



INQUIRY INTO THE ROLE AND PURPOSE OF THE CROWN OFFICE AND PROCURATOR FISCAL SERVICE

EVIDENCE TO THE JUSTICE COMMITTEE

Victim Support Scotland (VSS) is the largest charity supporting people affected by crime across Scotland through the provision of practical help, emotional support and essential information. VSS welcomes the opportunity to provide evidence to the Justice Committee as part of the inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS), as both an advocate for the best interests of victims and witnesses, and a partner and stakeholder of the COPFS.

Efficiency and effectiveness

VSS is not in a position to judge the *overall* effectiveness of the COPFS in its core role of considering reports from the police and bringing prosecutions, but can identify some ways in which we believe the COPFS could be more efficient and effective in carrying out this role.

In order to be truly effective, the COPFS must engage with witnesses to ensure that they are familiar with all of the evidence in advance of trial and to prevent avoidable issues. A decrease in the use of precognition and a general lack of contact with witnesses before trial has in some cases resulted in unsatisfactory outcomes, through the inability for witnesses to give their best evidence. In some cases, a lack of preparation by Fiscals in advance of trial results in adjournments when the case does call. The impact of churn on victims and witnesses is severe, with many witnesses losing out financially and experiencing additional stress and anxiety. VSS has also identified that it can be common for the COPFS to fail to countermand witnesses, which means that they still attend court only to find out that the case is not calling that day. This stress, anxiety and inconvenience caused to victims and witnesses, who will have mentally prepared themselves to give evidence, is completely avoidable. We believe that consideration should be given to the use of technology to cite and countermand witnesses, as this would ease pressure on the COPFS in sending these out manually or through the use of police officers.

Working with stakeholders

VSS: There has been in place a long-standing (>10 years) tripartite information and referral protocol between COPFS, SCTS and VSS, which enables the provision of advance notification of vulnerable victims and witnesses who need support. We have noted that the key roles and responsibilities as set out in the protocol are no longer being routinely followed by VIA. Since COPFS disbanded the VIA national team 2-3 years ago, there has been a decline in the consistency of practice across the VIA service. Ensuring effective communication from the COPFS centre to local VIA teams has been problematic due to their structures. Although we note proposals for a revised structure following recent appointment of David Harvie as Crown Agent, to date this does not appear to have manifested in any noticeable improvements.

Although COPFS policy staff do circulate instructions to VIA staff, our experience remains that these are not acted upon. For example, compliance reminders are often sent by policy staff to ensure that VIA refer vulnerable witnesses to the Witness Service 10 days in advance of trial.

This allows us to contact witnesses and offer our help and assistance such as court familiarisation visits; this enables witnesses to experience the actual court room, provides an explanation of key personnel in advance of trial and helps them to give their best evidence. If VSS do not receive referrals in the required time, we are unable to plan our resources effectively, which can affect the support that is available to witnesses on the day. Additionally, VIA staff are meant to contact vulnerable witnesses themselves to explain their role and our role. Increasingly, this does not occur and the only way victims and witnesses can receive this information is through contact with VSS.

Referrals from VIA to Witness Service (WS) involve the use of a designated 'referral form' through email. This hugely bureaucratic process is a duplication of recording by VIA and WS staff, which results in less time for contact with victims and witnesses. In addition, due to the manual process involved, mistakes are prone to be made. In raising this with COPFS, we have suggested the development of a technological solution along the lines of the police referrals to VSS, which come directly into our secure system. So far however, this has not been possible.

Issues raised at local level between VSS and VIA staff can sometimes be resolved through regular tripartite meetings between VSS, COPFS and SCTS. However, there is disparity across the country in terms of how well VIA work in partnership with VSS. Additionally, VSS staff can find it very difficult to contact VIA due to the centralisation of communications (through the COPFS Enquiry Point which has replaced previous named contacts with direct dials). This in turn impacts on our ability to effectively advocate for witnesses.

Defence: Adjournments are often also caused by a lack of timely disclosure by the COPFS to the defence, with evidence sometimes seen for the first time by the defence at the time of the trial.

SCTS: We believe that the marking and allocation of cases could be better coordinated between COPFS and SCTS to avoid too many witnesses being cited for cases that have no realistic prospect of being heard. This would reduce the number of instances in which witnesses are turned away from court to be re-cited to give evidence at a later date.

Resources and skillsets

As previously indicated, in order to carry out their core role effectively COPFS must engage with victims and witnesses in advance of trial. A deficiency in resources available may be linked to: fewer precognition officers; a lack of assessment for the appropriate special measure that should be used in cases of deemed vulnerable witnesses; a lack of contact with non-deemed vulnerable witnesses in order to assess their vulnerability; a lack of contact to confirm a not guilty plea at intermediate diet; and a change from telephone contact with witnesses to contact by letter. We also have concerns around resource allocation and deployment of staff, having experienced gaps in VIA staffing over sustained periods.

When it comes to communicating with victims and witnesses, the importance of sensitivity and an understanding of the impact that the information will have on them cannot be understated. Unfortunately, communications by COPFS are often difficult to understand and can be provided without the respect, care and sensitivity that victims deserve.

