

Proposed Victims, Criminal Justice and Fatal Accident Inquiries (Scotland) Bill

Response from Victim Support Scotland



Victim Support Scotland (VSS) 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 within each local authority and every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers.

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Victim Support Scotland is content with its response being published

Aim and approach

1. Which of the following best expresses your view of the proposed Bill?

- Fully supportive
- **Partially supportive**
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

See answers below for our rationale

2. Do you think legislation is required, or are there other ways in which any of the Bill's aims could be achieved more effectively? Please explain the reasons for your response.

Victim Support Scotland believe that legislation is required. We are aware that the Scottish Government have announced a review of the Victim Notification Scheme (which we believe is long overdue) and have also consulted on the Not Proven verdict in recent weeks. It is a matter for legislators as to what the most appropriate legislative vehicle is, we are clear however that a legislative solution to these matters is, in our opinion, required.

Not proven (pages 8 – 10) 35

3. Which of the following best expresses your view of the proposed removal of the "Not Proven" verdict in Scots Law?

- **Fully supportive**
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed

- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response.

Victim Support Scotland (VSS) supports the removal of the “Not Proven” verdict from the Scottish criminal justice system. We previously supported this change in the Criminal Verdicts (Scotland) Bill proposed in 2013¹.

It is our experience that many victims, witnesses and their families find the ‘Not Proven’ or ‘third verdict’ to be confusing, disappointing and at times re-traumatising. Finality and certainty are crucial elements of an effective criminal justice system and support people’s recovery journeys after a crime. With the added option of the ‘Not Proven’ verdict, and how it is understood in the context of standing alongside ‘Guilty’ and ‘Not Guilty’ options, many victims are left without the conclusive answer they were looking for from the justice system.

The three-verdict system, with its two different forms of acquittal, suggests two differing degrees of innocence. This is neither acceptable for the people affected by the crime, or the accused. It can also be argued that giving the jury two acquittal verdicts, but only one conviction verdict to choose from favours the accused².

In December 2021 the Scottish Government carried out a consultation on the ‘Not Proven’ verdict.³ As highlighted in the consultation document there is no statutory, case law or generally accepted definition of the ‘Not Proven’ verdict, nor the difference between the ‘Not Proven’ and ‘Not Guilty’ verdict. It also highlights that there have been occasions where judges have attempted to explain the significance of the two acquittals, but this has led to successful appeals on the grounds of misdirection. This effectively means that juries get no direction when making decisions in trials. These issues amongst others were highlighted in the Academic Expert Group of the Lord Bonomy Review⁴ in 2014 and in more recent times the Scottish Jury Research: Findings from a Large-Scale Mock Jury Study in 2019⁵.

If the ‘Not Proven’ verdict is so confusing that it cannot be explained in simple layperson’s terms, then it is our opinion that it is not fit for purpose. It is important our justice system aids people who have been impacted by crime, rather than causing further confusion or re-traumatisation.

We, therefore, agree with the arguments against the verdict, as highlighted in the Scottish Government’s consultation document that:

- The existence of two verdicts of acquittal, where the difference between the two cannot properly be explained, is illogical in principle;
- The verdict is incompatible with the presumption of innocence and may lead to an acquitted accused being stigmatised; and

¹ [Criminal Verdicts Scotland Bill | Scottish Parliament Website](#)

² [JS042016R03.pdf \(parliament.scot\)](#) - Stage 1 Report on the Criminal Verdicts (Scotland) Bill, 3rd Report, 2016 (Session 4)

³ [The not proven verdict and related reforms - Scottish Government - Citizen Space \(consult.gov.scot\)](#)

⁴ <https://www.gov.scot/Resource/0046/00460650.pdf> (webarchive.org.uk)

⁵ [Supporting documents - Scottish jury research: findings from a mock jury study - gov.scot \(www.gov.scot\)](#)

- The verdict allows jurors to ‘sit on the fence’.

