



Transforming Services for Victims and Witnesses

July 2020



This report is the output of the findings of the 'discovery' phase of a joint initiative between Scottish Government, Crown Office and Procurator Fiscal Service and Victim Support Scotland, to explore the potential for transformation in services to support victims and witnesses. The discovery phase was conducted, and the report drafted, prior to the outbreak of the Coronavirus (COVID-19) pandemic. As a result of the pandemic, changes were made in the operation of the criminal justice system in the interests of reducing transmission of the disease.

From March 2020, no new jury trials were commenced and all but essential summary trials were adjourned. Emergency legislation was passed to introduce measures to enable the operation of the criminal justice system including, extension of certain time limits, changes to custody arrangements to allow court appearance by digital rather than physical means, and electronic service and transmission of documents.

At the time of writing, the Scottish Courts and Tribunal Service (SCTS) had implemented steps to enable virtual courts and remote hearings

and Lord Justice Clerk Lady Dorrian was leading the Restarting Solemn Trials Working Group to identify the steps necessary to restart jury trials in Edinburgh and Glasgow. The Chief Executive of SCTS, giving evidence to a virtual meeting of the Justice Committee, anticipated that, by August, the backlog of High Court and Sheriff Court cases could reach 1,800, with the potential for this to increase to 3,000 by March 2021. While steps were put in place to allow for early release of certain prisoners, a Scottish Government report showed an increase in prisoners held on remand of 54% (604) from April to July 2020.

In a statement to the Scottish Parliament on 17 June 2020, Cabinet Secretary Humza Yusef highlighted that transformation of the criminal justice system had been accelerated through the pandemic and that further extensive transformation will be required. He also noted the concerns of members of the Victims' Taskforce that they should be involved in the development of these changes.

The COVID-19 pandemic has shown the both the interconnected nature of all elements of the criminal justice system, and the potential for

significant transformational change, supported by the application of digital technologies. The recommendations made in this report remain relevant and, perhaps more urgent now, given the strain on the criminal justice system imposed by the pandemic.

While there has been a necessary focus on operational matters during the crisis, this must not be at the expense of improvements in victims' and witnesses' experiences. Prior to the pandemic, the Victims' Taskforce had made a positive contribution towards developing a shared perspective on the need for change and the priorities for victims and witnesses; progress was being made towards greater collaboration between agencies on cross-cutting issues, and; pilots of evidence on commission and the witness' portal were being developed for testing. As attention turns to renewal in the COVID-19 context, learning from the pandemic response can be applied in support of bold moves, as set out in this report, that will increase the efficiency and effectiveness of the criminal justice system, and continue the journey towards transformation in services for victims and witnesses.

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About Thrive

Thrive is a specialist system change and strategic design consultancy based in Edinburgh.

Thrive supports teams leading whole-system responses to complex problems through the application of design thinking within a transdisciplinary team. We facilitate sector-specific and place-based transformation programmes and work nationally to inform policy and support social change.

Thrive has supported public service teams developing responses to challenges such as transforming models of social care; reducing homelessness; improving outcomes for young people who are disengaged from education; developing services for families bereaved by crime and reducing loneliness and isolation. We work at the interfaces between agencies and the public, ensuring that service design and strategy development is informed by lived experience.



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1.

Executive Summary

1.

Transforming Service for Victims and Witnesses was commissioned jointly by Scottish Government, Crown Office Procurator Fiscal Service (COPFS) and Victim Support Scotland (VSS). The intention was to understand the gaps in support for a victim or witness' journey through the criminal justice system by taking a user-centred, service design approach.

This 'discovery' phase reviewed existing research into the experiences of victims and witnesses interacting with the criminal justice system and gathered further insight through interviews and workshops with those working across the criminal justice system and related support services. Insights generated through the discovery process were tested through reference to previous research and policy reports and in discussion with representatives from across the system.

Oversight of the work was provided by a steering group with representatives of Scottish Government, COPFS and VSS.

Research has consistently shown that victims and witnesses experience problems at all stages of their interaction with the criminal justice system. While the majority of victims

and witnesses may conclude their interactions without any particular issues, for some, their experience of failings in the system is sufficiently problematic to traumatise them further. In a small number of cases, victims have described their experience of interacting with the criminal justice system as more traumatic than the original crime against them.

The Scottish criminal justice system seeks to ensure a just, safe and resilient Scotland. There is clear commitment across criminal justice agencies to improve the experience of victims and witnesses to ensure that their interaction with the criminal justice system does no harm and upholds their rights. However, necessary separation of agencies, cultural differences, legacy systems and processes and a stretching reform agenda, has reduced the capacity for change.

This report synthesises research studies investigating victims' and witnesses' journeys and explores the organisational factors that contribute to the 'pain points' experienced by victims and witnesses interacting with criminal justice agencies. It highlights recurring patterns in the experiences of victims and witnesses that have been highlighted repeatedly in research

and engagement. It makes recommendations that could address systemic barriers to change and result in a transformation of service for victims and witnesses. It highlights the importance of changes in culture and practice in improving outcomes and suggests a shift in both governance and delivery practices.

The report makes the following recommendations:

- 1** Digital technology. Realise service improvements across all crime types by implementing tried and tested digital technologies, supported by a system-wide information architecture to enable secure information sharing and effective customer management across the criminal justice system. The principle of 'tell us once' should extend across the criminal justice system. This has the potential to transform the experience of victims and witnesses, while improving the efficiency and effectiveness of the whole system.
- 2** Collective leadership for system change. Focus leadership attention at all levels on a vision for system

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change, acknowledge and articulate cultural and systemic barriers to change. Develop capacity for collective leadership at all levels, focusing on shifting mindsets towards collaboration and an improvement focus.

3 Appoint a Criminal Justice Customer Management lead. Introduce a new post, reporting to the Justice Board, with responsibility for customer management across the criminal justice system. This post would have responsibility for design and implementation of the information architecture and for improvements in customer management across 121.8 the system, including enquiry management, digital service provision and the proposed witness portal.

4 Refresh governance and delivery processes. Invest in capacity and capability in transformation through the application of agile and service design approaches, informed by systems thinking and effective change management.

5 Focus on priority, cross-cutting programmes. Focus on delivery of a small number of high impact, cross cutting programmes, namely the provision of evidence on commission and reduction in court churn / efficiency of court process.

6 Review Government funding of support agencies. Review Government grant funding and commissioning arrangements to focus on outcomes, drive collaboration, improve geographical coverage and encourage innovation and learning.

7 Trauma-informed approaches as standard practice. Recognise and prioritise the person-to-person interactions between victims and witnesses and staff across the criminal justice system. Instil kindness as a practice and develop awareness and application of trauma-informed approaches at all levels.

Perhaps the final recommendation has the potential to be the most impactful, although not necessarily the simplest to implement. While organisational improvement and application of technology can be transformational, it will always be the human interaction that has the most potential to ease the journey through the criminal justice system, particularly for vulnerable victims and witnesses.

2.

Introduction

2.

Since the turn of the century, there have been a series of reports, research and reviews that have consistently identified what, today, from a design perspective, we refer to as 'pain points' for victims and witnesses in their interaction with criminal justice agencies.

The Thomson Review (2017)¹ helpfully sets out a chronology of developments, from the Scottish Strategy for Victims² and the creation of the Crown Office and Procurator Fiscal Service (COPFS) Victim Information and Advice Service (VIA) in 2000, through a range of measures aiming to reduce distress for adult victims giving evidence and increase their access to information, leading towards the Victims and Witnesses (Scotland) Act 2014 and publication of the Victims' Code for Scotland in December 2015.

Since the Thomson Review, policy and legislative reform has continued. The Scottish Court Service Evidence and Procedure Review (2015) set out to 'explore the best possible methods for ascertaining truth in the context of the trial in the modern environment'³ and made recommendations that aimed to improve the quality of evidence, make the administration of justice more convenient for victims and

witnesses and tackle inefficiencies 'that are endemic in the criminal justice system'; the Forensic Medical Services (Victims of Sexual Offences) Bill⁴ contains provisions that will improve the way in which forensic medical examinations and associated healthcare are conducted for adult victims, taking a trauma-informed approach and introducing a self-referral model for victims of sexual crime who wish to have a forensic medical examination without first reporting a crime to the Police; and Scottish Government and other justice agencies produced the first digital strategy for the criminal justice system.⁵ It should be noted that many of the provisions of this legislation apply only to adults and as such are not 'trauma informed' in the context of children's experiences in the manner proposed by, for example, the Barnahus model⁶.

And yet, despite what appears to be a consistent direction of travel in relation to policy and legislation, 20 years on, the Scottish Centre for Crime and Justice Research in describing their findings in relation to 'justice journeys' for victim-survivors of rape and sexual assault, highlighted that while there were some positive experiences, victim-survivors continue to face challenges at each stage of the criminal

¹ L. Thomson, *Review of Victim Care in the Justice Sector in Scotland*, 2017, pp 21 - 47

² Scottish Strategy for Victims', <http://www.gov.scot/Resource/Doc/158898/0043164.pdf>

³ Scottish Courts Service, 'Evidence and Procedure Review Report', *ScotCourts*, 2015, found at <https://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/evidence-and-procedure-full-report---publication-version-pdf.pdf?sfvrsn=2>

⁴ Forensic Medical Services (Victims of Sexual Offences) (Scotland) Bill, 2019 <https://www.gov.scot/publications/forensic-medical-services-victims-sexual-offences-scotland-bill-fsda/>

⁵ Scottish Government, 'The Digital Strategy for Justice in Scotland', *Scottish Government Website*, Edinburgh, Scottish Government, 2014, found at <http://www.scotland.gov.uk/Publications/2014/08/5429>

⁶ Barnahus translates literally as 'Children's House' as was developed in Scandinavia based upon the Child Advocacy Model developed in the USA in the 1980s to avoid further traumatisation of children by the legal process. Barnahus brings together operations necessary to conduct criminal investigation, child protection and physical and mental health.

2.

justice process. In addition to more generalised concerns relating to inadequate information, the lengthy duration of the process, personal safety concerns and concerns that the system is weighted in favour of the accused, the familiar 'pain points' at each point of interaction with criminal justice agencies, remain⁷.

Transforming Service for Victims and Witnesses was commissioned jointly by Scottish Government, COPFS and Victim Support Scotland. The intention was to understand the gaps in support for a victim or witness' journey through the criminal justice system by taking **a user-centred, service design approach**. This 'discovery' phase was intended to facilitate the definition of **a long-term vision for an end-to-end service for victims and witnesses**; provide strategic direction in relation to policy, digital, business and people; and propose **a framework for how systems and management techniques can improve the experience of victims and witnesses** in Scotland's justice system⁸. Consideration was to be given to the ways in which digital technology could transform delivery of services and access to information for users of the justice system.

⁷ O. Brooks-Hay, M. Burman & L. Bradley, *Justice Journeys Informing policy and practice through lived experience of victim-survivors of rape and serious sexual assault*, University of Glasgow, 2019

⁸ Transforming Services for Victims and Witnesses, Specification, June 2019

3.

**A Service Design
Approach**

3.

Design has come to the fore in the management, business and policy contexts in the last 20 years⁹ where it is often described as being about problem-solving from a human-centred perspective. Design can be thought of as 'changing existing situations into preferred ones'¹⁰ with a particular focus on reconfiguring social, material and technological resources.

So, a design approach considers how things are, with a view to designing how they could be better. The insights generated in the discovery phase can be thought of as 'hypotheses' to be explored in more detail in later stages of the design process rather than 'truths' in relation to the current state. To that extent, the function of insight gathering activity is to **inspire** the design of a future state, rather than to evidence its requirement or validity: that comes later in the development and testing of prototypes.

