The Scottish Government

Summary Justice Reform: Victims, Witnesses And Public Perceptions Evaluation

Crime and Justice

social research

SUMMARY JUSTICE REFORM: VICTIMS, WITNESSES AND PUBLIC PERCEPTIONS EVALUATION

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Scottish Government Social Research
2012

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ACKNOWLEDGMENTS

The researchers would like to thank all those who have contributed to producing this research report.

In particular, we would like to thank the Scottish Government Social Research staff and the Research Advisory Group members for their expert advice in the design and development of research tools that were used, especially the workshop materials. Their time, patience and attention to detail throughout the work has been much appreciated and has undoubtedly led to a final research report that recognises the complexity of the subject matter at hand whilst being as accurate as possible in its delivery.

We would extend particular thanks to representatives from the Crown Office and Procurator Fiscal Service and to Victim Support Scotland for assisting in the recruitment of research participants, as well as to the individual staff from these and other organisations who participated as interviewees themselves. We also thank Scottish Women's Aid, the Scottish Police Services Authority and the Police for their input to the work.

For the victims and witnesses who took part, we appreciate the time taken to meet with the researchers and to discuss so openly their experiences and perceptions of a system which, in many cases, presented personal and emotional challenges. Without their help, the research would not have been possible.

Finally, we would like to thank each and every one of those who attended our workshops, including members of the public and expert panellists alike. Their views have been invaluable in allowing us to produce a report which takes cognisance of the wide range of interests, preferences and priorities of the end users of the Scottish summary criminal justice system.

Thank you.

Table of Contents

EXECUTIVE SUMMARY

Introduction

This report presents the findings from an evaluation of victims', witnesses' and public perceptions of the reforms to summary criminal justice in Scotland. The evaluation took place between January 2010 and August 2011, and ran alongside separate evaluations of the specific reforms to direct measures, summary criminal legal assistance and disclosure, bail and undertakings, fines enforcement and lay justice.

The overarching objectives of the summary justice reforms are to create a summary justice system that is fair, effective, efficient and quick and simple in delivery. Each of the reforms target different specific points within the summary justice system which collectively seek to contribute towards meeting these objectives.

Aims and Objectives

The main aim of the evaluation was to explore the impact of the whole package of reforms on victims and witnesses, as well as to gauge public perceptions of the summary justice system, and the reforms overall.

In particular, the work sought to establish if a number of specific policy objectives that were set out for victims, witnesses and the public had been met. These were:

- improved effectiveness and speed of the system – both court and non-court disposals;
- victims, witnesses and the public will see the reformed system as fair, effective, efficient, quick and simple;
- victim, witness and public confidence in summary justice will increase; and
- summary justice will be perceived to be credible by victims, witnesses and the public.

Methodology

The evaluation comprised desk based research and review of key performance indicator data, alongside primary data collection by way of interviews with a range of stakeholders. Principally, this included victim and witness information, support and advice agencies/organisations (e.g. Victim Support Scotland), professional and expert witnesses (e.g. police and forensic staff), civilian witnesses and victims, and members of the general public. An innovative deliberative workshop approach was used to obtain views from the general public, and produced some of the most robust data available to date on general public views of the summary criminal justice system in Scotland. The work was undertaken in three case study Local Criminal Justice Board areas: Glasgow and Strathkelvin, Lothian and Borders and Grampian.

Main Findings

Among those interviewed, awareness and understanding of the reforms varied considerably, both at the overall level and for specific areas of change. Police and expert witnesses and information, support and advice professionals were more informed than lay witnesses, victims and members of the public, for whom there was

almost no awareness of the summary justice reforms and quite limited understanding of the system overall.

Among **information, support and advice professionals**, there was consensus that victims, and particularly witnesses, are still subject to inconvenience during their case due, primarily, to waiting times for trial to come to court, adjournments (colloquially known as 'churn') and waiting times in court. There was also consensus that the system was neither quick nor simple for victims or witnesses, and in some cases, the reforms had introduced new concepts which needed to be more clearly explained to victims, which staff sometimes found challenging. Fairness for people using information, support and advice services was still largely felt to be determined by case outcomes, although the way that victims and witnesses were treated in court had perhaps the greatest impact on overall perceptions of the system.

For **police and expert witnesses**, there seemed to be agreement that there was little change in terms of effectiveness or efficiency of the summary justice system. On speed, expert witnesses were the only group consulted in the evaluation that did not consider that an increase in speed was necessarily desirable since it was adding to their work pressures. The biggest issue that remains for this group is inconvenience due to: being cited at inconvenient times; difficulties informing the court that they were unable to attend on the designated days; being cited when not needed; and being cited for long periods of time, when the actual time input required is far less. Possible options for reducing police time in court as witnesses are currently being considered as part of the Making Justice Work programme.

For **victims and lay witnesses**, most did not perceive their journey from the incident to case closure to have been efficient or speedy, and participants cited examples of being called to attend on multiple occasions due to court business being cancelled at the last minute. Factors which influence witness attendance and possible options for improving attendance and experience are also currently being considered as part of the ACPOS led multi-agency national criminal justice efficiency 'Making Justice Work' programme within the 'Getting People to Court' project.

A key unmet need for victims was not knowing case outcomes and, because not many of the respondents knew the case outcome, some made general statements that sentences per se did not seem to be acting as a deterrent to future offending. Even where people did know the outcome, sentences were generally not perceived to be proportionate and so were considered unfair to victims. Fairness also seems to be perceived in terms of personal satisfaction with the outcome of the case for the victim or witness (including an apology or a sense of justice) and there is some evidence that people felt a need for personal or community compensation in order to believe that the system was truly fair.

For **members of the public**, proportionality seemed to be a key driver of whether the system was considered to be fair, with a general consensus that sentences needed to fit the crime. The overwhelming view on the way accused were treated was that they received more favourable treatment in the system than either victims or witnesses. This was in terms of their court appearance and the information that victims and witnesses received as cases progressed through court, as well as in the sentencing outcomes. Most participants felt that the system was neither quick nor

simple, and this was based largely on their own lack of understanding or knowledge of the system. This translated in many cases to the conclusion that the system was not transparent. Perceived high levels of re-offending, based largely on media accounts, also seem to be contributing to a general perception that the system is not as effective as it could be.

Views of Specific Reforms

The package of reforms to the summary justice system included specific process changes to the system in a number of key areas (described in Chapter 1).

Overall, there was general support among all of the different stakeholder groups interviewed for **direct measures** (including all used by the police and fiscals), although there was some feeling that fines present a lenient option in some cases, especially for repeat offenders and for those where the fine was easily affordable.

Both police and expert witnesses suggested that **disclosure** of prosecution evidence (gathered by the police and the Procurator Fiscal) to defence solicitors, before court hearings begin was perhaps impacting negatively in their workloads, and that there may be some room to improve efficiencies in terms of not generating information which they perceived to be 'useless'. In contrast, one of the main gaps in information and support for witnesses was not being able to access the statements that they had previously given to the police. In most cases, months will have passed between the incident occurring and the trial going ahead. This was perceived to potentially add to the intimidating prospect and anxiety about appearing in court as a witness since they could not remember exactly what had been said.[1]

There were mixed views regarding early guilty pleas as a result of changes to payment rates for solicitors under **legal aid.** Among those providing information, support and advice to victims and witnesses, the view was that both churn and waiting times in court have not improved as a result of legal aid and disclosure and so, even though cases may be appearing in court more quickly, the actual court experience for victims and witnesses (on the day) remained in need of improvement.

For members of the public, views of legal aid suggest that they prefer the new payment method to the old (information about which was received with some surprise). However, the main point of contention for the public was whether early pleas should necessarily result in discounted sentences. The general feeling was that they should not.

Overall, views suggest that changes to **bail,** including the more serious treatment of breach of bail, were not having the desired effect, and it was believed that many accused would simply choose to ignore bail conditions, regardless of the perceived consequences. There was concern about the continued likelihood of breaches of bail by a core of accused, including the commission of other offences. There was general consensus about this across all groups consulted and, correspondingly,

[1] Sections 54 and 85 of the Criminal Justice and Licensing (Scotland) Act 2010 make provisions for statements to be made available to witnesses but this would not have been implemented or experienced by those interviewed at the time of the evaluation.

strong feelings that bail should not be given to people who have previously failed to comply with bail conditions.

Other than the police, most of those consulted did not know anything about people being released by the police on written **undertakings** to appear at court**,** but there was a general consensus that they seemed to present a common sense approach. There was also some suggestion that their use was fairer to the accused (than, for example, custody), although it was perceived by most stakeholders that breach of undertakings would continue to occur in some cases since they would not be taken seriously by the accused (in much the same way as bail). As with bail, there was no appetite for allowing undertakings to be used for people who have previously demonstrated a lack of willingness to comply.

The evaluation suggests that there is perhaps some confusion among victims over the **shift of business to Justice of the Peace (JP) courts**. Some victims had reported to support service staff that they felt their case had been 'downgraded' when it was heard in a JP court, and this view was supported by experts and support and advice organisation staff. For police witnesses, experiences of appearing in JP courts do not seem to have been positive, and this is perhaps leading to negative perceptions of the appropriateness of more summary cases being moved to JP courts. The same is true for lay witnesses and victims who reported disappointment in the way that proceedings were both allocated to and managed in JP courts.

Finally, although all those consulted were in favour of changes to the **recruitment, training and appraisal** of lay justices, there were some doubts about how representative of the community this group would ever be. Importantly, for members of the public, there was a poor understanding of the existence and role of JPs and JP courts at all, suggesting that this in itself might present a barrier to recruitment of a broad spectrum of JP applicants.

Messages for Policy

The reforms had specific ambitions for victims, witnesses and the general public and it was hoped that many of the other system changes would also indirectly increase their confidence in the system and its perceived credibility.

The research shows that whilst victims and witnesses support the principles of the reforms, they still do not perceive that the system meets their needs. The use of direct measures and changes to both legal aid and the system of disclosure of evidence are designed to mean that fewer cases come to court that require victims and witnesses to attend. However, those that do still seem to be subject to instances of repeat citation, and waiting times that are still too long. The reforms have not, as yet, improved the victim and witness experience in this regard.

The reforms also sought to generate a greater focus on the needs of victims, witnesses and the accused at the heart of the system. Perhaps the main message to emerge from the work is that victims and witnesses are perceived, by almost all those consulted, as being treated less fairly than accused. Thus, the reforms have not achieved the focus they sought.

The evaluation findings point to several areas where victims' and witnesses' experiences could be improved which were not part of the reforms. These might change perceptions and increase public confidence in the system, ensuring that it is seen to be credible by all.

For police and expert witnesses, the key messages seem to be that:

- there is still scope for increasing effectiveness of the system in terms of the guidelines around what is required for reports and for disclosure purposes; and
- there is room for greater efficiency around citing witnesses to court at times that are most convenient for all those concerned.

For victims and lay witnesses, it was felt that their experiences would be improved if:

- they were subject to fewer instances of repeat citation to court, and waiting times at court were kept to a minimum on the day;
- they were made to feel more valued during any court appearance experience;
- they could be kept separate from accused at court;
- they were kept up-to-date with case progress and supported throughout the system if required;
- explanations were given to them about the allocation of cases to different court jurisdictions;
- bail was not seen to be used in cases where the accused was known previously to have breached bail;
- sentences were perceived to more appropriately match the offence;
- cases were concluded as quickly as possible, and ideally within six months of the offence, whilst still being fair; and
- arrangements were made to always notify victims and witnesses of case outcomes in writing.

While not the function of the adversarial nature of the justice system, victims and witnesses indicated that their experience of the justice system would also be greatly improved if they had the opportunity to ensure that their perspective was *fully* heard and understood during the case.

For members of the public, confidence in the system and perceived credibility may be further improved if:

- they perceived that tougher sentences were being used for repeat offenders;
- sentences were seen to be effective in deterring re-offending
- the system was more transparent so that the public had a greater awareness of the true prevalence of crime and victimisation, and understood better how sentencing decisions were made; and
- the system was seen to be more supportive of victims and witnesses throughout.

Across all of the groups, some key commonalities also emerged. These included the view that the system is still currently perceived to be heavily weighted in favour of the accused, that more could be done to improve communications with victims and witnesses at all stages in the justice process and that there remained considerable room for improvement in the efficiencies of getting people to and through court.

Conclusions

The reforms have sought to create a summary justice system that is fair, effective, efficient and quick and simple in delivery for all those involved. This evaluation has uncovered generally good levels of support for the ambitions of summary justice reform, even if there remains some doubt about whether all of the specific objectives will be achieved. The evaluation has also provided evidence of which of the reforms are directly and indirectly impacting on victims and witnesses to date, and has provided valuable insight into the main issues that are important to victims, witnesses and the public with regards to the delivery of summary justice now and in the future.

1 INTRODUCTION

Background

1.1 This report presents the findings from an evaluation of victims', witnesses' and public perceptions of the reforms to summary criminal justice in Scotland. The evaluation took place between January 2010 and August 2011, and ran alongside separate evaluations of the specific reforms to direct measures, summary criminal legal assistance and disclosure, bail and undertakings, fines enforcement and lay justice.

1.2 The main aim of the evaluation was to explore the impact of the whole package of reforms on victims and witnesses, as well as to gauge public perceptions of the summary justice system, and the reforms overall.

1.3 The report is designed to be read in conjunction with the other evaluation reports to provide a victim, witness and public perception dimension to the other evaluation findings.

Summary Justice Reform

1.4 In 2001, the Scottish Ministers established an independent committee (the McInnes Committee), to review the operation of the summary criminal justice system in Scotland and explore ways that it could be improved. It concluded that the summary justice system was in need of a comprehensive overhaul and that the need for change was due to:

- problems with the overall speed in dealing with cases;
- wasted court attendances for victims and witnesses;
- little difference in the way that minor and more serious cases were being dealt with by the system;
- no incentives to encourage solicitors to deal with cases quickly;
- inconsistencies in the way that the police, courts and Procurator Fiscal dealt with cases; and
- waste of public funds.

1.5 The report of the McInnes Committee[2], which was independent of the then Scottish Executive and represented a wide range of interests and experience in summary justice, was published in March 2004.

1.6 Following consideration of the Committee's report and an extensive public consultation, Scottish Ministers published *Smarter Justice, Safer Communities: Summary Justice Reform Next Steps*[3] in March 2005, outlining the Scottish Executive's proposals for summary justice reform, with a

[2] The Summary Justice Review Committee: Report to Ministers (2004) Scottish Executive, Edinburgh available at: http://scotland.gov.uk/Publications/2004/03/19042/34176

[3] Smarter Justice, Safer Communities: Summary Justice Reform Next Steps (2005) Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Resource/Doc/37428/0009568.pdf

Summary Justice System Model Paper[4], published in September 2007, providing further details. The reforms that required legislation formed the basis of the Criminal Proceedings etc (Reform) (Scotland) Act 2007. Subsequently, a package of changes or 'reforms' were introduced. These are referred to as 'Summary Justice Reforms' or 'SJR'.

The Package of Reforms

1.7 The package of reforms essentially involved:

- The introduction of police formal adult warnings and fixed penalty notices for anti-social behaviour, so that some of the least serious cases do not have to be reported to the Procurator Fiscal or go to court;
- Encouraging greater use by Procurators Fiscal of fiscal fines, and the introduction of fiscal compensation orders (FCOs) and fiscal work orders (FWOs), where appropriate, so that some other less serious cases do not have to go to court;
- The new role of Fines Enforcement Officers to enhance the collection and enforcement of fines;
- Introduction of early 'disclosure of prosecution evidence' (gathered by the police and the Procurator Fiscal) to defence solicitors, before court hearings begin;
- Introduction of a new payment system for solicitors so that they are paid the same standard, set fee regardless of what plea their client makes and when. This was designed to encourage accused and their solicitors to conclude cases as soon as possible including, where appropriate, by the accused pleading guilty;
- Encouraging the use of more offers of undertakings issued by the police whereby accused agree to attend court within 28 days instead of being formally cited by post at a later date (so the accused appears at court more quickly) and allowing special conditions to be attached to undertakings;
- More conditions attached to bail and treating breach of bail more seriously in the courts;
- Moving a greater number of appropriate cases from the Sheriff court to the Justice of the Peace court;
- Increasing sentencing powers of a Justice of the Peace, so they can now disqualify someone from driving for road traffic offences; and
- Providing more consistent, transparent and open recruitment and training of Justices of the Peace.

[4] Summary Justice Reform System Model (2007) Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Publications/2007/09/06092618/6

1.8 Together, these reforms sought to improve the system and address the gaps and main issues that had been identified in the 2004 Summary Justice Review report.

Overarching Objectives and Intended Outcomes for Summary Justice Reform

1.9 The overarching objectives of the summary justice reforms are to create a summary justice system that is:

- fair to the accused, victims and witnesses;
- effective in deterring, punishing and helping to rehabilitate offenders;
- efficient in the use of time and resources; and
- quick and simple in delivery.

1.10 Each of the reforms target different specific points within the summary justice system which collectively seek to contribute towards meeting these objectives.

1.11 The *Smarter Justice, Safer Communities: Summary Justice Reform Next Steps*[5] document emphasised the role of the reforms in increasing community and public confidence in summary justice, and the importance of the reforms and the system being credible to the public. It also stated that SJR must *"generate a greater focus on the needs of victims, witnesses and the accused - not service providers - at the heart of the system".*

1.12 As a result, and in addition to the overarching objectives and intended outcomes as a whole, a number of specific policy objectives were set out for victims, witnesses and the public. These were:

- improved effectiveness and speed of the system – both court and non-court disposals;
- victims, witnesses and the public will see the reformed system as fair, effective, efficient, quick and simple;
- victim, witness and public confidence in summary justice will increase; and
- summary justice will be perceived to be credible by victims, witnesses and the public.

Previous Research

1.13 In 2003, the *Summary Justice Review: Public Views on Key Issues*[6], published for the Review Committee, reported the findings of both a survey of the general public and the views of participants at a number of focus groups. Together, these were undertaken to capture views of the Scottish public on aspects of contemporary summary justice. The research found that people had limited knowledge of the infrastructure of summary justice and were often

[5] ibid
[6] Nicholson, L. (2003) Summary Justice Review: Public Views on Key Issues, Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Resource/Doc/925/0008782.pdf

more familiar with Sheriff courts than District courts. Public perceptions of summary courts and judges were often inaccurate and confused. Further, the perception was that cases were being handled appropriately and fairly, but that inconsistency and leniency in sentencing were a problem. Most people considered that both lay and professional judges treated people equally, fairly, and impartially.