In that same document the arguments for keeping the ‘Not Proven’ verdict were that “the ‘Not Proven’ verdict is an important safeguard that reduces the risk of wrongful conviction”, and that “the current system works well and there is no evidence that it requires to be changed”. From the perspective and experiences of not only VSS as a victim-support organisation, but from its service users who have experienced crime, this has overwhelmingly not been the case.

We have received the following feedback from our service users on the Not Proven verdict to evidence our position:

“I don't believe in the not proven verdict. The reason being that if someone is innocent, they have to live with this hanging over them for the rest of their life and it could be viewed by some people as if the person is guilty, but it just hasn't been proven. The same can be said if someone is deemed guilty and is in fact guilty but got the not proven on technicality or misrepresented. From a victim point of view, if indeed the person is guilty but there is not sufficient evidence or misrepresented by lawyer on the day, the victim has no closure. They have to live the rest of their life passing their perpetrator in the street, with the anguish that justice has not been done and they got away with their crime. The not proven protects the perpetrator.”

“It [the not-proven verdict] stopped me coming forward. It's so unjust and too much trauma to risk as an outcome. Would have been more likely to give a statement if it didn't exist. Also being raped and impregnated, no one in any service understood that my child's safety was my first consideration. Why would I make statements putting my child's security, mental health and identity in jeopardy for a not-proven verdict? We would have no safeguard after taking a stand against the perpetrator. I did not want my child to be evidence and risk their life and future for a not-proven verdict. In practice, the not-proven makes sure there is not only zero justice but also zero safeguarding. It fails not just the victims and accused in stopping moving on from the crime but fails communities as well. It's futile. It acts against any healing and any restoration.”

An individual whose brother was murdered and his killer acquitted on a not-proven verdict, stated that they felt like “the not proven verdict was a scapegoat for the jury members.” They believes there should be a two-verdict system: Guilty and Not Guilty. “It allows the family of not only the victim, but the accused, to move on.”

“The not-proven rule is being used as an escape mechanism. It's on the side of the accused rather than the victim.”- VSS service user

Michelle's law -Oral representations (pages 10 – 16)

4. Which of the following best expresses your view of the proposal that victims (or their families in cases where the victim is deceased) are allowed to make representations in person when parole board hearings and temporary release applications are considered?

- **Fully supportive**
 - Partially supportive
 - Neutral (neither support nor oppose)
 - Partially opposed
 - Fully opposed
 - Unsure
 - No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Victim Support Scotland accepts that the recent regulations to improve Scotland's Parole system has been a 'step in the right direction' for creating greater transparency for victims, relatives and public. However, we want the Parole system to go further when it comes to supporting victims, witnesses and their families.

Victim Support Scotland is committed to supporting victims and their families to attend Parole hearings remotely. It is vital that victims' voices are heard through all stages of the criminal justice process. We recognise that attending in person or via video link will not be appropriate for every person affected by the crime. That should, however, be the individual choice of the victim or witness affected by the crime. VSS knows through our experience working with victims during the pandemic how giving pre-recorded evidence, or evidence on commission is far more preferential when people are vulnerable.

We also believe that the Parole Board or indeed Governor, if the decision making is done by them, should be required to consider and give due regard to the victims' views prior to making any release decisions.

We would also like to see a clear protocol established where victims and their families are provided with information around general and specialist support organisations available to them very early in the process. This would ensure that victims and their families can be supported before, during and after attending parole hearings and be suitably informed to make the choice that is right for them. Parole Boards should be mindful that giving oral evidence by video link or otherwise at a hearing is likely to re-traumatise vulnerable victims.

We do have concerns regarding the current The Parole Board (Scotland) Rules 2001⁶ as amended by sections 26A and 28A of The Parole Board (Scotland) Amendment Rules 2021. As these currently stand, a victim can attend as an observer via video link unless the tribunal considers that another means of attendance is required and in the interests of justice. A victim or family member can also be excluded by the Parole Board so there is no automatic right for victims to attend such hearings. More worryingly, there is also the potential that, if a victim were to become a participating party to the hearing, the offender would have the opportunity to challenge them under rule 27(3)(b)⁷.

