

Victims Taskforce

First Meeting – 12 December 2018

Paper 3 - Improving the Experience of Victims and Witnesses – The Role of the Taskforce

Introduction

1. This paper invites members to consider the added value the Taskforce can bring to existing work to improve the experience of victims and witnesses; and the most effective ways of working to achieve this.

Programme for Government

2. The Programme for Government (PfG) sets out that “our justice system must have the needs of victims and witnesses at its heart. As part of our ongoing reforms we will strengthen victims’ rights and support, increase transparency and extend the opportunity for those affected by crime to have their voices heard. We will take specific actions to support victims of gender-based violence and to drive forward work to end violence against women and girls.”

3. The programme of victim-related actions contained in PfG is at Annex A, with anticipated milestones for delivery. The Taskforce will be informed of progress against these actions, with the possibility that particular issues may be discussed in more detail where this is required to help inform delivery.

Discussion Points:

- **How often should progress updates be considered?**
- **Are there particular issues which require more in-depth discussion?**
- **Are other ways of working required?**

Model of Victim Care

4. More generally, it is recognised that existing models of information, advice and support for victims of crime do not fully meet their needs. This issue was explored by Dr Lesley Thomson, QC in her ‘Review of Victim Care in the Justice Sector in Scotland’¹. The key findings and recommendations of this review are at Annex B. The main recommendation was to consider:

“A new system of victim care in the Justice Sector in Scotland in the form of a co-ordinated service to bring together all criminal justice partners and third sector groups working as part of a multi-disciplinary team operating on a “one front door” model. This model would provide services directly to victims and to criminal justice agencies, ensuring ‘routes in’ to specialist services.....including essential counselling services.”

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http://www.copfs.gov.uk/images/Documents/Victims_and_Witnesses/Review%20of%20Victim%20Care%20in%20the%20Justice%20Sector%20in%20Scotland.pdf

5. This report and recommendations contained in two other relevant reports² were discussed at a Scottish Government workshop in September 2017. The key strengths, weaknesses, opportunities and threats identified within current provision and delegates' discussions around a 'Single Point of Contact' are at Annex C³.

6. Victim Support Scotland subsequently received a three year Scottish government funding package totalling £13.8 million, part of which was to deliver the following actions:

- Develop and deliver a new, dedicated Scotland-wide homicide service to meet the needs of families bereaved through murder in Scotland. Work with partner organisations to ensure families are given the support they need, when and where they need it.
- Work with partner organisations to develop a plan for a 'one front door', single point of contact model that supports the needs of victims through their journey and experience of the criminal justice system in Scotland.

7. The new homicide service will be operational by Spring 2019 and is being developed following a service design approach, i.e. in close consultation and liaison with stakeholders, including bereaved families. Victim Support Scotland are aiming to develop a report on a victim-centred approach by Spring 2019.

8. The Cabinet Secretary for Justice and officials from Scottish Government and the justice agencies also meet regularly with individual victims and their families to discuss their experiences and particular issues of concern. A number of specific issues have been raised and are often reflected in media coverage of these particular cases.

9. Many of these issues are currently being addressed in a variety of ongoing actions across the justice system (e.g. the PfG commitments around parole and prisoner release; new protocols on post-mortems; review of Home Detention Curfew; the Chief Medical Officer's Task Force on Forensic Medical Examinations).

10. The introduction of a new Victims' Commissioner for Scotland has also been suggested by victims and MSPs. This suggestion was last considered, but not supported, by Parliament during the passage of the Victims and Witness (Scotland) Act 2014. The Cabinet Secretary has said that the case for a Victims Commissioner will be reviewed by the Taskforce.

² Justice Committee report into the role and purpose of the Crown Office and Procurator Fiscal Service - http://www.parliament.scot/S5_JusticeCommittee/Reports/JS052017R09Rev.pdf and Moira Fund report 'Scottish Homicide Service – A Way Forward?'

