



**LEGAL ASSISTANCE IN SCOTLAND: FIT FOR THE 21ST CENTURY
RESPONSE TO THE LAW SOCIETY OF SCOTLAND DISCUSSION PAPER**

Victim Support Scotland is the largest organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime, both in the community and in every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. VSS welcomes the opportunity to make comment on the Law Society of Scotland's Discussion Paper on reform of legal assistance in Scotland, and does so with the best interests of victims and witnesses in mind.

Criminal legal assistance

Delays, adjournments, unnecessary citations and needless court attendance all add to the stress, confusion, frustration and distress experienced by victims and witnesses as they journey through the criminal justice system. Victim Support Scotland is generally supportive of the changes proposed by the Society in reforming how criminal legal assistance is structured and administered, as we believe they can potentially contribute to improving the efficiency of the criminal justice system, in turn benefitting victims and witnesses.

VSS supports the simplification of the current schemes; for example, requiring financial verification at the initial application stage only would reduce delays through avoidance of repeated scrutiny of the claim for legal assistance. We are particularly receptive to the proposed changes to the remuneration structure so as to avoid the disincentives that currently exist for solicitors to advise their clients to plead not guilty. Furthermore, we welcome the introduction of financial incentives for early guilty pleas in an attempt to increase the number of cases in which early resolution is achieved. We note that late guilty pleas constitute almost a quarter of summary cases that reach trial stage¹. Being cited for and attending court in such cases results in unnecessary and avoidable stress and inconvenience for victims and witnesses. In addition to the emotional impact, many suffer financial and practical consequences, such as reduced or lost income. We would hope that alongside other criminal justice reforms, such as the proposed Criminal Justice (Scotland) Bill, changes to criminal legal assistance would contribute to a reduction in the number of cases that needlessly reach trial stage due to late guilty pleas.

¹ Audit Scotland (2011), 'An Overview of the Criminal Justice of Scotland's Criminal Justice System', p.28
http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf

Civil legal assistance

It is common knowledge that many individuals find it difficult to understand the criminal justice system in Scotland², and we believe that this is no less true for the system of civil justice. It is desirable that legal assistance arrangements and structures are easy to understand, so that those in need of them can navigate the system more easily. This is especially important for victims of crime, as the stress experienced as a result of victimisation can add to the inherent difficulty of navigating and understanding the legal system. Victim Support Scotland therefore sees merit in a more streamlined and simplified approach to civil legal assistance, replacing the distinction between advice and assistance and legal aid with a general reference to 'legal assistance'. Using the same reasoning, we believe that a single eligibility test on initial application is preferable to the current system, as this would reduce the administrative burden and associated stress on clients at later stages as the case progresses.

The ability to use the civil justice system as a means of redress, protection or general support for victims of crime is fundamentally important; VSS believes that all individuals, regardless of the financial means available to them, should be provided with access to this type of justice. Many victims have a variety of on-going issues in their lives, from housing concerns and personal safety worries to debt problems and custody disputes. This may be no surprise considering that these kinds of problems have been found to be "intrinsically linked to other injustices...social justice and criminal justice issues."³ We know that many victims currently struggle to afford access to a solicitor for help required through the civil law; for example, the Scottish Crime and Justice Survey tells us that of those who have suffered a civil law problem and have not consulted (or planned to consult) a solicitor, 16% said that this was because they were worried about the cost or did not want to pay the cost⁴.

As such, we have concerns that the proposal to lower the threshold for civil legal assistance would result in exclusion of a further group of individuals; this assumes that those who can currently afford to pay some of their legal fees will be able to pay the remainder. We believe that the Society's suggestion that loans be provided in the place of legal assistance for those who would currently be subject to high contributions (and no longer eligible for legal assistance under the proposed changes) would not be an improvement on the current system. This could force many often vulnerable individuals into debt, which may itself cause a problem for the future; the choice between paying for access to civil justice and not is, for some, no choice at all.

² The 2012/13 Scottish Crime and Justice Survey reported that 76% of respondents said that they did not know very much or knew nothing at all about the criminal justice system. the Scottish Government (2014), 'Scottish Crime and Justice Survey 2012/13: Main Findings', p.77

<http://www.scotland.gov.uk/Resource/0044/00447271.pdf>

³ Kemp et al., 2007 cited in the Scottish Government (2014), 'Scottish Crime and Justice Survey 2012/13: Main Findings', p.85 <http://www.scotland.gov.uk/Resource/0044/00447271.pdf>

⁴ Ibid, p.88

Furthermore, we believe that the Law Society's proposals to remove certain types of issues from the scope of civil legal assistance (such as debt, employment law, housing and personal injury) would create an additional barrier to justice for many individuals in need, further limiting the ability of victims of crime to use the civil justice system to improve their situation, which is often caused by the victimisation experience itself. In addition, the suggestion to remove certain categories of law from the civil legal assistance available would remove the possibility of different issues being handled by one solicitor.

VSS would welcome reassurances on how that the network of advice agencies such as in-court advisors, debt organisations, housing organisations and citizens' advice bureau can be adequately funded and made available nationwide, as is the suggestion in the Discussion Paper. We are concerned that the proposed reliance on third sector or independent advice agencies would create geographical inconsistencies in available help across Scotland; those in rural areas may suffer a double disadvantage, as lower levels of access to advice centres coupled with a generally higher cost of living⁵ could make it less likely that they will be able to afford legal advice and representation.

The use of technology

Victim Support Scotland is supportive of increasing the use of digital technology to enhance efficiencies and cut down on costs, and hope to see this approach implemented across the whole of the criminal justice system, in line with the Scottish Government's Justice Digital Strategy. We look forward to a criminal justice system that is efficient, coordinated and sensitive to the needs of victims and witnesses.

⁵ Hirsch, D., Bryan, A., Davis, A., Smith, N., Ellen, J. and Padley, M. (2013) *A minimum income standard for remote rural Scotland*. Inverness: Highlands and Islands Enterprise. <http://www.hie.co.uk/regional-information/economic-reports-and-research/archive/a-minimum-income-standard-for-remote-rural-scotland.html>