If there was a move to victims or their families being a participating party in the hearing, then interaction between the victim and prisoner should be avoided to prevent the potential for re-traumatisation. As set out in the transformation priorities in the Scottish Government's Vision for Justice 2022⁸ ***“embedding trauma-informed practice will ensure that our justice services recognise the prevalence of trauma and adversity, realise where people are affected by trauma and respond in ways that reduce re-traumatisation”***.

Where a victim is registered under part 2 of the Victim Notification Scheme, they are given the opportunity where the prisoner has been given a life sentence, of making representations in person to a member of the Parole Board (the Parole Board

⁶ [The Parole Board \(Scotland\) Rules 2001 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁷ [The Parole Board \(Scotland\) Rules 2001 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁸ [vision-justice-scotland-2022 \(5\).pdf](https://www.scotland.gov.uk/Information/Statistics/2022/05/05-Vision-for-Justice-2022) page 5, para 2

member will not be part of the Tribunal considering the prisoner's case).⁹ We believe that this should be considered more widely in particular when dealing with vulnerable individuals, again preventing them from being re-traumatised.

Exclusion zones (pages 11 – 12)

5. Which of the following best expresses your view of the proposal that victims should have the right to request exclusion zones are imposed on offenders on their release to offer more protection to victims and their families?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**
- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

VSS believes that conditions restricting an offender's movements or preventing them from doing something should be routinely considered. There are also conditions that require the offender to report to their probation officer to undertake a rehabilitation course. We have had comments from many victims who have had their perpetrators released that they wanted evidence of how the probation officers decided if the perpetrators needed rehabilitation or not and if they had the proper credentials and training to make those decisions. What checks and balances are in place to ensure that proper accountability is in place.

The conditions requested from victims across many victim organisations relate to exclusion zones e.g. can be a condition that the offender does not come into the area where the victim lives and/or one that prevents a perpetrator from attempting to make contact with the victim.

Exclusion zones are normally used to prevent further offending linked to a particular area, or to ensure the victim is not impacted in the course of their normal life. In England and Wales, the victim liaison officer helps victims decide what to ask for, including on how specific to be about the area. We would expect the victim to explain the reasons for the exclusion zone to the Parole Board to help balance the risk of the perpetrator against the needs of the victim, ensuring action taken is necessary and proportionate in all circumstances.

We expect that if there is information concerning behaviour relating to the offender and the safety of the victim, that a key contact can share this with the Parole Board so they can update risk and make an informed decision based on the best up-to-date evidence.

VSS believes that technology should be used to its fullest effect and not only should the offender be fitted with tagging technology, but victims of crime should have the

⁹ [jU8SDL0riAqmkNk2Q9K8emoNLjysT0eYmC23P6Jw.pdf \(scottishparoleboard.scot\)](#) page 16, third para

opportunity to receive technology that would indicate that the prisoner is within a certain radius of them or their home.

It should be recognised that this would not suit all victims of crime and indeed could have a negative effect on some victim or their family's wellbeing should the technology indicate that the offender was near them. There is also the potential for the subject to attempt to traumatise the victim by putting themselves in situations that may activate the technology. Whilst situations could be accidental some might not be and is therefore subject to abuse.

Any offers of this type of technology should be done in a trauma informed way. There are a variety of victim support services that could assist victims and their families in understanding the positives and negatives of the technology to ensure that they are making the right choice for them.

In support of our position, we have provided comments from our service users as listed below:

"My brother was murdered and we come from a small town. Everyone knows everyone—I knew the perpetrator and he knew me and my family. I was driving to church one Sunday, and I pulled up to a traffic light. I turned my head—and he was right there. He'd been let out, no security around him, back into the same town he committed the crime. I can't tell you how shocked I was, how confused. No one had told me. When I demanded an answer, they said they released him to attend a funeral—but what reason went into that decision? Where was the victim safety, the community safety? The awareness of the danger? No one was giving me information."

