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**DISCUSSION WITH VICTIM SUPPORT ORGANISATIONS (28 JULY 2020) – FOLLOW UP**

Dear [REDACTED],

You will recall that we concluded our discussion when we met on 28 July with a commitment to come back to you with more detail on the 'asks' regarding 'key developments required to improve the experience of witnesses and complainers' that you presented ahead of our discussion.

We would first like to reiterate our thanks for your continued positive and supportive input. Especially at a time when many representative organisations are finding the challenges of Covid-19 placing extreme pressure both on their people and their capacity to engage with the various working groups that are in operation.

We clearly remain in a challenging environment and one where a focus on identifying positive and innovative solutions to overcome the pressures on our justice system must be paramount in our thinking. We don't underestimate that challenge and welcome your contribution and involvement in that debate.

For the purposes of this response we have highlighted a number of agreed action points against each specific 'ask', recognising that some significant progress has been made in the meantime and that the pace of change continues to be rapid. For example, the recent announcement of £5.5 million of funding support for the introduction of remote jury centres.

**Ask 1: Visually recorded police interviews should be expanded across all crime types involving vulnerable complainers or witnesses (as defined in the Victim & Witnesses Act 2014) and across all areas of Scotland. A rapid assessment should be made of the learnings from the existing VRI pilot in 3 areas of Scotland for rape complainers to inform the extension of this pilot.**

As confirmed during our discussions, we remain committed to working with partners to improve the experience of the criminal justice system for vulnerable witnesses including those who have experienced rape or sexual assault. We recognise the significant and detrimental impact that delays and uncertainty can have on victims and witnesses.

Recording evidence at the earliest opportunity will, to some degree, help alleviate these issues. As you are aware, we continue to support the two-year VRI pilot project, which was launched in November 2019. We are grateful for the hard work and collaborative approach by lead partners, Police Scotland and COPFS, and the invaluable expertise of Rape Crisis Scotland (RCS) to ensure that advocacy support and communications with victims is provided.

It is positive to note that the 70 VRIs conducted to date have been completed without issue and we understand that 15 cases have been reported to COPFS, albeit none have yet reached the court process.

Whilst we understand the ask for a rapid assessment, we are of the view that it is still too early to carry out a full evaluation without the risk that this would be incomplete as no cases have reached court or have had the VRIs used as evidence in chief. COPFS are fully committed to the pilot but have cautioned against scaling it up without careful consideration and evaluation of each stage of the process, including the standard and quality of the VRIs to ensure these are fit for purpose for court. In addition, Police Scotland have raised concerns that a hurried roll out could compromise the training requirements for officers.

However, we asked that SG officials raise this with the VRI pilot oversight group at the next available opportunity with a specific focus on what might be expedited (members include Police Scotland, COPFS, and RCS). We can confirm that this has since been discussed at the VRI pilot meeting on 6 August. Partners echoed the considerations above and all were agreed that it is not the time to conduct a rapid evaluation nor practicable to consider an expansion.

Partners have committed to give further consideration to where there may be opportunities to expedite some aspects of the VRI pilot and where they might enhance capacity. The VRI pilot group agreed to provide us with a further update and also update victim support organisations (VSOs) once these considerations have been progressed.

**Ask 2: In principle agreement that vulnerable witnesses will not need to give evidence from a court building but will be given the choice to give evidence via remote link from another suitable location**

**Ask 3: An expansion of the use of evidence on commission to take evidence from vulnerable complainers and witnesses. This should include: an urgent examination of whether the issues identified with using dedicated suites such as that at Atlantic Quay in the current circumstances can be overcome by the use of e.g. mobile technical equipment; and urgent consideration to how commissions can be extended geographically beyond the current use in Glasgow and Edinburgh**

We can advise that SCTS are very supportive of vulnerable witnesses being able to appear from non-court venues, indeed that was one of the key drivers for progressing the four new

Evidence and Hearing Suites. We have been reassured that the offer to use VSS and SWA facilities will be taken forward as part of the work stream on running virtual courts. We look forward to a further update in due course.

With regard to the Evidence and Hearing Suites in Atlantic Quay, Glasgow, and as previously advised, the 2 metre physical distancing requirements mean that the very small live TV link rooms are not able to accommodate more than one person. As there is normally a witness, supporter and court officer present in the live link room this means that they cannot be used in the short term. With physical distancing the three hearing rooms can only accommodate three, four and five people respectively. There is a need to accommodate eight to nine people for a commission hearing so until such time as the physical distancing requirements are revised, SCTS will look to: a) repurpose the hearing rooms as live TV link rooms and b) explore using a two-room model (one hearing, one observation room) as this is the only way to accommodate nine people in a hearing at this site.