1.14 Almost half (47%) of those who took part in the 2003 survey stated that they were 'not at all confident' that the summary justice system was fair in dealing with victims. As many as 79% of the respondents favoured prioritisation of cases, with cases involving what they perceived to be vulnerable victims and witnesses seen as the highest priority. Respondents felt that cases involving a child victim should be seen as the highest priority (84%), followed by cases with vulnerable witnesses (71%). Overwhelmingly, people wanted summary justice to achieve appropriate punishment and consistency in sentencing, alongside fairness to victims and the community.

1.15 The *Report of the Summary Justice Review Committee: Supplementary Research*[7], published in 2005, also reported that there was a general perception that the police, prosecution and the courts gave low priority to minor offending and that it was rarely taken into account by the authorities. There was some confusion around the term 'alternatives to prosecution' among many respondents who felt this really meant 'alternatives to prison'. However, most respondents accepted all proposed alternatives to prosecution as suitable punishments but that the actual success of a punishment working depended on a number of factors, including that the offence had not been carried out by a repeat offender; the age of the offender; whether the offender had showed contrition; and the nature of the offence.

1.16 Respondents welcomed the expansion of reparation to victims or community schemes and were generally strongly in favour of a "right to reply" for victims of minor crime within the court system. This would, they felt, detail the effect of the crime on the victim's quality of life in addition to physical damage/injury and cost.

1.17 This previous research has, until now, provided the main source of evidence on victims, witnesses and general public perceptions of summary criminal justice in Scotland. Both research studies were, however, general in scope and they were conducted before the specifics of the summary justice reforms were agreed upon. This current research sought to provide a more up to date and more focussed account of the views of these system end users.

Evaluation Approach

1.18 The evaluation comprised desk based research and review of key performance indicator data, alongside primary data collection by way of interviews with a range of stakeholders. Principally, this included victim and

[7] Report of the Summary Justice Review Committee: Supplementary Research Final Report (2005), mruk Research, The Scottish Executive, available at http://www.scotland.gov.uk/Resource/Doc/925/0016786.pdf

witness support agencies/organisations (e.g. Victim Support Scotland), police and expert witnesses, civilian witnesses and victims. Members of the general public took part via a series of deliberative workshops. The work was undertaken in three case study Local Criminal Justice Board areas across Scotland, these being Glasgow and Strathkelvin; Lothian and Borders; and Grampian. A full methodology is included in Appendix A.

1.19 Within each case study area, a variety of methods were used to recruit interviewees. Victim and witness support and advice staff, and police and expert witnesses were recruited via an invitation sent to their employers. This resulted in a sample that was somewhat skewed by availability, although it is worth stressing that the numbers of staff who were in scope for the research was relatively limited in each of the case study areas from the start. A total of 11 support and advice staff took part in the research, along with 22 police and expert witnesses.

1.20 Victims and lay witnesses in each area were recruited primarily via an invitation to take part in the research issued by the Crown Office and Procurator Fiscal Service (COPFS) to a sample of people in each case study area, as well as via invitations issued by Victim Support Scotland to a sample of their service users in each area. Using these methods, a total of 26 victims and lay witnesses were recruited and subsequently took part in one-to-one interviews.

1.21 Members of the public were recruited on street and door-to-door in each of the areas, using quotas to ensure a wide range of people of differing socio-demographic status (see Appendix A). In each area, 20 people were invited to take part in each of three workshop events with 56 people actually taking part.

1.22 The key performance indicator data that were analysed as part of the work came exclusively from the Scottish Government's National Criminal Justice Board Management Information System (CJBMIS) and included analysis of the total number of witness citations issued nationally and the percentage of repeat witness citations. No other data held on the system was deemed to be of direct relevance to this evaluation.

Research Caveats

1.23 During the analysis of data, attention was given to identifying any differences that arose in responses from participants living and working in each of the separate case study locations. Across all stakeholder groups, no noticeable geographical variations were noted and so, for reporting purposes, all data have been presented at the aggregate level.

1.24 As a general note, although the research also managed to engage with over 100 individual participants from a variety of backgrounds, the evaluation was always intended to be qualitative in nature and no attempt is made to draw statistically robust conclusions from the work. What the report does seek to do is to provide an in-depth insight into the views of those interviewed, who may or may not represent the wider stakeholder communities. This approach

was taken purposefully since the evaluation sought to generate an understanding of the issues that affect these groups rather than to quantify their presence.

1.25 Related to this, as the work progressed, it became apparent that there was an overwhelming lack of awareness or understanding of the justice system among participants. As a result, many of the views and opinions expressed cannot reliably be considered as fully informed opinions on system reform, but rather opinions on what is perceived to be the system and what are perceived to be the reforms. The subjective nature of the comments is acknowledged by the researchers, yet participants' views are still vitally important in showing what further needs to be done to make justice more accessible for all. The views also have clear implications for public confidence in the system more generally.

1.26 It must also be recognised at the outset that there will inevitably be some bias in the findings presented below due to the unique experiences of those who took part and an element of self-selection. For example, findings to emerge from support and advice organisations will be based on the experiences of those individuals who took part and on the relayed experiences of the victims and witnesses who choose to engage with their services. This may not be representative of the whole victim and witness population or reflect the experiences of support workers in other areas who were not able to take part because of the geographical case study approach that was taken.

1.27 Similarly, in relation to victims and witnesses, the research has also only been able to reach those who opted to participate, and so there will be a community of victims and witnesses whose views are not represented by virtue of their choosing not to take part. This may include, for example, those who felt less affected by the crime and so not interested in discussing its impact and those who were affected to such a degree that reliving the experience for research purposes was too off-putting. Although a limitation of the work, it is recognised that the experiences of victims, witnesses and the members of the public will, in reality, vary greatly depending on a number of social, personal and environmental influences and so research of this kind can never truly claim to be representative of the views of all such groups. It can, however, offer an insight into the views and experiences of those who feel able to convey them.

1.28 Finally, it is important to stress that the interpretation and reflections on the research findings set out in this report are those of the researchers, and not of the Scottish Government. Further, the views put forward by the various respondents which are presented in this report are those of the individuals who took part, and should not be taken as being representative of the organisations for whom they worked.

1.29 With these general caveats in mind, the remainder of this report goes on to present the findings of the evaluation, setting out the views of each of the main stakeholder groups who took part, in turn.

2 THE VIEWS OF VICTIM INFORMATION, SUPPORT AND ADVICE PROFESSIONALS

2.1 The research sought to canvass the views of victim and witness information, support and advice organisations, to complement data provided by victims and witnesses themselves. Importantly, it was felt that support organisations would have familiarity with the summary justice system both pre- and post-reform, and that this would counter the anticipated limited opportunity to speak with repeat victims or witnesses with both pre- and post-reform experience. Support organisations were, therefore, interviewed to provide insight into how they believed the reforms had impacted upon victims and witnesses, based upon their observations and experience over time.

2.2 A total of 11 individual interviews were carried out with representatives from Victim Support Scotland (both national and regional representatives), Witness Service staff in each of the case study areas and staff from Victim Information and Advice (VIA) - the Crown Office and Procurators Fiscal information service for witnesses and victims deemed vulnerable – in two of the case study areas. Other local specialist victim support services were also interviewed in two of the areas.

Awareness and Understanding of the Reforms

2.3 Among those interviewed, awareness and understanding of the reforms varied considerably, both at the overall level and for specific areas of change. None of the interviewees mentioned being made directly aware of the overall reforms by way of formal notification or consultation, although some were involved indirectly in early consultations before the reforms were established.

2.4 Respondents were asked what they thought the reforms were intended to achieve as an integrated programme, both in terms of high level outcomes and desired outcomes. Almost unanimously, respondents' expressed that they believed their purpose was to achieve a speedier system of summary justice, and to ease the workloads of the Sheriff courts:

> *"My impression of it was that it was hoped that it would ease the business that does actually come to court so that things would go through quicker…. The reforms are about alleviating what actually comes through as full-blown trials."*

> *"I think they're meant to deliver a more efficient service…. so, you know, to cut down on wasted court time, to make sure that cases are ready to proceed on the date they are meant to proceed, to take away a lot of the smaller business that may not necessarily be dealt with at some level to try and save bringing extra witnesses along to court when it's maybe not necessary."*

2.5 Such comments show an overall awareness of the aspirations for speed and efficiency although, as discussed below, there was not necessarily confidence that this was being achieved.

Perceived Impact of the Reforms on Victims and Witnesses

2.6 Respondents were asked what they believed to be the main impacts of each of the specific reform areas on their clients.

2.7 In relation to reforms to **legal aid and disclosure**, a view was asserted that these have had a negligible impact on early pleas (that is, the accused making a guilty plea at the earliest stage of court proceedings)[8] and, hence, there had been no reduction in the need to call victims and witnesses to trials:

> *"I don't think it makes people plead any earlier that there's this one single fee. That doesn't seem to be happening. People still seem to be waiting till the day of trial. Sometimes you wonder if they [the accused] are waiting to see if all the witnesses are actually going to turn up before they plead."*

2.8 Indeed, views were expressed which suggested that some accused may know the system so well that they would wait to see if all witnesses attended court as ordered, using this as a basis on which to decide whether to plead guilty or not on the day of the trial. It was suggested that this tactic may be used, instead of pleading guilty at an earlier stage, since failure to appear by a witness may weaken the case against the accused.

2.9 There was also a view that early pleas of guilty by the accused may cause some frustration for a minority of victims (who are also witnesses) who feel that they have not been given an opportunity to 'have their say' in court if no evidence is led:

> *"Obviously, the quicker cases come to court, the better. So if there is a plea, that means the victim and witness don't have to come to court... There's always the victim that wants to have their say in court but I think they're pretty much the exception and, quite often, they're left in frustration in any case. Even in court, if they're called as a witness if they're not asked the questions that they want to address, they don't have their say and have to answer the questions asked… quite often the victim is left frustrated because they can't say as they wish."*

2.10 The potential for more early pleas of 'guilty' and the associated reductions in the accused's sentence was questioned in relation to the perceived fairness towards victims.

[8] KPI data in fact shows that between 2006/07 and 2010/11 there was an increase in the percentage of cases pleading guilty at first calling from 19.8% to 33.8%.

2.11 Similarly, it was felt that many victims and witnesses may be left frustrated by plea bargaining, which was seen as benefiting only the accused and not the victim or witness:

> *"One of the areas people have difficulty with is plea bargaining. In terms of efficiency, it is wonderful as it speeds it up, avoids trials but when someone has been stabbed and it's plea bargained down to a breach of the peace, people will say 'Where's the justice in that?' With effectiveness, sometimes the fairness can disappear. Very often people cannot understand."*

2.12 Also, in relation to disclosure and case preparation specifically, there was some anecdotal evidence that it was perhaps benefiting police and expert witnesses only, and not lay counterparts:

> *"There has been a lot more cancellations in professional witnesses say rather than lay witnesses being cited, as professional witnesses seem to have their evidence agreed. I really don't know why this is; it just seems to happen more that it is either the professional or the police witnesses whose evidence has been agreed. Very rarely do they say a lay witness's evidence has been agreed. I don't really know if this is to do with the changes to disclosure or not to be honest."*

2.13 There were few comments in relation to **direct measures** and most respondents simply felt that the main impact would have been fewer witnesses going through the court system. This was something that they had not noticed. Similarly, few people commented on the direct impact of **fines enforcement**. Information, support and advice staff felt that, with the exception of compensation orders and fiscal compensation offers, victims and witnesses would not be aware that fines had been paid. Where they did know, it was suggested that victims are often unhappy with the penalty imposed, saying *"a fine is not a serious enough penalty."* This was something echoed in the later interviews with victims and witnesses, discussed in Chapter 4.

2.14 With regards to **bail**, there was some feeling that the use of special conditions and, in particular, the greater efforts put in place to avoid 'failure to appear' were not having the desired effect:

> *"It doesn't reduce failure to appear. If the accused is not going to come, they are not going to come. It doesn't matter what the bail conditions are."*

2.15 Similarly, there was some suggestion that the use of bail and bail conditions remained largely unclear for victims and witnesses, even though better explanations may now be being offered to the accused:

> *"As a general rule when we're dealing with victims and some witnesses, they're obviously angry that the accused has got bail. 'Why is he/she allowed out on bail?' That's the kind of comments that we get at the Witness Service."*

"Since the ECHR [European Court of Human Rights], the kind of presumption is that people will be given bail… and victims will have difficulty understanding why the accused are being bailed. 'I was seriously assaulted' or 'He took a glass bottle and smashed it over my head.' Like, 'The day previously, he was taken away by the police, then I see him walking the street like, how did he get bail?' … and I think it's all about credibility and fairness. Consistency is something victims have difficulty understanding, that what appears to happen in one particular situation doesn't happen in another… They will just look at it very simplistically but, quite often, they're cut out of the loop because nobody explains any of that to them. Perhaps if they were given reasons, it would be easier to understand, but quite often they're not."

2.16 This indicates a desire for the widening of information provision regarding the reasons for bail decisions, to include victims and witnesses, in the interests of being perceived as fair to both them and the accused. Currently, information and advice is only provided proactively by COPFS through its Victim Information and Advice Service (VIA) to victims assessed as being vulnerable. These victims receive updates about the outcome of court diets, and only after the accused has pled not guilty, the exception being custody cases[9] where vulnerable victims are updated on the outcome if the accused pleads guilty. The sentiment expressed by information, support and advice staff is that more victims involved in the system might also benefit from information, so long as it is provided in a clear and accessible fashion. Data that emerged from the general public workshops (discussed in Chapter 5) also suggests that there is a public appetite for easily accessible information about the justice system to be made available.

2.17 With regard to **undertakings**, none of the respondents felt that the reforms directly impacted on victims or witnesses, and most felt unable to comment on this reform area. This is interesting insofar as the aim of reforms to undertakings was to contribute to bringing cases to court more quickly, which may, in turn, improve the victim and witness experience (i.e. victims may see that cases are being dealt with quickly after the event, and witnesses may have to wait less time to give evidence due to early appearances in court). It may be, of course, that those victims and witnesses who are involved in cases where an undertaking has been used have less need for information or to call on support services and so the organisation representatives may not have had contact with these people. Alternatively, it could be that a proportion of cases where an undertaking is used do not involve victims or witnesses, or do not make it to court (and are dealt with by no proceedings or direct measures), in which case automatic notification of available support will not be generated for victims.

2.18 The reform area that was perceived among this group to have had the greatest impact was changes to **lay justice**. Although representatives understood the scope and purpose of this reform area quite well, feedback

[9] Custody cases are those where a person who has been arrested is held in a police cell or on remand in prison ahead of trial or sentencing.

from clients seemed to suggest that victims and witnesses did not always agree that it was working well in practice:

> *"…often we find when people are cited and they come to the JP court as a witness and they are like 'Why is this a JP case?' They don't understand why it's been dealt with at that level because they think it's more serious and it should have been dealt with at Sheriff summary level, but to be honest that happens at Sheriff and Jury trials where people think it should have been High Court level so it's individual perceptions by the public of how serious they think an incident has been."*

2.19 Such a view was not unanimous and so it seems that some victims and witnesses may be agreeable to the movement of cases to JP courts while others are not.

2.20 In summary, all respondents, when asked, commented that they felt that the system had not changed significantly for victims and witnesses since the reforms, but had stayed much the same. When probed to explore why respondents felt that the impact of the reforms on victims and witnesses to date had been minimal, three main 'gauges of change' were voiced by respondents.

2.21 Firstly, there was no perceived reduction in the number of referrals being made to either the victim or witness service and no perceived changes in the kinds of support or information being sought.

2.22 Secondly, interviewees perceived that there were no fewer instances of 'churn' (or repeated adjournments), in particular in relation to too many cases being scheduled during the court day. Respondents reported that one of the greatest frustrations for clients was time 'wasted' waiting in court, especially when they are discharged and asked to return on another date. This had not changed with SJR. The experience 'in court on the day' was seen as being perhaps the single biggest influence over a victim's or witness's overall summary justice experience, and their view of the system.

2.23 Finally, support and advice staff reported no real change in the sentiments being expressed by victims and witnesses to support services.

Perceived Inconvenience to Victims and Witnesses

2.24 Overall, there was consensus that victims and particularly witnesses are still subject to inconvenience during their case due, primarily, to waiting times for trial to come to court, adjournments (or churn) and waiting times at court.

2.25 On the issue of getting to court, there was perhaps some perception that cases were coming to court more quickly, but this improvement was being undermined if the same case was subsequently called back to court on several occasions, thus causing inconvenience to victims and witnesses:

"Things maybe come to court a bit quicker than when I first started because when you first went into witness rooms as a volunteer, people would be saying 'It's two years since this happened – I can't remember', but I would say that time frame has shortened for the first time that they ever get here but it is very rare that a case comes to a conclusion the first time they ever appear at court. They can be cited two or three times and could have sat here all day."

2.26 Similarly, on adjournments, the perceived inconvenience that this causes to victims and witnesses undermines the fact that the case has made it to court promptly:

"For the ones we deal with, who actually come to court, nothing's changed. People still very rarely get dealt with the first time they come here, even when it's children and this can be for a huge variety of reasons - either lack of court time 'cause there's so much programmed into the courts for each day, lack of court time to be able to deal with the cases, papers not being ready, accused people not turning up, one witness not turning up, so the adjournments are still there.

2.27 In terms of the percentage of summary criminal cases dealt with within 26 weeks (from caution and charge to verdict, the data shows that, following an increase in the percentage of cases moving quickly through the system in 2008 and 2009, since the start of 2010, this percentage has dropped back slightly (see Figure B.1, Appendix B). This perhaps provides a general measure of how quickly cases are being dealt with in court, and which might be impacting on the timing of hearings at which witnesses will be called. The percentage of cases being dealt with within 26 weeks is, however, still well above the national target.

2.28 The issue for witnesses is, however, perhaps more related to the cases that, despite being heard early in court after the incident, result in repeated further hearings in court at which witnesses are asked to be present. The KPI data show that the national average number of court appearances per case has remained largely unchanged post reform, (see Figure B.2, Appendix B).

2.29 Similarly, KPI data for the total number of witness citations (see Figure B.3, Appendix B) and the percentage of repeat witness citations (see Figure B.4, Appendix B) have been relatively steady over time, for both police and civilian witnesses. This is true at the national level and for each of the case study areas included in this evaluation meaning that support staffs' perceptions that there has been no real change in the number of witnesses cited to court post-reform (either once or on multiple occasions) is, in fact, largely accurate. This mirrors support staffs' comments that they also had not perceived any difference in the numbers of witnesses seeking support from their service over time.