"It is dangerous for all for offender to be out and walking around without people knowing, retaliation is possible. It is all geared towards the offender and not enough towards the victim – we got a couple of calls to update but nothing else. The accused prior to the trial was able to attend funeral even when remanded and other people had not got a right to know." Individual bereaved by murder

"We would like it to look like that perpetrator couldn't come anywhere near the victim's family. No chance encounters for either person. And a notification to family if they were going to travel abroad. The lack of information is what is causing chance encounters." Individual bereaved by murder

"If releasing a prisoner, it should be questioned, are you putting them back to same people/place where the crime occurred?" Individual bereaved by murder

Consultees have been asked to consider whether there should be a statutory presumption that the Parole Board for Scotland and/or prison governor accept a request for an exclusion zone if made by a victim of crime. We would support a presumption that any "exclusion zone" request be accepted, and any refused requests should have a full rationale as to why it was not deemed appropriate.

Safety and welfare of families (page 11)

6. Which of the following best expresses your view of the proposal that there should be an explicit requirement that the safety and welfare of victims and their families is considered during parole hearings and temporary release applications?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**

- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

VSS fully understands the need for prisoners to be reintegrated into the community. This, however, should be done after a robust risk assessment. We welcome the amendment to rule 8¹⁰ that the Parole Board must take into account ***“the effect on the safety or security of any other person, including in particular any victim or any family member of a victim, were he or she to be released on licence, remain on licence, or be re-released on licence as the case may be”***. We believe that this should be regarded as a primary consideration by the decision maker and all such decisions should be subject to regular scrutiny.

We would also like to highlight, which on the face of it, is good practice by the Scottish Prison Service when releasing individuals on Home Detention Curfew (HDC). The guidance¹¹ produced for agencies involved in that process was updated and made stronger after recommendations made in two separate inspection reports by Her Majesty’s Inspectorate for Constabulary in Scotland (HMICS)¹² and Her Majesty’s Inspectorate for Prisons in Scotland (HMIPS)¹³. The guidance for agencies includes SPS, Police Scotland, Criminal Justice Social Work and now has more detailed focus on risk and not just on the behaviour of the subject whilst they have been in prison.

We believe that a more holistic risk-based approach with information fed in from a variety of sources leads to better decisions being made regarding the suitability of individuals for release. We do understand that the Parole Board do obtain information from agencies, but we have not seen anything in the way of guidance as detailed as that produced by the SPS when considering HDC releases.

In support of our position, we have highlighted the following comments from victims and their families:

One family member bereaved by crime in which the offender was convicted of culpable homicide argues that life licenses should also apply in these cases too where required and goes on to say, *“the system should have public protection at its core.”*

A person who was the victim of attempted murder highlights that *“You as a victim serve a whole life sentence.”* and that it is important that there is *“confidence in justice system - to have this would need ordinary people to be able to read the papers and know what an accused is going to get, to know what to expect. You go around frightened that might happen to somebody else’s family”*

Notification of decisions for all crimes (pages 14 – 15)

¹⁰ [The Parole Board \(Scotland\) Amendment Rules 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹¹ [HDC Guidance for Agencies 2019 \(1\).pdf](#)

¹² [HMICS | HMICS Independent assessment of Police Scotland’s response to a breach of Home Detention Curfew \(HDC\)](#)

¹³ [Report on the Review of the Arrangements for Home Detention Curfew within the SPS.pdf \(prisonsinspectoratescotland.gov.uk\)](https://prisonsinspectoratescotland.gov.uk)

7. Which of the following best expresses your view that victims of crimes are given access to the reasons in full as to why the parole board or prison governor has come to a decision to release an offender?