However, in Transforming Service for Victims and Witnesses, where possible, and as you might expect in an exploration of the Scottish criminal justice system, when identifying insights, corroboration of the findings has been sought from other sources.

There is a range of contemporary design practices including:

Design thinking: Design thinking gives prominence to lived experience and the design activities of visualising and prototyping, whether this relates to products, services, strategies or policies. Design thinking proposes that design is a key organisational capability that can be practised by 'non-designers' through application of common tools and methods.

Participatory design, or co-design, involves all stakeholders in the design process to ensure that the resulting design is 'desirable, feasible and viable'.

Agile¹¹ originated in software design, but the principles of co-located, motivated, self-managing, multidisciplinary teams, designing in context and with a focus on simplicity and rapid development cycles, are increasingly applied to wider problem solving and project management approaches.

User experience design (UX) is often associated with digital innovation and emphasises the need to understand how users interact with services, including digital interfaces, in order to inform design and development.

Scottish Government has pioneered the application of design to help resolve social

⁹ L. Kimbell, G. Julier et. al, *Co-producing Social Futures Through Design*, Brighton, University of Brighton, 2016

¹⁰ Simon, H (1999) 3rd Edition, *The Sciences of the Artificial*, Cambridge: MIT Press, 1999

¹¹ K. Beck, M. Beedle, et al, *Agile Manifesto*, Feb 2001, <https://agilemanifesto.org/>

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problems through the creation of the Office of the Chief Designer, Digital and the codification of the Scottish Approach to Service Design¹². The Minister for Public Finance and Migration states that 'the vision for the Scottish Approach to Service Design is that the people of Scotland are supported and empowered to actively participate in the definition, design and delivery of their public services from policy making to live service improvement'¹³.

The lexicon of design approaches is well embedded in the Office of the Chief Designer, Digital and through a programme of developing 'design champions' across government and public service partners, there is an intent towards building capability in design-led improvement across public services.

However, design approaches are not without their challenges. In the context of public service, design privileges the citizen over the 'system'. Combine this with an assumption towards digital, which, according to the Scottish Digital Strategy, 'transforms the way in which we live our lives...puts power into the hands of users of services...and has the potential to fundamentally redefine the relationship between the public sector and the people it

serves'¹⁴ and it is evident that design has the potential to be significantly disruptive.

Given the majority of design techniques focus on understanding the problem and defining a solution, there can be a tendency to think that, because those solutions are based on understanding users needs, they are self-evident and so implementation should be uncontentious.

However, the shift in power towards service users implied in design-led and digital change, can be thought of as a zero-sum game. Where citizens (whether victims, offenders or the general public) may be the winners, the prevailing power bases in the system are the losers. This can result in the 'system' perceiving design as antagonistic, and so rejecting both the approach and the propositions.

Given the inevitable power-shift implied within the design process, skilful navigation of the interests of various stakeholders and the prevailing culture and practices is needed for implementation of the proposed future state to be achieved. This is challenging enough in the context of a single organisation: it is more challenging still in the complex, multi-agency

¹² Scottish Government Digital Directorate, The Scottish Approach to Service Design, *Scottish Government Website*, 2019 <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2019/04/the-scottish-approach-to-service-design/documents/the-scottish-approach-to-service-design/the-scottish-approach-to-service-design/govscot%3Adocument/Scottish%2BApproach%2Bto%2BService%2BDesign.pdf>

¹³ Ibid, pp6

¹⁴ Scottish Government, Realising Scotland's Full Potential in a Digital World: A Digital Strategy for Scotland, 2017 <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/03/realising-scotland-s-full-potential-digital-world-digital-strategy-scotland/documents/00515583-pdf/00515583-pdf/govscot%3Adocument/00515583.pdf>

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environment of the criminal justice system particularly where the public interest which requires to be served by that system cannot be reduced to the interests of stakeholders

The approach to Transforming Services for Victims and Witnesses is design-led and complexity informed. In this way, it recognises that outcomes for victims and witnesses emerge from a complex, adaptive criminal justice system, and it gives consideration to the systemic factors that might help, or hinder, development and implementation of solutions. It also recognises that the design activity itself is an intervention in the system and, as such, will create disturbance.

With this in mind, in addition to exploring the victims' and witness' journey through the criminal justice system, the system itself, is a subject of enquiry. Consideration has been given to the culture and conditions for change; and the capacity and capability across the system to design and implement a future state.

The approach consisted of three main strands of activity:

1. INSIGHT GATHERING

This involved reviewing documentation relating to victims' and witnesses' experiences obtained by victim support agencies; gathered in the course of specific reviews of services for victims and witnesses; obtained via VSS from the Victims' Taskforce 'Victims' Reference group'; presented in research studies; detailed in case studies; and described in 'grey literature' such as newspaper reports and similar.

In addition, desk research was undertaken to review a range of strategic, policy, corporate and planning documents. Publicly available performance data and management information gathered across the criminal justice was reviewed alongside the Victims' Code and current and previous Standards of Service reports. Information relating to initiatives in other jurisdictions was reviewed as were approaches to analogous services.

3.

Interviews and formal and informal discussions were undertaken with a selection of those currently and previously involved in the criminal justice sector. Interviews were also undertaken with representatives of victim support agencies and interest groups. Further insight was gathered through attendance at seminars and presentations.

Visits to courts, police stations, COPFS offices, support providers and the new video evidence suite were undertaken for the purposes of observational research.

2. WORKSHOPS

The critique emerging from an external design perspective can appear hostile, or antagonistic, to the prevailing system. While disturbance is necessary for change, it is not helpful if defensiveness spreads across employees. This will result in the system acting to restore its balance in the interests of the status quo, and the design initiative faltering or losing priority. Transformation is notoriously difficult, with 75% of all transformation programmes

being unsuccessful.¹⁵ To counter this, and to model safe spaces for collaboration, we hosted workshops with representatives from all levels of criminal justice and victim support agencies. Participants provided their own perspectives on emerging issues and opportunities and worked together to explore frameworks for collaboration and planning.

3. STEERING GROUP DISCUSSIONS

Transforming Services for Victims and Witnesses was led by a steering group of representatives from VSS, COPFS and Scottish Government. The steering group met on average fortnightly from November 2019 to March 2020. In addition to providing oversight of the activities, the steering group provided insight into the organisational, cultural and policy context for change and agreed the direction of insight gathering. Members of the steering group ensured Transforming Service for Victims and Witnesses was connected to on-going initiatives within criminal justice agencies and with the work of the Victims' Taskforce.

¹⁵ M. Reeves, L. Fæste, K. Whitaker, and F. Hassan, 'The Truth About Corporate Transformation Research Highlight', *Sloan Management Review*, 2018, <https://sloanreview.mit.edu/article/the-truth-about-corporate-transformation/>

3.

Victims of all types of crimes, whether prosecuted or not, were within scope, including victims within the criminal justice and youth justice systems. Victims include next of kin bereaved by crime, road traffic deaths, suspicious deaths abroad and corporate manslaughter.

The scope of the criminal justice system is taken to be Police Scotland; COPFS, including VIA; Scottish Courts and Tribunal Service; the Scottish Prison Service (insofar as they administer the Victim Notification Scheme) CICA and the Parole Board. However, consideration is also given to the system of support services for victims and witnesses.

4.

**Victims' and Witnesses'
Experiences of the Criminal
Justice System**

4.

This report details the findings of Transforming Services for Victims and Witnesses discovery phase, proposes a long-term vision for end-to-end service for victims and witnesses, and suggests an approach to transformation across the criminal justice system.

But first, a real-life story...

Gayle.

Gayle is 24 years old.

She was raped when she was 21.

Gayle said, "I hardly remember the person I was before the attack. She was a funny, sassy, optimistic person, always laughing. I don't find myself laughing very often now. Looking back at the what happened, the investigation and the trial, I can see now that I was just surviving. I went from a state of shock to a state of constant anxiety, with moments of overwhelming fear. I still get that from time to time but with support, and from speaking to other survivors I'm learning to manage it.

Knowing what I know now, would I report it? I don't know. Really, I had no idea what to expect. I just knew I didn't want what happened to me to happen to anyone else.

Everything was evidence. I was evidence. They took my clothes, my bag, my phone; literally everything. The police officer explained that it needed to be examined and would be needed as evidence. He didn't explain that I wouldn't see any of it again until the trial. It didn't occur to me to ask. I was stripped of everything. I couldn't have faced having the clothes back, but my phone had on it all the photos of the life I'd had before.

The trial was cancelled twice. The second time I was already at the court when I was told one of the witnesses hadn't turned up so they would have to postpone. On the third date for the trial I was sick in the morning. The anxiety was overwhelming. The prosecutor showed

me a copy of my witness statement. I hardly recognised it.

He was found guilty and sentenced to 3 years. I was informed that he was granted parole. I've moved to a different town now. I'm in touch with other survivors and together we're helping each other to recover"

4.

Gayle's story is not the story of an individual person. She is a persona. In the design process, a persona is a fictional character based on an amalgam of real-life experiences of service users, drawn from user research, and developed to illustrate examples of victims' experiences of interacting with criminal justice agencies.

It is important to note that while Gayle's experiences are based on real examples of victim survivors experiences, this is not to say that they are representative of the majority, nor that these experiences are the intention of any policy. Gayle's experiences represent what can – and has been – the case for specific victim survivors at individual touchpoints in the criminal justice process. These experiences of individual 'pain points' are not necessarily common, but nor are they unique. However, Gayle's 'persona' uniquely brings a range of 'pain points' together as an illustrative story, framed as an individual's experience.

In this case, Gayle is a woman who has experienced sexual violence. There has been some discussion at the Steering Group about the whether the experiences of victims of sexual crime are representative of victims in general.

Crimes of sexual violence account for only 5% of recorded crimes in Scotland¹⁶ and research shows that views on the quality of the justice experience do vary by crime type¹⁷. There is also research to suggest that for victims of violent crimes, their experience of the justice process is associated with more and longer term distress than victims of other crimes¹⁸ and that victims of sexual assault are more likely than victims of physical assault to be dissatisfied with the police and court process¹⁹.

However, there is an argument in service design for considering 'non typical' users of services. These people may be small in number but they may require more intensive interaction with services or have particular wants and needs. If service redesign can improve their experience, then it will also improve the experience for the majority of service users. Given that there are examples of 'pain points' across interactions with all agencies within the criminal justice system for victims of sexual violence, it was considered reasonable to explore their journeys as a source of insight. Further, Victim Support Scotland gathered feedback from victims in the Victims' Reference Group within the Victims' Taskforce and confirmed that based on their engagement

¹⁶ Recorded crime in Scotland: 2018-2019, <https://www.gov.scot/publications/recorded-crime-scotland-2018-19/pages/4/>

¹⁷ S. Armstrong, B. Weaver and T. McCulloch, *Measuring Justice: Defining Concepts, Developing Practice*, SCCJR, 2020

¹⁸ *ibid*

¹⁹ R.B. Felson, P. Pare, *Gender and the Victim's Experience With the Criminal Justice System*, Social Science Research, vol 37, pp 202-19

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with Victims, there were consistent patterns in relation to 'pain points' across all crime types. These aligned with the experienced described in the SCCJR study, Justice Journeys, which detailed the experiences of victim-survivors of sexual assault²⁰.