³ The full report of the workshop is at <https://www.gov.scot/publications/support-for-victims-of-crime-workshop-report/>

Discussion Points:

- Do the issues set out in Annex B and C resonate with members?
- In addition to the issues highlighted in Annex B & C what other key issues require to be addressed?
- What are the next key steps to transforming the model of victim support?
- What can your organisation/sector/expertise offer to achieve these steps?
- How can the Taskforce best address these issues?
- Are other ways of working required?

Broader Context

11. The Justice Board takes a collaborative approach to implementation of Justice in Scotland: Vision and Priorities 2017-2020 and the associated delivery plan⁴. This sets out seven key priorities towards achieving the vision of a just, safe and resilient Scotland. The two most relevant priorities for the Taskforce are:

- We will improve the experience of victims and witnesses, minimising court attendance and supporting them to give best evidence
- We will modernise civil and criminal law and the justice system to meet the needs of people in Scotland in the 21st century

12. The Justice Board is also taking forward a number of work-streams to ensure that improving the experience of victims and witnesses is a principal driver for any system-wide transformation. These include: developing a transformation roadmap; improving modelling capacity; and developing a criminal justice system health-check.

13. The Victims Code for Scotland⁵ sets out victims' rights to minimum standards of service; information; participation; protection and protection of privacy; support; compensation and expenses. It also sets out how to complain and national support contacts.

14. The Victims and Witnesses (Scotland) Act 2014 requires the justice agencies to develop, publish and report against Standards of Service for Victims and Witnesses⁶. There are common standards of services shared between the agencies and also specific standards for each of the agencies (Police Scotland, SCTS, COPFS, SPS and Parole Scotland).

⁴ <https://www.gov.scot/publications/justice-vision-priorities-delivery-plan-overview-progress-2017-18-new/>

⁵ <https://www.mygov.scot/victims-code-for-scotland/>

⁶ <https://www.mygov.scot/victim-witness-rights/standards-of-service-for-victims-and-witnesses/>

15. Each agency has methods in place for gathering user feedback and complaint procedures whereby issues can be raised and addressed. To date the agencies have also met with the Victims Organisations Collaboration Forum Scotland (VOCFS) once a year to discuss and receive feedback. The Scottish Government's Victims and Witnesses Unit, VOCFS and the agencies are currently considering how this liaison can be strengthened and reflected in future development of the Standards of Service process.

Discussion Points:

- **There is a wide array of activity being taken forward across the justice system, wider public sector and in the third sector which can potentially impact on the experience of victims and witnesses. How best can the Taskforce be informed of this activity?**
- **Are there particular actions which the Taskforce should discuss directly as central to its remit?**
- **How should the Taskforce relate to the existing mechanisms for developing and reporting on Standards of Service?**
- **Are other ways of working required?**

ANNEX A - Programme for Government Commitments

In the Programme for Government (PfG) 2018/19 a number of commitments were outlined to improve support of victims of crime and to improve the experience of rape and sexual assault victims. A summary of these commitments and a comment on progress has been included below.

PfG commitment	Timeframe	Comment
Reduce and, where we can, eliminate the need for victims to have to retell their story to different organisations as they look for help, working with Victim Support Scotland and others	Ongoing	Work is being carried out by VSS to consider a 'single point of contact' for victims. So far this has been informed by user research undertaken by establishing the homicide service. VSS will be looking to engage with partners across the Criminal Justice sector in the coming year to inform this work.
Widen the range of serious crimes where the victim can make a statement to the court about how the crime has affected them physically, emotionally and financially.	Consulting on details by early 2019	Initial discussions have taken place between SG and COPFS.
Ensure victims and their families have better information and greater support ahead of prison release arrangements	Ongoing	SPS and VSS have been working together to identify improvements to the Victim Notification Scheme as it relates to prison release arrangements. This has included the best mechanisms to communicate with victims and families. For example, SPS have been undertaking more meetings with victims and families to discuss release arrangements and how victims can make representations if they wish.

