



**SUPPLEMENTARY EVIDENCE TO THE JUSTICE COMMITTEE
ON THE INQUIRY INTO THE ROLE AND PURPOSE OF THE CROWN OFFICE AND
PROCURATOR FISCAL SERVICE**

Victim Support Scotland is providing further evidence to the Justice Committee to support information previously provided by us on the inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service. We hope that the following case studies and information on the Case Progress Information Pilot in Tayside will be useful in the Committee's consideration of our evidence.

Contact with victims and witnesses, assessment for vulnerability and appropriate use of special measures

- In some areas, VIA officers will make every effort to assist if they can, and there is some good communication and assistance from the PF office. For example, in a case in which the domestic abuse aggravator was removed from a fraud charge, VIA took on board our suggestion that an application for special measures should be made. When the first application was refused, they made a second application, which was successful. This meant that the victim was provided with the protection they needed to give their best evidence and to feel supported.
- A victim of assault took an overdose of painkillers while waiting to give evidence in the court building. This witness had not been assessed by COPFS for any vulnerability and despite the fact that he was under the care of a psychiatrist, had no special measures in place to enable him to give his best evidence. The case was adjourned, and eventually the witness was excused from court for medical reasons by his GP, and the prosecution was dropped. It is our belief that if this gentleman had been given the right support and assessed for the measures that he needed to give evidence, the court case would have gone ahead.
- A female victim of domestic abuse suffering from PTSD was given screens and a supporter as special measures at court. She was so distressed she couldn't speak, and so had to be removed. Later that day, the witness saw the NHS crisis team who said that they would only permit her to give evidence with further measures to support her. Although the witness and her family had requested the use of CCTV on multiple occasions beforehand, she was told that a screen and supporter would be sufficient for her. When giving evidence again, she suffered greatly and was too upset, confused and affected by her PTSD to be able to answer effectively. She feels that the result of this was fewer charges against the accused resulting in conviction and believes that if she was able to give evidence remotely through CCTV link, this would not have been the outcome.

Countermanding of witnesses

- In one area, VIA agreed to call a family of witnesses if they were required to attend court, as they lived 45 minutes' drive away in a rural area. The aim was to avoid the whole family waiting in the court if they weren't needed to give evidence.
- A victim of stalking was called to court 4 times and each time the case was adjourned. The main reason given was the length of time taken to obtain evidence from an electronic device and the volume of that evidence when it was received. The financial impact and upset on this lady's everyday life was substantial - she was self-employed, and was unable to fill the time she had cleared for the court case on each occasion with clients and so lost out financially.
- Two children (age 8 and 11) attended court this month even though there was a plea at intermediate diet two weeks before – they were not countermanded.
- There was a domestic abuse case in which the victim was under 18, and 4 other witnesses were also children. Only the victim had special measures in place, and because WS staff had contact with this person, we were aware of the lack of special measures for the other witnesses. We made VIA aware of this the week before (Tues/Wed) but the witnesses were not countermanded and attended court (along with their parents) on the Monday, for the case to be adjourned after an hour of waiting. This was due to the special measures not being in place for them.

Administrative mistakes and inefficiencies

- The COPFS had used a letter from a witness saying that they would not be able to attend court from a separate and previous case unrelated to the one they were due to attend. This led to the charges being dropped. When reviewed by our two service users, COPFS said that this was their mistake but due to the passage of time, they could not bring the case back as it had already been nearly two years since the incident. This was taken further to the Lord Advocate, however again they said that due to the passage of time the case could not be tried. This has impacted them severely and their opportunity to speak and be heard and seek justice was removed by an error in administration at COPFS. If the case had been heard sooner, things may have been different.

Communications can be confusing

- In a rape case in which an appeal was being heard, the victim was told that they were holding an "avizandum", which is essentially where the judges meet to make a decision regarding the appeal. There was a lot of confusion in regards to this as the term "avizandum" was used in the letter sent to the client. She was unsure what this meant, if she had to go up to court, etc. which caused significant stress. We had to call VIA to get clarification.
- After a decision was made following a review being sought by a client, COPFS expressed the reasons for refusal in legal terminology such as that it "would no longer be in accordance with the law" or "in the public's best interest" to prosecute due to "passage of time". These appear simple phrases however to the clients, these were highly vague and gave no answers as to why the case was dropped and not brought back. (This is the same case in which an administrative error by COPFS led to the case being dropped due to passage of time).

