



This submission was made as part of a call for evidence from the Scottish Parliament Criminal Justice Committee roundtable on 22 September 2020 to allow members to hear from key stakeholders about a range of policy ideas on victims' rights and support.

Impact of current legislation

At the Criminal Justice Committee roundtable on the impact of Covid-19 which was held on 7 September 2021, Victim Support Scotland (VSS) notes the discussion around digital developments in our courts and in particular the views of some witnesses it was imperative in-person court proceedings resume as soon as possible.

Victim Support Scotland is growing increasingly concerned that such comments ahead of the introduction of Covid permanence legislation, may lead to an erosion of victim's rights to measures which pre-date the pandemic. Under the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019, witnesses who are categorised as 'vulnerable' – this includes victims of sexual assault, domestic abuse, trafficking and stalking, and those under the age of 18 – have the right to provide evidence remotely via CCTV link, or pre-recorded in advance of a trial rather than giving their evidence in court.

Many victims describe appearing in court as more traumatic than the experience of the crime itself with Dr Lesley Thomson QC's ['Review of Victim Care in the Justice Sector in Scotland'](#) report noting that "victims often speak of feelings of re-victimisation... once they enter the criminal justice arena." Over the years there have been many such reports with similar findings. In contrast, providing evidence remotely or pre-recorded via evidence on commission allows victims to provide evidence in a more comfortable setting and completely avoids the risk of contact with the accused increasing the likelihood of victims giving their best evidence.

VSS has recognised the opportunity provided by the pandemic, to overcome some of the challenges victims and witnesses face and is supporting the use of virtual courts for summary criminal cases during the pilot project in Grampian, Highlands & Islands. VSS is the largest organisation providing in-court support to vulnerable witnesses in Scotland and routinely receives over 20,000 referrals from the Crown and Procurator Fiscal Service to do so each year. Virtual trials were hailed by Sheriff Principal Pyle as, "a pillar in the effective administration of justice." His desire is that "virtual trials become the default method of judicial determination in summary crime" according to his report ['Summary Criminal Virtual Trial Pilot: The Way Ahead'](#) published 3 July 2020. In VSS's view, virtual summary trials have proven themselves to be an effective method of delivering justice and improving the experience of victims and witnesses. They should be viewed as core components of the justice system, rather than a short-term alternative born out of the necessity of Covid-19 or viewed as a threat to the sanctity of the courtroom.

VSS would like to see the extension of the provisions for vulnerable witnesses to all complainants who may choose to provide their evidence remotely. This aligns well with the current Programme for Government commitment to 'give serious consideration to the recommendations of the Dorrian Review, including the introduction of specialist courts, and allowing victims to pre-record their evidence.

Under the emergency Covid legislation, time bars were extended from 40 days to 3 months for summary trials, and from 140 days to 6 months for solemn proceedings. While VSS acknowledges the need to reduce the backlog of court cases and the detrimental impact lengthy delays are having

on the wellbeing victims, given the timescales for addressing the backlog as set out by the Scottish Courts and Tribunal Service, it would be premature to return to pre-Covid time limits whilst the backlog continued. This would potentially result in some cases being thrown out and therefore removing the ability of victims to see their case brought to justice. VSS has major concerns about the impact of this in terms of public safety but also in relation to public trust in the justice system.

Barnahus and the Child's House for Healing

In partnership with Children 1st, Children England, the University of Edinburgh and the People's Postcode Lottery, Victim Support Scotland is working to establish the first Child's House for Healing in the UK in Scotland. It is inspired by the international renowned Barnahus standards, first developed in Iceland.

VSS understands that Children 1st have also been invited to give evidence to the committee and will be providing a more in-depth overview of the progress on the establishment of Scotland's first Child's House for Healing in East Renfrewshire.

