



SCSN Policy and Strategy Paper No 08 –Victims and Witnesses Consultation

1 Introduction

This paper provides a summary of the Making Justice Work for Victims and Witnesses: Victims and Witnesses Bill Consultation currently being undertaken by the Scottish Government.

On the 22 May 2012, the Scottish Government launched a public consultation which set out proposals to ensure that witnesses and victims receive better support before, during and after criminal proceedings. This consultation builds upon a number of stakeholder consultation events held during 2010/11 in addition to various reports and surveys on victims' and witnesses' experiences of the justice system.

The Scottish Government are committed to introducing a Victims and Witnesses Bill during the 2012/13 session of parliament which will aim to enact many of the proposals in the consultation document. Furthermore, the Making Justice Work programme will be utilised to deliver those proposals which are more than legislation alone can provide.

The consultation will be available until the 20 July 2012 on the Scottish Governments website. The links to access both the consultation paper and the individual consultation questions can be found at:

<http://www.scotland.gov.uk/Publications/2012/05/8645/downloads>

2 Context

With the number of improvements to the Scottish Justice systems in recent years, the expectation of society, victims and witnesses has also increased. Furthermore, the development of the draft EU Directive on Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime ("the EU Directive on Victims") raises the bar for the rights of victims and witnesses of crime. As such the Scottish Government is responding with the development of a Victims and Witnesses Bill.

3 The Consultation

Research was commissioned to determine what would make a difference to victims and witnesses and their experience of the justice system. Six key areas were identified and these provide the guiding principles for the consultation paper, its proposals and associated consultation questions.

Improved Information

The Scottish Government propose to support the principles of the EU Directive on Victims by legislating the right for information to be provided to victims. The EU Directive includes provisions to ensure victims:

- Get information from the first point of contact;
- Are provided with information about their case;
- Are given information in a language they understand; and
- Are provided with the information to allow them to make an informed discussion about whether to ask for a review of the decision not to prosecute (if they wish).

In the light of this, the Scottish Government are to commission a feasibility study into developing an information hub for justice to provide case specific data in Scotland. Furthermore, in order to promote information sharing, a statutory framework relating to a duty to share information is suggested.

It is also being considered which measures could be taken to help improve the public's understanding of sentencing and the consultation asks respondents to give their views on what information (and the methods for disseminating it) would be most useful.

Delivering Greater Certainty

Research has shown that victims and witnesses often do not feel valued within the court process and as such, the Scottish Government are proposing to create a duty on relevant public bodies requiring a minimum standard of service for victims and witnesses. It is also intended that the legislation would require performance reports against the standards. The core standards that the Scottish Government propose for victims and witnesses are listed below. The consultation asks respondents if they feel there are any other issues which should be covered.

- The levels of service that they can expect to receive e.g. about the type and timing of information about their case;
- The information they can expect about what their rights are, including the information they are entitled to about why decisions have been made;
- The information they can expect before giving evidence in court e.g. about the court process and about special measures;
- That information will be provided in plain language, translated if necessary;
- That they will be treated with dignity and respect, and that high standards will be provided regardless of race, age, gender, disability, ethnicity, religion or sexual orientation;
- That suitable arrangements will be made for those with a disability;
- How information they provide can be used in the justice system; and
- How to make a complaint if unhappy with the service provided and informal attempts to resolve the matter have been unsuccessful.

Additionally, the Scottish Government wishes to ensure that applications for closed courts (without public viewing) are considered at an early stage. This will allow vulnerable witnesses to know as early as possible if they will give their evidence in private.

Feeling Supported

The experience of crime causes fear and anxiety and giving evidence in court can be an unfamiliar and uncomfortable experience. The proposals set out by the Scottish Government aim to reassure victims and witnesses about their safety whilst ensuring evidence given is of the highest quality and integrity. A number of suggestions for improving victim and witness care and support have been provided by partners (see below) and the consultation asks respondents to give their views on the options and to suggest any alternatives.

- A dedicated point of contact to provide advise;
- A co-ordination/liaison/care unit responsible for victim and witness contact;
- A support programme for child victims/witnesses;
- A central hub to support professionals.

Currently, Part 1 of the Vulnerable Witnesses (Scotland) Act 2004¹ defines a person under the age of 16 as a vulnerable witness, however, the EU Directive on Victims and the UN Convention on the Rights of a Child define a child as being up to the age of 18. As such, the Scottish Government intend to change the definition of a child witness as being up to the age of 18. Furthermore, it is proposed that the Bill will reflect the wider definition of vulnerability as written in the EU Directive on Victims. Respondents are asked if they agree with these proposals.