- **Fully supportive**
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Victim Support Scotland has long supported the position of transparency of information between victims and the criminal justice system, as well as the view that victims would benefit from being shown evidence that the impact of a crime on their well-being (physical, psychological, emotional, financial) has been considered. This should include consideration of the original impact the offence had on the victim and the victim's family; the lasting impact of the offence since it was committed; and the impact that the offender's release would have on the victim, or those with close ties to the victim's family.

The Parole Board are now required as from the 1st of March 2021¹⁴ to publish, where release has been directed at a tribunal hearing, an anonymised summary of the reasons for its decision. Whilst that development is welcome, we have concerns regarding the robustness of these decisions and the weight given to the impact on victims and their families in those release decisions.

Having reviewed several of the summaries, there is significant weight given to the behaviour of the prisoner whilst in prison. Whilst we appreciate recent behaviours are important factors, that is not the whole picture, and it should not be considered the primary factor when reaching decisions. Important risk factors such as environments, past offending history (not just the index offence) and triggers which led to the offending are also important.

Example

"The offender killed their victim, and it was clear from representations submitted by the victim's family that their actions had caused significant and permanent harm."¹⁵

In that same example it was clear that the Parole Board did not always take proper cognisance of the advice of responsible agencies, such as Community based Social Work when reaching their decision.

"The Board carefully considered the evidence of prison-based and community based social work. They did not support release, and were of the view that a review period of six months would be appropriate. The Board noted that this was partly due to a wish to have housing assessments completed. While the Board understood the importance of accommodation, the offender would be accommodated by their local authority, and the Board did not think that it was appropriate to delay

¹⁴ [Parole Board for Scotland \(scottishparoleboard.scot\)](https://www.scottishparoleboard.scot/)

¹⁵ [release-2022-022_1649660308.pdf \(scottishparoleboard.scot\)](https://www.scottishparoleboard.scot/attachment_data/file/1649660308/release-2022-022_1649660308.pdf)

release for that reason. The Board also considered whether further testing was required, but agreed with the solicitor's submission that the offender had already had a significant amount of testing which had passed without incident. The offender had support in the community and that, together with the testing they had undergone and the lack of recent violence led the Board to the conclusion that it was not necessary for the protection of the public that the offender remain in prison."

It is clear in this case that the Parole Board have granted release despite concerns expressed by Social Work professionals. We do not believe that this provides either reassurance or public confidence in the decisions being made.

In support of our position, we have provided the following comment from one of our services users:

"If you don't know what's happening, it gets your mind going, you don't know if they are out. How have they been rehabilitating, what is the process?" Individual bereaved by murder

Suzanne's law (pages 16 – 17)

8. Which of the following best expresses your view of the proposed aims of implementing Suzanne's law, whereby an offender convicted of murder could be denied release on the grounds that they have failed to disclose the location of the victim's body?

- **Fully supportive**
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Victim Support Scotland would welcome the introduction of Suzanne's Law. Victim Support Scotland has provided the Support for Families Bereaved by Crime (SFBC) service since 2019. The SFBC is a specialist service designed to support families who have been bereaved through murder or culpable homicide. The service involves a dedicated support worker who can provide support to families and next of kin with immediate practical tasks such as arranging funerals, handling the media and finances.

We have been working with families who have been denied closure due to the failure to disclose the location of their family member. The pain and suffering this causes to families is almost unimaginable to those who have not gone through this experience.

