



MAKING THE CASE FOR A VICTIMS COMMISSIONER FOR SCOTLAND



Victim Support Scotland

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background

WHERE WE ARE NOW

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.

It is an opportunity for Scotland to lead the way globally in terms of victims' rights that can emulate the success of the Children and Young People's Commissioner for Scotland role.

We know there is appetite from victims and their families for this role as they believe it will help their voices be heard at a national level. We also know directly from the Victims Reference group (made up of people who have experienced some of the most serious of crimes) that they support the concept.

A Victims Commissioner for Scotland 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 Victims Code for Scotland.

Victim Support Scotland

PERSPECTIVE

Victim Support Scotland is supportive of the establishment of a Victims' Commissioner in principle.

Properly empowered and resourced, the role would play an **active, tangible role in the protection and promotion of victims' rights** in Scotland, contributing towards a victim-centred approach across the criminal justice system. 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.

This support from Victim Support Scotland 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.

Some victims and witnesses of crime, including individuals bereaved by crime, have highlighted to Victim Support Scotland that there needs to be a greater emphasis on the voices of victims and witnesses within the Scottish criminal justice system.

“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 INFORM DECISION MAKING.”

LYNN BURNS

*victims' rights campaigner
and Victims' Taskforce
member*

For some individuals, a Victims' Commissioner could therefore function as an independent source of information, collective advocacy and best practice guidance within a current system where there is not direct legal representation for victims and witnesses in criminal cases.

The role of Victims' Commissioner or a Victims' Commission must be clearly defined as **an advocacy role**. Independent from government, it must be a critical component in advancing the voices of victims and witnesses in influencing positive changes across the criminal justice system, that does not result in the withdrawal of vital support services that are based in courts and communities.

The Victims' Taskforce was established with the remit to, 'co-ordinate and drive action to improve the experiences of victims and witnesses within the criminal justice system, whilst ensuring a fair justice system for those accused of crime.' Victim Support Scotland believes that **the Victims' Taskforce should continue** in the sixth session of the Scottish Parliament and should work alongside the Victims' Commissioner to deliver for victims and witnesses. We also believe that the Victims' Commissioner should become a member of the Victims' Taskforce.

Victim Support Scotland 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 themselves 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 criminal justice system. Enshrining the role of a Victim's Commissioner who has a duty to directly consult with people affected by crime would make Scotland a world leader in taking a victim-centred approach to justice.

what would a

VICTIMS' COMMISSIONER FOR SCOTLAND

look like

Independent

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Representative

The Victims' Commissioner should sit on the reinstated Victims' Taskforce with a statutory remit to 'coordinate and drive action to improve the experiences of victims and witnesses within the criminal justice system, whilst ensuring a fair justice system for those accused of crime.

Enshrining the role of a Victim's Commissioner who has a duty to directly consult with people affected by crime would make Scotland a world leader in taking a victim-centered approach to justice.

Oversight

A key duty of the Victims' Commissioner should be to formally monitor criminal justice agencies performance in relation to their responsibilities as set out in the Victims' Code for Scotland and the Victims & Witnesses (Scotland) Act 2014.

Through this process, the Commissioner can make recommendations for improvement to ensure that acceptable standards of service are being delivered for people affected by crime.

Much like the Children and Young People's Commissioner for Scotland, the primary function of the role must be to **protect and promote the rights of people affected by crime**, using lived experience to drive the transformation of Scotland's justice system and scrutinise the agencies which seek to serve them.

Victim Support Scotland envisages that a similar appointment process for a Victims' Commissioner for Scotland be used to that of the Children and Young People's Commissioner role whereby the Commissioner is funded each year via the Scottish Parliamentary Corporate Body (SPCB), appointed by the Scottish Parliament and approved by Royal Assent. This would ensure independence from the Scottish Government and criminal justice bodies.

learning from elsewhere

VICTORIA, AUSTRALIA

The **Victims of Crime Commissioner** is an independent statutory officer, appointed under the Victims of Crime Commissioner Act 2015. The role is independent from government and other agencies of the justice system.

The role of the Commissioner and the Commissioner's Office is to:

- Advocate for the recognition, inclusion, participation and respect of victims of crime by government departments, bodies responsible for conducting public prosecutions and Victoria Police.
- 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.
- Provide advice to ministers, government departments and relevant organisations about improvements to the justice system to better meet the needs of victims of crime.
- Consider complaints from victims about investigatory, prosecuting and victims' services organisations about their compliance with the principles in the Victims' Charter Act 2006.

The Commissioner does not have the powers or responsibility to:

- Provide direct support to victims of crime – the Commissioner's Office can, however, provide information and referral to a victims' support service.
- Provide legal advice or recommend a solicitor/barrister.
- Release any information that might lead to the identification of a victim.
- Change an outcome of a case that has been through the courts, or influence the way that a case will be run.
- Act in a way that would influence –
 - a criminal investigation
 - a criminal or civil proceeding in a court or tribunal
 - investigations of the Independent Broad-based Anti-corruption Commission (IBAC)
 - investigations of the Victorian Inspectorate disciplinary proceedings or criminal investigations conducted by members of Victoria Police.

learning from elsewhere

NORTHERN IRELAND

The **Commission for Victims and Survivors** was established in May 2008 under the Victims and Survivors (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008. The Commission is a Non-departmental Public Body (NDPB) of The Executive Office.

The Commission works to address the needs of all victim and survivors by ensuring excellent service provision, acknowledging the legacy of the past and building for a better future. It oversees and provides guidance to the Victims and Survivors Forum in relation to the three key areas of victims and survivors work - Services Working Group, Better Future Working Group, Pension and Need Working Group. In turn, the Victims and Survivors Forum acts as an advisory body to the Commission.