The scope of Transforming Service for Victims and Witnesses required that insights would be based on secondary research into victims' experiences and data from victim support agencies. It is the case that there is a greater body of contemporary research into victims' experiences to draw upon in relation to violent crime, particularly sexually violent crime and homicide. In addition, there is an apparent bias in recent research towards a particular demographic of victim²¹. Going forward, there is a strong argument for further research into the experiences of victims of different crime types and those with different demographic profiles, including, for example, culturally diverse victims, those with disabilities and from other marginalised groups.

We explore the insights gathered, illustrated through the Gayle's experience as she interacts with the criminal justice system:

²⁰ Brooks-Hay et al 2019

²¹ S. Armstrong, B. Weaver and T. McCulloch, Measuring Justice: Defining Concepts, Developing Practice, SCCJR, 2020, pp45

4a.

Initial Reporting



Gayle's Story

When I got back to the flat I was in shock. I couldn't believe what had happened. I was just sitting shaking. I phoned my friend and she came round. She said, 'Look, you've got to report this.' She googled what to do. Then she phoned 101 and they told us to go to the police station. I didn't really think about it. I just went along. I didn't realise that once I reported it, it was out of my hands.

When we got to the police station, the woman at the reception was so nice. She offered me a cup of tea and I think she felt bad that the waiting area was so cold. I was shivering but I think it was just the shock. She asked me if I'd like to speak to a male or a female officer. I said a female.

We had to wait for 2 hours. The woman at reception said they were dealing with an incident. My thoughts were all jumbled. Eventually a male police officer came out and spoke to me. He said there wasn't a female available so he would interview me.



Pain points

- Third parties, whether friends, colleagues or support workers can often be instrumental in people's decision whether to report. Yet, outside of professionals and support workers, there is limited knowledge of the system. 76% of adults in Scotland say they don't know much or anything about the criminal justice system²². Consequently, it is difficult for victims to make an informed decision whether to report
- Victims are not aware that they can't change their minds and decide to 'drop the charges'. Choices to report, or not, are not always informed and victims can feel they lose choice and control in the process, compounding experience of trauma
- First encounters are very important. Research shows that those who feel they are treated unfairly from the start of the process have higher incidence of PTSD²³
- Victims of sexual assault (and other specified crime types) have the right to request that they are interviewed by an officer of their chosen sex²⁴. However, across eligible crime types, this was not deemed practical in 14.9% of cases in 2018/19²⁵

²² Scottish Crime and Justice Survey self-completion sections 2016/17-2018/19, <https://www.gov.scot/publications/scottish-crime-justice-survey-2017-18-main-findings/>

²³ J.A. Wemmers, 'Victims' experiences in the criminal justice system and their recovery from crime', *International Review of Victimology*, 2013, vol 19 issue 3, pp221-233

²⁴ Victims' Code for Scotland, <https://www.mygov.scot/victims-code-for-scotland/>

²⁵ Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Scottish Prison Service and the Parole Board for Scotland, *Standards of Service for Victims and Witnesses Annual Report on Performance 2018 – 2019*, May 2019, pp10



General points

- Online sources are often the first place people go for information
- Intentional management of online contact and search engine optimisation would improve information provision and ensure people are directed to reliable information and advice
- Online reporting on Police Scotland website is not easy to navigate and only available for selected crimes. 'Query' versus 'reporting' forms can be confused
- Better use of online reporting could improve customer service across all crime types and reduce cost to serve
- Victims of violent crime are a relatively small proportion of victims. Not all victims experience distress therefore victims of lesser crimes would benefit from a more coherent online approach
- Victims often say their motivation to report is because they don't want it to happen to anyone else
- Conversely, victims who do not report often say they didn't see the point because they doubted it would result in any action. This was highlighted particularly by victims of hate crime and by those at reporting centres²⁶
- Feeling that they are believed and taken seriously has an important impact on victims' experiences. Male victims of sexual assault have reported that they were not taken seriously by police resulting in significant impacts on mental health
- People who do not report hate crime to the authorities, do discuss their experience in their communities and this can add to a sense that the community is unsafe²⁷
- Better communication to inform the public that reporting data is used to improve policing could incentivise reporting and participation

²⁶ Scottish Alliance of Regional Equality Councils, *Why Me?: Research into the experiences of those who have experienced hate crime in order to understand the kind of support services that they actually need, 2017*, pp10

²⁷ Scottish Alliance of Regional Equality Councils, *Why Me?: Research into the experiences of those who have experienced hate crime in order to understand the kind of support services that they actually need, 2017*, pp28-29

4b.

Giving a Statement

4b.

Giving a statement



Gayle's Story

I was taken to a small room with no windows. I felt very anxious. The police officer sat opposite me with a pen and paper and began asking me questions, really detailed questions about what happened when. It was really hard to remember the details. I wasn't sure. I kept having to say, 'I can't remember'. I felt stupid and confused, as though he wouldn't believe me. It was all very matter of fact for him but this was the worst experience of my life. After everything I said it took a long time for him to write it down. While he was writing, I was reliving the whole thing in my head. It was horrendous.

I was in there for hours, with nothing to eat or drink and no one asking me if I was ok.

When he read the statement back to me, it really hit me what had happened. It didn't sound like me. It was in his words. It was brutal.



Pain points

- Uncomfortable environments compound feelings of being unsafe
 - Victims can find it difficult to remember things in the order that the police wish to record them in the statement²⁸
 - The statement is not the story of what happened
 - Remembering accurately can be very difficult after a traumatic event²⁹
 - Hand writing statements can lead to short cuts or errors in recording
 - The process can be very lengthy, with victim-survivors reporting that statements took 36hrs to record³⁰
 - Going back over the statement can be very difficult
- Most often victim-survivors give their statement alone. However, those who are accompanied find it very beneficial³¹
 - There are practical concerns with victims reporting that their basic needs for food, water and toilet facilities were not met³²

²⁸ O. Brooks-Hay et al, Justice Journeys, pp3

²⁹ Lancashire Traumatic Stress Service, 'How Trauma Affects the Way in Which We Encode and Store Memories', 2013, <https://www.lscft.nhs.uk/media/Publications/Traumatic-Stress-Service/How-Trauma-Affects.pdf>

³⁰ O. Brooks-Hay et al, Justice Journeys, pp3

³¹ ibid, pp16-19

³² ibid, pp4



General points

- Giving a statement after a traumatic event is particularly difficult but the statement process is identified as a pain point across all crime types for victims and witnesses
- The mode and order of questioning in order to get the statement in the format that is useful for the police does not always lead to the 'best evidence' from the witness
- Hand writing is time consuming, prone to error and seems 'dated'³³
- Explaining that victims can be accompanied to give a statement would be helpful to many
- Reducing anxiety will improve the quality of evidence gathered
- Basic errors in recording statements undermine victims' and witnesses' confidence in the process and cause problems further down the line with the prosecution process³⁴
- Statements are available prior to trial but this is not always explained
- Accuracy of the statement, rather than remembering its content, seems to be a concern for the victim

³³ Ibid, pp5

³⁴ Ibid, pp12

4c.

Initial Evidence Gathering



Gayle's Story

Everything was evidence. I was evidence. They took my phone, my clothes, everything. They wanted to see texts and so on but my phone had my whole life on it, photos, phone numbers. My old life was all gone.

They explained that I needed a medical examination. I had to wait for that and all I wanted was to be home, and clean, and warm.

The doctor was kind. He talked me through everything and explained what was happening but it felt like I was just being processed. Then, after the examination the police officer was saying, oh hold on, we should have done a toxicology report. I thought, on no, after all that I don't want them to have missed something.

I was really scared that my attacker might have infected me with something. I didn't want to ask about it. I figured they'd tell me after they got the results.



Pain points

- Loss of belongings, especially mobile phones, can have a significant impact. While it is the responsibility of the police to return belongings after the prosecution, this can may be over a year later. Many never get their belongings back
- Trauma informed approaches, and treating victims with dignity and respect has a significant positive impact³⁵
- Victim-survivors want to be reassured that all evidence has been gathered and that the process has been undertaken properly. Their participation in the process as providers of evidence and insight into the event is important³⁶
- Wellbeing support in the form of basics like access to food, drink and washing facilities is important, as is access to medical care
- Effective implementation of the provisions of the Forensic Medical Services (Victims of Sexual Offences) Scotland Bill should improve access to medical care for victim-survivors while enabling best evidence and access to examination by a medical professional of the chosen sex

³⁵ Scottish Government, 'Improving NHS services for victims of sexual crime', 2019, <https://www.gov.scot/news/improving-nhs-services-for-victims-of-sexual-crime/>

³⁶ Ibid



General points

- While there are specific experiences in relation to the gathering of forensic evidence from victim-survivors of sexual assault, victims of other crime types also report concerns
- In the case of murder or culpable homicide, those bereaved highlight concerns that evidence may have been missed and there are concerns that the crime scene is not cleaned after evidence has been gathered, leaving those bereaved with the traumatic task of cleaning the murder scene³⁷
- Loss of possessions is a common and serious concern. Withholding personal possessions can feel like further victimisation. Often property is not returned to victims and witnesses and they are left without information relating to whether they should continue to pay phone charges, for example. Loss of laptops can impact on employment. There is an expectation that police should be able to download digital evidence and return these items

³⁷ L. Casey, 'Review into the Needs of Families Bereaved by Homicide', 2011, pp25

4d.

After Reporting



Gayle's Story

Reporting the attack was a really intense experience. When I got home, I just felt dull.

I didn't know what to do, who to tell, how to tell my mum. I couldn't go in to work but I didn't want to tell them why. My flatmate rang in sick for me.

One of the police officers told me that she was my SOLO. She told me that she had referred me for support and someone would be in touch to help me if I wanted. But I didn't have my phone so I wasn't sure how that was going to work.

My flatmate went to work and when she came back I was still sitting there on the sofa. I'd hardly moved all day. That's how it was for a week or so.

I went back to work after a week but I was anxious and tearful and had to take more time off.



Pain points

- After the experience of reporting, it can feel like there is a lull in the process from the victim-survivor perspective³⁸
- Victim-survivors experiences mean that they may not be able to pick up the routines and relationships of their life as they had been previously³⁹
- Personal and practical concerns are very important and affect wellbeing
- Access to practical and emotional support at the earliest stage is important

³⁸ O. Brooks-Hay et al, Justice Journeys, pp7

³⁹ H. Easton, R Matthews, 'Investigating the experiences of people trafficked into commercial sexual exploitation in Scotland', Equality and Human Rights Commission, Glasgow, 2012, pp45-47



General points

- While research evidence of victims experience often focuses on the interactions with the criminal justice system, the impact on day to day life can be overlooked
- Victims' journey through the experience of crime and the justice process is not entirely focused on interactions with criminal justice agencies. They have personal and practical concerns
- The experience of crime can have a significant impact on relationships with family and friends and on practical matters like return to work and caring responsibilities⁴⁰

⁴⁰ O. Brooks-Hay et al, Justice Journeys, pp27

4e.

Investigation



Gayle's Story

The SOLO came round to the flat and explained that for a successful prosecution, they needed corroboration. I had no idea that was how it worked. No one explained it to me at the start. She told me they would be gathering evidence from other people who were there that night and she would let me know how things were progressing.

I felt very agitated and started thinking about who might have been there that I might have missed. I went online to see if I could find out anything more about him. I was in this kind of frenzy of trying to find out anything I could. I just wanted to feel there was something I could do. I called the SOLO and said that I'd found other women he'd been involved with through Facebook but she said it wasn't relevant.