It is our understanding that the Scottish Government were considering amendments to Rule 8 of the Parole Board (Scotland) Rules 2001 to specifically cover considerations of release in situations where the prisoners fail to disclose the location of a victim's body. We did not see any specific amendment to this effect in The Parole Board (Scotland) Amendment Rule 2021.¹⁶

¹⁶ [The Parole Board \(Scotland\) Amendment Rules 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

We would highlight that The Prisoners (Disclosure of Information about Victims) Act 2020¹⁷ came into effect on the 4th of January 2021. This updated the Crime (Sentences) Act 1997¹⁸ as detailed below

Murder or manslaughter: prisoner's non-disclosure of information

- (1) The Parole Board must comply with this section when making a public protection decision about a life prisoner if—
 - (a) the prisoner's life sentence was passed for murder or manslaughter;
 - (b) the Parole Board does not know where and how the victim's remains were disposed of; and
 - (c) the Parole Board believes that the prisoner has information about where, or how, the victim's remains were disposed of (whether the information relates to the actions of the prisoner or any other individual) which the prisoner has not disclosed to the Parole Board (“the prisoner's non-disclosure”).
- (2) When making the public protection decision about the life prisoner, the Parole Board must take into account—
 - (a) the prisoner's non-disclosure; and
 - (b) the reasons, in the Parole Board's view, for the prisoner's non-disclosure.

VSS would support a similar amendment being made in Scotland.

Victim Statements (pages 17 – 18)

9. Which of the following best expresses your view of the proposal to allow all victims to make a Victim Statement to court?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**
- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Victim Support Scotland would be in favour of allowing as many victims, their families and partners, and people who have been impacted by crime, as possible to provide a victim impact statement and give details of how the offence has affected them. The eligibility criteria in terms of who can make a statement and which offences need to be much wider.

In the previous Scottish Government consultation in 2019¹⁹ on this subject the document talked about expanding the eligibility to include a prescribed list of serious offences taken on solemn procedure. The supposed ‘seriousness’ of an offence

¹⁷ [Prisoners \(Disclosure of Information About Victims\) Act 2020 \(legislation.gov.uk\)](#)

¹⁸ [Crime \(Sentences\) Act 1997 \(legislation.gov.uk\)](#)

¹⁹ [Consultation on widening the scope of the current victim statement scheme - Scottish Government - Citizen Space](#)

often has little to no bearing on how the individual has been impacted. Therefore, anyone who has been impacted by a crime should be able to make a victim impact statement, should they wish to, regardless of the nature of the offence, or the court in which it is to be heard.

At VSS, we regularly hear from victims that they feel erased by many elements of the criminal justice system, such as the case referring only to the accused and not the victim. By not being able to fully express their experience in their own words, or to address the court themselves, many victims feel they have no way to get their story across. One member of our support staff is currently working with a victim who has requested permission from VIA to include a family photograph along with their statement. For them, it is hugely important for the Judge to “see the person behind the name and their family” who have been left behind.

Overall, the majority of victims who VSS have supported to complete a victim impact statement find it to be a challenging but worthwhile experience. Victim Support Scotland would like to see a number of key improvements to the current scheme:

- More flexibility in who is eligible to make a victim impact statement in order to account for complex family and community dynamics
- A widening of the types of crime involved in the scheme to allow more victims to participate
- The option to make a victim impact statement extended across all Solemn and Summary cases
- Clearer, more consistent information from VIA
- Greater flexibility in how a statement can be made or recorded to provide more options for children, young people and adults who struggle to communicate using written English or who are at risk of being further traumatised
- Ability to complete and submit a victim impact statement digitally, rather than as a written letter, therefore giving choice and control back to victims
- More resources to support victims who wish to submit an impact statement
- Assurances that victim impact statements are given serious consideration by judges and sheriffs when making their decision on sentencing

Notification of decision not to prosecute (pages 18 – 20)

10. Which of the following best expresses your view of the proposal for all victims to have the right to be notified of a decision not to prosecute their case?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**
- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response.

Victim Support Scotland fully agree that victims of crime should be told whenever a decision has been made to discontinue their case, at whatever stage, and a full explanation and rationale should be provided.

The Victims Code for Scotland²⁰ outlines how victims and witness should be treated in the criminal justice system. We would argue that not being told of the decision not to prosecute would fall below the requirements of the charter and the other provisions in the Victims and Witnesses (Scotland) Act 2014.