Statutory duties of the Commissioner:

1. The Commissioner shall promote an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests.
2. The Commissioner shall keep under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors.
3. The Commissioner shall keep under review the adequacy and effectiveness of services provided for victims and survivors by bodies or persons.
4. The Commissioner shall advise the Secretary of State, the Executive Committee of the Assembly and any body or person providing services for victims and survivors on matters concerning the interests of victims and survivors:
 - a. as soon as reasonably practicable after receipt of a request for advice; and
 - b. on such other occasions as the Commissioner thinks appropriate;
5. The Commissioner shall take reasonable steps to ensure that the views of victims and survivors are sought concerning the interests of victims and survivors.
6. The Commissioner shall make arrangements for a forum for consultation and discussion with victims and survivors.

Powers of the Commissioner

1. The Commissioner may undertake, commission or provide financial or other assistance for research or educational activities concerning the interests of victims and survivors or the exercise of his functions.
2. The Commissioner may, after consultation with such bodies or persons as he thinks fit, issue guidance on best practice in relation to any matter concerning the interests of victims and survivors.
3. The Commissioner may:
 - compile information concerning the interests of victims and survivors;
 - provide advice or information on any matter concerning the interests of victims and survivors;
 - publish any matter concerning the interests of victims and survivors, including the outcome of any research or activities mentioned in bullet 1 and any advice provided by the Commissioner.

The Commissioner may make representations or recommendations to any body or person concerning the interests of victims and survivors.

learning from elsewhere

ENGLAND & WALES

The **Victims' Commissioner for England and Wales** exists to listen to and represent the views and needs of victims and witnesses. The role of Victims' Commissioner is set down in the Domestic Violence, Crime and Victims Act 2004.

The office of the Commissioner consults individuals and organisations to understand everyone's experiences of the criminal justice system. They carry out detailed research into victim services and produce comprehensive reviews that:

- Focus on specific areas, like the Victim Personal Statement, and criminal injuries compensation.
- Highlight what is and what isn't working in the criminal justice system.
- Submit reports and recommend changes to the Secretary of State for Justice aimed at improving the support offered to victims.
- Monitors how victims' support agencies are complying with the Victims' Code and Witness Charter, and encourages good practice.

The Victims' Commissioner cannot champion individual cases or challenge criminal justice agencies to make different decisions. For example, the Commissioner can't ask the Criminal Injuries Compensation Authority (CICA) to overturn a decision to refuse compensation for a victim, or ask the Crown Prosecution Service (CPS) to make a different charging decision.

learning from elsewhere

CHILDREN AND YOUNG PEOPLE'S COMMISSIONER SCOTLAND

The Commissioner's powers are set out in the Commissioner for Children and Young People (Scotland) Act 2003, as modified by the Children and Young People (Scotland) Act 2014. The Commissioner's main function is to promote and protect the rights of children and young people in Scotland. This includes everyone in Scotland under 18, and anyone under the age of 21 who is care experienced.

Protecting and promoting rights must involve:

- Promoting awareness and understanding - The Commissioner has to inform people in Scotland about the rights children and young people have and help them understand what they mean in practice.
- Reviewing law, policy and practice - The Commissioner has to look at what powerful people in Scotland do and the laws they pass, and challenge them when they don't respect children and young people's rights.
- Promoting best practice - The Commissioner has to guide people who work with and for children and young people how to get better at respecting human rights.
- Research - The Commissioner should research issues around children and young people's human rights and get others to carry out research around this.
- Investigation - The law gives the Commissioner a special power to investigate some issues affecting children's human rights. There are limits on when this power of investigation can be used. Before the Children and Young People (Scotland) Act came into force, the Commissioner could only use their power of investigation to investigate cases involving the human rights of groups of children and young people. The Act changed this to allow the Commissioner to investigate cases affecting the human rights of an individual child or young person.
- Reporting to Parliament - As a parliamentary appointment, the Commissioner has to report to the Scottish Parliament.
- Equal opportunities - The Commissioner must encourage equal opportunities and the observance of equal opportunity requirements.
- Involving children and young people - The Commissioner must consult children and young people on the work they plan to do, and must consult organisations who work with children and young people.

To ensure independence from the Scottish Government, the Commissioner is funded each year via the Scottish Parliamentary Corporate Body (SFBC), appointed by the Scottish Parliament and approved by Royal consent.

how to make

A VICTIMS' COMMISSIONER FOR SCOTLAND

a reality

Victim Support Scotland's recommendations are for:

1. A commitment in **2021 Programme for Government** to bring forward the Victims' Commissioner for Scotland Bill, giving victims assurances that they will continue to have a voice and role in the current legislative agenda.
2. The **Victims Taskforce reinstated** to assist with scoping out of role, drafting and consultation process.
3. A **Victims' Commissioner Bill** brought before Scottish Parliament in 2022 to allow for scrutiny and to enshrine the role in Scots Law.
4. For the Victims' Commissioner to be an effective advocate for victims they should be **politically independent, established in statute, and maintain the confidence** of the victims.
5. Guarantee the creation of a Victims' Commissioner will supplement, **not adversely impact**, the resources and funding that goes directly to victims/victims' services. An independent advocate for the rights of victims is no replacement for the network of support and information services that organisations such as Victim Support Scotland provide.

why should

VICTIMS HAVE TO WAIT

any longer?

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 longer victims wait, the longer the impression grows that they do not have an advocate in Scotland's justice system**, with Scotland falling further behind the rest of the UK in protecting victims' rights.

Victim Support Scotland want to see Scotland's first Victim's Commissioner in post before the end of the current parliamentary term.





Victim Support Scotland

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