She rang me again two weeks later, then two weeks after that to say things were progressing. I didn't know what that meant. My advocacy worker explained that this was normal, not to worry. She was a point of certainty in the whole confusing process for me.



Pain points

- The requirement for corroboration is not well understood⁴¹
- The evidence gathering process is not transparent or understood⁴² by victims and witnesses. This can leave victims feeling that their input is not important or valued or that important evidence has been missed and the process is not reliable. Whether or not concerns are valid or rational, the uncertainty can traumatise further
- Victim-survivors expectations of the process can be quite different from the reality, leaving some victim-survivors feeling disappointed
- Support workers are helpful in navigating the process and providing reassurance. While the criminal justice system is 'neutral', there is benefit to victim-survivors of feeling their support worker is knowledgeable and there for them⁴³

⁴¹ Ibid, pp9

⁴² Ibid

⁴³ Ibid, pp10



General points

- The criminal justice system is not well understood by the general public or by victims and witnesses, and nor are processes within it. This can leave victims feeling that they are secondary to the process and amplify their feelings of being out of control, which in turn can be traumatising

4f.

Prosecution



Gayle's Story

Not a single day went by that I wasn't thinking about it. It affected my work, my relationships, everything.

The SOLO got in touch to tell me that they were proceeding with the prosecution. It was 4 months after the assault. The SOLO explained that now that the case was going forward, she would hand over to a VIA officer and they would explain what would happen next. We met the VIA woman. She couldn't tell me when my case would go to court or who would be taking my case. She told me I would have the option to give my evidence from behind a screen so I didn't have to see my attacker.

I felt like my life was on hold. After that initial meeting, I didn't hear from VIA for 6 weeks. I thought they must have lost my case. My advocacy worker tried to contact them but they didn't call back. When I got through they said there was no new developments and they would be in touch. Weeks later I got a letter saying there would be an initial hearing that I didn't need to attend. Then I got a letter saying I had to go to court for the trial.



Pain points

- Involvement in the criminal justice process can have a wide effect on victim-survivors
- Protracted process can mean victim-survivors are in limbo, unable to move forward in their lives or their recovery
- Handover from Police to VIA often means a change in style, form and regularity of communication⁴⁴
- Lack of regular contact can cause concern and a sense that nothing is happening or there has been a failure in the process
- Support workers can be useful in providing confidence and reassurance through regular contact
- The prosecution process is not transparent or widely understood and can be confusing to lay people

⁴⁴ Ibid, pp11



General points

- Only specified cases are allocated to VIA, including all cases with vulnerable witnesses. For other cases, individuals may request information
- Lack of understanding of the criminal justice system, combined with the expert nature of the legal process and its particular language, can make this stage of the process baffling and distressing for victims and witnesses
- Witnesses may hear nothing about the progress of the case until they receive a citation to attend court. This may be some considerable time after they gave their initial statement
- Experiences of insensitive communication can have long lasting emotional effects on victims⁴⁵
- The difference in regularity and nature of contact between Police and VIA is marked. FLOs and SOLOs give victims mobile numbers and often offer additional support and regular contact. This access to a known individual and regular contact is cut off when the case transfers to VIA

⁴⁵ Ibid, pp11

4g.

Preparation for Trial



Gayle's Story

My advocacy worker talked to me about what it would be like going to court and showed me a video of what it would look like inside the courtroom. Once we had watched the video, we went to visit the actual court so I could see what it was like. It was quiet and we were shown round by a volunteer. I was glad I went but it felt very different on the day.

The VIA officer told me I had to come and read my witness statement before the trial and make arrangements for giving evidence. He said there was a room in the court where I could give my evidence by video. I wasn't sure how that would work but he said it would be fine if that was what I wanted.

I didn't realise I would get to see my statement again and had been racking my brain, awake all night going over and over trying to remember every detail. My advocacy worker came with me to the Fiscal's office to read the statement. I couldn't believe it. It sounded like it had been written by a primary school kid. It made me sound stupid. Some of the details had been written down incorrectly. I was really upset.



Pain points

- Pre-trial court familiarisation is valuable and can help reduce anxiety
- Visits on quiet days with a host do not prepare victims and witnesses for the reality of court
- Victims do not necessarily understand their rights in relation to special measures. Some feel they are not provided with sufficient information to make informed choices about whether to opt for special measures⁴⁶
- Victim-survivors are often not aware that they will see their statement again⁴⁷
- Errors in statements and the style and tone in which they are written can be upsetting for victims and witnesses. While errors undermine confidence in the process, the style and form makes the statement feel like it is not 'their story'. This adds to the feeling of being marginalised in the process

⁴⁶ O. Brooks-Hay et al, *Justice Journeys*, pp16

⁴⁷ *Ibid*, pp ii



General points

- Court familiarisation visits are valuable for victims and witnesses, although they do not fully represent the experience of a busy court on the day of the trial
- Witness statements are a source of concern for victims and witnesses. There is scope for error when statements are transcribed and the order in which details and events are recorded does not always correspond with the way in which victims or witnesses remember them
- Victims and witnesses are concerned with telling their story of events. This can feel like a memory test when there has been a significant period of time between the event and the trial. This is compounded for victims who have been traumatised
- Victims are not necessarily given time or information to decide on whether they want special measures and if so, what form. Where they have opted to accept a special measure, they can later be dissuaded if it is suggested that it will compromise their evidence or the perception the judge or jury might have of them

4h.

The Court



Gayle's Story

After the first date was set, I got a letter saying it was cancelled. Just like that. No notification of when the new date would be.

For the next trial date, I turned up at the Court with my mum and my support worker. The Court was really busy. Everyone seemed to arrive at the same time and I was really anxious in case I came across my attacker in court. I wouldn't feel safe around him or his friends and family. My advocacy worker knew her way around and found the place for witnesses to go.

The first time I met the Advocate Depute was when he came to tell me the case was cancelled. One of the witnesses hadn't shown up. I had got myself all psyched up and was just told to go home.

The trial went ahead on the third attempt. Each time I'd had to ask for time off and by the third time my boss was wondering what was going on.

The Advocate Depute came to speak to me. He explained that although I'd asked to give evidence by video, he thought it would be better if the jury were able to see me in person. I thought he would know best so I agreed.

We waited for a long time. There was nowhere to get coffee or a drink in the waiting room and no toilet. My advocacy worker got us a sandwich and a drink. She said to keep my strength up.



Pain points

- Cancellation of trial dates is a significant concern. It causes anxiety, feelings of loss of control and loss of confidence in the process
- The Court arrival process can create bottle necks at key points and risk victims and accused coming into contact raising safety concerns
- Support workers are helpful in providing reassurance and support through the process, but this is a significant commitment of time and resource
- Basic provision of safe access to refreshments and toilet facilities can be overlooked
- The lack of contact with the prosecution is unexpected for many victim-survivors who had previously thought of the prosecution as 'their lawyer'⁴⁸
- The sense that the prosecutor is rushing and may only just have picked up the case causes anxiety and loss of confidence⁴⁹
- Concerns about jurors' attitudes to and perceptions of evidence which is pre-recorded or given by CCTV link can lead to prosecutors advising against the use of certain special measures
- Lack of engagement with witnesses or failure to deliver citations can lead to witnesses failing to turn up at court and so cancellations of trials

⁴⁸ O. Brooks-Hay et al, Justice Journeys, pp19

⁴⁹ Ibid



General points

- While court schedules are available online, this is not widely known and without a search function, this facility is difficult to use
- Court buildings are generally difficult to navigate, with poor signage, limited separation of victims and witnesses and poor disabled access
- While court buildings themselves are often old and inflexible, there is some scope to improve the design with greater consideration of signage and flow of people. This has been explored and recommendations made in a report by the Customer Service Institute that has been seen during the course of this review but is not in the public domain
- When it is suggested that victims use a side or back entrance to avoid the accused, this adds to the impression that the process favours the accused
- Travel arrangements and expenses, getting time off work, waiting in court only to be told that the trial is cancelled, all add to the inconvenience and upset caused by the court process. This experience is reported across all crime types⁵⁰
- Quality of volunteer services in court can be variable and capacity can be an issue. During a visit in one court, it was evident that volunteers struggled to get around all the witnesses to speak with them
- The volunteers showed witnesses a poor quality, laminated photograph of the court and with evident capacity constraints, the focus was on the task not the individuals and their specific concerns

⁵⁰ Ibid



General points

- High Court and Sheriff Court experiences can be contrasting with more sensitive treatment of victims and witnesses at the High Court
- There are reports of citations not being received by witnesses. Text reminder messages do not appear to be sent routinely
- The Scottish Children's Reporter Administration are outside of the scope of this study. However they offer interesting insight in that they make explicit commitment to improving service and have launched a Customer Charter that they post in their locations. They have sought to improve the 'customer experience' of interacting with them and to embed this within their culture
- COPFS commissioned the Customer Service Institute to undertake a review of the court experience, with a principal focus on the Edinburgh Sheriff Court. Following this review COPFS developed a prototype Witness Portal for testing and improved the witness release process. SCTS made improvements to the signage of the Edinburgh Sheriff Court. The evidence suite being piloted in Glasgow is undoubtedly an improvement. However, greater attention could be given to access (secure access is next to the main entrance and requires those using it to use the stairs to the suite on an upper floor of the building. Consequently, it is unsuitable for disabled people); design components to improve use; user testing and feedback (roll out is planned but an evaluation has not been completed); elements that might affect evidence quality (such as technicians zooming in or out during evidence)

4i.

Giving Evidence



Gayle's Story

The process of giving evidence was nothing like I imagined. It was awful. I thought I would have an opportunity to tell my story, at least explain what happened in my own words. I thought the prosecutor would be on my side, but he just seemed to ask bland questions that seemed to go off at a tangent.

And the defence. I don't think anything could have prepared me for the 7 hours of questioning, the accusations that I was lying, asking me about my Facebook, things I had no idea they were going to ask me about. Having to stand there and talk about intimate details of what happened that night, all the while with him looking at me like I was making it up.

By this time it was year after the attack, a year I'd spent trying to block it out of my mind and now I was being asked detailed questions about the night in a random order and all the time they're trying to catch you out.

I know that to the defence, it's just a job, but I don't think he has any idea about the effect that has had on the rest of my life. I have flashbacks regularly, not just to the attack but how helpless and out of control the defence questioning made me feel.



Pain points

- The process of giving evidence is not the opportunity to 'tell their story' that victims often expect
- The process of giving evidence is traumatic and contributes to feelings of being out of control. Victims report that this feeling of lack of control is particularly acute at the trial⁵¹
- The questioning is not as expected in that it often doesn't follow a linear, chronological sequence. This is confusing and can be upsetting
- The length of time that has passed, and the impact of the trauma that victim-survivors have experienced, means that they cannot always recall details
- Lack of understanding of the process disempowers those giving evidence⁵²
- Expectations that the prosecutor is the 'victim's lawyer' can add to the upset and feeling of being unsupported and marginalised through the process
- The adversarial nature of the process, and the stress experienced by victims and witnesses make it difficult to give 'best evidence'
- The impact of giving evidence can be traumatic, harmful and have long lasting negative effects

⁵¹ O. Brooks-Hay et al, Justice Journeys, pp20

⁵² Ibid



General points

- Those giving evidence across a range of cases, whether victim-witness or witness, report problems with accuracy of their statement. They may only see their statement again just prior to giving evidence. Any errors that emerge at this stage can undermine confidence in the legal process
- The interrogatory nature of questioning can be upsetting and disempowering
- The process of giving evidence, and the defence and prosecutor questioning, is often described using metaphors relating to 'performance' where the quality of the performance is thought to sway the outcome. This language, and the reality that, for many, their expectations of the criminal justice system are based upon TV or film dramas, compounds a mis-match of expectations and lack of understanding

4j.