- Witnesses often do not understand the ‘float’ and turn up anyway (rather than wait to be told when they will be required within the floating period) - we frequently have to explain to witnesses about how trials ‘float’ so they may not start on the day that is written on their citation.

Communications can be inaccurate

- A letter was received by the victim in a domestic abuse case to say that bail conditions were dropped and the accused was found not guilty, when in fact only in one charge was this the case (and so bail conditions were still in place, and the accused was guilty for the other charge). The impact of this was for the victim to panic, and to be fearful for her safety.
- Another letter in the same case as above was received to say that the accused was found not guilty and was ordered to pay a compensation order. This was inaccurate and confusing for the victim, having been told from a different source that he was found guilty.
- In another domestic abuse case, a letter was received to say that the accused had been found not guilty and bail conditions were dropped. In fact, there was another charge, dealt with by another PF, that was going ahead and the bail conditions were still in place.

Sensitivity required in how information is provided

- A victim in a sexual case residing outside of Scotland was telephoned by VIA to let her know of an issue with the case. When asked what this issue was, VIA intimated that they would be unable to provide this over the telephone and suggested a face-to-face meeting in two weeks’ time. This panicked the victim who was alone without anyone to support her when she received this call, and felt that she couldn’t wait two weeks to find out whether her court case was going ahead or not. After some time, VIA decided that they would in fact provide the information over the telephone.
- Providing information by letter is not the best method of communication especially when the information may require explanation, e.g. the example of the avizandum.

Victims’ Rights

- When applications are made for information or for a review of a decision not to prosecute (under sections 6 and 4 of the Victims and Witnesses (Scotland) Act 2014), the response has generally been efficient.
- A victim of harassment had her case escalated from summary to solemn only for it then to be marked no proceedings. VSS helped her to use her section 6 right to find out the reasons for this. Their response was that it had been marked as insufficient evidence to prosecute, but that they had reviewed this decision and were taking this forward at summary level. The end result was that the accused pled guilty, and in addition to his sentence was also given a non-harassment order for over a year. The victim, feeling as she was at the time, would have struggled enormously to complete the application for this information without our help and it would be fair to say that access to justice would have been denied.
- For victims to be able to use their right to ask for a review of a decision not to prosecute, they must first of all be aware that this has been the decision. For cases not under the VIA service, victims are not told of the outcome of their case. They require to call the COPFS themselves to find out.

Difficulties in contacting the COPFS

- When a victim of domestic abuse tried to get her mobile phone back that had been taken as evidence, she couldn't get through to the central COPFS number given by VIA, so she rang Police Scotland who emailed the production department, who in turn emailed the Crown. She was told to collect it from the police station. When she got there they insisted on a letter from the PF but did eventually allow the release without this. This was a very upsetting experience as she needed this to use as evidence for her restraining order. She had also emailed COPFS addresses, receiving no response.
- In the case where there were no proceedings at solemn level, the victim had tried to contact the COPFS /VIA office for an explanation of this decision with no success. This led to her going through the formal process to request a review of the decision not to prosecute.

Lack of information on support available

- When witnesses are cited in non-VIA cases, they receive only a citation. This references the support at court leaflet, which is not included in physical form along with the citation, but is only available online and by request. This is reflective of a general change across many agencies in which the internet is relied upon to host resources, for financial reasons. However, this means that witnesses are not provided with information on their rights as a witness, and the possible support and protection measures that may be available to them.
- Our Witness Service has often provided our own copies to service users, such as the going to court DVD for child witnesses

Tayside Case Progress Information Pilot

The COPFS provided funding to VSS to run a pilot project in Tayside in 2012-2016 in which case progress information was proactively provided to **all** victims and witnesses in **summary cases** who were supported by VSS. A VSS project worker was given access to the national COP2 criminal justice tracking system, which enabled them to provide information to victims and witnesses who were being supported by VSS. The importance of proactive provision of information to victims of crime was shown through the high opt-in rate. The success of this project related mainly to the provision of support alongside case progress information; the feedback from service users focused on the importance of having time to talk, someone who is able to explain the information given, and someone to provide support to them at the time. The project ended in March 2016 due to technological difficulties with the need for IT improvements to enable efficient, linked-up processes and information systems.