A Victims' Commissioner for Scotland

VSS notes that the Programme for Government, published on 7 September 2021, states a commitment to "prepare for the necessary legislative process to appoint a Victims' Commissioner" but that the Scottish Government has not indicated a timescale for when this will happen. We want to see a Victim's Commissioner Bill brought before the Scottish Parliament by the end of this parliamentary year to allow for an appointment to be made during the life of the current parliament.

There is a clear mandate, from victims themselves and a commitment in the manifestos of the majority of political parties in the Scottish Parliament, for a Victims' Commissioner for Scotland.

The creation of an independent and properly resourced Victims' Commissioner for Scotland will allow the voices, experiences and views of those affected by crime to be heard and to influence decision making. A Victims' Commissioner should seek to promote the recognition, inclusion and participation of victims of crime in the justice system, seeking to improve awareness and access to the rights set out in the Victim's Code for Scotland.

It would also address the perceived imbalance that the representation of issues affecting victims and witnesses is better provided in Northern Ireland, England and Wales, and London, due to the lack of an equivalent role in Scotland.

In our report '[Making the case for a Victims' Commissioner for Scotland,](#)' Victim Support Scotland details how similar roles operate elsewhere to highlight instances of best practice and sets out its key criteria for such a position.

This support from VSS for the creation of a Victims' Commissioner is on the basis that the creation of this post does not adversely impact resources and funding that would go directly towards victims and/or victims' services – we feel strongly that this should not detract from this. VSS would require assurances that the role of commissioner would come with a commitment to engage directly with victims and witnesses and believe that a key responsibility for the role should be to establish victim experience panels to give victims a forum to advocate for the changes they believe would make the most difference for them.

As demonstrated by the Victims' Reference Group, it is vital that their experiences are used to drive positive changes and improve outcomes for victims throughout the justice system. Enshrining the role of a Victim's Commissioner with a duty to directly consult with people affected by crime would make Scotland a world leader in taking a victim-centred approach to justice.

While we largely envisage that the powers of a Victims' Commissioner for Scotland would echo those of the Children & Young People's Commissioner, our report cites the Victims of Crime Commissioner in Victoria, Australia as an example of international best practice. The powers of the VCC include the ability to, 'carry out inquiries into issues affecting large numbers, or particular groups, of victims of crime in Victoria, and report to relevant ministers on those issues.' VSS is open to the idea that a Victims' Commissioner could conduct inquiries and take forward complaints on behalf of victims and their families, but would seek further consultation as to the scope and resources required for such a function.

Effectiveness of the Victim Notification Scheme (VNS)

VSS works with thousands of victims each year and based on their feedback is of the view that the current Victim Notification Scheme is not fit for purpose. VSS is fully supportive of the Scottish Government's pledge to review the scheme and would welcome a full review of this scheme to ensure it is trauma-sensitive. However, given that no specific commitment was made to the review of the VNS in the current Programme for Government, VSS remains concerned that this review is not being given adequate priority. The legislative context that governs the scheme is complex and needs simplification as well as the scheme requiring systemic and procedural change.

VSS has described the mental health impacts of the pandemic on victims and witnesses and the cumulative impacts arising from knock-on effects to the justice system at a time when access to psychological support services is a challenge across the country. Overall, VSS has seen an alarming rise in the numbers of victims experiencing emotional distress and the number of safeguarding concerns that have had to be escalated for further action has remained high throughout the pandemic. The proportion of safeguarding concerns that relate to potential suicide or self-harm increased sharply at the beginning of the pandemic and has remained high.

For example, 29 Safeguarding concerns were reported in VSS in August 2021, of which 19 (66%) of those related to suicide. For comparison, in August 2020, 20 safeguarding concerns reported, with 12 (60%) of those being suicide related. This is a significant jump compared to the number of concerns reported in August 2019 when only one safeguarding concern was reported. There have been recent occasions where VSS has sought intervention by emergency services to provide medical attention to victims as a result of a letter notifying a victim of the release of a perpetrator having been received.