Increase the openness and transparency of the parole system	Consulting on specific proposals in late 2018	Work is underway to prepare the consultation paper on the parole system, which will be published by the Scottish Government before the end of this year.
Establish a new support service for families bereaved by murder and culpable homicide, developed and delivered with Victim Support Scotland to provide dedicated and continuous support	Minimum viable service to be operational in Spring 2019	VSS have been engaging with families through a user-centered design process to inform this work and is on track to have a minimum viable service in operation in April 2019.
Provide an additional £1.1 million of funding to allow trials involving rape to start at the earliest opportunity and minimise the distress caused to victims.	Financial year 2018/2019	Investment of an additional £1.1 million funding (2018-19) from the Justice Budget was announced in August 2018.
Consult on proposals to clarify in legislation the responsibility for forensic medical examinations to ensure that access to healthcare, as well as a forensic medical examination for victims of rape and sexual assault, is a NHS priority and consistently provided for throughout Scotland.	2018-2019	The Scottish Government will bring forward a consultation paper early in the New Year.

<p>Continue to work with others, such as NHS Education Scotland, to achieve a gender balance of professionals trained to undertake forensic medical examinations so that where a victim requests the specific gender of the forensic examiner involved in their care, this can be met.</p>	<p>2018-19</p>	<p>The CMO Taskforce has commissioned NHS Education Scotland to redesign the Essentials in Sexual Offences Management and Court Skills course to make it more accessible, including for remote and rural locations.</p> <p>Most recently, it has been further adapted to provide joint training inputs to both nurses and doctors. The course has been accredited by the FFLM. Taskforce funding has also been provided to NES to train up to 100 additional doctors over the period 2017-19. The aim, is to increase the number of particularly female physicians who are able to undertake this work.</p> <p>SG has provided funding to NES to appoint two clinical leads to mentor and support trainees and to look at how more female doctors can be recruited and retained. NES funding will also support the development of local and regional peer support networks.</p> <p>An expert group under the remit of the CMO Taskforce has been established to develop the role of Forensic Nurse Examiners in Scotland with a view to improving the gender balance of the workforce.</p>
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ANNEX B – Key Findings and Recommendations from ‘Review of Victim Care in the Justice Sector in Scotland’ Report by Dr Lesley Thomson QC

Summary of Findings

It is accurate to say that gaps remain in service provision and levels of satisfaction amongst victims with the criminal justice system are inconsistent. It is convenient to group the main findings of the Review under the three headings formulated from discussions with victims, stakeholders and support groups:

STRUCTURAL ISSUES

Many of the issues raised relate to communications – as between agencies and between agencies and victims. Such communication issues are classed as ‘structural’ when there is no apparent legal obstacle to addressing the issue.

- Victims and vulnerable witnesses may require to turn to a succession of organisations / websites / leaflets and support agencies to learn information about the criminal justice process and what they are entitled to and when.
- Protocols and information-sharing arrangements are largely dependent on manual intervention – if they fail it is to the detriment of the victim.
- Victims and vulnerable witnesses in serious cases would benefit from better preparation before trial. This should include what they can be told about the evidential issues in dispute; the role of the defence; and what to expect during cross-examination / defence challenge.
- Ahead of the reform which the Evidence and Procedure Review may bring, floating trials within the High Court are an increasing issue with the changes of dates / venue causing great distress.
- There can be a tension in the lower courts where victims and witnesses may wish an explanation from the prosecutor about decision-making in their case – but the prosecutor remains engaged in court with many other cases.
- Support and information at court – particularly at Sheriff Court level - can be fragmented and there is scope for an enhanced role, co-ordinating effort.
- ‘Style’ responses can cause distress and can undermine what might otherwise have been a professional, sensitive approach by an agency.
- The availability of interventions for vulnerable accused continues to present difficulties: In achieving timely examination of their fitness to engage with the criminal justice system; Offering diversion from prosecution where that would be a helpful and proportionate response; Providing treatment, to prevent re-entry into the system.
- Securing the services of an Appropriate Adult where necessary for interview to take place and to ensure delivery of the accused’s rights (and admissibility of evidence) can be difficult.
- The numbers of agencies who can be involved in the transmission of information about bail conditions can cause confusion to victims and would benefit from an efficient, nationally agreed approach.
- Early trauma work / providing safe spaces can be essential for recovery from crime, but accessing same can be challenging.