2.30 Waiting times in court was the other key area that seemed to cause a great deal of anxiety and frustration to witnesses, and which appeared to the support service interviewees not to have been directly addressed through the

reforms. Although respondents recognised that the courts having a lighter caseload may reduce waiting times, there was a perception that workloads had, in fact, not decreased to such a level that this inconvenience had been mitigated or reduced:

> *"Purely from the witnesses that we see, I don't think it's improved a great deal from the point of view that many witnesses will come to court. They're scheduled to come to court at 9:15am so, they come in and they're seated and wait until the court starts at 10:00am. And they're not given regular updates except for what the Witness Service can give them and regularly they'll sit here for the majority of the day, and they'll still get sent away because of lack of court time and somebody hasn't shown up, etc. So we regularly speak to witnesses that this is the third time, fourth time, fifth time that they've been here for that one trial, and it's always another 6 or 8 weeks that they're scheduled to come back again and they're obviously worried that things won't be fresh in their minds and it's probably taken them months to get into that stage as it were and they keep getting put off again."*

2.31 Importantly, staff pointed out that inconvenience, including waiting times in court and churn, appeared to vary considerably by court (both between and within Sheriffdoms). These messages cannot, therefore, be applied with a broad brush and this may be an area that requires further analysis of monitoring data at the court level.

Perceived Impact of the Reforms on Support Organisations

2.32 At the macro level, there appears to have been very little noticeable impact of the reforms on the day-to-day working of victim and witness support organisations.

2.33 Case loads are not perceived to be getting smaller, which may have been an indicator of an 'improved 'system (i.e. fewer witnesses coming to court and so less demand for support services). There has also been no noticeable change in the nature of the complaints received.

2.34 Although unification is out of scope for this evaluation, it does seem that the merging of JP and Sheriff courts may have impacted on witnesses' experiences if it becomes apparent to them that some witnesses are eligible for Witness Service support and others are not:

> *"As a victim support organisation, the impact that court unification has had on us is that District courts have been subsumed into Sheriff court buildings. That means that there are witnesses in there too. And, for us, we now can't just say to people 'Are you a District court witness or are you a Sheriff court witness? Okay, we can support you [Sheriff court witness], but we can't support you [JP court witness]'. VS view has always been that we would like to support all witnesses because we approach supporting victims and witnesses from the point of view that it's not necessarily the seriousness of the crime that affects an*

individual, it's that individual's perception and experience and where they are in their life. Someone could be as badly affected witnessing a breach of the peace as they might be if they were involved in an assault on themselves or a serious assault."

2.35 Indirectly, this may contribute to the perceived credibility of JP courts and the fact that, as witnesses in a JP case, their need for support is not perceived to be as great as the needs of witnesses whose cases are heard in the Sheriff court.

2.36 A further impact has been a slight increase in the numbers of people seeking clarification of the allocation of cases to the Sheriff or JP court. Where clients feel that their cases should have been dealt with in a higher court (i.e. Sheriff and not JP), the Witness Services is having to make more referrals back to VIA or Crown Office in order to provide clients with the feedback that they require:

"We are very careful in the explanation we give to people and don't offer legal explanations. When it comes to people questioning why a case has been dealt with at a certain level, we always refer them back to the Procurator Fiscal because we can't discuss anything that may have any sort of legal implications."

2.37 Such comments suggest a need for more information being given to victims and witnesses around the allocation of cases to different court jurisdictions, in order to offer reassurances that such allocation does not necessarily reflect a downgrading of case importance or any sentences that may be imposed on those found guilty.

Perceptions of the Overarching Objectives of SJR

2.38 Staff were asked to comment on the extent to which they felt the current system was meeting the overarching objectives to be fair, effective, efficient and quick and simple in delivery.

2.39 Staff were clear that they did not feel that 'fairness' was necessarily determined by the case outcome alone, and whether the victim or witness felt that a suitable disposal had been awarded. Instead, the court experience itself was seen to contribute noticeably to the overall perception of what was **fair**:

"In general people will only see the system as fair if the case has their desired outcome. However, if someone is dealt with at first attendance and conclusion is on the same day, they are more likely to say that yes, that was quick, easy and dealt with fairly [if they get their desired outcome]. But if you ask someone that has been here three or four times and had their case deserted, then they are likely to disagree with this. It is down to people's personal experience."

2.40 Staff also expressed a view that there was overlap between fairness, confidence and credibility:

"Confidence, credibility and fairness are all linked in together because if the process is being carried out properly, it gives some confidence to the victims and witnesses. If there hasn't been equality in their contacts with the system, if the only support is a brief 'How are you getting on?' and the outcome of the case is not good, well then they will always be disappointed."

2.41 For support organisations, **effectiveness** seemed to be framed in terms of the experience being relatively uncomplicated and positive for victims and witnesses.

2.42 On **efficiency**, staff suggested that this was probably best defined in terms of quick solutions for victims:

"From a victim/witness point of view, efficiency means the whole process is concluded relatively quickly."

2.43 All staff interviewed agreed that the system was neither **quick nor simple**, and in some cases, the reforms had introduced new concepts which needed to be more clearly explained to victims, which staff sometimes found challenging:

"In terms of 'simplicity of the system', I consider there to be nothing simple about it. The legal system is so complex that people just don't understand it. I don't believe that many people even know that there has been a summary justice reform. When they came into place and people were asking me why certain cases were being dealt with at different levels, I tried to explain it was due to reform, but they did not really understand. I see a lot of repeat witnesses and I don't think they would have noticed or been able to comment on any changes due to reform."

2.44 Finally, in a number of interviews, the issue of 'consistency' was raised as something that may be an area of discontent for victims and witnesses. It was suggested that the reforms could have included a focus on greater consistency across the summary justice system, but that they had not done so.

Are the Reforms Meeting Their Aims?

2.45 From a support organisation perspective, the general consensus appeared to be that the reforms had not yet met their specified aims. The view was that both churn and waiting times in court have not improved, and so, even though cases may be calling in court more quickly, the actual court experience for victims and witnesses (on the day) remained in need of improvement:

"In terms of changes, I would say things have stayed the same maybe slightly verging on the improved. Getting cases to court quicker is a bit better but experiences in court are just the same."

"I don't think a majority of the reforms have had any specific impact. ….. a general improvement in speeding up the process helps, but I can't really say if it's changed much. My guess is that it has stayed much the same."

2.46 Although respondents did not intimate many signs of positive change for victims following the reforms to date, all were optimistic that, over time, some of the changes may start to impact positively on their client group. All welcomed the changes that had been made and noted that they were a change in the right direction, although they were mostly considered to be process focussed.

2.47 Importantly, staff were keen to stress that general improvements brought about by non-SJR changes were assisting in improving the victim and witness experience more generally:

"I don't feel that reforms are meeting the overarching aims and objectives of SJR, but they are trying. I suppose it is having a little impact but maybe not to the extent they had hoped. Things are improving, more as a result of the Scottish Court Service's willingness to improve things and us working with them and the Fiscals to improve things too."

3 THE VIEWS OF EXPERT AND POLICE WITNESSES

3.1 There are two main categories of witness who may be involved in the administration of summary justice: professional and expert witnesses, and lay witnesses. The former category includes people who are asked to provide evidence as a witness either as a consequence of their professional involvement in the criminal justice system (for example, the police) or as an expert in their area (for example, medical experts or forensic scientists). The latter category, lay witnesses, are usually members of the public who would not necessarily otherwise be involved in the system.

3.2 Both categories of witness took part in the research. This chapter specifically explores the views of police and expert witnesses, while the views of lay witnesses are covered in the following chapter.

Expert Witnesses

3.3 A total of 10 expert witnesses were interviewed, including forensic biologists, forensic toxicologists, scene of crime examiners and fingerprint experts, amongst others[10]. All received high volumes of citations each year (up to 100 in some cases), but actual court appearances usually only amounted to around 10 per year. However, this group of interviewees offered least feedback in relation to specific reforms and thus their responses are presented at more summary level than other groups.

3.4 At the group level, awareness of summary justice reforms was quite limited. Respondents suggested that they tended to be in their *"own little bubble"*, focussing on their own job (preparing evidence and presenting it in court). None of the interviewees recalled ever being given any information on the reforms prior to them being introduced:

> *"I think I need to put my hands up and say I was not knowingly aware of any reforms or any changes. Something may have been circulated at the time, but maybe I read it at the time and did not fully take in any implications for us."*

3.5 On understanding the specific reforms, respondents suggested that, since they do not tend to see the case from beginning to end, there was much about the reforms that meant nothing to them.

3.6 All interviewees said that **direct measures** and **fines enforcement** did not affect them. They were very rarely aware if the accused was appearing on **bail** or an **undertaking** and were often unaware of the outcome of cases (if they wanted to find out they had to seek the information proactively).

3.7 Although not feeling that **bail** impacted directly on them, experts did have quite strong views on their perceived impact of changes to the system, which

[10] The sample was accessed via the Scottish Police Services Authority and so was skewed towards their employee profile, rather than representing the wider expert witness community.

mirrored those expressed by support staff, i.e. that for some, there simply would be no fear of consequences for breach, regardless of how harsh:

> *"A lot of them just go wild, because they know they will be convicted and go to prison [anyway]."*

3.8 Similar to members of the public, whose views are discussed in chapter 5, some experts commented that the consequences of breach of bail did not appear to be a deterrent for offending during the bail period:

> *"It's more open than it should be - people continually flout their bail by committing further crimes. Someone can have four bails and we're still finding their fingerprints at scenes while on bail."*

3.9 Although not specifically related to **undertakings**, at the general level of 'getting cases to court more quickly', some experts perceived that this was putting them under extra pressure:

> *"At the moment we do not have the capacity to turn things around that quickly for these types of cases [summary], and do all the solemn work that we have to do as well, and that's what it is, a juggling act."*

3.10 Experiences of being cited to court were only for High Court or Sheriff court cases, and so these interviewees had little awareness of, or comments on **lay justice** or JP courts. Nevertheless they had some interesting observations on cases being moved 'downward' in the system, not from Sheriff to JP Courts, but from High Court to Sheriff courts:

> *"I do get annoyed at times when cases are put under summary procedures, when really they should be under solemn procedures…It's the same as putting someone to JP court instead of Sheriff court."*

3.11 As expert witnesses have input to disclosable summaries of evidence, they tended to have greater awareness of and be more affected by changes to **disclosure**. The interviewees felt that this reform had increased workloads or, at least, had led to the need for quicker preparation of evidence, and to tighter deadlines.

3.12 In general, the main issues appear to be: greater time pressure, as evidence was needed sooner; some unnecessary work being requested; and lack of guidelines on what level of evidence is needed.

3.13 On speed, one respondent commented:

> *"You can try to be too fast as well as too slow. What is most important is to be pragmatic and realise that if a lot of forensics are needed, then it can't be done within 28 days…With reforms to the fiscal service this may be able to be done and we will be able to see things [working] in more of a joined up manner."*

3.14 On unnecessary work, an observation was made that:

"Compared to what we used to do, we really have to be answerable to everything, even if it's not relevant. If you go into a scene and do nothing, you still have to write a statement saying you did nothing."

3.15 There was a feeling that there was perhaps more evidence provided than was necessary and that more efficiencies could be achieved if experts worked more closely with Procurators Fiscal:

"It's a laudable thing to achieve but I'm not sure if what we're doing at the moment is actually the most efficient way of doing it. As scientists, what we have to do is ensure that all information that needs to be disclosed is revealed, and it's up to the fiscal what is actually used."

3.16 On guidelines, comments included:

"Disclosure has been a huge impact work wise, as far as we can ascertain. We don't know what the courts will accept, what they won't accept and we're just having to do what we think is right. It's causing us problems at the moment, it's like the "blind leading the blind" at the moment."

"As a supporting organisation we have been pushed by the police and the law to implement disclosure but we have had to do so with very limited guidance."

3.17 Such comments suggest that more guidance may be needed, although other respondents were pragmatic in understanding that requirements would vary by case and suggested that this was perhaps why guidance had not been forthcoming.

3.18 On the overarching objectives, there seemed to be reasonable agreement within this group that there was little change in terms of **effectiveness, speed** or **efficiency** of the summary justice system. Indeed, this was the only group consulted in the evaluation that did not consider that an increase in speed of the system was necessarily an improvement:

"They want to speed the system up but to do that they have to bear in mind that the work still needs doing. It's all very well tidying up the system and getting things through quicker, but they've got to be aware of the work that needs doing between incident and trial".

3.19 On **fairness**, some comments were made about how the system still seemed to favour the accused, and there were some clear messages regarding the way that lay witnesses and victims who appeared in court were treated:

"I just don't think witnesses are getting proper protection in court. They [defence] attack their credibility and integrity."

3.20 Experts shared the view with support and advice colleagues that the system is currently unfair to victims and witnesses, especially for vulnerable witnesses:

"They [victims and witnesses] are treated badly in court. They [the defence] ask ridiculous questions, pick on the vulnerable, especially youngsters and especially cases of a sexual nature."

3.21 Again, there seemed to be a view that there was no noticeable change in the way that victims and witnesses were treated post reform in terms of fairness, and a view that there was room for improvement.

3.22 On **simplicity**, experts involved in the system said that they considered it was 'cumbersome'. Many tended to focus on their own specialism and to familiarise themselves only with the protocols relevant to their role in the justice process. They did not necessarily proactively seek to learn about the wider system practices or processes since this was outwith their remit. The preference was, instead, to ensure that they were operating as efficiently as possible in their own role, on the assumption that others would do the same elsewhere in the system. This behaviour seems to have been driven by a perception that the system was, as a whole, too complex to fully understand.

3.23 The main facets of the system that respondents' perceived as causing unnecessary **inconvenience** were: being cited at inconvenient times; difficulties informing the court that they were unable to attend on the designated days; being cited when not needed; and being cited for long periods of time, when the actual time input required was far less.

3.24 As with lay witnesses, there are still numerous occasions when experts are cited and are not needed:

"There have been about three or four times where I have been required, so you go and get your suit on, get the case file and then you get there and you sit in the witness room for a few hours and then they say 'We don't need you'."

3.25 This seemed to be a frustration for several of those interviewed and it was discussed that, although things had in principle improved, in practice there were still instances that caused serious personal inconvenience.

3.26 The practice of two hour notification, where it was in place, seems to contribute a lot towards reduced inconvenience for expert staff:

"I get so many citations I note them in my diary, but that's as far as it goes cause we have a local agreement with the Fiscals that even if we are told we are on standby for court we don't actually have to turn up on the morning. We basically have a two hour standby agreement where they will ring us and say we need you in two hours, so for most citation I don't look at anything unless I get a phone call saying we need you, in which case I would get the case file out and look at the report."

3.27 Although this system does not prevent people being cited at times when it is not convenient, or at short notice, it does mean that less time is wasted by

staff who do not need to 'block book' time off for court and it also overcomes some of the problems of being cited when not needed.

Police Witnesses

3.28 Professional witness interviews were limited to the police and a total of 12 police officers took part in the research. Although the police provided much insight into impacts of the various reform areas on their day-to-day role, which will be covered by the specific evaluations in those areas, they also provided some specific insight into how the changes impacted on their role as professional witnesses.

3.29 On **legal aid**, officers felt that there had been an increase in the number of guilty pleas, and this meant that there were fewer citations to court for officers – something that was welcomed. Despite that, some examples were given of cases where late pleas still occurred:

> *"When in court, you sit about for hours with a lack of information as to what is going on, whether the case is going ahead, etc. You may appear at court for the same case several times and be sent away and on the odd occasion you will give evidence, but more often than not you will be sent away [being told] the accused has pleaded guilty. Makes you wonder, 'Why did I have to be cited three times for them to then get a guilty plea?'"*

3.30 As with experts, the police also expressed some concern that **disclosure** may be generating some 'less than useful' information, in the eyes of the police and, as witnesses who input to those summaries, may be wasting their time:

> *"We just have to disclose pointless statements that don't mean anything to anybody, but it's 'cause we now have to disclose everything….We seem to be spending a lot of time writing statements and disclosing things which can only be deemed as irrelevant. It means losing staff hours at a time."*

3.31 On **lay justice**, police witnesses were more likely to have experience of appearing as witnesses in JP courts than their expert witness colleagues. Unfortunately, these experiences do not seem to have been positive and this was creating negative perceptions of the appropriateness of more summary cases being moved to JP courts. For example, officers perceived that JPs' lack of experience with some of the more complex cases has the effect that they are spending more time questioning police in court in order to establish facts about standard police operating procedure rather than specifics of the case at hand.

3.32 Indeed, some police officers expressed views which suggest that appearances at JP courts were personally more challenging than appearances at Sheriff court for this reason:

"I personally prefer a professional Sheriff as opposed to a Justice of the Peace…it's a bit of a free for all in a Justice of the Peace court."

3.33 On the **overarching objectives** (i.e. fair, effective, efficient, quick and simple) police views again mirrored those of support and advice staff and expert witnesses - that is, that the system had not changed significantly in any of these regards.

3.34 In terms of **fairness** of the system, police considered that there were probably many witnesses who were extremely reluctant to come forward again because of their previous experiences of the system and feeling that they have been badly treated:

"The system is still weighted in favour of the accused, and victims and witnesses get a raw deal on a number of occasions."

3.35 In general, the system was perceived to have become **speedier** but **confidence** in the system as a whole has perhaps still not been achieved, primarily because is it perceived that too much business is being scheduled for court days with no realistic prospect of all cases being heard.

3.36 Again, as with expert witnesses, **inconvenience** was mostly seen to be around unnecessary time spent preparing for court in cases where pleas *"on the day"* meant that the witness was not needed. A "stand-by system" (where officers are rostered for court but wait on stand by at their local office for a summons, if required, to give evidence) was seen as better than having to wait in the court building. [11] Also, like expert witnesses, there appeared to be inconvenience around being cited during periods of annual leave where staff were unsure if they would actually be required:

"You get phone calls to appear at short notice – legally you should have 48hrs notice and doesn't always happen. In general you are given a citation and, if it's following procedure, its citation to appear on the Monday, but you may not be needed on a Monday. You may have to sit for 2 weeks, really cited for 2 weeks. That can affect family life; having to cancel holidays, etc. because of it. If the trial progresses and if it's a lengthy trial, it finishes for the day and then prosecution sits down and arranges for the next day, you then may get a call at 5.30pm to attend for next day. That's the amount of notice you get."

