Kind regards,

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