We strongly believe that it should not be for a victim of a crime, or their family if relevant, to actively seek information about whether the crime against them is being prosecuted. It should be for the Crown Office and Procurator Fiscal Service (COPFS) or their representatives to proactively contact victims to inform them of such decisions. In cases where victims are not told, then they cannot make use of the right to appeal such decisions in situations where that would be legitimate to do so.

Changes to Victim Notification Scheme (pages 20 – 23)

11. Which of the following best expresses your view of the proposals to increase uptake of the Victim Notification Scheme (VNS) and to make other improvements to the scheme?

- **Fully supportive**
- **Partially supportive**
- **Neutral (neither support nor oppose)**
- **Partially opposed**
- **Fully opposed**
- **Unsure**
- **No comment on this policy proposal – skip to next question**

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

Victim Support Scotland welcomes the Scottish Government's announcement of an independent review of the Victim Notification scheme announced on the 31 March, which we believe is well overdue.

The Victim Notification Scheme has long been seen as an outdated and archaic system that needs overhauled. We have heard of too many instances where victims have received letters about release of offenders with no prior warning and no offer of support. This can be traumatising.

The review and any subsequent legislation brought by this proposed Bill, or the Scottish Government, must consider the impact that communication has with people affected by crime and give choice and control back to them in terms of how they receive information.

We would also offer the following suggestions for the scheme going forward:

- Extend the Victim Notification Scheme to include all types of crime.
- Include more options of how and when you receive information through the Victim Notification Scheme, therefore giving more choice and control back to victims. Often people are asked about joining the scheme at an unsuitable time when they are most traumatised.

²⁰ [Victims' Code for Scotland \(mygov.scot\)](https://www.mygov.scot/victims-code-for-scotland)

- Ensure the Victim Notification Scheme makes better use of digital communication methods, at the same time considering the digital literacy levels and digital poverty for those who are signed up to the scheme to ensure they receive accurate and timely information.
- Text/literature in relation to the Victim Notification Scheme - which includes letters to victims - should be trauma-informed and include formal referral routes to support services. In addition, alternative methods of communication that are more trauma-informed should be utilised e.g. face to face meetings and phone calls.
- Currently victims are only entitled to limited information if a person is convicted to less than 18-months and we believe that any changes must address that.
- The current system is complicated to understand, and more communication is needed with victims, which in turn will hopefully increase the uptake of the scheme. Uptake is currently about one in four of victims who are eligible to participate.

Fatal Accident Inquiries (pages 23 – 25)

12. Which of the following best expresses your view of the proposal to set maximum timescales for Fatal Accident Inquiries (FAIs)? 39

- Fully supportive
- **Partially supportive**
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response.

Victim Support Scotland would be supportive of timescales being introduced for both decisions as to whether, or not as the case may be, a FAI will be proceeded. If a FAI is to proceed, this decision should also include a realistic timeframe for when a FAI should commence. We would however want to ensure that any timescales placed on holding a FAI did not lead to situations where they became time barred after a certain period. It should always be a prerogative of the Crown to hold an FAI where it is in the public interest regardless of the time that has passed since the incident. It should, however, be noted that due to the backlogs created by COVID 19 there should be a realistic timeframe given before any rigid timescales were introduced. We would not want victims' families being given unrealistic expectations.

We would not consider it appropriate to comment on the length of time taken to complete an FAI once the Inquiry has commenced. We would also urge that any decision not to proceed with an FAI should be published along with a full rationale as to why it was deemed not in the public interest to do so. This, along with the decision not to prosecute, should be subject to appeal. Bereaved families should be entitled to answers as to how their relatives have died and also reassurance that, whatever the circumstances, steps have been taken to learn lessons from their relative's death.

13. Which of the following best expresses your view of the proposal to expand the list of circumstances where deaths are automatically investigated through the fatal accident inquiry process?