3.37 This aside, police did comment that they were perhaps being cited slightly less frequently post-SJR:

"Generally, for police officers, the volume of citations has gone down slightly [post SJR], the number of times police officers have had to turn up at court has gone down anyway".

[11] Attempts to reduce police time in court as witnesses is also currently being addressed as part of the ACPOS led multi-agency national criminal justice efficiency 'Making Justice Work' programme within the 'Getting People to Court' project

3.38 This perceived decrease is not evidenced in the KPI data (see Appendix B) which shows that nationally, police citations and repeat citations post-SJR have, in fact, remained reasonably steady. The perceived decrease may actually be due to a number of factors, including a higher percentage of guilty pleas at pleading diet which will mean that witnesses do not require to be cited, changes in guilty pleas at intermediate diet resulting in witnesses being countermanded or late guilty pleas at trial diet which need no further citation. Further research would be required to compare the actual progress and volume of cases pre and post SJR to explain what, on the surface, appears to be an anomaly between perceptions and the KPI data.

3.39 Overall, professional witnesses (namely, the police in this instance) seemed to perceive that SJR was working, to some extent:

> *"There has been a bit of oil put on the wheels somewhere and it does run more quickly and more smoothly than it did before."*

4 THE VIEWS OF VICTIMS AND LAY WITNESSES

4.1 Interviews were sought with a spread of victims and witnesses across Scotland to explore their experiences and perceptions of the summary justice system. The focus was solely on victims and witnesses who had been involved in summary justice (as opposed to solemn or civil justice) and on those who had been victimised post-December 2007, in order to capture data on experiences post-SJR[12]. Some of the victims who were recruited had also been witnesses in court, and so were able to comment on the two separate experiences. Many of the victims had also been victimised on more than one occasion which meant that they had multiple experiences of the summary justice system on which to base their responses. Importantly, in such cases, it was felt that victims may be able to comment on their experiences and perceptions of the system both pre and post-reform (if their earlier encounters had taken place before December 2007).

4.2 In presenting the interview data that resulted, there are several caveats that must be applied. Firstly, although the research hoped to reach some people who could comment on repeat victimisation both pre and post-reform, it is important to remember that recollection of the timing of separate events may have been difficult for some of those interviewed, and there may have been some further confusing of different cases that occurred both pre- and post-reform, simply as a result of victims' multiple experiences with the system.

4.3 Secondly, a total of 26 victims and witnesses took part in the research, including victims of a broad range of offences ranging from bike theft to assault and witnesses to such crimes as shoplifting and fraud. Again, it is important to stress that this was never intended to be fully representative of victims' and witnesses' experiences, instead this chapter offers an insight into the views of just some types of victims and witnesses from across the country. In reading the findings, the subjective nature of the data needs to be borne in mind.

4.4 Finally, some of the victims and witnesses who were interviewed had previously been engaged with the system as an offender. This meant that, to some extent, the data captured from victims may have been influenced by experiences of the system from an offender perspective as well as a victim's view. Due to the recruitment methods used, it was not possible to screen out those persons who had previously been involved with the system as an offender and victim, and so the only way of controlling for this was to try to focus the minds of respondents during interview, as far as possible.

Overall Experience with the Justice System

4.5 The majority of respondents reported that their most recent experience with the Scottish summary justice system was as a witness. A few respondents

[12] This component of the research complemented other work being undertaken by the ACPOS led multi-agency national criminal justice efficiency project 'Getting People to Court' which is being managed under the Scottish Government's 'Making Justice Work' Programme. This project specifically explores factors affecting witness attendance at court and ways of improving attendance.

had been both a victim and a witness, and only one participant was solely a victim.

4.6 All respondents were initially asked to attend court in relation to the incident they had been involved in, although not all made it to court. One participant was subsequently advised, by telephone, that they did not need to attend court after all. There was no explanation given, and the participant received no further information, so they remain uninformed of the outcome of the case. The respondent, a victim, was *"mildly disappointed"* with no information on the sentence. Their overall view on the credibility of the judicial system did, however, remain relatively high because they felt the police had performed excellently by preventing the theft and catching the offender.

4.7 In most cases, respondents only had to attend court once; however, two needed to return at a later date. One participant was told on his first visit to *"go away"* and return the next day. Both respondents were annoyed by this and felt that someone could have advised them beforehand that they would not be required on the initial date:

> *"A little phone call would have been nice because I am quite a busy guy. It was a big waste of everyone's time and money. I employ a hundred people and have a large company and I had to cancel a meeting down south to go to court. That could have physically cost me £500 to £1000, but I didn't mind going to court; all I would have liked was a little phone call".*

4.8 Similar sentiments were expressed in relation to the timings of being asked to appear at court, and the inflexibility of the system which can mean that victims or witnesses are inconvenienced and feel that they 'lose out twice' as a result:

> *"I was a bit disappointed with it because I had to cut my holiday short. I got nothing out of it except a broken nose and a wrecked holiday."*

4.9 Feelings of general inconvenience were also matched with comments about feeling victimised twice over, due to the stressful nature of being called to court:

> *"I was a little shocked at how little appreciation there was for how stressful being a witness is. By the time I had read all the information I felt like I was the one who had committed the crime".*

> *"I just remember having to sit in the witness room for hours before it came to court. We weren't allowed to leave the witness room and it almost felt like we were the criminals".*

4.10 Another witness reported that having to sit in the same waiting room as the accused whilst attending a Sheriff court had considerably tarnished their experience of the summary justice system overall:

> *"They put me in the same room as the accused who I was giving evidence against which I didn't like. I thought 'How stupid is that?'*

Imagine if it was for something more serious. I was a bit disgusted by that. Obviously you are going to be in the same building, but the same room? That could totally tarnish or taint someone's experience and my experience, I'm afraid to say, was not good".

4.11 Other comments related to the general atmosphere in the court building, rather than the case experience, and these wider environmental cues may have impacted on the overall experience:

"I was very surprised at the number of people floating about, and mostly youngsters I have to say, with a laid back attitude. They don't seem to have much respect for the law. I was dressed in my best suit and I felt out of place".

4.12 Such sentiments reflect what were generally negative reactions to the court experience, although some of these relate less to specific reforms, and more to generic environmental, timing and accommodation issues. This is important since it perhaps indicates that, regardless of improvements made to the speed and efficiency of the system, the initial sensory and practical components of the court visit and court environment can result in overall negative perceptions of the system.

4.13 Interestingly, where respondents provided positive feedback about their recent experience with the summary justice system, many attributed this to their dealings with the police:

"The police were fantastic. They understood how I was feeling about it all".

"I would say the police were great. That side of justice was great. The police seemed really keen to do something to get charges against the guy and get as much evidence as possible".

"The experience was good, I cannot expect more of the justice system. The police did a lot of things for a small crime, and the letters from the Sheriff court were clear, so it was good".

4.14 This shows that experiences early in the system may be important in driving overall positive perceptions of the summary justice system. The feedback suggests that, from the participants' point of view, the attitudes and activities of the police met their needs as victims and witnesses and succeeded in starting them on a positive path in their justice experience.

A Fair System?

4.15 Where respondents felt that the system had been fair, this related mainly to police and support organisation contact and being kept informed of case progress and what was required of them:

"My complaint was taken seriously [by police] and they did everything they could until they caught the guy, so I've got absolutely no complaints about that".

"It was fair to me. I had the police checking on me every day".

"It's fine, because the people that volunteer are really nice, and you're treated fairly".

4.16 Instances where people felt that the system was not fair related mostly to the outcome of the case and a perceived lack of compensation for the victim:

"Reasonably fair, but I wouldn't have minded some compensation to be honest".

"Justice was done to an extent. I mean the boy got charged, but from my point of view, I got nothing out of it".

4.17 Such sentiments highlight general perceptions around the need for personal satisfaction (including monetary compensation, an apology or a sense of justice) in order for victims to feel that the system is fair. They also indicate a lack of awareness of compensation and the basis on which it is awarded.

An Effective System?

4.18 There was a general feeling that the summary justice system is not wholly effective in deterring, punishing and helping offenders change for the better because, more often than not, the system is dealing with repeat offenders:

"I've been to court three or four times for the same people".

"In general I would say that sometimes they get off a bit light".

"Sometimes the justice system does not work, people get more time in prison for lesser crimes, and there is less rehabilitation in prisons".

4.19 Interestingly, as with sentiments expressed by professional, expert and support staff, there was a feeling that some accused are simply too familiar with the system, and its loopholes, which impacts on effectiveness:

"To an extent, but they are smart enough to know how to work the system".

"Because I was never called to court, I don't know what the actual outcome of the court case was so I have really no idea. I do know that he had about five or six other outstanding convictions, so it doesn't seem to be doing him much good".

4.20 There was some indication that people felt that there remained flaws in the system that allowed cases to be dropped, and that this was often, in some way, the fault of professionals involved in the system:

"The case fell apart, because the right people weren't called".

"I don't know what the answer is, but I feel sometimes that the police are let down by the leniency in sentencing. The police put in a lot of work and they must feel pretty frustrated when they [the accused] are just given probation or something like that. There is sometimes a need for people to have harsher sentences for their own benefit".

4.21 There was also some hint that accused were managing to manipulate the system to their advantage:

"You turn up at court and you know fine they [the accused] are going to plead guilty. You sit about and then they plead guilty and that annoys me. That's a complete waste of time and a couple of times I've had citations sent and the Procurator Fiscal has known a couple of days in advance that they [the accused] have pleaded guilty and you turn up at court, sit about for a couple of hours and they still turn round to you and say, 'Oh, they pleaded guilty the other day.' Basically, you've just wasted a day".

4.22 Where the system was seen as being effective, this was mainly linked to positive case outcomes:

"I had been taking it [abuse] off him for forty-odd years, and it [the abuse] stopped after the last time, so something good came out of it".

"He eventually pleaded guilty prior to the case being heard so I guess that was effective".

An Efficient System?

4.23 With regard to **efficiency** in the use of their time and that of others, many respondents felt that the summary justice system not only subjects people to a lot of time wasting, but it is also costing taxpayers a lot of money:

"A lot of the shoplifters are drug addicts and they get Drug Rehabilitation Orders and you know fine well it's not going to make any difference to them. Sometimes it's just pointless and sometimes, for the value of the stuff they are stealing, it probably costs us more money to go to court and put them through the system".

"It was a complete waste of time and money".

"A lot of time wasted in the courts but not much can be done about that when offenders do not turn up. This is especially true for policemen – there were a lot of policemen sitting around all day waiting to see if they would be required; seems like a waste of time".

4.24 In essence, there appears to be frustration both with the fact that some cases are called to court which could be dealt with earlier or by way of a direct

measure, and also with the time wasted due to accused failing to appear while professionals and civilians do turn up, also at a cost to the system.

A Quick and Simple System?

4.25 Respondents generally had mixed views on the ease of the summary justice system for them as a victim and/or witness. People generally acknowledged that there are no simple answers when it comes to justice, but that, in terms of what was required of them directly, things were quite straight forward.

4.26 Where people had been in contact with support services, including VIA, they felt that they had a good understanding of what was going on throughout the duration of their case progressing through court:

> *"They were most helpful in phoning me with any bit of information. The Procurator Fiscal took me through each step and each time the case was finished they would phone me up and let me know the progress and what was happening and they would also put it in writing".*

> *"There are always plenty of people around the court. At the likes of Glasgow Sheriff court, there are plenty of Witness Service people wandering about and telling you what to do. If you go to the District courts, the Ushers and the Court Officers are normally quite good."*

4.27 However, some respondents had little understanding or awareness of either the actual criminal and court process, and their involvement with the case. One witness reported that they had never heard of the person named in the citation that was sent to them, nor did they have any recollection of ever being a witness to a crime. Other respondents were uncertain of why they were called to court, whilst others had no knowledge of the process, nor outcome:

> *"I wasn't really kept informed. The only people that kept me informed were the police. They kept me more informed than anyone else in the justice system".*

> *"I had no idea what I was called to witness for, or against".*

4.28 The same was true of others contacted by the researchers to take part, who simply stated that they could not recall having been involved in a crime, as a victim or a witness, and so were unaware of why they were on the COPFS database.

A Credible System?

4.29 Unfortunately, those participants who were poorly informed felt that they could not comment on the credibility of the summary justice system because they did not know what happened to the accused.

4.30 Where people did comment on the credibility of the system, their views suggested that, whilst some aspects of the system are viewed favourably, the system as a whole is perhaps not perceived to function as expected:

"I'd say the police were great. I'm happy with the police, especially the CID side. They understood where I was coming from and they explored all the evidence I had to give. But I would say that when that evidence is given to the courts, it's undermined, it's not listened to and it's not looked at favourably. I mean, why would a guy like me who is a good, upstanding citizen be lying against a guy who has got convictions the length of your arm. He was done for selling heroin, breaking into houses and they are looking at me as if I'm the liar. I was put on the same pedestal as that guy and I'm questioned from his lawyers as if I'm telling lies. It shouldn't be that way. I feel as if the rules bend too much towards the criminals".

4.31 Other general comments expressed by witnesses also echo this view that some witnesses feel that their testimony is not being regarded as credible and that they are being undermined when giving evidence (either by the courts, the defence or the Fiscal). Some also indicated that they felt that they were being 'attacked' and felt unsupported in the court room when giving their evidence. Feeling unsupported as part of the process impacts on the overall perception of the system:

"Didn't think it was fair to me. The witness should be supported and made to feel that their role is important".

4.32 This perhaps points towards a need for witnesses' expectations to be better managed, and for more information to alert them to, for example, their likely interactions/lack of interactions with both prosecutors and defence agents.

4.33 Many respondents commented on the way proceedings were managed in court as also being an influencing factor in the perceived credibility of the system:

"Proceedings were okay apart from the PF asking me questions about the theft and trying to get me to drop the charges. He was trying to make out that we couldn't really prove it, so I had to explain to the PF why we could prove it".

"The Justice did not really seem to know what he was doing and was taking a lot of advice [from the legal expert]."

4.34 In both cases, Fiscals and JPs were not viewed in a positive light in terms of their conduct in court. This aside, in general terms, only if the outcome was known and matched the perceived severity of the case did people consider that the system was credible.

Time Between Incident and the Final Outcome

4.35 As outlined above, several of the reforms were designed to reduce the time taken between incidents occurring and a verdict being reached. As not all respondents could comment on the length of time between the incident and the final outcome (because more often than not, respondents were unaware

of the outcome of the case), many commented on the time from the incident up until they were told they were not required anymore.

4.36 One witness explained that after an incident that took place in August 2009, it took until June 2010 before they received a letter to say that they were not required anymore. They did, however, comment that *"It's what I would have expected. I know the courts are extremely busy".*

4.37 Respondents who were aware of the outcome of their case and the length of time between incident and final outcome was six months or less, were generally satisfied:

> *"At that time it was a very busy period and it was dealt with quickly".*
>
> *"I guess it was about what I expected – I know these things take time".*
>
> *"The quicker the better".*

4.38 Where respondents knew that the length of time between incident and final outcome was over six months, they tended to be generally less satisfied:

> *"I would say I am dissatisfied with this length of time. It's an incredible waste of time and for someone like that to still be roaming the streets is just ludicrous".*
>
> *"Could have been a bit quicker".*

4.39 In contrast, however, one respondent reported that it had taken almost a year from incident to final outcome but they were not dissatisfied with this length of time because they *"could appreciate the amount of work that needs to go into these things".* They commented further that it would be *worse "if they took things too quickly without the proper evidence".*

Inconvenience Experienced During Case

4.40 Although a small number of respondents had not experienced any inconvenience during their case at all, the majority of respondents reported that they had experienced some form of inconvenience at some stage in the process:

> *"The only time I was inconvenienced was when I turned up and was told to go away because it had to be re-set for another date and I had to wait for them re-contacting me to tell me when that was going to be".*
>
> *"I don't understand why people are asked to be at court so early in the morning if they are not actually going to get dealt with for quite a considerable time afterwards".*
>
> *"You get fed up sitting about, you know, I mean you wait a really long time…we were there from early morning".*

4.41 One respondent explained that they have repeat experience of turning up at court to find out that the case is not going ahead because the accused pled guilty beforehand:

> *"That does get really annoying and that's happened a few times".*

4.42 All of these views echo those expressed by victim and witness support staff, and by police and expert witnesses and suggest that there is still considerable room for improvement in ensuring timely notification of whether cases are expected to proceed on the days scheduled.

Information Received on Progress of Case

4.43 On the whole, respondents reported that they had not received any information on the progress of their case at any time leading to feelings that they were "just left hanging" or "left sitting":

> *"No progress until the man pleaded guilty".*
>
> *"Once, when a witness hadn't turned up, the Ushers asked me if I had a phone number for him and I phoned the boy and he came, but other than that; no. You only really hear when your name gets called out or when the case gets called and if it's going ahead or if it's been cancelled".*
>
> *"No, I never received any information at all".*

4.44 When asked what further information they would have liked, respondents were overwhelmingly keen to stress that they would have liked to know what happened to the accused in the case:

> *"I would like to know what actually happened. I still, to this day, don't know what happened to the guy. I just went and did my best and I have received nothing from anyone regarding that case".*
>
> *"To know the outcome of case".*
>
> *"Updates on what was happening with the case and also to be told the sentence".*
>
> *"Would like to know what happened to the offender".*

4.45 Another respondent felt that they would have also liked more information earlier on in the proceedings:

> *"After he was arrested, to actually know if it was going to go to court or if he was going to be charged because from the time he was taken away in the van, my next piece of information was the letter to go to court".*

4.46 With many respondents reporting that they had not received any information on the progress of their case, it is not surprising that many indicated that this is the type of information that they would have liked to have had:

> *"I would have liked some written confirmation to keep and also some sort of progress update".*

> *"I would have liked someone to have updated me at court about when I might be called".*

4.47 One respondent who was cited as a witness explained that they had absolutely no idea why they had been called or what the case was about and they would have liked their citation to contain more information:

> *"More information about the case and why I had been called as a witness. I was not impressed by that aspect at all".*

4.48 As it stands, only witnesses who are supported by VIA receive information proactively although all victims and witnesses can ask the Procurator Fiscal about the outcome.