CULTURAL ISSUES

- A great deal of distress is caused to victims by cross-examination. This was reported to the team by individuals and by victim groups as being one of the biggest concerns. The opportunity presented by the Evidence and Procedure Review could transform the experience of giving evidence. Better preparing victims and witnesses about the role of the defence and agreeing cross-sector guidance about cross-examination which is aggressive or intimidating would provide a good baseline, pending the introduction of systematic digital recording of evidence.
- There are benefits to encouraging witnesses to take up access to their statement – and to building a system which gives them control of how and when to access it.
- Awareness-raising amongst all court officials would assist with confidence and accuracy in dealing with victims and witnesses and their rights and responsibilities.
- Victims in serious cases report huge benefits, particularly in serious cases, in having their own support person or ‘case companion’, acknowledging that this requires to be an individual who: is highly knowledgeable about the entire justice sector and system; has the requisite skills, problem-solving approach and empathy.

‘LEGAL’ ISSUES

- Whilst the law is clear about the rights of victims in terms of Article 8 not to be subject to abusive, intimidating or aggressive cross-examination, additional work may be required meantime to ensure all court practitioners adhere to those principles. Victims and witnesses also need to know what they can expect of prosecutors and judges in terms of interventions.
- The work of the Evidence and Procedure Review will consider how defence challenge to digitally captured evidence will be achieved to secure the accused’s rights and this will also be pivotal for victims.
- Information-sharing is crucial to the identification of victims and witnesses and the rights they can invoke. Examples exist of agencies being able to access criminal justice information at source, for example, in undertaking risk assessments. Observing data protection principles, there is scope for better information sharing to: Increase efficiency and reduce bureaucracy; Improve response time; Reduce the number of people/agencies victims require to contact. Crucial to this would be identification of common criteria (training/accreditation) for approval of access/information-sharing.
- Under the 2014 Act victims are entitled to seek referral to a support agency. Section 3D of the Act does not specify who should provide those services nor place any obligation for support services to be provided to any particular standard.
- Victims’ rights are articulated in a number of key sources (see the Victims Code and the 2015 Regulations). For them to be truly effective, they require to be accessible to all. The current arrangements require victims to have regard to a number of documents /criminal justice agencies / service providers. There is a strong desire amongst victims for a single source of support and information,

eliminating or reducing the need to approach numerous agencies at different stages.

- As described to the Review by representatives of the Sheriff's Association, an unintended consequence of the extended ambit of the Victim and Witnesses (Scotland) Act 2014 is the automatic provision of special measures for those deemed vulnerable, even when they do not engage with the criminal justice system. It may be beneficial to conduct an exercise to examine this practical impact as against the policy aims of the legislation.

Recommendations

From the evidence and information ingathered during the Review it is clear that there requires to be further work done to ensure that victims' experience is of a comprehensive and cohesive information and support system, available for all victims of crime based on both individual need and crime type. No single organisation is providing that service, nor indeed can provide that service, as currently composed. The case put forward by victims is for a single service.

Accordingly it is proposed:

The Justice Board considers – in the context of broader strategic changes – appropriate governance to ensure victim care comprises an element of the proposed new Victim Strategy and is accommodated and progressed.

This comprises:

A new system of victim care in the Justice Sector in Scotland in the form of a co-ordinated service to bring together all criminal justice partners and third sector groups working as part of a multi-disciplinary team operating on a "one front door" model. This model would provide services directly to victims and to criminal justice agencies, ensuring 'routes in' to specialist services such as Rape Crisis Scotland, Scottish Women's Aid, Victim Support Scotland, PETAL and others, including essential counselling services. Remodelling in this way would provide a crucial interface with the constituent parts of the criminal justice system and further the provision of routes in to equally important civil justice matters.