- Fully supportive
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure
- No comment on this policy proposal – skip to next question

Please explain the reasons for your response. Please include any comments on the specific issues underlined in the consultation document on this proposal.

We would consider that any death abroad should be subject of an automatic FAI. Families often find great difficulty getting information or answers as to how their family member has died when this has occurred overseas. We feel that an FAI would be a step closer to families finding out information surrounding the death of their family member.

We do appreciate that in some circumstances, depending on the country involved, this might prove difficult. These difficulties in our opinion should not preclude attempting to obtain answers and justice for families bereaved by crime abroad.

We also believe that the criteria applied by the Scottish Fatalities Investigation Unit (SFIU) is too narrow and excludes some Scottish citizens who are living abroad even where that may be a temporary arrangement. The criteria applied on mygov.scot says²¹:

If a person dies abroad in suspicious circumstances, Healthcare Improvement Scotland may report the death to the Crown Office and Procurator Fiscal Service. Their Scottish Fatalities Investigation Unit (SFIU) will investigate the death, whether or not there is an open or closed investigation in the country where the death happened. When a death abroad is reported to the SFIU, they will consider if:

- *the death was sudden, suspicious or unexplained*
- *the circumstances of the death have been sufficiently established (meaning enough of the details are proven to be true)*
- *the circumstances would be sufficiently established in an inquiry*
- *it would be in the public interest to hold an inquiry*
- *If someone dies abroad who has emigrated and lived permanently in another country, the SFIU will not investigate.*

We would expect that if a family in Scotland has concerns surrounding the investigation into the death of a family member abroad then they too should be able to request COPFS to investigate that death and also the fact that a Scottish citizen is not normally resident in Scotland at the time of their death is in our opinion irrelevant. Families should expect Scottish Authorities to properly investigate any death of a Scottish Citizen regardless of whether that death occurs overseas, even in circumstances where the person was temporarily or otherwise living outwith Scotland.

Financial implications (pages 25 – 26)

²¹ [Apply to bury or cremate in Scotland - mygov.scot](#)

14. Taking into account all those likely to be affected (including public sector bodies, businesses and individuals etc), is the proposed Bill likely to lead to:

- a significant increase in costs
- **some increase in costs**
- no overall change in costs
- some reduction in costs
- a significant reduction in costs
- unsure

Please indicate where you would expect the impact identified to fall (including public sector bodies, businesses and individuals etc). You may also wish to suggest ways in which the aims of the Bill could be delivered more cost-effectively.

Victim Support Scotland expect that the provisions in this proposed Bill would have financial implications for victim support services including VSS. Some of the provisions would involve more support for victims and witnesses accessing information around any proposed changes. We would not be able to provide a full financial assessment until the Bill was published.

Equalities (pages 27 – 28)

15. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation?

- **Positive**
- Slightly positive
- Neutral (neither positive nor negative)
- Slightly negative
- Negative
- Unsure

Please explain the reasons for your response. Where any negative impacts are identified, you may also wish to suggest ways in which these could be minimised or avoided.

Victim Support Scotland believe that this proposed Bill would have a positive impact on equality. Having better access to justice would benefit victims and witnesses of all protected characteristics.

Sustainability (pages 28 – 29)

16. In terms of assessing the proposed Bill's potential impact on sustainable development, you may wish to consider how it relates to the following principles:

- living within environmental limits
- ensuring a strong, healthy and just society
- achieving a sustainable economy
- promoting effective, participative systems of governance
- ensuring policy is developed on the basis of strong scientific evidence.

With these principles in mind, do you consider that the Bill can be delivered sustainably?

Yes

No

Unsure

Please explain the reasons for your response.

General

17. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)?

Victim Support Scotland welcomes the proposals in this draft Bill. We believe that these proposals place victims of crime and their families on a more equal footing within the justice system. We hope that these proposals are supported by parliamentarians either through this draft Bill or future Scottish Government legislation.