Assistance from a Support or Information Organisation

4.49 Although the majority of participants felt that they did not require any emotional or practical assistance from an information, support or advice service or organisation, those that had taken up the offer of support were generally very satisfied with what they received:

> *"They made me feel at ease and that I was not to blame in any way".*

4.50 Despite not actually having to give evidence in court, one victim explained that they were initially very apprehensive about the possibility of giving evidence in the same room as the accused; however, the support they had received had helped them enormously:

> *"The girls at the department were going to arrange for me to go in through separate doors and also for me to have a look around before the case. They showed me how the cameras were set up and how the video link worked".*

4.51 Where people had interacted with information, support and advice organisations, their overall experience seemed to be improved:

> *"To me as a witness I have no complaints whatsoever. They treated me with the utmost respect I would say".*

4.52 One victim stated that they would have liked to have received emotional assistance that was more personal rather than just been treated as another statistic in the system:

"I would have liked to be reassured that I was safe and that my stress regarding the case was not unusual – I felt very alone and felt that the system was very matter of fact and didn't take my feelings into account in any way".

4.53 Such comments suggest that support is perceived to be important throughout engagement with the justice system, and not just as being the responsibility of dedicated information, support and advice services. The data also show that receiving appropriate information, support and advice seems to have a considerable effect on overall satisfaction with the justice system experience and, where such support was absent, the experience seemed to be far less positive.

Perceptions of Specific Reforms

4.54 Where respondents had been made aware that the offender was given a **fine**, only one respondent was fairly confident that the fine would be paid as the offenders "weren't short of money". In the majority of cases, however, respondents were doubtful that fines would be paid:

"I have no idea if it was paid or not, but he probably never paid it".

4.55 **Direct measures** (DMs), introduced under SJR, provide alternatives to prosecution that can be offered to an alleged offender either by the police or Procurators Fiscal. They include anti-social behaviour fixed penalty notices and formal adult warnings (issued by the police) and Fiscal Fines and Fiscal Compensation Orders (offered by the Procurator Fiscal). They are intended to contribute to fewer minor cases going to court unnecessarily, thus freeing up the courts to deal with more serious cases.

4.56 Many respondents were in favour of direct measures as long as they were used to deal with low level crimes or first time offenders:

"I think that this sounds like a practical idea, especially for first time offenders. We are all capable of making a mistake and being charged with something and it's sometimes not practical or necessary to go through the courts system (using massive amounts of tax-payers money) when the person may never offend again. However, I think if someone is a repeat offender then they should be dealt with more severely".

"If it's somebody that's been drunk and disorderly and a bit too loud, then I think a fine is a good way of dealing with it rather than taking it to court. I would say that's a good strategy".

4.57 Another respondent commented that direct measures are fine so long as the victim is informed that this was the outcome.

4.58 Those who viewed direct measures less favourably felt that offenders were generally being let off lightly by being dealt with in this way:

"I don't like the 'wee pat on the head' attitude. If they did the crime, then they should do the time".

"Where do the people concerned get the money to pay the fines? They steal to pay their fines and I think warnings fall on deaf ears. Like that guy in particular; he had about six outstanding convictions. He must have been warned about them and it's not doing much good is it?"

4.59 The types of cases that respondents felt should be dealt with through the court system rather than a direct measure were serious assault cases, rape cases, damage to property/house breaking and especially cases that involve repeat offenders. It should be noted, however, that many of these case types would routinely be prosecuted in either the Sheriff Summary or Solemn Courts (High or Sheriff and Jury), and direct measures would never be considered in these instances:

"I would say any serious crimes where there has been injury to people or to property even".

"Repeat offenders. Physical injury to a person or an animal. Causing a person psychological damage – frightening them or repeated verbal/mental abuse. Any crime committed on a child or elderly person. Any crime above a certain value. Any crime that could have potentially harmed a person or an animal".

"If they do something to old people like con them on their doorstep, then they shouldn't get the option; they should go straight to prison, but the jail is that full of them".

4.60 A few respondents were unsure if direct measures are a good or a bad thing:

"I think it is a bad thing [compensation orders], but then again I am getting money back from it so I guess I am in two minds. I'm not getting the amount back that the bikes were worth".

"Maybe they [direct measures] can be a good thing. It depends on the crime, but I think if someone has assaulted someone, then they should do time for that, not just get a slap on the hand. They've got away with it. That's how they see it".

4.61 Respondents' experiences of **bail and undertakings** were very limited, and most respondents were unaware if the accused in their case had been given bail or was released on an undertaking. Of those who thought that they did know, one commented that they only knew this because they had seen the offender leaving court on the day[13]:

"Yes, he was definitely given bail. I know because I saw him walking out the actual court".

[13] The accused could, however, have been released from court without bail conditions being set.

4.62 One witness also suggested that knowing this information might not necessarily be important for 'neutral' witnesses, but would be more important for victims:

> *"It didn't bother me that he was released on bail, but I think if I was a victim it would bother me".*

4.63 **On legal aid and disclosure,** only one respondent provided some insight into the stage at which the offender pled guilty:

> *"The offender waited until a couple of witnesses were questioned, they went for lunch and by the time they went back to court; he had pleaded guilty. The offender dragged it out as long as he could".*

4.64 Again, such views suggest that there may be a perception that offenders are manipulating the system to an extent, including manipulating use of court time on the day of trials (perhaps 'delaying the inevitable').

4.65 Respondents had attended both Sheriff and JP courts and, among those interviewed, many were generally happy with the level of court that their case had been assigned to. This suggests that reforms to **lay justice**, and the movement of some cases from Sheriff to JP courts was not something that had negatively influenced victims' perceptions in all cases. This provides a contrast to interviews with information, support and advice staff that suggested that, for some, the allocation to JP courts was not well received.

Interviews with People Awarded Compensation

4.66 As part of the research, special arrangements were made to speak with a sample of victims who had been awarded compensation as a result of reforms to direct measures. Fiscal Compensation Orders (FCOs) are usually used for lower level crimes and provide an alternative to a court prosecution. Specifically, as part of the reforms, FCOs were introduced for cases involving damage or loss of up to £5,000 along with combined orders (FCoOs) of up to £300 fine plus £5,000 compensation. If offered the opportunity to pay compensation, the offender has 28 days to accept or reject the offer. If he or she does not refuse it, it will be deemed to be accepted and the order will be registered against their name. If the Order is refused, the case will be reported back to the Procurator Fiscal for further consideration and appropriate alternative disposal. Fiscal Compensation Orders are disclosable to the court for a period of two years, which means the court can be told about this on conviction.[14]

4.67 In total, five people were interviewed whose case was marked as requiring a compensation order to be paid. Of the five people interviewed, three were victims, and one person considered themselves to have been both a victim

[14] The Judiciary can also make provisions for compensation to be awarded by the court along with the Criminal Injuries Compensation Authority, a government organisation that can pay money (compensation) to people who have been physically or mentally injured because they were the blameless victim of a violent crime.

and a witness. The other respondent classified themselves as a witness only, although the award of an order in their case by the Fiscal means that they must have been a victim too. This perhaps highlights some of the misunderstanding in victims' and witnesses' own minds regarding the circumstances in which a compensation order can be offered to the offender.

4.68 The views expressed by this sample of victims were much the same as those expressed by the other victims and witnesses. The majority of these respondents reported negative overall experiences with the justice system, with the main grievance being dissatisfaction with the outcome of their case:

> *"Getting a slap on the hand and a £100 fine is not really a punishment. To some people that's nothing".*

> *"Some people might think, 'Why would I want a compensation order?' Money isn't going to get rid of my bruises and my humiliation. And what would that compensation order be; a hundred pounds, maybe two hundred pounds. It's just not on".*

4.69 Being left in the dark about the progress of their case was also a source of annoyance amongst compensation order payees:

> *"I've had no feedback apart from a letter. It hasn't gone to court and it's been 13 months now. I've not heard a word from the police or the justice system or anything about compensation. Quite frankly it's ridiculous now".*

4.70 The one area that was considered unfair among compensation payees was the perceived 'choice' given to the offender whether or not to accept the offer of a compensation order as an alternative to prosecution in court, a decision over which the victim has no influence:

> *"It was okay. I was just worried about my wife. She was quite shocked about it. She kept thinking he was coming to get us because he kept shouting 'I've got your number. I'm going to follow you and beat you up'. They gave him the option to pay compensation or face a trial. He opted to pay a fine and my wife was annoyed about it. She would rather have gone to court because she is disabled and it affected her quite a lot".*

4.71 Among those awarded compensation, there was also not a great deal of confidence that compensation would be paid, and one respondent where the offender had opted to accept a FCO said that they were "*Not very confident at all"* that it would be paid.

4.72 In another case, where the respondent had been paid their compensation straight away, they were still dissatisfied that this had been the outcome of the case:

"I got a cheque straight through the door with the letter. I didn't even want the £100 to be honest. I would rather have seen the guy in jail for six months. It's a joke basically".

4.73 Many of the respondents were sceptical about whether or not the summary justice system is effective in deterring, punishing and helping rehabilitate offenders, with many suggesting that offenders are receiving light treatment by being given a direct measure:

"It's always the easy option. If they get a fine they think they've got away with it".

4.74 Some respondents had issues with the apparent simplistic nature of the summary justice system, commenting that they did not understand what was going on:

"It was a bit confusing. We didn't know which way it was going and all of a sudden we got a letter saying that he had been fined even although we hadn't been to court. We didn't understand".

4.75 Unlike other victims, compensation order payees were generally satisfied with the time between the incident and the final outcome. This did not seem to soften the blow in terms of outcome, however, for those who felt the order was too lenient:

"I was satisfied with this time, but not with the outcome".

4.76 The main complaint for compensation order payees was a lack of information regarding their case. While a few respondents felt that they had not been inconvenienced during their case, those who reported that they had been inconvenienced mainly attributed this to the lack of information sharing within the justice system:

"It's still an inconvenience because if you don't know who to contact and you can't get any progress, then you don't know if it's going on or not going on. It's still a hassle".

"It seems that there is only a certain amount of information that they are prepared to give you. They seem to be all for the perpetrator, not for the victim".

4.77 Again, as with other victims, respondents reported having received either very little or no information on the progress of their case. Unlike other victims, however, the five compensation order payees who were interviewed had not received any assistance from an information, support or advice organisation, either because they had not been offered it in the first place or they had been offered it and felt that they did not need it. Only one respondent reported having had a chat with Victim Support Scotland who had helped them "as far as they could". It is important to note that Fiscal Compensation Orders are only likely to have been used in cases that were considered to be minor and so may not have resulted in an automatic referral to a support or advice

service, which may explain the absence of an offer of support or advice in these cases,

Confidence in the Scottish Summary Justice System Based on Experience

4.78 Levels of confidence in the summary justice system amongst victims and lay witnesses were mixed. Those whose experience had given them confidence in the summary justice system attributed this mainly to their dealings with the police:

> *"As I said, I am a great supporter of the police. I don't think they have an easy job and at no time was I made to feel like a hysterical woman. They were very sympathetic and they understood completely where I was coming from".*

> *"I have dealt with the police over the years on a number of occasions and although I haven't always won my case and I've been let down one or two times, they have been very good".*

> *"Yes, because they are able to catch criminals".*

4.79 However, some respondents who had little or no confidence had obviously had a bad experience with the summary justice system:

> *"It makes me hope and pray that I am never witness to anything ever again. I wouldn't be so quick to report a crime in future for fear of having to be a witness".*

4.80 Another respondent who had little confidence in the summary justice system felt that there are far too many repeat offenders, blaming lenient sentences for re-offending:

> *"Not really. I think it's because of the outcome and cause I see so many of them coming back. They are just far too lenient".*

4.81 Overall, when asked if they had confidence in the summary justice system based on their experience, respondents' views were mixed:

> *"No. You see these reports that junkies are breaking into houses and taking life savings and if they get that person, they go to court and get a fine, but it is very hard for the people to get back what was taken. The result is the victim loses out".*

What Victims and Witnesses Want from the Scottish Summary Justice System

4.82 Respondents were asked what was the single most important thing that they required from the Scottish summary justice system. Primarily, the most important thing that respondents wanted was to ensure that "justice was served" which, as a minimum, requires being informed of the outcome and for their voice to be heard:

"To make sure that he wasn't going to get away with it and that he'd be punished for what he had done".

"I would like whoever is guilty to get prosecuted for the offence, but I feel that the police's hands are tied a lot of the time with so much red tape and nonsense and I'm pretty sure I'm not alone in saying that".

"I just wanted the truth to be told and I just gave the information that I needed to give".

"To keep them [the offenders] away from me and away from my door".

4.83 Compensation Order payees agreed with this sentiment that the most important thing the justice system needed to do was to ensure that "justice was served":

"Proper justice, basically. I think people should do time for their crime instead of just getting a little fine or something like that".

4.84 One respondent commented that as a witness, they wanted to feel safe and appreciated but unfortunately, they "didn't feel either".

4.85 Other examples of what respondents cited as the single most important thing they wanted from the summary justice system included receiving citations to appear in court as early as possible to allow them to arrange childcare in advance, and professionalism from all those involved in administering justice (including the police, court staff and Fiscal employees).

Ideas for Improving the Victim and Witness Experience

4.86 Respondents' suggestions for improving the victim and witness experience of the Scottish summary justice system overwhelmingly related to improved speed and efficiency in the system, significantly reduced cancelled appearances and wasted time and the routine provision of case progress and outcome information to those impacted on by the crime:

"Keep the witness informed. It's as simple as that. Common sense stuff. It's like going for an interview; if it's cancelled, call them up and give them a new date. Just keep people up to speed on what's happening and it would be nice to hear the results as well. If someone has taken the time and effort to come and help with an inquiry, they should at least be given information about what has happened or what the outcome was".

"The only thing for me personally is if they plead guilty to be told beforehand. They could maybe make more of an effort to tell, you know so that you don't have to run about changing days off or go to court to sit and wait and then get told they pleaded guilty last week".

"I hate to see court time being wasted by people who know full well they are guilty and they deliberately go to court to cause a nuisance.

That really needs to be dealt with more harshly. It happens all too often".

4.87 Finally, and on a positive note, one respondent felt that there was little room left for improvement within the Scottish summary justice system:

"I couldn't have asked for anything better of the whole system and even in the presence of the court, the information was 100% and I felt that that really helped me".

4.88 This is important in highlighting that there is great variation in the victim and witness experience, and that there may be regional and other differences in the responses that are provided.

4.89 As a qualitative exercise, these findings were never intended to be generalised to the entire victim and witness population, but what they do provide is an indication of the range of factors that are influencing people's views and experiences of the summary justice system where they have experienced it post-reform.

5 THE VIEWS OF MEMBERS OF THE GENERAL PUBLIC

5.1 The final strand of the evaluation involved speaking with members of the public to explore both their knowledge and understanding of the Scottish summary criminal justice system, and to canvass their views about the reforms that had been introduced.

5.2 Recognising that a large-scale general public consultation was not within the scope of the current work, a qualitative approach was taken. As a result, three separate workshops were held – one in Ayr, one in Livingston and one in Aberdeen with small, mixed samples of the general public.

5.3 Also recognising that knowledge and experience of the summary justice system among members of the general public may be limited or variable, a deliberative approach was favoured. This enabled the research to capture 'uninformed' views of the public, and then, through providing further information and detail about the specific reforms at the workshops, to gather more 'informed' views. The workshop events were attended by expert panellists from the summary justice community, including police, Victim Support Scotland staff, solicitors and others working in the field, who were able to inform discussions at the events and answer questions that arose from members of the public.

5.4 A total of 56 people took part in the general public workshops: for numbers in each area and socio-demographic status see Appendix C. All respondents completed a pre and post-event questionnaire which captured their views of the summary justice system. The quantitative data captured as part of these questionnaires should not be considered as representative or statistically robust. It is presented only to provide an indication of the strength of sentiments that were expressed in the surveys and to support the qualitative data that is summarised thematically below.

Knowledge of the Summary Criminal Justice System

5.5 Overall, participants suggested that their knowledge of the Scottish summary criminal justice system was limited. The pre-event questionnaires showed that the mean rating for how much people felt they knew about the system was 1.8 out of 5 (where 1 was 'nothing at all' and 5 was 'a lot').

5.6 When asked specifically what they knew of the system, typical responses included "not a lot", "not a great deal" or "I don't know anything about it". For the most part, people explained that they had never been involved and so really had no basis on which to comment about what the system entailed or how it worked.

5.7 Even where people did have an awareness of how justice was administered in the courts, there was little awareness of the distinction between 'summary criminal justice' and other types of justice, and the tag of 'summary justice' seemed to be a distraction for some:

"I've heard of criminal justice, but not this 'summary' thing. Criminal justice just means the courts, I think, like the High Court and the Procurator Fiscal, but that's it."

"Never heard of it before, and I've lived here for 19 years. There's a court case, somebody's prosecuted and somebody's charged as a result. End of the system as far as I'm concerned, that's all it is. But I didn't know it was called the 'Scottish summary criminal justice system', as far I was concerned, it was 'go on trial, get tried', so it's rather highfalutin."

5.8 Indeed, a general issue regarding the complexity of terms and language involved in the justice system was raised suggesting that terms in the system, (such as Procurator Fiscal, intermediate diet, unification, Stipendiary Magistrate, etc.) acted as a barrier to making the justice system 'simple' to understand.

5.9 People had no grasp of the range of cases that could be dealt with by summary criminal justice, and there was some surprise that the range included such things as breach of the peace (which people considered as 'minor') to assault, with the latter being considered as far more serious and so in need of a different way of being dealt with. People also felt that drugs offences were quite serious and were surprised to hear them classified alongside such incidents as breach of the peace.

5.10 One of the main things that 'surprised' people about the system when given just a little detail about what fell within the scope of 'summary' justice, was that some cases were heard without a jury:

"I didn't realise that all of the lesser crimes were dealt with without juries and in a different kind of court. I just simply didn't know that."

5.11 For all cases that involved personal harm there was a perception that they would perhaps involve a jury and that they would certainly be heard in court. Overall, there was no-one who expressed a clear understanding of the difference between summary or solemn criminal justice:

"I wasn't even sure about the difference between this and solemn. I had a quick look on the internet before I came out, and I didn't even know they were different until then."

5.12 Information about criminal justice in general largely came from newspapers, the news on television, word of mouth or in some cases through people's working lives. For example, participants included a nurse, a security guard and a social worker who had all had some previous involvement with accused or the courts in a working capacity. Table 5.1 shows the number of people who said that they received their information from a variety of different sources, as detailed in the pre-event questionnaires completed before the workshops.