This should be underpinned by:

- Commissioning of research into victims' needs and expectations in the Scottish context to inform the design of any future service;
- Commissioning of a study to examine the best way to integrate existing services to form a single cohesive service for victims;
- Separately, research should be commissioned into the impact of the adversarial system upon a system of victims' rights, in particular in the area of child victims, to inform future policy making.
- The above multi-disciplinary approach, which I suggest requires further consideration by all interested groups, would ultimately provide vital support for the victim throughout the entirety of the criminal justice system with necessary cross-over to civil justice, health and housing issues, where required.

Meanwhile, the following undertakings on the part of COPFS will place the prosecution in Scotland on the path to contribute to that vision.

COPFS will:

- continue to explore increasing use of digital contact to provide system and case progress information to victims and witnesses;
- deliver an updated programme of mandatory training for all staff and Crown Counsel on the impact of crime on victims;
- further develop the role of VIA in supporting victims and witnesses to give best evidence.

ANNEX C - Outputs of SG Workshop on Victim Support / Single Point of Contact – September 2017

Strengths

Strong 3rd sector victim support organisations currently meeting victims' needs
Skilled, experienced staff within 3rd sector and criminal justice agencies
Partnership working & sharing of expertise
Political will and policy support
Existing victim-centred, legislative framework in Scotland
Existing expertise within the system/organisations
National Standards of Service for victims

Weaknesses

Organisational culture focusses on the system, not the individual
Victims do not feel valued/important
Lack of specialist services
Demand for services is increasing but resources aren't
Lack of joined up IT system to enable sharing of data
Lack of understanding of services provided by victims organisations
Lack of trauma-informed staff across professions

Opportunities

Put victims at the centre of the system
Make the provision of training more professional
We have a radical opportunity to do something different
Learn from others – homicide service already tested in England and Wales Equity of access across the country
Champions to drive forward change e.g. Victims Commissioner
Use limited resources more effectively
Partnership working

Threats

Shrinkage of resources
Dependency on public funds and short term nature of funding
General data protection regulation (GDPR) and potential impact on potential for data sharing
Government inertia / legislation lagging behind the requirements of victims Dilution of service for victims
Potential liability risks for victim support organisations

Summary of discussions on the exploration of a Single Point of Contact model

Key attributes of a successful model

Victim/person focused rather than system focused

Victims feel confident they are receiving the best service possible

Proper identification of needs at first point of contact

Ensures equity of service across all regions of Scotland

Encourages organisations to work collaboratively and to similar standards

Accountability

Multi-disciplinary hub with sign-posting (doors) to specialists

Accessible to all who need it and needs led

Independent and flexible

Providing advocacy support

Good knowledge capture and data sharing

Professional training

One Key Change

Immediate/Short Term

Develop appropriate, accredited training

Improve consistency of service across geographical areas

Create a victims working group and a champion

Create a person-centred hub

Identify and put in place an agreed support protocol

Develop/pilot a homicide service in Scotland

Longer Term

Linked IT services and data sharing across organisations (within data protection principles)

Easier and equal access to support services for victims across Scotland

More professionalism and professional collaboration between organisations Better understanding of who does what across different organisations and minimising duplication of effort

Digital access to/digital directory of support services

Evaluation/accreditation/accountability/evidence

Clear legislative basis

Vision

'Quality information and support for persons impacted by crime, sensitive to individual needs'

'Shared and understood model for victims services for organisations across Scotland with clear roles, responsibilities and accountability'

'Central hub which feeds into bespoke services to support, enable and empower individual families at their most vulnerable time. The hub must make victims feel like they have arrived at the right place'

'Help and support to the open road to a new 'normal' after negotiating the pot holes and jams of an horrendous journey'

'People affected by crime always receive quality information and support that delivers positive outcomes'

'Quality support and information is available and identified for bereaved families and vulnerable witnesses in Scotland'

'I always understood what was going on, who everyone was, and what they did, I knew who to talk to. I could access the support I needed when I needed it'