In relation to the Evidence and Hearing Suites rollout to Inverness, Aberdeen and Edinburgh, work on those three venues was suspended during lockdown. Those works are now being rescheduled based on the revised availability of suppliers within the construction industry, with the works already underway in Inverness. Those three additional hearing rooms will also be repurposed as live TV-link rooms until such time as the physical distancing rules change.

Finally, on Commission Hearings, applications to have evidence taken by Commissioner are being progressed by the courts on a case-by-case basis. Since restarting commissions in June, there have been 40 commissions undertaken to date, with a further 47 scheduled between now and October.

The primary issue is locating venues large enough to hold a physically distanced commission hearing, with eight to nine people present. Where that venue is a courtroom, then the option of the witness appearing by live TV link is always available to the court to approve (to help reinforce separation from the location of the accused). SCTS is also progressing models for virtual hearings being held using cloud-hosted VC platforms. This will add flexibility to the choices the court can make regarding where the witness and the accused appear from (enabling separate locations to be used where practicable).

**Ask 4: The Scottish Government should commit to a review by September where if there is no indication that the measures being pursued are likely to have a significant rather than minimal impact on the backlog, then they will reconsider judge led trials**

**Ask 5: Academics with relevant experience should be involved at an early stage to assess the impact of a move to remote juries and the impact this may have on jury decision making**

As you will be aware, the Scottish Government has now agreed funding of up to £5.5 million for SCTS to take forward the use of remote jury centres to make up to 16 jury rooms available for High Court Trials from October 2020.

These centres are expected to commence operating from early October, so it would not be appropriate to commit to a review in September before they have had sufficient time to demonstrate their impact.

Although this is a very significant step, we are clear about the challenge we still face. The current proposal will assist in preventing further backlogs building up in the High Court, but we recognise that further work will be required to address the existing High Court backlog and the extensive and increasing caseload also present at Sheriff and Jury and Summary level. Work continues to explore ways to address these issues.

Throughout discussions with SCTS on this matter we have emphasised the importance of engaging with stakeholders including VSOs, responding to feedback, and also of evaluation more broadly. We note that VSOs participated in mock trials at both Edinburgh High Court and in the Edinburgh external jury centre and are aware that your feedback has been vital in developing these centres. We are grateful for your input.

SCTS have also confirmed that, going forward, continuous feedback on the experience will be sought from practitioners, jurors and other participants, and adjustments made in the light of that feedback. Given that the Contempt of Court Act 1981 prohibits questioning jurors who have participated in actual criminal trials about their discussions during deliberation, it is important to be clear that any jury feedback can only relate to the general experience and not to any aspect of decision making.

In addition, we will continue to consider how we can best understand the impact that external jury centres may have. Justice Analytical Services (JAS) and SCTS analysts will be gathering data to allow us to appraise the impact of external jury centres on numbers of trials held and the potential impact of any wider roll out to Sheriff and Jury cases.

You are no doubt aware that the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, requires SCTS, as a listed public body in the Regulations, to ensure that its policies and practices comply with its public sector equality duty. SCTS have been considering equality impacts as part of their initial options appraisal, and as an ongoing component as this initiative progresses.

You have suggested the involvement of relevant academics to help consider issues related to remote juries. While of course the operation of the courts is a matter for the Lord President, we consider that this could be a valuable piece of collaborative working and officials will follow this up. The recent meeting between officials, analysts and RCS has been useful in progressing consideration of this.

**Ask 6: Explore increase in sentencing power for sheriffs at summary level. Safeguards will be required, training for sheriffs undertaken prior to implementation, and guidance issued for COPFS staff on which cases should be considered for summary trial.**

We can confirm that this is still under active consideration and we will keep stakeholders advised as matters progress.

**Ask 7: Urgent attention is needed for modelling that brings summary times for domestic abuse cases back within 8-10 weeks. Engagement with SWA and Assist will be critical to delivering this.**

SCTS and COPFS monitor court waiting times in domestic abuse cases on an ongoing basis. We understand that the court waiting times in summary domestic abuse cases have gone out nationally to approximately 18 weeks as a result of the pandemic court closures (from an average of 9.4 weeks in the 6 month period from September 2019 –February 2020).