Victims and witnesses

The needs of victims and witnesses and the associated legal obligations placed on COPFS fall into the following categories: information and communication, and protection.

Information and communication

The provision of information is fundamental in enabling victims to understand the process of which they are a part, and for minimising uncertainty and anxiety. The VIA service provided by COPFS provides information and advice to child victims and victims of crime in cases of domestic abuse, hate crime, sexual crime or where it is likely that a trial will involve a jury. **Victims who do not fall under the auspices of VIA are not provided with proactive information on their case, such as whether it is going to court, until they receive a citation many months later (if at all).** When an alternative to prosecution is used, victims are not provided with this information unless they request this, using their right under section 6 of the Victims and Witnesses (Scotland) Act 2014. Unfortunately, very few victims are aware of this right, and the process used to access this information is bureaucratic, online only and difficult to navigate. On the other hand, positive reports have been received as to how these requests have been handled when made.

When trying to contact VIA directly, victims have told us of their frustration at the length of time that it takes for calls to be answered, if at all.

COPFS have a legal obligation to ensure that their communications are as clear and easy to understand as possible¹. The standard letters used by VIA to provide information to victims and witnesses are overly lengthy and too complex, with little explanation of terms used; feedback received from our service users is that the letters are confusing, and many witnesses contact us to ask about subjects covered in the documents sent by COPFS. Many victims and witnesses are unclear of what is happening next, or what the outcome of their case was, even though they have received communications about this from VIA.

Although there have been some positive reports of individuals being very impressed with the compassion they have received when cases have been adjourned and there is no date yet set, we find in the majority of cases that witnesses who face this situation are often left uninformed. Although in some cases Fiscals endeavour to explain their decisions to victims and witnesses, this often does not happen due to time restraints. This is particularly true when it comes to dropping charges or accepting not guilty pleas. Inaccurate information is also sometimes provided by COPFS, which creates confusion, anxiety and often fears for their safety.

COPFS must also take into account any personal characteristics which might affect the victim's ability to understand or to be understood². In most occasions, if COPFS are aware of any barrier which may affect a victim's understanding (such as a learning difficulty or health issues), they provide this information on their referral to us. Some issues do occur however, such as in relation to language needs.

COPFS generally meets its duty to ensure that victims are provided with interpretation and translation services where required³. On most occasions, translators are present for trial dates. However there have been times when they have failed to arrange for a translator, the wrong dialect of translator has appeared, or it is realised that more than one interpreter is required, which can result in delays when this happens on the day of the trial. In addition, some of our

¹ Section 3E of the Victims and Witnesses (Scotland) Act 2014

² Also Section 3E of the 2014 Act

³ Section 3F of the 2014 Act

service users where English is not their first language have been contacted in English with no interpreter used over the phone.

Our experience is that victims are not made aware of the rights available to them, such as the right to obtain information⁴, or the right to request a review of a decision not to prosecute⁵. Moreover, the form for requesting a review is difficult to access. Using this right has resulted in positive outcomes for some victims, with prosecutions taking place.

Protection

As regards their duty to take reasonable steps to enable a victim to **avoid contact with the offender**⁶, COPFS frequently make VSS aware when there may be an issue with a witness seeing the accused, even though the safety of witnesses within the court building is not the responsibility of VSS. There have been occasions in which the accused has been let out of the building before the victim and witnesses, resulting in intimidation and further offences being committed. We believe there is a duty of care in relation to the safety of witnesses upon those who cite witnesses to give evidence and those who run the court building, and measures should be in place to ensure that this type of contact is avoided.

As regards the provision and arrangement of **special measures**, COPFS have a duty to have regard to the best interests of the witness and to take account of any views expressed by the witness⁷, and to take reasonable steps to carry out an assessment to determine whether a witness may be vulnerable⁸. Although in some cases VIA work well to ensure that the most appropriate measure is used (for example, PFs consult with WS and have changed the measures from a screen and a support to CCTV and a supporter), our experience is that in general, the COPFS are unable to fulfil these duties, **resulting in a failure to protect victims and witnesses from secondary victimisation.**

Since the implementation of the 2014 Act provisions on automatic special measures for child and deemed vulnerable witnesses in September 2015, there has been a move away from the assessment of witnesses' vulnerability and discussion with them around their needs for support and protection. The time and resources of VIA seem to be taken up with the additional administrative work that has resulted from the automatic entitlement to special measure for specific categories of witnesses. **The result is that many witnesses are not being provided with the measures that they need to support and protect them from the trauma of giving evidence.** The Witness Service identifies many individuals who are in fact vulnerable, but unfortunately this happens at a late stage, very often on the day of the trial, resulting in an inability for them to access the support they need.

We recognise that many of these issues may be attributable to the additional resources and skillsets required to implement a system in which the needs of victims and witnesses are truly at its centre.

⁴ Section 6 of the 2014 Act

⁵ Section 4 of the 2014 Act

⁶ Section 9D of the 2014 Act

⁷ Section 271E of the Criminal Procedure (Scotland) Act 1995

⁸ Section 271BA of the 1995 Act