Table 5.1 Sources of Information about the Summary Justice System[15]

Source	Number of Responses
Newspapers	29
TV – factual programmes such as the news or documentaries	32
TV – drama, e.g. Taggart	9
Friends'/family's experience	9
Own personal experience	6

Base: 56

5.13 Some participants also commented that their views on the system came directly from things they had witnessed first hand in their local communities.

5.14 Some of the workshop participants had accessed the internet to search for information about summary justice and the reforms before attending on the night, and commented on how much information was available if people went looking.

Knowledge of the Reforms

5.15 From both the surveys and workshops, it was clear that there was almost no awareness of the reforms to summary justice, or any of the specific reform areas among the general public who took part. Only 5 of the 56 people who completed a pre-event questionnaire said that they had heard of summary justice reform, and three of those had been online to find out about it only after they had been recruited to the workshop. The other two said that their awareness of the reforms came from the news/work/internet.

5.16 Despite this, a couple of comments were put forward during the workshops which suggested that there was some insight into the reforms, including:

> *"I get the impression it's about trying to get a fine or something dealt with as quickly as possible so that justice is done as quickly as possible. So, to save people a lot of hassle and paperwork, pay a fine, then it's over, as far as I'm aware."*

> *"I've heard of people getting Procurator Fiscal fines more instead of going to court these days. In fact, I know people that have got them [fiscal fines]."*

> *"Recent legislation, I think, trying to keep people out of courts, like, on the spot fines. 'Cause the Sheriff courts are so busy these days, there must be some alternatives."*

[15] Given that most respondents had not heard of 'summary' criminal justice, these responses are more likely to refer to sources of knowledge about criminal justice per se.

5.17 The few people who offered these comments said that their awareness came from knowing people who had been through the system, or who worked in the system.

5.18 Again, as with victims, police and expert witnesses and information, support and advice organisation representatives, members of the public were asked to define and to comment on their perceptions of the four concepts at the heart of the SJR overarching objectives, namely fairness; effectiveness; efficiency; speed and simplicity. It is worth noting that this task proved quite difficult for members of the public who took part and most only felt comfortable when speaking about fairness. Responses provided in the questionnaires showed that people had little or no knowledge or experience on which to base their answers and this resulted in quite limited feedback in relation to most of the objectives.

A Fair System?

5.19 Fairness of the current system for the general public was largely defined in terms of sentencing, with a view that sentences needed to fit the crime:

> *"Fair is just that the punishment fits the crime."*

5.20 As part of both the pre and post-event questionnaires, people were asked how fair they thought the Scottish summary criminal justice system was overall, for victims, witnesses and the accused. Their responses indicated that victims and witnesses were perceived as being treated less fairly overall than accused, and this was supported by the comments made during workshop discussions. Only one person provided a neutral view that, *"Based on the very little I know it seems that the justice system tries to treat all 3 with fairness."* Post event there was little movement in views, except that people seemed to be more confident in their responses (with fewer people saying that they 'didn't know') and a slight upward move in perceived fairness for all groups.

5.21 The main sentiment expressed at the events appeared to be that **victims** are treated 'less fairly' than accused:

> *"I think there's still holes that a lot of people slip through, and are not dealt with properly. And it's usually the victims that are left to feel vulnerable, and the accused, sometimes it looks like they've got away 'scot free'. I think that definitely, the victim seems to become more of a victim, cause they're put through so much and then, a lot of the time, the person who has done something to them, or the criminal, nothing much seems to happen to them, and it seems like the victim, they can't really move on with their life, and the criminal, can just go on and do it again and again and nothing's gonna happen to them."*

5.22 Consistent with comments provided by support and advice professionals, the public expressed views that victims are often 'victimised again' as a

consequence of having to go to court and that they may feel that they are the offender in some cases:

> *"I think the victim is very often treated as the person who has done something wrong."*

5.23 People generally felt less able to comment in relation to the way in which **witnesses** were dealt with, but some participants did know others who had been called to court as a witness which helped them to comment in general terms:

> *"The woman at work, she was a witness, and it was quite stressful for her. Just the waiting, and the waiting, and not knowing if she was going to be called. And so that affected her work, and it just, for herself, she was pretty uptight about it."*

5.24 Some members of the public who took part in the research had been called as witnesses in the past. Generally, people reported that while they had not been required to actually give evidence, they had still encountered inconvenience through travelling to court and then being told that they were not required on the day. This left people with generally negative views of the witness experience:

> *"I was quite annoyed because, even though you don't lose any money or anything, with the expenses, it's a bit of hassle."*

> *"I used to be a bar manager and I was called a couple of times in relation to incidents that happened in the bar, but I never actually got called up. You turn up and then obviously, they've changed their plea, and you end up going home."*

5.25 Some comments were also provided in the questionnaires which indicated that people felt that some witnesses were treated in a negative and hostile way (as were victims) in relation to court appearances in that, *"witnesses are made to feel as if they are on trial"* and *"witnesses face disruption"* (through frequently being not required). There was also strong support for better protection of witnesses at court so that they were not exposed to potential intimidation from accused and people felt disappointed that this sometimes did not happen:

> *"They are interrogated. They are treated as if they are the accused. They possibly feel like they have committed the crime."*

5.26 Many participants were surprised by accounts from others in the group of situations where the witness, or victim, had to sit in the same waiting room as the accused on the day of the trial; and come and go via the same door and at the same time. They felt this was incredibly insensitive and created an environment and opportunity for additional threat and emotional stress for the victim or witness. Furthermore, it seemed to play into the hands of the accused who were being given the opportunity to see whether the victim/witness had turned up and plead guilty/not guilty accordingly:

"You just imagine that they go out of different doors – 'the good', and 'the bad', you know."

5.27 This feeling of disappointment amongst some participants that the system created a second wave of anguish for the victim/witness was exacerbated when advised by expert panellists that, in some cases, this was because of the age and design of many court buildings. Participants felt that improvements in facilities were needed in order to prevent infrastructure obstacles hampering justice and putting off victims and witnesses from attending court.

5.28 Indeed, there was also a strong sense from the workshops that many potential witnesses may be put off reporting crimes for fear of repercussion and a lack of protection or care for witnesses once they have come forward:

"I think a lot of the time, people who would be witnesses maybe don't want to report an incident. So, more support for people coming forward is needed."

5.29 As with victims, views were also put forward that witnesses did not get compensated enough for their time and troubles.

5.30 The overwhelming view of the way **accused** were treated was that they received more favourable treatment in the system than either victims or witnesses. This was both in terms of their court appearance and the information they received as cases progressed through court, as well as in the sentencing outcomes. At court, there was a feeling that:

"It's only the accused that get defended."

5.31 People also commented that offenders "know how to work the system" and that this puts them at an advantage over the victims or witnesses who may be less comfortable and familiar with the court environment.

5.32 On sentencing, the view was that sentences also often favoured the accused and were not appropriate, as they were not perceived to be sufficiently serious to reflect the nature of the crime:

"I think they get a 'wee slap on the bum' and off lightly….It's almost like the accused are victims these days."

5.33 Whilst people generally felt that the accused were treated more fairly in the system than victims or witnesses, there was also some recognition that the system could do more to be 'fair' to the accused in terms of rehabilitation. Although outwith the remit of summary justice reforms, several people felt that the current prison system did not do enough to rehabilitate offenders, which was thus impacting on the perceived high rates of re-offending:

"I think more needs to be done on the rehabilitation side. If they just keep punishing them and it's not working, then they need to do more."

5.34 In both the questionnaires and group discussions there was also some suggestion that the presumption of guilt was made too quickly and early on in proceedings in some cases, and that not all accused were treated fairly as a result. Views were expressed at each of the workshop events which suggest that people did want the system to be fair to the accused in that regard:

> *"I suppose, I mean, there will be innocent people accused of things, and so it would be wrong if they were given very little chance to defend themselves, and so you need to strike a balance."*

5.35 People described cases in which an accused was named and later found not guilty and commented that they perceived this as unfair and potentially damaging to the accused:

> *"I don't think they should be reporting on things until they know what's happened. I don't think the press should be able to report on things until they're sorted."*

5.36 This aside, the general view was that accused were definitely currently treated more fairly than victims or witnessed.

> *"The accused just seems to have more rights than the victim."*

An Effective System?

5.37 The main reasons why people perceived that the system was not effective was that "criminals always re-offend". Although people were more liberal in their views of addressing offending overall, and stressed that proportionality was important in sentencing, the need for punishment (and harsh punishment) seemed to be regarded as absolutely necessary to deter repeat offending:

> *"Money is being wasted on people who constantly appear in court when they should be properly reprimanded the first time."*

> *"There are too many repeat offenders, suggesting they are not being deterred, punished or prevented very effectively."*

5.38 Among a core of participants, there was also a feeling that even prison sentences were too lenient and they were resigned to the fact that imprisonment would not prevent re-offending. As one participant described:

> *"TVs, games consoles, recreational time, private cells, 3 cooked meals a day – very comfortable!"*

5.39 A number of suggestions for the imposition of very harsh sentences were put forward by participants and there was, at each of the workshop events, a small number of people who had a very punitive, 'flog 'em and hang 'em' outlook in relation to offenders. Most others were more liberal and considered that individual cases should be dealt with on their own merit, including a consideration of extenuating circumstances.

5.40 There was also a view among some participants that some offenders are beyond 'learning' from short, sharp sentences, and that more serious sentences needed to be handed out to repeat offenders as the only way to put an end to their offending:

> *"Everybody thinks that we should give them as many opportunities as we can. But sometimes, there needs to be a last chance."*

5.41 Some people expressed a view that examples of people being 'punished' should be more widely publicised to act as a deterrent. There was, as it stands, a view that the news only reports cases where the sentences are perceived to be too light for the crime:

> *"If a victim tries to defend themselves, they are the ones that end up getting charged. I mean, you read about that all the time."*

5.42 In addition to re-offending, people felt that the most reliable indicator of effectiveness was a reduction in crime.

> *"I think if things are working effectively, there should be less crime."*

5.43 It is worth stressing that none of the participants believed that there had been any reduction in crime in recent years, despite evidence in the public domain which shows that there has[16]. This may suggest that media coverage of reductions in crime and victimisation either has not reached or registered with the wider public or that people's own experiences and anecdotal evidence play a greater role in informing their overall views of the levels of crime and victimisation than formal statistics.

An Efficient System?

5.44 Efficiency was the one area where people felt least able to comment on how the system was currently performing. There was a view that it must be working reasonably well otherwise the public would be aware that it was not, but that, in all likelihood, things could always be improved.

5.45 It is worth noting that participants were encouraged by the KPI findings that showed substantial improvements in numbers of direct measures; percentage of cases with an early guilty plea; and time from caution and charge to verdict between 2007 and 2011. Although direct measures were generally welcomed as an improvement to efficiency, there was still a minority who were not supportive of their use and would prefer harsher measures in all cases. Some people suggested a need for a more transparent and accessible reporting of performance measures by criminal justice agencies so that the public had a

[16] See the Scottish Crime and Justice Survey reports, covering victimisation rates, at http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/Publications/publications and Recorded Crime in Scotland statistics at http://www.scotland.gov.uk/Topics/Statistics/Browse/Crime-Justice/PubRecordedCrime

greater awareness of how the system was performing, and suggested that regular feedback on system performance in local media would be welcomed by the public at large.

A Quick and Simple System?

5.46 Most participants felt that the system was neither quick nor simple, and this was based largely on their own lack of understanding or knowledge of the system. This translated in many cases to the conclusion that the system was not transparent.

5.47 Before the workshops, people generally felt that they had little idea of how long it took for cases to progress from the time the incident occurs to the final result. That said, people's estimates ranged from 6 weeks to 24 months with most people guessing at around 6 months. This shows that, despite feeling that they did not know how long it took, their perceptions were, in fact, quite accurate.

5.48 Again, people's perceptions appear to have been informed by the newspapers and television, which seemed to convey that it took a long time for people to be brought to justice. Many of the cases that will have been referred to in such TV or news articles will most likely have been solemn cases with longer turnaround periods, and this may well have influenced people's perceptions.

5.49 In relation to speed, some people observed that the system was currently too long for victims, who may attempt to recover normality in their lives during the period between the incident and the court appearance, but who then may have any progress undone when they are then required to appear at court. One person suggested that, regardless of the time taken, it was "too long for the victim" and another explained that:

> *"If cases were dealt with quicker, all three [victims, witnesses and accused] would be able to put it behind them and move on with life."*

5.50 The main points in the process where people felt more speed could be achieved were with the police investigations and in court.

5.51 As with earlier comments, the use of jargon and technical terminology was seen as something which made the system difficult to understand. As one respondent commented, the system is full of "*A lot of jargon and big words (for some people)*".

5.52 People also commented that, even if they wanted to find out more about the system, it was not easy to find the information they wanted in amongst the plethora of documents and data available through the various websites of criminal justice agencies. As one participant summarised:

> *"There is too much information to take in and it's not always easy to find the information you want."*

5.53 Although, after the events, people generally expressed that they 'knew more', there also remained a feeling that the system was *"still hard for a 'normal' person to understand."*

Confidence in the System

5.54 As with victims and witnesses, among participants, the police seemed to be considered as the 'public face' of justice, and their response seemed to have a large influence over confidence in the system at the general level. Generally, members of the public expressed confidence in the police at the early stages of the summary justice system and in their ability to identify offenders. Although confident with current policing, people did feel that police resources were stretched:

> *"When you see the police about, and you actually see them driving past you, or walking down the street, that gives you confidence."*
>
> *"I think that the police do their best with what little resources they do have. They are doing their best, but they're under too much pressure. There's too few just now and the cut backs are gonna make it worse."*

5.55 Little else was mentioned in the context of what gave people confidence in the system and instead, most people focussed on the need for harsher sentencing and reduced re-offending to give them more confidence overall.

General Public Views of Specific Reform Areas

5.56 On non-court disposals, or **direct measures,** participants were asked to what extent they thought that all people accused of summary offences should be dealt with by being put through the court system, instead of being dealt with without going to court. Pre-event, the mean score for agreement with this sentiment was 2.85 and post-event there was only a small increase in agreement with this statement to 3.1, showing little change among the group before and after receiving information about the purpose, pros and cons of using non-court disposals. Indeed, for this question, opposing views were expressed, with some participants feeling that direct measures offered quicker and cheaper solutions for lesser crimes, whilst others felt that direct measures for any crime were an 'easy option' for the accused. A number of people also felt unable to decide or provide a ranking for this question.

5.57 Participants were asked for their views on the use of fines at the generic and specific level (including non-court fiscal fines and police fixed penalty notices as well as fines handed out in court), although it is worth stressing that some of the detail and differentiation between the two forms of fines; were lost when it came to people's comments. Views in respect of **fines** overall were split quite evenly among participants, with some people feeling that direct measures simply did not work as a deterrent, but others recognising that they played a valuable role in freeing up court time and allowing more serious cases to be dealt with that way.

5.58 For those who felt that fines did not work, there was a perception in particular that they would allow for repeat offending due to offenders not taking the punishment seriously enough, compared to having to go to court:

> *"I don't think fines work. For some things they do, but generally, they don't work. I'm generalising, and I think fines are good for some things. But I think people will re-offend if they are just fined."*

> *"By putting all accused people through the court system may make them think twice initially."*

> *"If you've never done anything bad before and you get a fine, then that's fine [okay], but not if you've done that kind of thing before."*

5.59 For those in support of fines, their views seemed to be based on a perception that their use was cost and time effective and that this would benefit the public purse:

> *"Fine people on the door-step instead of taking them through court. If they get caught red handed, why waste time?"*

> *"Some of the cases that are coming through, I think they are just a waste of time….Especially when you consider legal aid, and who pays for that legal aid."*

> *"Small offences are a waste of taxpayers' money if they go to court when a police fine would be sufficient."*

5.60 Interestingly, when discussing direct measures, the public seemed to want a system that was 'fair' to the accused in the sense that fines were proportionate, not only to the crime, but also to the individual means of the offender. There was a feeling that a 'fixed fine value' for the same type of offence would act as a bigger punishment to those without money than those with money and, accordingly, be more likely to deter those less well off.

5.61 There was also a view among several participants that the use of fines (either fiscal or police) in some cases would not provide the accused an opportunity to be heard in court, and that the deemed acceptance in cases where fines were offered was not fair[17]. Recognising that non-court fines could be refused, and that an accused may opt to go to court instead, people felt that this scenario was still unlikely, and may be acting as an unfair part of the system for the accused:

> *"Depends on the crime, but I think all people should have a right to a court case."*

[17] An accused person can refuse to accept a police direct measure which will result in the case being reported to the Procurator Fiscal for consideration/appropriate disposal. Similarly, an accused can refuse a Fiscal direct measure and an alternative disposal could include the case being prosecuted in court. It is important to emphasise that accepting a direct measure does not mean acceptance of guilt or a criminal conviction on behalf of the accused.

5.62 Generally speaking, people were less inclined to view most forms of direct measures as suitable for repeat offenders, and there was a preference to see all repeat offenders being sent to court, with a view that they may receive a harsher sentence as a result. There was also no support for fines being used in cases that potentially involved injury to the person (for example, stranger assault or reckless driving). Overall, however, the view was that individual cases needed to be considered on merit.

5.63 It is worth noting that a number of participants showed some surprise that not all criminal cases went to court.

5.64 Again, there was some surprise that **fines enforcement** officers were not in place before the reforms and people seemed to suggest that they assumed that an enforcement role was essential for the fines system to work. Knowing that fines enforcement officers were in place seemed intuitively sensible to people but people did not feel that enforcement officers would necessarily result in more people paying their fines.

5.65 Other than this, people were very pragmatic in respect of direct measures and expressed views that the appropriateness of their use should be "dependent on circumstances" of the crime.

5.66 People expressed some surprise at the pre-reform situation with regard to **legal aid and disclosure** and the absence of incentives to encourage solicitors to deal with cases quickly. There was a feeling that prior to the reforms the system could have been easily manipulated by solicitors to their personal financial benefit. Everyone agreed that evidence should be shared equally in order to be fair to both the defence and prosecution. It was also felt that the new system would benefit victims more:

> *"Disclosure of evidence, if they know they must plead guilty, will save victims a lot of grief."*

5.67 Discounts in sentencing, although not a result of SJR, are more likely to occur as a consequence of more early guilty pleas being tendered (through reforms to legal aid). Although people did not appear to object to the encouragement of early pleas, there was some difference of opinion in whether early pleas should result in a discounted sentence. Some people recognised that it would save time and money, whilst others (and perhaps the majority), felt that the sentence should remain the same regardless of the time of plea:

> *"I understand why it's there, but I don't agree with it….Just because someone says one word instead of two, they should still get the same sentence."*

5.68 People put forward suggestions that, instead of getting a one third reduction in sentence for pleading guilty, those who pled not guilty and were later found guilty should instead have a third added on. This, they suggested, seemed fairer than people receiving favourable treatment for an early plea.