After the Trial



Gayle's Story

I don't know if justice has been done. I'm glad that he was found guilty. I made an impact statement and the Judge mentioned it when he sentenced him. I'm glad they believed me in the end. When I realised how short his sentence was, I felt really nervous. I didn't know how I would feel.

After the trial I was advised to apply to CICA for compensation. I hadn't thought about it but I was encouraged to apply. It was another official process, telling all the details again. The woman on the phone was nice but I didn't like going through it all again. It took about 6 weeks for a decision and they sent me some compensation. I was glad to receive the money but it felt disconnected from the experience I'd had.

About 6 months after the trial, I moved out of my flat and moved in with another friend in the next town. I think my flatmate was relieved. She'd been through a lot with me and she was called to give evidence in the end. I think she was glad to move on. I don't hear from her now. My flatmate got a letter from the prison service that she sent on to me. It told me that he was going to be released from prison.

I had to stay off work when I heard. It really hit me. I thought I was getting better but I'm not there yet.



Pain points

- When impact statements are referenced in Court, it adds to feelings of being listened to and believed
- Sentencing can be difficult to understand, especially where there are a number of charges or when the perpetrator has been detained prior to trial
- CICA process is rules-driven. This may ensure consistency but for many, it is not perceived as transparent or easy to understand. While CICA works within a prescriptive legislative framework, the organisation has taken steps to improve customer experience and develop a more customer-focused culture. The results of this will come through in future research with service users
- Maintaining contact with VNS can be problematic when people move home or their contact details change
- Capacity issues within the prison service, and complex processing, can lead to challenges in ensuring that appropriate information is provided in a timely way to those registered on the scheme
- Victims can be retraumatised at notification of release



General points

- Perceived fairness of sentencing is influenced by a number of factors
- Attention to safety concerns is important particularly when the accused is released – whether guilty, not proven, or acquitted
- Criminal justice proceedings have long lasting effects on relationships and life circumstances for victims and witnesses
- The impact extends beyond the end of interaction with the justice system

Incident

- Lack of awareness of criminal justice process
- Lack of information to make an informed decision whether to report
- Information available is difficult to understand when in trauma
- Lack of understanding of impact of reporting

Reporting

- Digital process is not well designed
- Inconvenient
- Waiting times
- Lack of support for vulnerable victims and witnesses
- Lack of availability of appropriately trained officers of the chosen sex
- Lack of attention to basic needs
- At times not treated with dignity and respect, taken seriously or believed
- The process is not set out clearly and plainly
- Lack of awareness of rights
- Access for marginalised groups

Investigation

- Process is not transparent
- Lack of ability to participate
- Lack of choice and control
- Lack of information or regular contact
- Concerns about quality of the process
- Inaccuracies in witness statements
- Witness statements do not reflect victim's 'voice'
- Lack of awareness of the need for corroboration

4.

Summary of 'pain points'

Trial

- Lengthy delay from reporting to trial
- Cancellations and postponements
- Court buildings are poorly laid out
- Lack of facilities in court
- Lack of provision for safety
- Lack of provision for access
- Lack of access to refreshments
- Special measures inconsistently applied
- Implications of special measures not always understood (for example, victims may not realise that they can still hear the accused through the screen and this can be found intimidating).
- Concerns over jury education in relation to special measures
- Inaccuracy of witness statements
- Adversarial questioning is traumatic
- No scope for victims to 'tell their story'

Post trial

- Safety concerns without the protection of bail conditions
- Access to support services is variable
- Story must be re-told for impact statement, CICA and further administration for VNS
- VNS is not reliable in making or maintaining contact

These 'pain points' are noted in terms of 'critique'. They are framed as 'problems' that could be 'solved' to improve the victims and witnesses experiences. It is important to note that these problems do not occur for all victims and witnesses, and in many cases there are policies in place that intend to avoid these problems. However, research consistently shows, victims and witnesses do experience these problems. While it may be the case that many, even the majority, of victims and witnesses go through the criminal justice system without experiencing significant 'pain points', by addressing the problems reported in the body of customer experience research, there is potential to improve the process, in terms of experience, efficiency and effectiveness, for all. These 'pain points' in victims and witnesses experience of the interacting with the criminal justice system are relatively well known. Most have been identified consistently in research into victims experience for over a decade. The challenge is to find effective ways for the justice system to act on the basis of this intelligence.

**Organisational and System-wide
Factors Affecting Transformation of
Services for Victims and Witnesses**

5.

In considering the potential for transformation in the experiences of victims and witnesses, it is necessary to explore the system in which any organisational change would take place and to consider the factors and systemic patterns that may act to constrain or promote improvements in victims' experiences. With this understanding, change efforts can be prioritised and configured to focus on the leverage points that will have most impact in enabling change. By considering not only the 'models' implied by organisational structures, hierarchies, policies and processes, but also the inevitable local variation that occurs in interactions between individual people, there is a greater likelihood of reaching a shared perspective on the reality of human experiences of the criminal justice system, and creating a shared endeavour towards transformation.

VISION, GOALS AND PRIORITIES

The criminal justice system in Scotland consists of a number of bodies, with different roles and accountability arrangements. This fragmentation is necessary to ensure that the power of the State is separated from the processes of maintaining and upholding the

law, but it makes co-ordinated improvement difficult⁵³ and it is experienced as complex, disjointed, and at times chaotic, by victims and witnesses interacting with individuals employed within its component parts.

The National Criminal Justice Board was formed in 2003 in response to criticism in the Normand report on the criminal justice system⁵⁴ that individual bodies were largely unaware of the actions of other bodies and that the way in which individual bodies worked, hindered the work of others. Normand concluded that a set of overarching aims and objectives for all criminal justice bodies was required to improve cooperation and coordination across the system.

The Justice Board launched the first Strategy for Justice in 2012⁵⁵. This was followed in 2017 with Justice in Scotland: Vision and Priorities⁵⁶.

The vision outlined here by the most senior leaders of the criminal justice system is for:

'A just, safe and resilient Scotland'⁵⁷

Although outside the scope here, there are many perspectives on what is meant by

⁵³ Audit Scotland, An overview of Scotland's criminal justice system, 2011 https://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf

⁵⁴ Normand CB, A, Proposals for the Integration of Aims, Objectives and Targets in the Scottish Criminal Justice System, Scottish Executive, 2003

⁵⁵ Scottish Government, The Strategy for Justice Scotland, 2012

⁵⁶ Scottish Government, Justice in Scotland: Vision and Priorities, 2017 <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2017/07/justice-scotland-vision-priorities/documents/00522274-pdf/00522274-pdf/govscot%3Adocument/00522274.pdf>

⁵⁷ *ibid*

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'just'⁵⁸, and it is evident from this investigation that, in fact, the criminal justice system has considerable potential to negatively affect resilience, particularly in the case of vulnerable witnesses.

The Justice Board comprises of the most senior leaders with responsibility for the criminal justice agencies. Justice in Scotland: Vision and Priorities is a statement of their collective priorities across justice agencies. While this is evidence of collective leadership at the highest level, it is not evident that vision and priorities are embedded and driving collaboration across agencies or that collective leadership towards achieving these priorities is embedded at all levels across justice agencies.

From the various interviews and discussions with actors across the criminal justice system, it was clear that there is a shared concern for improving the experience of victims and witnesses. However, that is not to say it has the same priority for all. The 'Criminal Justice System Transformation Mapping Report' highlighted that of 113 projects reviewed, 75 were not explicitly aligned to justice system priorities for modernisation and improving victims' experiences⁵⁹ and these initiatives were largely 'vertical' in nature, being led and

delivered by single agencies according to their specific priorities.

The nature of a complex system, such as the criminal justice system, is that there are many different perspectives on both problems and solutions. However, the nature of this system, with separation of duties, distinct statutory obligations, and a stretching agenda for legal reform, can lead to individual agencies 'just getting on with it', according to their individual priorities, and as a result, missing potential opportunities for more robust, cross cutting solutions that would improve the efficiency and resilience of the whole system, and the experience of victims and witnesses.

There are also more philosophical dilemmas in relation to the prioritisation of victims' and witnesses' experiences within the criminal justice system resulting from the different 'worldviews'.

While legislation and policy suggest the need to balance the rights of all those involved, there can be a tendency amongst actors within the system to think of the rights and the interests of victims, and the interests of the accused, to be a zero-sum game. Interviewees within support agencies talked about 'the pendulum having

⁵⁸ Armstrong, S, Measuring Justice, SCCJR, 2020

⁵⁹ Criminal Justice System Transformation Mapping Report to the Justice Systems Planning Group

5.

swung too far' in the interests of the accused, while representatives of COPFS pointed out that their purpose was to prosecute in the public interest, and this may not always align with the interests of victims and witnesses. This perceived conflict of interests between the victim and the accused is challenged by research which indicates that both victims and accused are more likely to rate a process as fair when they feel that both sides are treated respectfully personally and in terms of rights⁶⁰. However, these views in relation to trade-offs between rights are apparent in the culture and mind-set of agencies across the criminal justice system. With different 'worldviews' it is challenging to achieve sufficient coherence behind a shared vision for a 'victim-centred' criminal justice system to garner system change.

Further, there is an extent to which the terminology of a 'victim-centred' criminal justice system might inadvertently promote an individualised, 'consumer' model which may not align with emerging thinking and policy in relation to community experiences of justice and public health approaches.

An often-heard expression in interviews and

discussions with representatives of the criminal justice system was, 'One week they're the victim, the next they're the accused'. While in some instances this may suggest a scepticism towards services for victims within the criminal justice system and an inherent view of victims as either 'worthy' or not, there is some factual basis for this remark. While there is no Scotland-specific research, studies in other jurisdictions show that there is a significant victim/offender overlap, particularly in relation to repeat violent victimisation, with victims of violence themselves becoming perpetrators of violence. While 1 in 100 adults in Scotland experience repeat violent victimisation, their experiences are significant and account for 59% of all violent crime.⁶¹ This suggests that the relationship between victimisation and offending is worthy of further exploration.

Representatives of the Scottish Children's Reporter also discussed the victim / offender overlap, highlighting that often, young offenders are often themselves victims of adverse childhood experiences, and as such, victims.

These complex relationships between victimisation and offending, and the role of communities, suggest a risk that articulating

⁶⁰ S. Armstrong, Measuring Justice, SCCJR, 2020

⁶¹ Scottish Government, Scottish Crime and Justice Survey, p45, <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2019/03/scottish-crime-justice-survey-2017-18-main-findings/documents/scottish-crime-justice-survey-2017-18-main-findings/scottish-crime-justice-survey-2017-18-main-findings/govscot%3Adocument/scottish-crime-justice-survey-2017-18-main-findings.pdf>

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a vision for Scotland's criminal justice system in terms of victim-centredness, may unintentionally draw attention away from a whole system response that recognises the wider factors relating to a just society.

The Victims' Taskforce was created in 2018 to improve support, information and advice for victims⁶² with a primary role in co-ordinating and driving action to improve the experiences of victims and witnesses within the criminal justice system, while ensuring a fair justice system for those accused of crime. The Task Force meets quarterly and brings together senior decision makers from across the justice system, the legal sector, third sector support agencies and includes direct representation of victims. At the meeting of the Taskforce in December 2019, workplans for 5 workstreams were presented and a catalogue of over 80 'relevant initiatives' was set out⁶³.