Summary trials, as you are aware, are proceeding but still on a very restrictive basis. Sheriffs Principal are issuing Practice Notes to regulate the business within the sheriffdoms and are seeking to increase the volume of summary trials proceeding.

The virtual summary courts work stream of the Recover, Renew & Transform (RRT) programme is exploring ways to assist with this and increase the number of trials proceeding, but there are, and will continue to be, significant backlogs for a long time to come. We are obviously very concerned about this but realise that everyone is working in unusual conditions. We remain committed to looking for solutions to mitigate against delays and to support victims to ensure they keep engaged with the process.

While the court programme is set by SCTS, COPFS have publicly committed to prioritising certain cases, especially domestic abuse, during this recovery phase and provided you with a letter in June confirming this in relation to the Summary Prioritisation Principles. The Crown's commitment to tackling domestic abuse remains firm, especially during this unprecedented time, and domestic abuse cases will continue to be prosecuted vigorously and fairly.

It is not currently possible to achieve the 8-10 week target. However, once the court programmes begin to operate in a more consistent and comprehensive way, there can be discussions with SCTS at sheriffdom level and through the RRT work stream groups about how to address the timescales for court waiting times in new cases and how to progress older domestic abuse cases as quickly as possible.

We have made it clear to officials that a joined-up, collaborative approach which takes account of the particular needs of victims is required. This includes recognising that victims of domestic abuse are significantly more likely to suffer from emotional and psychological trauma and that the dynamics of domestic abuse can mean that there are on-going safety concerns whilst cases proceed through the justice system.

**Ask 8: A significant increase in resources to advocacy services supporting complainers of gender based violence. The current situation is having a significant impact on people's wellbeing and services are already finding that people are requiring additional support to cope with the delays and uncertainty.**

We are aware of the pressures on services in these unprecedented circumstances. We are committed to working with partners to ensure that front line services (including advocacy services) supporting women and children experiencing domestic abuse are still able to provide that support. We have provided significant additional funding to third sector support organisations to ensure that services are maintained during the crisis and I was pleased to hear feedback that the VSS Victims Fund has been helpful to victims during these difficult times.

As you are aware, the Cabinet Secretary for Social Security and Older People and the Minister for Older People and Equalities are carefully considering these issues. You will also be aware that the current funding arrangements under the Equalities portfolio for front-line services has been extended until September next year, and bids will be invited to the new Delivering Equally Safe Fund later in 2020. Officials from Ms Somerville's portfolio have contacted violence against women organisations to understand what their needs may be as restrictions are eased and demand increases upon services, and we are looking at that in the context of available resources.

We understand the points made in relation to court advocacy services and the inconsistency of service provision across Scotland. We are aware of this and remain committed to looking

longer term at this issue and what can be done to create a more consistent service for victims.

**Ask 9: Gathering of evidence about what is happening with accelerated pleas and bail reviews. Safety planning and court advocacy for victims/complainers is crucial.**

We understand that under this ask there is a request for further information, particularly on sentencing outcomes and decisions on bail, to provide a clearer picture about what is happening in the courts. We also understand that at the outset of the pandemic ASSIST had raised concerns about bail reviews and ensuring victims views were sought on bail and non-harassment orders (NHOs) and also that advocacy services were kept advised of court dates for bail reviews and accelerated pleas to enable safety planning.

JAS are working closely with partner organisations across the criminal justice system to collect a range of data on domestic abuse cases in order to expand our evidence base on this matter. This information will be used to inform decision making and shared as appropriate for this purpose.

COPFS have issued guidance to prosecutors and VIA staff over the past few months on dealing with accelerated pleas and bail reviews. This guidance highlights and reinforces the importance of; (a) keeping victims updated and seeking victims' views on bail reviews and NHOs and (b) engagement with VSOs to ensure they are aware in advance of these court dates to enable safety planning and advocacy for victims, including providing victims' views on protective conditions in bail orders and NHOs. We note that your organisations have welcomed this guidance.

Further steps have been taken by COPFS to improve partnership working with advocacy services. This includes improving the recording of VIA information about advocacy services where the victim has such support, and providing ASSIST with sheriffdom PF contacts to discuss and resolve local issues. This is particularly important given the different court programmes and Sheriff Principal Practice Notes applying in each sheriffdom.

We can also confirm that COPFS' policy and approach to domestic abuse, including seeking protective bail conditions where appropriate, remains as it was prior to the pandemic.