5.69 Perhaps the most important underlying principle for members of the public in respect of pleas was that the plea was 'truthful'.

5.70 On **bail** there were few people who did not think that the changes post-2007 were a change for the better. Some comments were made about bail being too lenient with a suggestion that bail allowed too much freedom to the accused, but generally, people acknowledged that bail was the most cost effective way of dealing with accused until case outcomes were known. In relation to the tougher treatment of breach of bail, all felt that this was a good idea and people felt that accused who had breached bail on any previous occasion should not be permitted the same liberty on subsequent occasions. Again, repeat offenders received little sympathy among the public.

5.71 People also agreed with the principles of **undertakings** and supported their increased use describing it as a *"common sense option"*. There were no perceived 'drawbacks' for victims or witnesses given that undertakings would not be used instead of custody, and people generally felt that the system was fair to the accused since it meant that they were given an opportunity to enter into a contract on the basis of a shared understanding of what was required of them.

5.72 People expressed a view that *"if they're not gonna turn up, they're not gonna turn up"* and so felt that it was better to use the cheapest and quickest option for getting people to court, i.e. undertakings instead of citation. As with bail they did, however, feel that someone who breached an undertaking should not be permitted this option on future occasions.

5.73 A number of people had not heard of JP courts and were surprised to learn that they existed alongside the High Court and Sheriff courts. This aside, people seemed generally supportive of the reforms to **lay justice** and in particular the idea that less serious cases could be handled by them. They viewed this as freeing up time for more serious cases in the Sheriff court which they described as being potentially beneficial for victims and witnesses in that cases would conclude more quickly.

5.74 There was also generally limited awareness of JPs and overall some surprise that Justices were not legally qualified. When the role of Legal Advisers was explained, this did not generally generate any further enquiry. There was nothing that people objected to, or criticised in respect of the new recruitment and training procedures although some were surprised at how quickly training could be undertaken.

5.75 Surprise was also expressed that JPs worked on a voluntary, non-salaried basis. This was also seen as a potential barrier for some people to apply and also as a barrier to employed people who might want to be a JP but would need to balance their duties alongside a paying job:

> *"Working people are almost out of the system, 'cause they can't fit it in around their job. So, therefore, the scope for change is not great, on the whole, anyway. I don't know how anyone can work and fulfil their duties as a JP."*

5.76 When asked if they knew of anyone who may be willing to apply for a JP position, most people seemed to think not. They questioned who would want to get involved in sentencing people on an unpaid basis and few were convinced that the sense of 'serving the community' would be a sufficient incentive for most 'ordinary people' to volunteer. Related to this, people felt unsure that JPs would ever truly represent their communities, since they perceived that it would always be older, more middle class and more educated people who would be likely to apply.

5.77 In contrast, some of the workshop attendees did express an interest in the JP role themselves, but again, their participation in the event may mean that they were unusual in their interest in the summary criminal justice system and may not be representative of the wider community.

5.78 Overall, the general public appear to have been generally supportive of all reform areas and it was considered by the majority of people that all areas would contribute considerably towards the intended outcomes.

What the Public Want from the Summary Justice System

5.79 Proportionate sentencing for repeat offenders and, generally, sentencing that reflects the nature and severity of the crime seemed to be two of the main things that people wanted from the system.

5.80 Overall, the 'typical' sentences that were presented to participants did not meet with any real objection, and the only thing that people wanted to see elevated in sentencing decisions was consideration of offending history, because they generally perceived that repeat offenders were being treated too leniently. In these cases, proportionality to the crime seemed less important than if the person had committed similar acts before and had not been dissuaded from future offending as a result of their previous sentence. Much of this was based on media coverage of cases where the accused had a prior criminal record:

> *"You read reports of some criminals, and it's the umpteenth offence for them, and normally it's the same thing they're doing. So, there's obviously no deterrent there for them…Tougher sentences are needed for repeat offenders."*

5.81 Linked to this was an expressed need to remove perceived 'red tape' which was seen to be allowing guilty people to get off on technicalities.

5.82 As highlighted above, speed also emerged as one of the main things that people wanted from the system i.e. "criminals should be dealt with quickly" with "fast sentencing". It was felt that, as well as being constructive in its own right, speed would also help bring about fairness for victims, witnesses and the accused as it enables all to move on.

5.83 Compensation for victims was also mentioned frequently in both the questionnaires and during workshops and fines and community service seemed to be welcomed outcomes for 'less serious' cases:

> *"I think community service would be the best thing if it was organised in a way that worked, and to benefit the people who are affected by crime….Things that make the community better."*

5.84 Better support for victims and their families was also something that people wanted from the system and, in particular, a number of people commented that victims and witnesses needed to be better 'protected' in the system. One participant responded that, for members of the public, confidence was associated with "feeling safe when reporting a crime".

5.85 Honesty and integrity from the police and the courts were also cited as requirements and finally, a number of people said that the main thing they wanted from a system was one that was flexible and which allowed cases to be dealt with on a case by case basis and demonstrated "fairness to all parties".

Other Observations

5.86 Finally, as part of the workshops and included in the post-event questionnaires, members of the general public were invited to provide comments or feedback on the sessions they had attended.

5.87 The feedback received indicated that people had found the sessions 'enjoyable', 'interesting' and 'informative' and there was a view that more people would be interested in learning about the Scottish summary criminal justice system and the reforms, if delivered in a similar accessible way.

5.88 Some people made comments to suggest that they felt embarrassed at how little they knew of the system, and that they felt they should now find out more. Perhaps the clearest message, however, was that that most people felt it unlikely that members of the public would know much about the system unless/until they had reason to become involved in it:

> *"In general, nobody's gonna really have an opinion until it affects you."*

6 DISCUSSION

Main Emerging Themes

6.1 The evaluation was successful in canvassing the views of a number of participants involved in the Scottish summary criminal justice system, as well as members of the general public, and the research findings suggest that the reforms have impacted in different ways and to differing extents on those involved. Importantly, however, the evaluation has also uncovered some key emergent themes that seem to be present in the views and experiences of all groups consulted.

6.2 The main messages to emerge from the work is that victims and witnesses are perceived, by almost all those consulted, as being treated less fairly than accused. There is an overwhelming view that the system favours the accused both in terms of their ability to determine the course of action through the process, to have their say in court, to be defended, and to be kept informed of the progress of cases. Of course, no data were collected from accused for this evaluation, and so it is not possible to say with confidence that they too do not have concerns about how the system does/does not operate to meet their needs. What does seem clear, however, is that people both perceive and experience the system as being relatively more weighted in favour of the accused.

6.3 Related to this, the experience of victims and witnesses in court is a driving factor in determining whether people perceive the system to be working well overall. Based upon primary data from the general public, victims and lay witnesses, and victim support and advice professionals, there is a clear picture that the experience of victims and witnesses inside and outside of court continues to affect professional and lay people's views on the fairness, effectiveness and credibility of the summary justice system.

6.4 In particular, victims and witnesses are currently disappointed/upset by:

- having little information about how the case is progressing;
- often waiting alongside the accused at court, and leaving by the same exit at the same time;
- being less sympathetically treated in court/witness box than expected (and than the accused) – leaving them feeling that they are the ones on trial;
- attending court needlessly;
- long waiting time at court;
- usually not being told of the outcome;
- perceived lenient sentences; and
- perceptions that current sentencing is not effective at reducing re-offending.

6.5 These poor experiences mean that victims and witnesses consider the system to be unfair and are likely to put them off attending court the next time they are required. Although there is some evidence that moves have been made to improve the court experience on the day of trials, there is clearly a shared view that there is room for considerable further improvements.

6.6 Despite this, there were many positive comments about the level of support and information that respondents received, especially from the police during the early stages of investigations, and also from support agencies and court staff when at court and post appearance, if required. It is important that this positive message is not lost. The views expressed by victims and witnesses are not dissimilar to those expressed by support staff and by police and expert witnesses, or members of the public, and all seem to agree that increased fairness may be achieved if victims and witnesses are given case outcome information and are treated with greater care and respect as part of the court process.

6.7 Finally, a key message is that the communication processes in the system needs to be strengthened and made more consistent at all stages. This is true for both police and experts (knowing what is required of them) and for members of the public. Again, for victims and witnesses, this seems to be mostly a need to know what to expect in court, but also, very importantly, to know case outcomes. For others involved in the summary justice system in a working capacity, there may be a need to explain policy and operational changes, and provide regular updates on what is being achieved, and what the reforms mean in practice, in order to remove some of the general lack of understanding that exists.

Knowledge of the Reforms

6.8 There were mixed levels of awareness of the reforms among support and advice staff and most seemed to equate the changes with an aspiration for more cases to be removed from the courts.

6.9 Expert witnesses seemed to know little about the reforms, other than the need for disclosure. Police witnesses knew more, but did not consider that there had been any significant improvements to the system or to their experiences as professional witnesses as a result, other than perhaps speeding up of some parts of the system.

6.10 Victims and lay witnesses knew very little about specific reforms, and the same was true of the general public. The public also had a general lack of understanding of the system. This was, in part, attributed to the use of complex and what they perceived as antiquated terms which meant that the system was not accessible. This echoes findings from the pre-reform research with members of the public outlined in the introduction which also showed a lack of understanding of the system. Lack of knowledge was explained by the fact that many members of the public did not 'need to know' about the system (since they were not involved in it).

Views of Specific Reform Areas

6.11 Most people were supportive of the aims of the suggested reforms, but were sceptical about whether they would work.

6.12 Overall, there was general support among all those interviewed for **direct measures** (including those offered by the police and fiscals), although there

was some feeling that non-court fines present a lenient option in some cases, especially for repeat offenders and for those where the fine was easily affordable. There was a feeling that direct measures should not be used for those with previous criminal records, and some public and professional support to see repeat offenders go to court in almost all instances. There was limited knowledge of fines enforcement officers, and again some scepticism about whether their introduction would result in the greater collection of penalties. Those awarded compensation orders were also sceptical that it would be paid.

6.13 Despite statistical evidence showing an increase in the number of early guilty pleas as a result of changes to **legal aid,** support organisations did not perceive that this was necessarily resulting in fewer instances of victims or witnesses being called to court.

6.14 From a support organisation perspective, the view was also that both 'churn' and waiting times in court have not improved as a result of change to the legal aid and disclosure regimes and so, even though cases may be appearing in court more quickly, the actual court experience for victims and witnesses (on the day) remained in need of improvement.

6.15 For members of the public, views about legal aid expressed suggest that they prefer the new payment method to the old (information about which was received with some surprise). However, the main point of contention for the public was whether early pleas should necessarily result in discounted sentences. The general feeling was that they should not.

6.16 Both police and expert witnesses also suggested that **disclosure** was perhaps impacting negatively in their workloads and that there may be some room to improve efficiencies in terms of not generating information which they perceived to be 'useless'. In contrast, one of the main gaps in information and support for witnesses was not being able to access the statements that they had previously given to the police. This was perceived to potentially add to the intimidating prospect and anxiety about appearing in court as a witness since they could not remember exactly what had been said.[18]

6.17 Overall, views suggest that changes to **bail,** and the more serious treatment of breach of bail, were not having the desired effect, and it was believed that many accused would simply choose to ignore bail conditions, regardless of the perceived consequences. There was concern about the continued likelihood of breaches of bail by a core of accused, including the commission of other offences. There was general consensus about this across all groups consulted and, correspondingly, strong feelings that bail should not be given to people who have previously failed to comply with bail conditions.

6.18 Suggestions were also made that the use of clearer explanations of bail and the consequences of its breach were solely in favour of the accused, and had

[18] Sections 54 and 85 of the Criminal Justice and Licensing (Scotland) Act 2010 make provisions for statements to be made available to witnesses but this would not have been implemented or experienced by those interviewed at the time of the evaluation.

no real benefit to victims or witnesses since they occurred before these parties became involved in the court case. This was held up as a case in point of a system being geared towards the accused, with such explanations making the system easier for the accused to understand with no equivalent attempt to make things easier for victims and witnesses to understand. Victims and witnesses were perceived to have no real understanding of if or why bail had been used, or knowledge of any conditions attached.

6.19 Most of those consulted knew nothing about **undertakings,** but there was a general consensus that they seemed to present a common sense approach. There was also some suggestion that their use was fairer to the accused, although it was perceived by most stakeholders that breach of undertakings would continue to occur in some cases since they would not be taken seriously by the accused (in much the same way as bail). As with bail, there is no appetite for allowing undertakings to be used for people who have previously demonstrated a lack of willingness to comply.

6.20 The evaluation suggests that there is perhaps some confusion among victims over the **shift of business to JP courts**. Some victims had reported to support service staff that they felt their case had been 'downgraded' as a result of being heard in a JP court and this view was supported by experts and support and advice organisation staff. For police witnesses, experiences of appearing in JP courts do not seem to have been positive, and this is perhaps leading to negative perceptions of the appropriateness of more summary cases being moved to JP courts. The same is true for lay witnesses and victims who reported disappointment in the way that proceedings were managed in JP courts.

6.21 Finally, although all those consulted were in favour of changes to the **recruitment, training and appraisal** of JPs, there were some doubts about how representative of the community this group would ever be. Importantly, for members of the public, there was a poor understanding of the existence and role of JPs and JP courts at all, suggesting that this in itself might present a barrier to recruitment of a broad spectrum of JP applicants.

The Overarching Objectives

6.22 **Fairness** was largely defined in terms of 'appropriate' outcomes for offenders. Fairness also seems to be perceived in terms of personal satisfaction (including an apology or a sense of justice) for the victim or witness, and there is some evidence that people felt a need for personal or community compensation in order to believe that the system was truly fair.

6.23 Most people did not consider the sentences awarded (where known) to be **effective** in deterring future offending, and this was the main measure of an effective system for almost all groups consulted. Use of more prison sentences, and harsher treatment of repeat offenders, were seen as necessary to achieve system performance, and proportionality was seen as the key for other types of offenders. The issue of leniency in sentencing

mirrors findings of the pre-reform research with members of the public, along with the need for appropriate punishment and consistency in sentencing.[19]

6.24 **Efficiency** was something that most people found difficult to define, although there was consensus that the system could probably be streamlined further to ensure savings to the public purse. For both police and expert witnesses there remains an element of inconvenience due to being cited to appear at court for cases which are later dismissed following a guilty plea. This was regarded as being the biggest barrier to achieving efficiency.

6.25 For most victims, the journey from the incident to case closure was not considered to be **quick or simple**, and participants cited examples of being called to attend court on multiple occasions due to court business being cancelled at the last minute.

6.26 As with other interviewees, police and expert witnesses seemed to agree that the summary justice system as it stands is still quite time consuming. Overall, this group perceived that the system was perhaps quicker (if not simpler) post-reform.

Messages for Policy

6.27 The reforms had specific ambitions for victims, witnesses and the general public and it was hoped that many of the system changes would indirectly impact on users to increase confidence and perceived credibility of the system.

6.28 The research shows that whilst these system users support the principles of the reforms, victims and witnesses still do not perceive that the system meets their needs. Although the use of direct measures, and changes to both legal aid and disclosure will mean that fewer cases come to court that require victims and witnesses to attend, those that do still seem to be subject to instances of repeat citation, and waiting times are still too long. The reforms have not, as yet, improved the victim and witness experience in this regard.

6.29 The reforms also sought to generate a greater focus on the needs of victims, witnesses and the accused at the heart of the system. Perhaps the main message to emerge from the work is that victims and witnesses are perceived, by almost all those consulted, as being treated less fairly than accused. Thus, the reforms have not achieved the focus they sought.

6.30 The evaluation findings point to several areas where victims' and witnesses' experiences could be improved which were not part of the reforms. These might change perceptions and increase public confidence in the system, ensuring that it is seen to be credible by all.

[19] Nicholson, L. (2003) Summary Justice Review: Public Views on Key Issues, Scottish Executive, Edinburgh available at: http://www.scotland.gov.uk/Resource/Doc/925/0008782.pdf

6.31 For police and expert witnesses, the key messages seem to be that:

- there is still scope for increasing effectiveness of the system in terms of the guidelines around what is required for disclosure purposes; and
- there is room for greater efficiency around citing witnesses to court at times that are most convenient for all those concerned.

6.32 For victims and lay witnesses, it was felt that their experiences would be improved if:

- they were subject to fewer instances of repeat citation to court, and waiting times at court were kept to a minimum on the day;
- they were made to feel more valued during any court appearance experience;
- they could be kept separate from accused at court;
- they were kept up-to-date with case progress and supported throughout the system if required;
- explanations were given to them about the allocation of cases to different court jurisdictions;
- bail was not seen to be used in cases where the accused was known previously to have breached bail;
- sentences were perceived to more appropriately match the offence;
- cases were concluded as quickly as possible, and ideally within six months of the offence, whilst still being fair; and
- arrangements were made to always notify victims and witnesses of case outcomes in writing.

While not the function of the adversarial nature of the justice system, victims and witnesses indicated that their experience of the justice system would also be greatly improved if they had the opportunity to ensure that their perspective was *fully* heard and understood during the case. Many victims explicitly said that they would have welcomed an opportunity to meet with the Procurator Fiscal ahead of the trial. Victims also wanted to feel that their key messages were being heard in court, regardless of how that occurred.

6.33 For members of the public, confidence in the system and perceived credibility may be further improved if:

- they perceived that tougher sentences were being used for repeat offenders;
- the system was more transparent so that the public had a greater awareness of the true prevalence of crime and victimisation, and understood better how sentencing decisions were made; and
- the system was seen to be more supportive of victims and witnesses instead of favouring the accused.

6.34 Across all of the groups, some key commonalities also emerged. These included the view that the system is still currently perceived to be heavily weighted in favour of the accused, that more could be done to improve communications with victims and witnesses at all stages in the justice process and that there remained considerable room for improvement in the efficiencies of getting people to and through court.