There is no doubt that there has been considerable reform in the criminal justice system and the creation of the Victims' Task Force has provided transparency and visibility in relation to the wide range of initiatives underway. However, it can appear that there is an ever-increasing industry of those providing

'oversight' with the unintended consequence that there is less capacity within the system to get things done.

CAPACITY AND CAPABILITY FOR CHANGE

The Victims' Taskforce has raised awareness of initiatives across the sector and as such, the potential for greater collaboration. However, it appears that the tools, methods, capabilities and practices of user-centred, collaborative problem solving are not yet well embedded. The 'Criminal Justice System Transformation Mapping Report'⁶⁴ highlighted the lack of reference to user research or service design in the project documentation for the 113 transformation projects it reviewed alongside a lack of clear links between policy priorities and downstream technical and operational planning.

During a workshop with members of Workstream 1, Victim Centred Approach, an outcome-based collaborative planning tool was introduced to encourage explicit consideration of whole system impacts of change initiatives. Multi-agency groups worked together and commented that collaborating was easier than

⁶² See <https://www.gov.scot/groups/victims-taskforce/>

⁶³ See <https://www.gov.scot/binaries/content/documents/govscot/publications/minutes/2019/12/victims-taskforce-papers-december-2019/documents/victims-taskforce-catalogue-of-initiatives---11-dec/victims-taskforce-catalogue-of-initiatives---11-dec/govscot%3Adocument/Victims%2BTaskforce%2B-%2BCatalogue%2Bof%2BInitiatives%2B-%2B11%2BDec.pdf>

⁶⁴ *ibid*

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they thought is might be, and that colleagues were not as defensive as had been expected.

As Cruddas points out, quoted in *Measuring Justice*, 'public leadership is not the technical task of delivering outcomes. It is the moral practice of getting people together. It's about unlocking the capacity we have to work collectively for the common good.'⁶⁵

Unlike in the commercial sector, where effective customer service has a clear link to organisational success, criminal justice agencies exist to discharge their statutory duties within their operational budgets. Each of the agencies across the criminal justice system has different priorities, and none of them need to prioritise the interests of victims and witnesses in order to 'survive'. Statutory duties, bureaucratic structures, regulations, protocols and procedures ensure consistency, but limit the ability to act dynamically in response to feedback or intelligence in relation to outcomes and impacts. This can lead to atrophy and limit the adaptability necessary for any system to survive in the face of shocks and challenges.

COPFS, perhaps the most significant agency within the criminal justice system in light

of its role in directing police investigation, making decisions in relation to public interest and prosecuting cases, has experienced a range of challenges including the changing profile of crime, the pace of regulatory reform, increased duties in relation to disclosure of evidence, technological change and increased responsibilities in relation to vulnerable witnesses. Evidence presented to the scrutiny committee on the role and purpose of COPFS in 2017 suggested an organisation that was 'just about managing' in the context of increasing demand and budgetary pressure⁶⁶. However, since 2017 COPFS has been provided with a significant uplift in resources by the Scottish Government in order to address some of the evolving challenges, which it is facing. For example, in August 2018 COPFS received an additional in year budget of £3.6 million. This has provided some additional capacity which has been allocated to a series of improvement initiatives.

The creation of Police Scotland has led to significant requirements for integration and there are challenges relating to legacy systems that impact on operational capacity and information flows between partner agencies. Increasing numbers of registrations with the

⁶⁵ J. Cruddas, "Lecture on The Role of the State in the Good Society", delivered to the Centre for Social Justice, reproduced in the *New Statesman*, 13 December 2012

⁶⁶ Justice Committee, 9th Report, (Session 5): "Role and Purpose of the Crown Office and Procurator Fiscal Service", Scottish Parliament, 2017 http://www.parliament.scot/S5_JusticeCommittee/Reports/JS052017R09Rev.pdf

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Victim Notification Scheme and increased numbers of offenders in custody has created challenges for the Prison Service.

These challenges impact the capacity for change across the system and impact on experience of victims and witnesses in the criminal justice system directly and indirectly. The 2017 scrutiny committee noted that, 'Overall, the impression given was of a service whose primary preoccupation was the demanding task of keeping the prosecution system ticking over, and avoiding major errors, in a time of limited resources. In that context, relationship-building with victims and witnesses could come across as a lesser priority; something to be squeezed in when time allowed'. Since then, pressures on COPFS capacity have, if anything, increased further.⁶⁷

Processes within Police Scotland for recording witness statements and preparing police reports are based on legacy systems and are subject to considerable scope for human error. This can lead to distress for witnesses who find errors in the recording of their statements prior to trial and problems for COPFS in relation to incomplete or incorrect reports.

The latest report on Standards of Service highlights the complexity of managing the victim notification scheme and the need for individual interrogation of an average of around 1,245 alerts each month. Loss of two members of staff to promotion within the Prison Service adversely affected performance in relation to the standards of service for the Victim Notification Scheme.⁶⁸

As well as the operational challenges described above, rules and processes within criminal justice agencies may limit their propensity and ability to adapt and respond to intelligence in relation to customer experience. Transforming Service for Victims and Witnesses examined the ways in which information flows between victims and the criminal justice agencies, the ways in which customer service is monitored and managed and how these processes drive or inform change.

⁶⁷ *ibid*

⁶⁸ Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Scottish Prison Service and the Parole Board for Scotland, Standards of Service for Victims and Witnesses Annual Report on Performance 2018 – 2019, May 2019

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MEASURING SERVICE FOR VICTIMS AND WITNESSES WITHIN THE CRIMINAL JUSTICE SYSTEM

The Victims Code sets out specific rights for victims and witnesses and the Victims and Witnesses (Scotland) Act 2014 requires criminal justice agencies to publish service standards so victims and witnesses know what to expect from them. The Standards of Service document⁶⁹ also sets out complaint procedures for each of the justice agencies. In addition, there are protocols, notably between Rape Crisis, COPFS and Police Scotland, to facilitate feedback from victim-survivors to these agencies.

Each year, agencies publish standards of service and report on their performance against these standards. They also include narrative on general activities undertaken in relation to improving services for victims and witnesses.

These standards of service are not in the form that might be expected in, for example, a typical commercial setting, where quantifiable targets for service quality standards would be set and services would be monitored and reported against the achievement of these standards.

There are some targets set in relation to response times. For example, Police Scotland sets a standard that all applications received from victims requesting information will receive a response within 40 days. Requests for information must be made by completing a standard form and providing proof of identity. However, in 2018-2019 the annual standards of service report states that, of 9 such requests, only 5 were responded to within the target timeframe⁷⁰. This is reported without explanation or indication whether it is better or worse than last year. Further, it may be considered as surprising that only 9 requests for information were made. This reflects the fact that only requests for information submitted according to a police process, involving completion of a lengthy form and provision of evidence of identity to prove eligibility to request the information, are counted in the standard of service. 'Information' here relates to specific case information and not what might be considered as information more widely by the general public.

Police Scotland also highlight the rights of victims of specified offences to request that the police interviewing officer is of a specific gender. However, in 2018-2019 in 14.8% of

⁶⁹ Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Courts and Tribunals Service, the Scottish Prison Service and the Parole Board for Scotland, Standards of Service for Victims and Witnesses 2019-20

⁷⁰ Ibid pp9

⁷¹ Ibid pp10

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cases, it was not deemed reasonably practical to uphold these rights⁷¹. Again, this is reported without comment or explanation. Police Scotland do collect data in relation to customer service and report aggregate levels of customer satisfaction. However, while this information is gathered at a disaggregated level quarterly, and reported in Police Scotland management information, it is not provided in the Standards of Service report.

Much of the content in the Standards of Service annual report is in narrative form, with no indication of whether progress is on, behind or ahead of target. The Standard of Service document offers assurances that the agencies 'need to do more, and can do more, and ... are committed to doing more'⁷² but it is difficult to connect the rhetoric to objective measures of progress. It seems unlikely that victims and witnesses would be aware of this document and, if they were, it would not provide a useful basis upon which to hold agencies to account. Individual agencies do gather information relating to victims' and witnesses' interactions with them but in the main, this information relates to whether agencies have discharged their statutory duties rather than whether victims and witnesses were satisfied with

the service they received. Each agency has its own complaints process, with victims and witnesses first having to identify which agency was responsible for the interaction and then contact them with a formal complaint. Agencies then review the complaint determine whether statutory duties were met, in which case the complaint is rejected, or not, in which case it is upheld.⁷³

Interestingly, COPFS does publish information akin to 'standards of service' in its Book of Regulations⁷⁴. These regulations set out 'quality standards' in relation to the issuing of indictments and court process. So, for example, in cases where the accused has appeared on petition, 60% of all bail indictments must be issued within 8 months; 80% within 9 months and 100% within 10 months. Where the accused is in custody, indictment must be served within 80 days, preliminary hearing within 110 days and trial within 140 days of apprehension. However, these standards are intended to protect the rights of the accused. As stated in the Book of Regulations, 'victims, witnesses and next of kin have no legal rights in relation to delays', unless the delay can be construed as a breach of their rights in terms of Articles 3 or 8 of the European Convention on Human Rights

⁷² Ibid, pp10

⁷³ Ibid, pp47-49

⁷⁴ COPFS, Book of Regulations: Precognition and Management Solemn Business, 2003, pp6 https://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Book_of_Regulations/Book%20of%20Regulations%20-%20Chapter%204%20-%20Precognition%20and%20Management%20Solemn%20Business.PDF

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and there are no 'quality standards' for victims and witnesses akin to those for the accused.

Rape Crisis provide feedback to COPFS and Police Scotland from survivors supported through their advocacy service. This feedback is gathered based upon an agreed format and shared with COPFS and Police Scotland on a monthly basis. In the case of COPFS, monthly feedback is circulated to senior operational legal managers and the head of the National Sexual Crime Unit who then distributes the feedback to Crown Counsel. These individuals are invited to provide comments, whether case-related or in relation to recurring themes. The policy division then collates responses and provides an analysis of these and the feedback, comparing previous results and discussing any on-going work which may assist in addressing issues raised, or identifying additional action that might be required. This analysis is then circulated quarterly, along with the feedback forms, to Law Officers, senior legal managers and the head of the National Sexual Crime Unit. Depending on the content of the Policy Division briefing, there may be an instruction from a Law Officer to take certain action or request further information.

So, it may be the case that more than three months may have passed, following the conclusion of a case and the feedback being submitted, before there is a direction from senior managers for improvement in response to this information. COPFS suggest there is sufficient flexibility in the process to allow for more immediate action to be taken where required and supplementary processes are also in place to enable Rape Crisis to raise operational issues arising in cases on an ongoing basis so that immediate action can be taken if required during the life of a case. There is no doubt that the protocol provides useful feedback.

Within the Victims' Taskforce, a survivors' reference group, established by Rape Crisis Scotland, and a victims' reference group, established by Victim Support Scotland, have been formed within the Victim-Centred Criminal Justice Workstream. Through these reference groups, victims of a range of crimes have shared their experiences, including directly with the Cabinet Secretary for Justice and the Lord Advocate, and this has been feedback to the governance and operational groups of that workstream.

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It is evident that there is a willingness to hear the experiences of victims and witnesses within organisational and programme structures. It is less clear how the feedback from victims and witnesses might dynamically inform change, nor how the contributing victims and witnesses might be informed of the results of their feedback.