**Ask 10: Community justice – report to victims about offender's compliance, if they want this. Links must be made to specialist services.**

In relation to community orders, further specific consideration is being given to options around proposals to reduce unpaid work requirements to help ensure there is sufficient capacity to deliver existing orders and new orders. A careful balance needs to be struck and these are exceptional powers which impact on decisions made by the judiciary.

We are also mindful of the points raised about information to victims in relation to compliance with community orders. While measures are in place to ensure national and local authority based information relating to community orders is published, including through the Criminal Justice Social Work Statistics and Community Payback Order (CPO) Annual Reports, there are a number of issues to consider regarding the provision of information in relation to individual cases.

Local authorities are responsible for the delivery of CPOs and in cases where an individual has a CPO with both unpaid work and supervision, the responsible justice social worker in liaison with the unpaid work manager, will oversee progress and compliance and take forward action on breach – including taking matters to court - in line with national guidance.

While information to victims may provide some assurance, it does increase demands on justice social work when the primary focus needs to be management of risk and preventing harm. There may also be associated data protection issues, therefore consultation with specialist colleagues working with perpetrators and victims of domestic abuse would be required in order to explore current information sharing and data protection parameters in this area. If an individual on an order provides consent for information to be shared that could also influence what was appropriate.

It is also important to note that criminal justice social work services have a duty to alert the appropriate agencies should there be any indications of domestic abuse risk (whether to partners, ex-partners, or children) for anyone subject to community orders or licences, which may include information in relation to compliance with requirements.

While providing information in relation to compliance and completion of orders may have some benefit in increasing confidence around community interventions, it is not clear that it is useful in preventing harm and may reduce capacity of criminal justice social work services to focus on supervision and interventions with those in the justice system.

We are also aware of the concerns expressed about offences committed during a CPO which are not a direct breach of the order. While any new alleged offence should be investigated and assessed for prosecution, there is clearly a relationship with expectations around breach of any existing order and this is a matter we will keep under consideration. It is not a subject which could be addressed using powers in the Coronavirus (Scotland) Act 2020, but the policy and potential legal aspects will be explored in more detail to inform any future decisions on this.

**Ask 11: Parole – return to transforming parole – face to face/ video link hearings and increased involvement of victims and their families if they want it.**

Turning to Parole, we have recently recommenced work on implementing the actions from the consultation *Transforming Parole in Scotland* and as part of that work we have begun a rewrite of the Parole Board rules of procedure. The new rules will be modernised and simplified to make them easier to understand. We intend to consult on the new rules next year and will ensure VSOs are included in that consultation.

The Parole Board have also provided assurance that remote hearings are working well and have been carried out using video or teleconference technology. Feedback from a recent survey conducted by the Parole Board, provides evidence of the success of remote working with 95% of 59 respondents rating the teleconference arrangements either good or very good.

Having the ability to work remotely has allowed parole hearings to continue almost unaffected. Statistics obtained from the Parole Board back up this claim. Teleconference arrangements were implemented on 27 March to allow the Board's hearings to take place remotely. Since implementation to 30 July, over 99% of hearings have taken place successfully.

Victims' statements for parole hearings have also continued to be taken during this period, with 13 requests from victims being received and 10 interviews concluded by phone. The Board have only had one complaint from a family who preferred a face-to-face interview but we understand that in this case the Board have agreed, exceptionally, to meet with this family.

Unfortunately, due to the pandemic it is not yet possible to return to face-to-face meetings or hearings, in the majority of cases. Parole Board members and staff continue to work from home and we have to ensure that they can work in a safe environment. We are continually reviewing these arrangements but trust you will understand that members, staff, and indeed victims' safety, are an important consideration in any decision to return to work normally.

We hope to be in touch with VSOs shortly to provide an update on further work in relation to parole that has also paused due to Covid-19 but which we aim to take forward before the end of the current Parliamentary term.

**Ask 12: Complete overhaul of the Victim Notification Scheme**

Regarding the Victim Notification Scheme (VNS), we were very concerned to hear your reports of victims being traumatised when receiving notification of a prisoners impending release and that there had been some serious 'near miss' incidents involving risks to victims' personal health and safety upon receipt of notification through the Scheme. We note your concerns that while the Scheme provides information about prison release and signposting to support services, this is not accompanied by the direct provision of support.

Officials have already had an initial discussion about the Scheme with VSS, and a commitment has been made to speak to all criminal justice partners involved and decide on how best to explore your concerns and determine where improvements could be made. Overall, this will look to build on previous positive activity on the VNS that VSS were taking forward with SPS. We will of course look to involve VSOs in this work as it progresses.