The VNS causes a huge amount of distress for victims and the manner in which it is administered often re-traumatizes people. The need for a review has never been greater given the wider context as outlined above. The scheme is problematic in a number of ways, a snapshot is given here to illustrate this: Notifications of a prisoner's release are mostly done by letter which means that the victim has little control with little or no time to plan ahead. These letters arrive without warning and often without a prior offer of support. Victims tell us that they have found themselves in the situation of being alone and vulnerable when receiving these letters, with no one to support them. Concerns have also been raised about the timing of the letters, some are received on a Friday afternoon which victims say is the worst time as there is no one in the relevant office all weekend to answer any questions they may have.

Victims receive no regular communication and, especially in the case of long sentences, they may have moved addresses. The onus is being placed on the victim themselves to update their details as the system is address-based with no option to opt in for email or text or online communications. This also puts anyone in rented or short-term accommodation at an additional disadvantage for receiving the information they are entitled to.

While the Covid-19 pandemic and closure of courts has been a factor in the number of people registering with the Victim Notification Scheme dropping to a record low from 443 in 2018-19 to 306 last year, the registration process itself remains a key issue.

Victims are given only one opportunity to sign up and it can be at the time they have experienced trauma as a result of the crime – while still at court immediately after the sentence has been handed down – and report to us that they can't remember being asked if they wish to opt-in to the scheme due to shock. Greater flexibility in when and how victims sign up, as well as the ability to choose how they are kept updated is urgently needed.

Early release

While efforts are made to put support plans in place for the offender upon release back into the community with Information Sharing Agreements now in place between the Scottish Prison Service and every local authority in Scotland, there is no equivalent consideration given to victims and support and/or safety planning. VSS sees this as a wasted opportunity.

During the Covid-19 pandemic the decision was made to release hundreds of prisoners sentenced to 18 months or less and who on 4 May 2020 had 90 days or less left to serve in custody to increase the availability of single-cell occupancy and allow for isolation if necessary. While prison governors maintained a veto, and those convicted on domestic abuse charges were not eligible for release under emergency legislation provisions, this mass release approach to release did not allow for a dynamic risk assessment process to take place. Full consideration to the impact on the prisoner, their victim(s) and their community are needed as part of a coordinated approach. Information sharing relating to the victim must be treated with equal importance to that of the prisoner so that appropriate support plans can be put in place for victims across Scotland.

With notice and clear information of the services available, support organisations can ensure victims are informed and supported in a trauma informed way and put additional measures in place. During the past year, VSS has seen an increase in the number of people accessing its Victims Fund to request home security equipment such as intruder alarms and video-enabled doorbells, demonstrating victims rising concern for their personal safety.

Impact of Victims Surcharge Fund (VSF)

Victim Support Scotland has operated its Victims Fund for over a decade, with a view to ensuring that no victim in need, is adversely impacted either materially or financially as a result of being affected by crime. Whilst the fund was relatively low in value previously, it has always been open to other organisations to apply on behalf of victims or for victims to apply themselves, with VSS taking on the administrative responsibility for applications.

In March 2021, VSS received a share of the first £157,000 payment out of the Victim Surcharge Fund and this funding went directly to the Victims Fund since the objectives of the two were well aligned. The VSF enabled VSS to scale-up its work through the Victims Fund considerably and reach hundreds more families than has been possible previously. In addition to the VSF, the Victims' Fund received an additional £30,000 of funds to ensure continued availability for crisis funding for women engaged in sex work/Commercial Sexual Exploitation in the financial year 2021/22.

Throughout the pandemic, VSS has seen an unprecedented demand for its Victims' Fund. In financial year 2020/21, £285,000 was distributed to 741 people and their families who have been affected by crime. It was only possible to match this increased, unprecedented demand due to, in the main, additional funds received through the VSF along with other charitable donations, reallocation of existing budgets and additional funding from the Scottish Government.

VSS is of the view that it is vital that funds remain available for direct allocation to victims and their families to meet these costs which arise out of emergency and unforeseen necessity.