Wider Lessons

6.35 Although focussed on SJR, the evaluation uncovered a number of other key messages regarding victims' and witnesses' experiences which SJR was never set up to address. One such message seems to be that victims' and witnesses' experiences are greatly affected by not knowing case outcomes. This is a long standing gap, and is a key cause of frustration which may be leading to overall negative sentiments being expressed about the fairness, transparency and credibility of the summary criminal justice system. Although provision of case outcome information emerges as a significant factor determining victims' and witnesses' overall experiences, this was not something that summary justice reforms ever sought to address.

6.36 Secondly, there remains considerable frustration for victims that their voice is not heard. This may be because they perceive that the questioning in court does not allow them to say what they wish, and is largely directed by the PF and defence. Further, while some victims expressed that they would personally like an opportunity to speak freely and be heard in court, others wanted to know that they would be sufficiently well represented by Fiscals in court, even if they themselves were absent. There appears to be an expectation among some victims that they will automatically have an opportunity to meet with Fiscals before cases go to trial and this expectation could be better managed to prevent some victims feeling that their views are not heard.

6.37 Therefore, it can be said that some of the systems and practices that were altered as a result of SJR may have improved the experience for victims and witnesses overall. However, a step change is still required to result in overall positive experiences for victims and witnesses involved in the summary (and wider) criminal justice system.

Conclusions

6.38 The reforms have sought to create a summary justice system that is fair, effective, efficient and quick and simple in delivery for all those involved, and this evaluation has uncovered generally good levels of support for the ambitions of SJR, even if there remains some doubt about whether all of the specific objectives will be achieved. The views expressed by the various stakeholders show that there remains some lack of clarity around all of the system changes, and some scope for further improvements in order to have a system that is considered to be fair, effective, efficient, quick and simple for all. The evaluation has also provided evidence of which of the reforms are directly and indirectly impacting on victims to date, and has provided valuable

insight into the main issues that are important to victims, witnesses and the public with regards to the delivery of summary justice now and in the future.

Appendix A – Methodology

Core Approach

The evaluation comprised desk based research and review of key performance indicator data, alongside primary data collection by way of interviews with a range of stakeholders. This included:

Victim and witness support agencies/organisations – 11 interviews in total. All staff were recruited via an invitation issued by their employers. Interviews followed a topic guide drafted in collaboration with the Research Advisory Group and were carried out face-to-face or by phone. The researchers undertook to complete these interviews ahead of those with victims and witnesses in order that any general lessons about the victim and witness experience could be captured before the victim and witness interviews went ahead. This meant that the views of support and advice staff helped to shape the questions that were later posed to their client groups.

Professional and expert witnesses – 22 interviews in total. All staff were recruited via their employers, which were the Scottish Police Services Authority and the three separate police forces that were chosen as case study areas (see below). Interviews were carried out face-to-face or by telephone and lasted around 1 hour. Tailored topic guides were developed for each respondent group.

Civilian witnesses and victims – 26 interviews in total. Participants were recruited via an invitation letter issued by the Crown Office and Procurator Fiscal Service with an 'opt in' form to be returned directly to the researchers. This meant that participation could remain anonymous whilst contact details of those who did not wish to take part were not disclosed to the researchers. Additional invitation letters were issued by Victim Support Scotland to service users, using a similar opt in approach.

Members of the general public – 56 attendees in total. Participants were recruited in three case study areas using on-street and door-to-door recruitment. Loose quotas were set for age, gender and employment status and people working or otherwise involved with the criminal justice system were screened out. Incentives were paid to all attendees.

Case Study Areas

The work was undertaken in three case study Local Criminal Justice Board areas across Scotland, these being Glasgow and Strathkelvin; Lothian and Borders; and Grampian. A decision was made to adopt a case study approach for mainly practical reasons, and attempts were made to select three areas that would be broadly representative of the Scottish population in terms of geography and demographic features of the local populations.

In determining case study areas, consideration was also given to the availability of victim and witness support services in the area (since the level of support available to victims and witnesses in each area may impact on their experiences and perceptions of the justice system), the presence of other SJR evaluation research teams operating in the area (so as to provide results that could be most reliably

mapped onto those evaluation findings) and court types, business and locations in each area (endeavouring to incorporate areas that have a mix of different court types) since this may be a variable influencing the impact of reforms, including, for example, the distribution of cases heard in each court type and the experience victims and witnesses have.

Deliberative Workshop Events

A deliberative workshop approach was chosen for speaking with members of the public, as it is a technique that is useful for exploring how people feel about issues of which they have little or no previous knowledge. It provides time and space for exploration of participants' initial views on a topic that is new to them; for informing them about the topic; and for investigating their informed views. The process provides a measurement of views and beliefs both before and after participants are informed on the subject, and qualitative research findings from the discussions on how and why people are forming their views and making their decisions.

Deliberative research is usually conducted on a larger scale than a focus group and is characterised by gathering both uninformed and informed views on a given topic. Either at, or before, the event initial views on the subject matter are collected and are compared to those given after knowledge has been imparted. The event itself is a mixture of discussion and informing of the audience by 'experts'. In this case, a number of Summary Justice Experts were invited to attend the events, to provide information to attendees and to answer questions that arose on the night.

The workshop events involved:

1 - Completion of a pre-event questionnaire which sought to collect information about people's awareness and understanding of the summary criminal justice system, the reforms and attitudes towards the overarching objectives. Questions were also asked about what people wanted from the summary criminal justice system in order to have confidence in it.

2 - A short presentation by the researchers to define the scope of summary criminal justice followed by mini-group discussions focussing on understanding of the system, sources of information about the system, the overarching objectives and what people wanted from the system in order to have confidence in it.

3 - Further short presentations by the researchers and expert panellists on the nature of summary criminal justice, the case process journey, the reforms and impact of the reforms to date, as evidenced by Key Performance Indicator data.

4 - Further mini-group discussions using plausible but hypothetical case study examples of how certain types of cases may be dealt with in the system both pre- and post-reform, as well as case studies to highlight some of the process changes that had been made. Views were sought from members of the public on overall perceptions of the changes, whether they were perceived to be a change for the better or worse, if they were considered to be fair to victims, witnesses and accused, if they would help to reduce re-offending or not and if they perceived that further changes were required.

5 – Completion of a post-event questionnaire before leaving the venues which again captured information about people's awareness and understanding of the summary criminal justice system, the reforms and attitudes towards the overarching objectives.

Three workshops were organised, each with 20 people recruited. The attrition rate was low, with 56 attendees from the 60 people who originally agreed to take part. The profile of participants is shown in Appendix C.

Appendix B – CJBMIS KPI Data

Figure B.1 Percentage of summary criminal cases dealt with within 26 weeks, (caution and charge to verdict), December 2007 to July 2011, National data

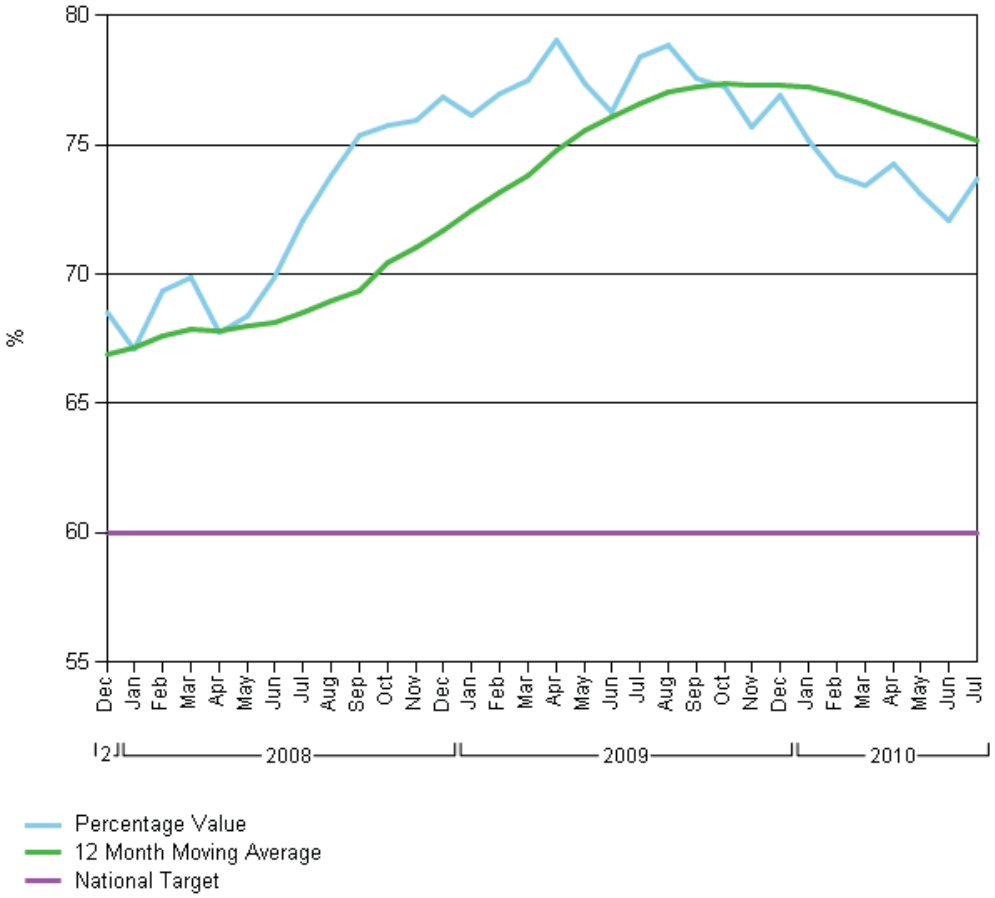
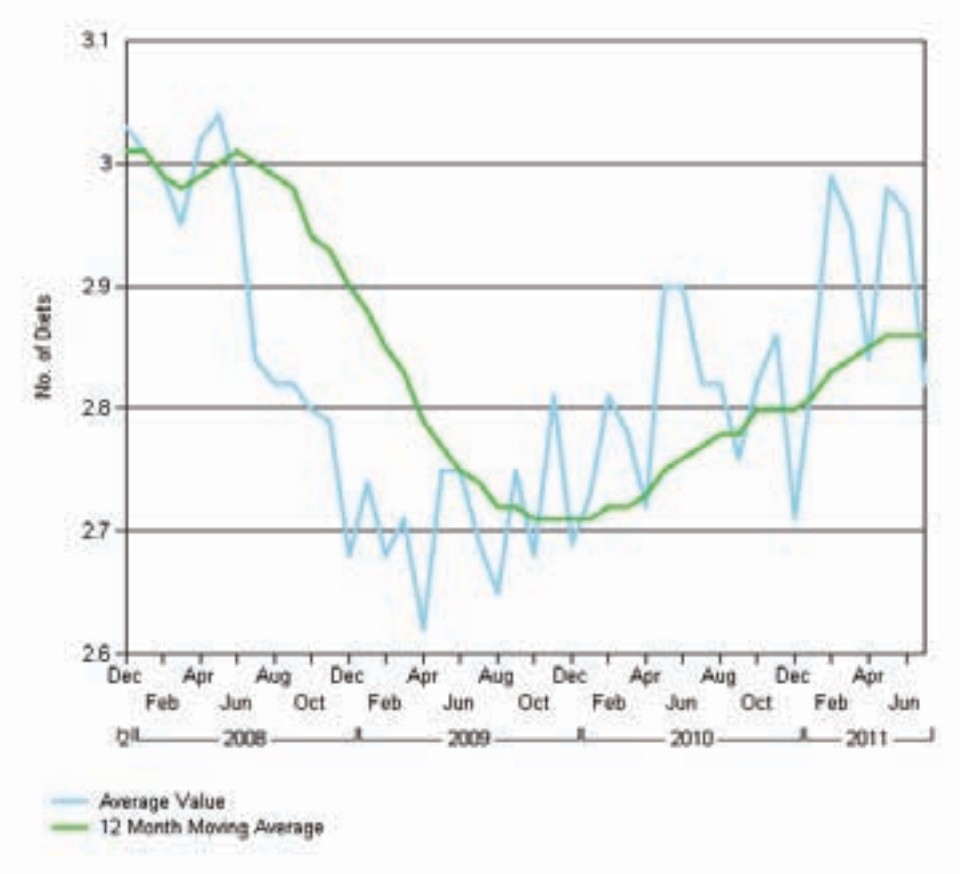


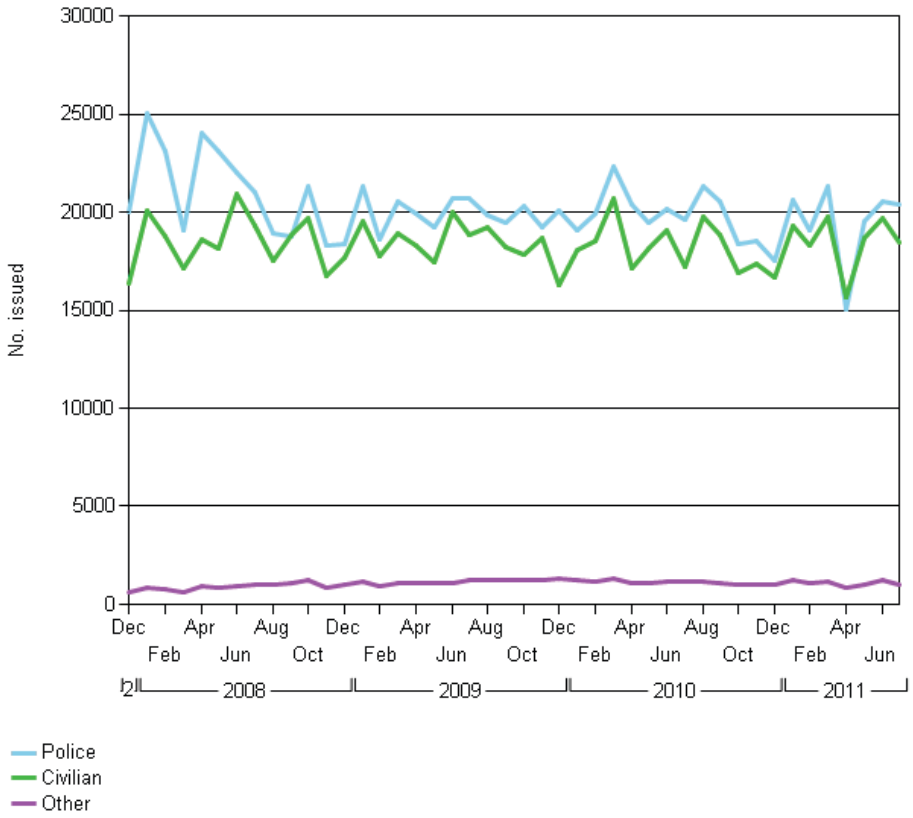
Figure B.2 Average number of diets per case, December 2007 to July 2010, National data



Data relate to the average number of appearances* per case for summary courts, by month that case is first closed (summary court cases only)

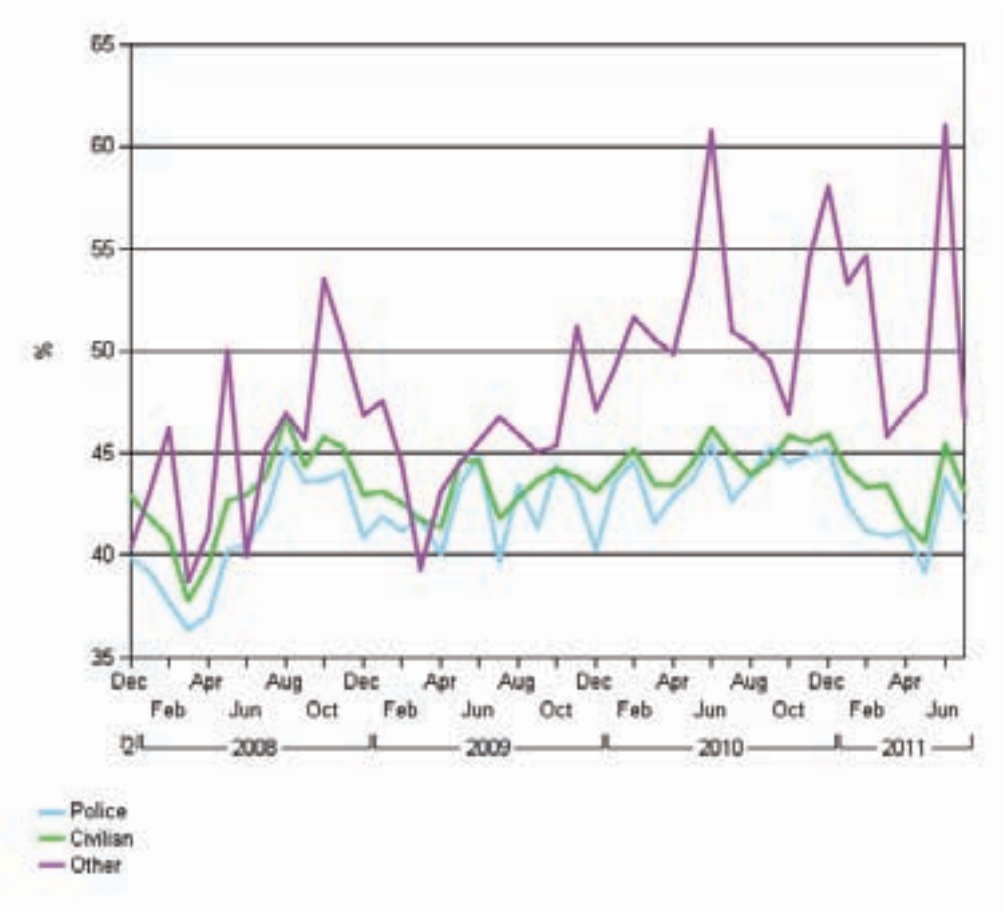
(* defined as the number of times a case is called “in court”)

Figure B.3 Number of witness citations, December 2007 to July 2011, National Data



The ‘other’ category includes expert witnesses

Figure B.4 Percentage of repeat witness citations, December 2007 to July 2010, National data



Appendix C – Workshop Participant Profiles

Gender	**Total**
Male	28
Female	28
Total	**56**

Age	**Total**
18-24	11
25-34	13
35-44	10
45-54	9
>54	13
Total	**56**

Employment Status	**Total**
Full-time	31
Part-time	6
Student	3
Unemployed	6
Retired	7
Other	3
Total	**56**

Social Research series
ISSN 2045-6964
ISBN 978-1-78045-623-2
web only publication

www.scotland.gov.uk/socialresearch

APS Group Scotland
DPPAS12480 (01/12)

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