Criminal justice partners are receptive to this work, however, given the ongoing impact of the pandemic on their capacity, they have requested this is paused until the autumn rather than commencing it immediately. In the meantime, officials will continue to engage with you and gather more evidence of issues with the VNS and your thoughts on specific areas for potential improvement.

**Ask 13: Witnesses who are in court offered choice and control - e.g. plastic screen and visors to avoid face masks if needed**

**Ask 14: Priority is given to witnesses' safety and health concerns and their preferences regarding PPE are accommodated where possible**

As these two asks relate to operational matters, officials have contacted SCTS about them. SCTS has confirmed that detailed risk assessments have been carried out in all SCTS buildings and a comprehensive range of measures have been introduced to protect and safeguard all court users. This includes additional health and safety measures which have been put in place to maintain two metre physical distancing throughout buildings and court rooms. As SCTS has put in these measures to maintain physical distancing, in line with current public health guidance, the wearing of face coverings or PPE is not required in the court room while giving evidence.

SCTS is also updating its position with effect from 31 August, to encourage all those entering SCTS premises to wear a face covering. Therefore, it will be open to all court users, including victims and witnesses, to wear face coverings and this will be strongly encouraged in the transit areas of buildings. In the courtroom itself, such as in the course of giving evidence, face coverings can continue to be worn if desired. However, the sitting judge may require them to be removed.

In addition, should a witness feel distress at giving evidence from the witness stand without a face-covering, even in the court environment where physical distancing is in place and any



face-covering would be an additional precaution to the already stringent measures, an application could be made for special measures.

**Ask 15: Commitment to working with victims organisations from the start, rather than at the end, of any developments**

This ask followed on from discussions at the Victims Taskforce in June, regarding your concerns that VSOs were not being included as equal partners in the development and implementation of the RRT programme for the criminal justice system in light of Covid-19.

You stressed that you feel there have been missed opportunities for VSOs and other justice partners to share information, work collaboratively and develop innovative solutions, informed by the extensive experience of the VSOs and designed with the needs of victims as a fundamental consideration.

We are clear that every effort should be made to utilise the skills and knowledge offered by VSOs, ensure victims' interests are fully represented and that this should form part of the development of solutions, not just at the delivery and implementation stage.

We have reiterated this point to the Criminal Justice Board, which has been established as a sub-set of the national Justice Board. The Criminal Justice Board is chaired by COPFS and SCTS and its main remit is to oversee the RRT programme. You will be aware that a series of work streams have been set up under the Criminal Justice Board and work has taken place to ensure VSOs are represented on the work streams where they have a strong interest.

Rape Crisis Scotland are the VSO rep on the High Court jury trials work stream, with VSS represented on the virtual summary trials work stream. Both of these work streams are led by SCTS.

COPFS are leading the summary procedure work stream, with VSS representing the VSOs and with a clear commitment from COPFS to liaise directly with other organisations, such as Scottish Women's Aid and ASSIST, at appropriate points where further engagement is required.

In addition, an Advisory Group is being established to provide the Criminal Justice Board with independent expert advice and provide confidence that the RRT programme is being considered from the perspective of the potential impacts that could arise for those going through the justice system, whether they begin that journey as an alleged perpetrator or victim of, or witness to, crime.

An invitation will be issued shortly via the Victims' Organisation Collaboration Forum Scotland (VOCFS) for you to collectively discuss and consider how best victims' experiences should be taken into account in this process.

Furthermore, a communications strategy and delivery plan for the RRT programme are under development and will be informed by direct input from VSO communications leads.

**Conclusion**

There is clearly a great deal to consider in these updates and it is likely that you will have some follow up questions which could helpfully be discussed at the regular fortnightly discussion with officials, within the RRT work streams and via the Victims Taskforce.

If you are in agreement, can we suggest that we include this response in the papers for discussion at the next Victims Taskforce meeting on 9 September? If you have any concerns about this suggestion please contact the Victims Taskforce secretariat to discuss further.

We can assure you that we remain absolutely committed to ensuring our engagement with all the VSOs continues in a spirit of mutual respect and cooperation. We recognise that at times there may be a frustration at the progress being made and at the pace of change (both too fast and too slow); but we can assure you we are happy to clearly explain our position and to listen to any further suggestions as to how matters might be moved forward.

Yours sincerely,

**HUMZA YOUSAF and W. JAMES WOLFFE QC**