So, despite a vision of a just, safe and resilient Scotland, the criminal justice system as it operates currently, has considerable scope to cause harm. The arcane legal justice process exacerbates feelings of disempowerment and loss of control experienced by victims. It maintains a power asymmetry that makes change in favour of victims and witnesses difficult to achieve, and its propensity towards embedding practice in laws, rules, standard operating procedures, protocols and 'a robust evidence base' mitigates against the adaptability.

Against this backdrop, how might we take a design-approach to reconfigure our resources, and apply technology, to change this current state into a preferred future state?

6.

**Towards a Vision for
End-to-end Services for
Victims and Witnesses**

6.

It is evident that there is an understanding of the 'pain points' experienced at points of interaction with individual agencies in the criminal justice system. However, less attention is given to the overarching wants and needs of victims and witnesses of crime, or the recognition that their 'journey' does not begin and end with the criminal justice system.

The purpose of exploring victims' and witnesses' experiences is not simply to develop an 'evidence base' for change initiatives; it is also about engendering empathy so that designs and decisions are made with the benefit of a deep understanding of how these might affect victims and witnesses in their daily lives. Developing a sense of empathy is all the more important when the process of asking the people who use a service about their experience risks traumatising them further.

It is evident that no one 'wants' to use the criminal justice system. However, people do experience crime. Within a compassionate criminal justice system, that is just and ensures the safety and resilience of communities, the aim of an end-to-end service could be to minimise trauma and enable recovery from the experience of crime. An end-to-end service for victims and witnesses could address their needs and provide the following outcomes:

Outcomes for Victims' and Witnesses' Services

- Victims and witnesses can make informed decisions about whether to report a crime.
- Victims and witnesses know what action will result from their decision to report a crime.
- Should they choose to report a crime, they will be able to do so in a manner that is safe, convenient and timely.
- Victims and witnesses will be supported to give their best evidence, and any other information necessary to provide them with support and participation in the process, once, and at the earliest possible stage.
- Victims and witnesses are not disadvantaged as a result of their engagement in the criminal justice system.
- Victims and witnesses, whether or not they choose to report, have access to appropriate, timely support to enable their recovery from their experience of crime

6.

Within an over-arching, end to end customer journey, Gayle's journey would change considerably:

I was sexually assaulted.

I knew I could go straight to the specialist centre at the local hospital for a medical examination that would capture any evidence and give me the medical attention and care I needed. I had heard about it on TV and social media.

The receptionist greeted me kindly and I was treated with dignity and respect throughout. I asked for a female examiner. After 15 minutes, I was examined by a specialist female nurse. The nurse explained the whole process to me. The examination room was warm and I felt safe and cared for.

After the examination, I was able to shower and have a cup of tea. My clothes were kept as evidence. I rang my flatmate and she brought me some clothes I could go home in. The nurse explained that if no one was home, they could give me some clean fresh clothes that had been provided by a charity.

She explained that a support worker would

come and talk to me about what happens next and what my choices are.

While I was in the waiting room, I googled the process on my phone. My search went straight to the Scottish Government advice service where there was a diagram of the process and some straightforward information about the justice process.

The support worker arrived and explained what would happen. If I chose to report the incident, I would be interviewed by a police officer and what I said would be recorded on video to ensure they had an accurate record. They had the evidence that was gathered from the medical examination and they would keep that safely so that the police could access it if I chose to report the crime at a later date.

After our discussion, I decided I wanted to report the incident. I didn't want this to happen to anyone else.

I reported the incident on my phone and asked them to text me. The police texted back and arranged for me to come for an interview that day. The interview room was warm and comfortable. They made a video of what I said

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so that they had an accurate record. This was my initial statement. They took my phone so they could access text messages and they took information about my social media accounts. They said they would get my phone back to me within a week and they did.

The day after, I didn't feel able to go to work. I rang in sick and called the number of the support service I had been given at the hospital. A support worker came round. When I opened the door I burst out crying but she sat with me and listened. She understood my concerns about how I would tell my family what happened and about not feeling able to go to work. She understood and helped me to think about what to do next.

The police liaison officer called me every other day to let me know what was happening. 6 weeks after the incident the police officer rang and explained that they would like me to come in to answer questions and this would be the evidence presented to the court.

My support worker went with me to the evidence suite. It was like a modern office with comfortable chairs. The Advocate Deputy prosecuting the case introduced himself

and explained the process. He would ask me questions and then the defence would ask me questions. He reassured me that the questions had been agreed by a judge and while they would be thorough, they would not be intimidating.

It took 4 hours in total. I was allowed to take breaks and have something to eat and drink. Although I had tried to block out what had happened to me, I was able to read a transcript of the initial video I had given, and I could remember the details clearly.

After the questioning, the person at the evidence suite explained that they had all the information they needed from me now. If they needed anything further they would let me know. They would let me know next steps but if I wanted to, I could log in to a secure website where I could get access to certain information about my case.

My support worker arranged for me to see a counsellor and she introduced me to a support group of women who had been through similar experiences. It was really important to know that I wasn't alone.

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After 6 months, I was told when trial was going ahead. If I wanted to, I could attend, or I could watch the trial by video link at the evidence suite. I decided I wanted to watch at the evidence suite. The trial was over in a day and he was sentenced to 3 years. The judge referred to the impact statement that I had given when I was in the evidence suite so I knew my thoughts had been taken into account.

There were two notifications on my phone so I logged on to the portal when I got home. There was a notification to say that they were now able to confirm my award for compensation. It will help because I had to take some time off work, and it's reassuring to know it's there in case I have a dip in my recovery. There was also a message asking me if I wanted to register to be told when my attacker was released from prison. I filled in the form and registered my details online.

I will never forget what happened to me and reporting the crime was emotionally hard. But I'm happy with the outcome and I'm proud of myself for reporting the crime. I'm moving on with my life and the support I'm getting – and giving – with the peer network is making a big difference.

6.

Design Principles for Victims' and Witnesses'

An end to end service designed around victims' and witnesses' needs would:

- Be based on high levels of awareness of the criminal justice process and support services, with consistent, reliable provision of information
- Make use of digital technology to enable reporting and increase convenience and service levels for all types of crime
- Make use of digital technology for recording of evidence and enabling a 'tell us once' approach to gathering witness statements, providing impact statement and applying for compensation
- Make use of digital technology to gather data to use to improve service and efficiency across the criminal justice system
- Reduce the risk of harm to victims and witnesses by shortening the period of interaction and minimising the impact of interacting with the criminal justice system
- Increase the efficiency of court processes by reducing churn (through gathering evidence in advance)
- Decrease the pressure on court services and the requirement to manage people in attendance at court
- Reduce the need for lengthy advocacy support to navigate the criminal justice system, and focus provision of support for recovery

7.

**Recommended Steps Towards
Transformation of Services for
Victims and Witnesses**

7.

We have seen evidence of intent towards transforming services for victims and witnesses, and identified a number of systemic and organisational barriers that pose challenges to progress.

Here we set out tangible steps that could be taken to address these barriers and bring about a step change in victims' and witnesses' experiences.

1

Digital Technologies

We were asked to consider the potential for digital to transform services for victims and witnesses. The Criminal Justice System Transformation Mapping Report, referred to earlier, set out a range of digital initiatives already underway. It is clear that there is considerable scope for digital technologies to enhance services but, as yet, the potential for customer-led service improvement is not being realised.

The improvements described in our persona, Gayle's, journey through the criminal justice system rely on implementation of digital technology. However, it is important to highlight

that significant improvement is not reliant on *innovative* technology. The technology required to enable an end to end service for victims and witnesses is tested and available.

At its simplest, provision of consistent, accurate, well communicated information, online, would make a difference to victims' and witnesses' experiences. This is cheap and easy, with the application of the appropriate capabilities.

Taking a small step further in imagination and the better design and implementation of digital interaction would enhance the experience of reporting all crime types. Given that the majority of crimes relate to crimes against property, being able to report a crime and be given a crime number, online, would make a significant improvement to convenience and allow victims to move forward with insurance claims, for example. It would also, inevitably, increase the capacity of the 101 call-centre to deal with more complex or serious issues.

A small step further still could involve feeding back to citizens the way in which data from crime reporting has been used to improve policing and investigation of crime. The analysis of the data could be made public, increasing transparency and highlighting, for example,

7.

clusters or patterns in crime types, behaviours, locations and frequency. Feeding back to citizens informing them of the ways in which police have responded to information provided would provide reassurance that reporting is worthwhile and that police do respond. This could increase confidence and trust in relation to crimes such as hate crime, where communities have said that they feel there is no point in reporting crimes.

In order to perform their statutory duties, individual agencies across the criminal justice system require information from victims and witnesses and are required to provide information to victims and witnesses. The 'system' requirements in this regard result in the disjointed interactions that leave victims feeling like a pinball, bouncing between agencies. For an end-to-end journey for victims and witnesses, enabled by digital technology, the data necessary to support the justice process, needs to be 'joined up' and this suggests a bolder move: a shared data strategy that enables information to be gathered and stored centrally, and shared across agencies. However, there is no 'centre' as such to the criminal justice system.

There are a number of initiatives underway within individual agencies in the criminal justice system that will, in some way, improve the experience of victims and witnesses. However, a 'whole system' perspective would ensure that opportunities for greater collaboration that could improve outcomes further, and increase overall efficiency, are not missed. The witness portal being taken forward by COPFS will improve access to witness statements, court scheduling and allow witnesses to indicate their availability and claim expenses. However, it does not currently link witnesses to sources of support; similarly, the Victim Notification Scheme does not link victims to sources of support; data sharing protocols between police and local authorities enable sharing of information relating to prisoners who may be released within 12 weeks but information in relation to victims' safety plans is not shared. Truly transforming services for victims and witnesses requires a 'whole system' approach with greater collaboration between agencies and a shared perspective on the end to end customer journey.

7.

2

Collaborative Leadership towards a Vision for 'Whole System' Change

System thinking would suggest that if you want to change a system then the most effective leverage point is at the level of the system paradigm – in other words at the level of the mindset, or 'worldview'. It is clear that there are different mindsets across the criminal justice system and these are reinforced by the patterns of behaviour, the rules, structures and processes. The challenge for leadership across the criminal justice system is to shift mindsets, generate a simple narrative that describes a shared vision for the future in relation to victims and witnesses, and to hold one another individually and collectively responsible for achieving this. Getting to that narrative and making the link to each organisation's vision and purpose, will require constructive and challenging dialogue between leaders across the system.

The criminal justice system is adversarial and built on pursuit of a 'truth'. But this can lead to cultural patterns that subdue disagreement as though there is a single, objective reality. By de-pathologising conflict and critique, leaders can encourage more coherent innovation

that arises out of the exploration of different perspectives. The Justice Board is one place for this dialogue to take place, but it would be helpful if it was encouraged and extended to lower levels of organisational hierarchies and across the wider criminal justice system. An intentional, facilitated dialogue – not a board meeting or presentation – has the potential to enable the shift in mindset necessary to catalyse change and will also support agencies to develop a shared understanding of priorities and what they mean for action.

This may seem like a 'soft' intervention, but it is necessary for hard edged results. System theorists consistently highlight the importance of changing mindsets in order to change system outcomes. It requires constant leadership attention, skill and tenacity, to keep pointing out the failures and anomalies of the old system, and act visibly and vocally from the perspective of the new one. It also requires investment in capability and capacity to lead in a new way that is better suited to whole systems, complex problems solving.

7.

3 Appointing a Criminal Justice 'Customer Management' Lead

In order to transform towards an end-to-end service for victims and witnesses (and the accused, and jurors, and all users of the criminal justice system) it is necessary to insert people with visibility, resource and power, to realise the new system.