Currently, victims of sexual offences and domestic abuse are given automatic entitlement to special measures when they give evidence. The Scottish Government propose to extend this automatic right to standard special measures to any other category defined as automatically vulnerable in the EU Directive on Victims.

It is also proposed that a duty is created on those who have joint investigative interviews with child witnesses to ensure effective participation. It is therefore suggested that the Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland² becomes statutory.

It is suggested that submissions of Child Witness Notices should be a compulsory part of pre-trial hearings to prevent last minute applications and to improve the rights of child witnesses. Respondents are asked for their views on this matter.

There is a requirement to ensure that witnesses with communication needs are supported to ensure they understand questions and can articulate answers effectively. Therefore the Scottish Government propose to extend the types of support measures (including intermediaries and witness profiling) by piloting measures in specific areas and following monitoring and evaluation, roll out the measure across Scotland if appropriate.

¹ Legislation.gov.uk, 2004 - http://www.legislation.gov.uk/asp/2004/3/pdfs/asp_20040003_en.pdf

² Scottish Government, December 2011 - <http://www.scotland.gov.uk/Resource/Doc/365398/0124263.pdf>

Finally within the 'Feeling Supported' section, respondents are asked that if the role of Appropriate Adults in relation to suspects is defined in statute, should be the same be necessary for their role in relation to victims and witnesses.

Feeling Safe

It is proposed that the victims of sexual violence should have the right to choose the gender of the person who interviews them. This is in line with the draft EU Directive on Victims and respondents are asked if they agree with the proposal.

The Scottish Government is proposing that it should not be necessary to disclose a witnesses' personal circumstances in applications for standard special measures. It is felt that this information is unnecessarily intrusive for the victim or witness and diverts attention from the core evidence.

It is further proposed that victims and witnesses are given the right to raise concerns and to propose additional conditions to the Scottish Prison Service when a prisoner is given planned temporary release. Respondents are asked if they agree with this proposal and to comment on any concerns or implications.

Currently, Witness Anonymity Orders (WAOs) allow courts to reserve the anonymity of a witness when giving evidence. It has been suggested that the introduction to Scotland of Investigative Anonymity Orders (IOAs) would offer earlier protection to witnesses. Respondents are asked for their opinion on this proposal and are asked under which circumstances/cases they should be used.

Feeling Involved

The Scottish Government are committed to giving victims inputs into sentencing policy which will allow those who are most affected by crime to have a say in how criminals are dealt with. The consultation asks what mechanisms could be used to ensure victims interests are taken into account when sentencing policy is developed.

Additionally, it is proposed that a scheme will be implemented which will allow victims (or relatives) to meet and put their views to a member of the parole board. Respondents are asked for their views on this proposal. Furthermore, it is proposed that Victim Statements (made when the accused pleads or is found guilty) should be allowed to be submitted to the court at any time after the prosecutor moves for sentence.

It is proposed that anomalies associated with victims statements for children under the age of 14 are given greater consistency.

Making Offenders Pay

The Scottish Government's view is that where an offender has caused harm, loss or distress, the first recourse is that the offender pays compensation directly to the victim. As such it is proposed that courts are required to consider the provision of compensation where a victim has suffered injury, loss or distress. Furthermore, it is proposed that a surcharge should be applied in cases that result in a court fine, with the potential to roll out surcharge arrangements to custodial sentences, community sentences and direct measures. The revenue accrued from the surcharge would then be used to primarily support victims. The consultation asks respondents if they agree with both proposals.

It is suggested that a progressive scheme is applied relating the amount of the surcharge to the size of the fine and consultees are asked for their views and the rates at which the surcharge should be set. Furthermore, it is proposed that priority is given to any compensation payment to the victim, followed by the surcharge and then the principle fine.

Police officers are frequently exposed to criminal damage and injury. The Scottish Government proposes to ensure that those who carry out assaults on the police pay to support the specialist non NHS services who treat or assist the victims. This restitution order would be in addition to compensation to the individual. The consultation asks if respondents agree with the restitution order and asks for opinions on their size and method of enforcement.

Policy and Strategy Paper produced by:
Scottish Community Safety Network
June 2012
Version 1