In practical terms, this means appointing an individual, with responsibility, authority and resources, to implement an overarching enabling framework for customer management across the criminal justice system. Given the nature of the system, it seems appropriate that this individual should report to the Justice Board, or potentially higher. The purpose of this role would be to design and implement a 'customer management' platform to enhance citizens' experience of the criminal justice system. This would include:

- Responsibility for a data strategy and implementation of an integrated information architecture to support service provision and improvement across all justice agencies
- Responsibility for designing and implementing cross sector 'customer journeys' through design of effective customer interactions and customer management across all channels – digital, phone, mail and face to face
- Review of responsibilities for 'enquiries' services with a view to ensuring efficient and effective customer service across all agencies
- Establishing an appropriate and dynamic performance management system to ensure customer service is monitored and feedback is used to improve across all customer interactions

7.

This role would include responsibility for a number of recommendations emerging from the Evidence and Procedure review in relation to digital capture of evidence, digital capture and sharing of evidence, and digital access to permitted case information such as witness statements, trial dates etc.

This is a bold and visible way of supporting a transformation of the Justice systems and Justice leaders could emphasis the links to the success of individual agencies by pooling budget resources from each agency centrally to support this function.

4 Refreshing Governance and Delivery Approaches

In order to shift the focus from discussion to action, the catalogue of initiatives currently under the oversight of the Victims' Taskforce should be reviewed and a small number of priority projects with cross cutting implications identified. The Task Force should then be re-configured to drive delivery of these programmes, with co-located, fixed term, multi-agency teams, working with agile methods where appropriate, and supported

with capability in service design, change management, and quality improvement. In governance terms, accountability should be located with those who are responsible for resource allocation and prudential control and it should be clear and transparent to all stakeholders. Where stakeholders are providing input in an advisory capacity, or an advocacy capacity, this should also be clear, and should not be conflated with decision making authority.

We have noted the significant challenges to the agencies within the criminal justice system in relation to their capacity to deliver and the relative lack of adaptability inherent in the structures, systems and processes of organising. The inclination towards establishing 'programme management' style governance infrastructures, with steering groups, reference groups and other fora for discussion is an example of a pattern of behaviour across the system that can result in the unintended consequence of reduced availability of capacity to actually get thing done.

It is important that both governance and delivery approaches are appropriate for the stage and nature of the initiatives at hand and that individual accountability, roles and

7.

responsibilities are clear and understood. Greater distinction between governance tasks and delivery tasks would be helpful in ensuring that whole system capacity is deployed to best effect and attention needs to be given to develop capacity and capability in both functions.

Delivering service transformation across a whole system is more likely to be effective if it is a collaborative effort, given the necessity for change across a number of different actors. Service design and agile processes provide managed, structured approaches that promote clarity of outcomes, service user focus, transparency and sufficient flexibility to respond to learning as the process progresses. However, service design and agile are not well embedded in the criminal justice system. The addition of skills in systems thinking to transformation teams has been seen to improve results and this should be encouraged across priority programmes in the criminal justice system.

A shift from traditional single organisation, project management approaches, towards multi-agency, collaborative, agile service design approaches, requires a shift in governance also. Significantly more governance attention

is needed in the initial stages, agreeing scope and defining requirements. Teams can then be afforded responsibility and given permission to act. With transparent working methods and regular 'show and tell' activities, if intervention is necessary it can be made at an early stage. Key decision points are anticipated and those with governance responsibility are prepared and informed at the point that decisions are needed.

This is a more dynamic, responsive, engaged and action orientated form of delivery and governance and will require investment in specific development activity to build capability. However, if a transformation in services for victims and witnesses is to be achieved, a commitment of this kind will be needed.

5 **Focusing on Priority Programmes with Reach Across the Whole System**

In support of the Victims' Taskforce, a directory of projects was collated and showed the considerable extent of improvement activity underway across the system. There can be inclination within traditional programme

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management approaches to coral all related activities and to monitor and report on them at regular meetings. This can add unnecessary bureaucracy and complexity to initiatives that are rightly within the scope and authority of single agencies. Instead, greater focus, and dedicated multi-agency teams, focusing on a small number of cross-cutting projects, will deliver greater impact and act as a proof of concept for new working practices. We recommend that individual agencies focus on progressing activity within their own remit, without the need for additional reporting, and that resource is allocated to time-limited, multi-agency teams to focus on the cross-cutting programmes with the most potential impact on victims and witnesses. We recommend the following areas of focus initially:

REDUCING COURT CHURN

Reducing court churn has been an on-going issue. Refreshing the approach and sharing responsibility for change has the potential to transform services. Applying a service design approach would involve a multi-agency 'discovery' of the problems across the system that result in churn and adopting a person-

centred perspective to understand these issues and identify opportunities for improvement across the whole system. It is anticipated this would bring into scope a number of initiatives currently being led within individual agencies, for example, improving the process of collecting witness statements and producing police reports (avoiding premature reporting) to COPFS; links with the witness portal to ensure effective scheduling and provision of information; and provision of witness support. The multi-agency team would be supported by additional service design and change management capacity, potentially drawn from The Office of the Chief Designer, Digital, and the various innovation and transformation functions within the individual agencies.

This work would seek to solve the problem of cancelled trials and the traumatising impact this has on victims, and increase the efficiency of the court system. Given that the audit commission estimated churn cost the system in the region of £10m⁷⁵, this has potential to release significant savings.

⁷⁵ Audit Scotland, An overview of Scotland's criminal justice system, 2011, pp27 https://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf

7.

IMPLEMENTATION OF DIGITAL RECORDING OF WITNESS STATEMENTS AND EVIDENCE ON COMMISSION

This programme is underway with a pilot of a small number of cases, but, again, the delivery should be undertaken by a multi-agency team with the addition of design and change capability. Potentially, this could come under the remit of a newly appointed customer service lead.

The ability to give best evidence, as soon as possible within the process, will limit the time over which victims interact with the criminal justice system and so reduce capacity for harm. It will also reduce the need for services to support victims to navigate the criminal justice system and instead, resource could focus on support with recovery. However, there are considerable challenges in introducing a process that meets the needs of all stakeholders and improves the victims' and witnesses' experience. Effective implementation of a transformational service will require the application of design approaches and skilled change management at every stage, from working with solicitors and the judiciary, to educating jurors, to specification of equipment,

protocols for secure storage of information, and the layout and specification of the rooms where evidence is given.

These programmes are highlighted as they have the potential for significant improvement in the victim and witness experience and have cross-cutting, multi-agency impacts.



Review of Commissioning of Support Agencies

The victim and witness journey through their experience of crime does not begin and end with the criminal justice system. As described above, there is often a narrow focus on the interactions victims and witnesses have with the individual agencies across the system and a lack of consideration of their wider lived experience.

Another consequence of this focus on the criminal justice system is that perhaps insufficient attention is given to the system of support services for victims and witnesses. This system can also be experienced by victims as fragmented and disjointed.

7.

Scottish Government allocated £18m to support for victims and witnesses in the 2019/20 spending round⁷⁶. However, the services available to victims and witnesses are dependent on where they live and, often, the predisposition of the service provider they approached first to signpost to other support services.

There is scope for leverage of this commissioning expenditure to drive more collaborative provision of support across the third sector. For example, government could consider alliance commissioning models that require collaboration across providers to deliver specified outcomes. In return, funding is provided for longer time scales and there is scope for innovation and learning in relation to what works.

Review of commissioning arrangements for third sector support is outside of the scope of this review but it is important to highlight the requirement for increased collaboration and focus on the victims' and witnesses' journey should extend beyond the boundaries of statutory agencies.



'Trauma-informed' as standard practice – the importance of human interaction

This report has been about exploring the potential to transform services for victims and witnesses. It has identified 'pain points' experienced by people as they interact with the criminal justice system. However, while the recommendations above deal with organisational and systemic barriers to transformation, it is important that we do not lose sight of the fact that the interactions with the criminal justice system most often highlighted by victims and witnesses are human-being to human-being exchanges.

While the recommendations for organisational change will improve the efficiency and effectiveness of business processes, which in turn will reduce the need for potentially traumatising interactions with 'the system', it will always be the person-to-person, human-being to human-being interaction that has most impact on the experience of victims and witnesses. Kindness, understanding and empathy can make otherwise devastating processes, a little less bad.

⁷⁶ Scottish Government, Scottish Budget 2019-2020, Edinburgh, 2018, pp26

7.

Those employed within the criminal justice system and interacting with victims and witnesses can have the most significant impact on the victim and witness experience by showing unconditional positive regard to those they work with – by being kind.

This recommendation should not be thought of as 'fluffy' or 'light weight'; quite the opposite: evidence suggests that it may be the most challenging to implement consistently across the board. Culture and practice, pressure of time or workload, bias, whether conscious or unconscious, can affect how staff 'meet' victims and witnesses, the quality of that interaction and the impact it has.

As a minimum, managers of those who may be interacting with victims and witnesses should instil the importance, perhaps above all else, of being kind. Further, extending kindness should not be limited to victims and witnesses. Staff can be reassured that also being kind to the accused will do no harm, and in fact, it may well do good for all concerned.

We recommend instilling kindness and unconditional positive regard in all staff interacting with victims and witnesses, as a minimum. Going further, we recommend that

staff within the criminal justice process involved in a 'case management' capacity with victims and witnesses, including VIA staff, advocates depute, FLOs, SOLOs, support workers, should receive tailored training in trauma-informed approaches.

Trauma-informed approaches recognise specific considerations for interaction with people who may be experiencing trauma or may have experienced trauma in the past. This goes beyond human kindness and common sense. Trauma informed approaches anticipate and recognise the symptoms of trauma in clients, staff and others involved in the process. Providing training to frontline staff will ensure they have the knowledge and tools to work with people in a trauma-informed way.

Trauma-informed approaches should not be limited to frontline staff. Understanding of trauma should be integrated into the development of policies, procedures and practices. Decision makers should understand the principles of trauma informed approached and actively seek to prevent re-traumatisation through on-going process improvement and policy development activity.

8.

Conclusion

8.

For over a decade, research has consistently highlighted problem areas for victims and witnesses interacting with the criminal justice system. Across the criminal justice system there has been commitment to improving services for victims and witnesses but this has been challenging given significant differences in the 'worldview' of actors across the system, separation of agencies in order to maintain their independence, considerable reform of the justice system reducing capacity for change, and lack of available skills and capabilities in collaborative transformation.

In order to enable a step change in the experience of victims and witnesses, this 'discovery' stage points towards taking a whole system perspective and focusing on systemic levers for change. This includes developing a vision and transformative narrative that links improvement to the long term success of criminal justice agencies; introducing system level capacity, lead by a senior individual, reporting at Justice Board level, and with responsibility for an overarching information architecture and customer management; prioritising a small number of impactful programmes and

managing their implementation with dedicated, multi-agency teams, working within an agile, collaborative process.

Across these change initiatives, digital is a vital enabler, with significant potential to transform service for victims and witnesses. Realising this potential will require leaders across the system to adapt their practices to take a whole system approach. By looking beyond the current paradigm and the processes and practices built within it, leaders can adopt more transformative structures, and ensure that the cycle of incremental, vertical change does not sap the system's capacity for change.

The focus of the organisational changes suggested is, in large part, in reducing the length of interaction with the criminal justice system and so enabling victims and witnesses to progress towards recovery. However, perhaps the most impactful change that could be made is in ensuring that at every interaction with a member of staff in the criminal justice system, victims and witnesses are met with kindness and understanding.

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