Introduction

The intention of the proposal is to provide for the establishment and functions of a Victims’ Commissioner for Scotland. The consultation document accompanying the draft proposal for the Victims’ Commissioner (Scotland) Bill was issued on 1st April 2009 and ran until 30 June 2009. A number of late submissions were received after the closing date; they were accepted and have been included in this analysis.

The consultation document was made available from a link on the Proposals for Members’ Bills webpage on the Scottish Parliament website (http://www.scottish.parliament.uk/business/bills/membersBills.htm). It was also sent to 297 organisations and individuals with an interest in the issue; recipients were encouraged to bring the consultation to the attention of anyone else they thought might have an interest in the subject matter.

The Member answered requests for 10 copies to be sent out either electronically or in hard copy.

Additional activity
In addition to carrying out the public consultation, David Stewart MSP has taken part in a number of activities related to the subject of Victims Commissioner in order to inform the development of his policy. These included:

- A video conference with the Northern Ireland Commissioner (11 December 2008);
- A meeting with Sara Payne, England and Wales Victims' Champion (1 April 2009);
- The press launch of the consultation (6 May 2009);
- Various other meetings, including a series of meetings with key staff from Victim Support Scotland.
- An article published around August 2009 in the Third Force News;
- An article published in September 2009 in the legal journal SCOLAG.

General

In total 47 responses were received; these were made up of the following individuals and organisations:

- 16 individuals
- 7 community councils (including 7 individual responses from 1 council)
- 3 public bodies
- 2 membership organisations
- 2 trade unions
77% of respondents fully supported the terms of the proposals.

10.5% of respondents stated that they did not support the proposal. The reasons given included: existing agencies should continue to receive any funding to continue with their services; the impact of the creation of another ‘quango or body’ and associated funding; what would be the ‘added value’ to victims.

In 10.5% of the responses received, it was unclear whether the respondents supported the proposal or not because their comments did not clearly state support or lack of support.

A further 2% declined to comment on the proposals.

Victim Support Scotland support the establishment of a Victims’ Commissioner, stating, “We look forward to seeing the development of the new office and hope it will play an active, tangible role in the protection and promotion of victims’ rights in Scotland.”¹

Unite, the Union, is similarly supportive, commenting, “The implementation of a Victims’ Commissioner would make a significant difference to victims and families of victims affected by crime and negligence in their pursuit of justice. It would also represent a step forward in the fight to ensure that people and not profit takes priority in the Scottish justice system.”²

Responses

The consultation document posed six questions; the responses to each are outlined below.

---

¹ Consultation response no.14 (Victim Support Scotland)
² Consultation response no.25 (Unite, the Union)
Question 1

*Do you have any comments about the need for a Victims’ Commissioner for Scotland?*

44 (94%) respondents directly answered this question. Of those, 36 (82%) agreed that there was a need for a Victims’ Commissioner in Scotland, whilst 6 (14%) disagreed. Two respondents (4%) indicated that although not entirely against the creation of such a post, they remained to be convinced there was a need for it.

The majority of respondents who agreed that there was a need for a Victims’ Commissioner said that it would benefit the victims of crime by giving them a “voice”.

A high number of respondents also stated that the creation of a Victims’ Commissioner in Scotland was essential if we were to keep pace with England and Wales on the representation of victims. Victim Support Scotland stated that “there is an imbalance in representation …Northern Ireland as well as England and Wales have established Victims’ Commissioners/Champion … the lack of a Victims’ Commissioner in Scotland can give the notion that victims rights are better protected in other parts of the UK.”

A number of respondents also believed that there was a need for a Victims’ Commissioner in the interests of fairness, given that prisoners have a voice in the form of the Scottish Prison Complaints Commission. Glasgow University School of Law commented that the creation of “A Victims’ Commissioner would both fulfil the need for a dedicated person to represent victims’ interests and address the public concern that victims’ needs are given less priority than offenders.”

Unite, the Union, believed that “Scotland is lagging behind on this crucial matter” and said “In our dealings of representing victims and their families … it is a common occurrence for families to feel disenfranchised and stymied by the system in their pursuit for justice. We believe this can be attributed not only to absence of a specific support body but also to flaws within the existing system relating to victims rights.”

Reasons given by the 14% who did not believe there was a need for a Victims’ Commissioner included that there were already sufficient agencies supporting victims and that having a Commissioner would add another level of unnecessary bureaucracy. Inverness South Community Council stated “in the present economic climate ... any additional resources should be channelled through the local Victim Support Groups which are already in existence and doing a worthwhile job.”

---

3 Consultation response no.14 (Victim Support Scotland)
4 Consultation response no.16 (University of Glasgow School of Law)
5 Consultation response no.25 (Unite, the Union)
6 Consultation response no.10 (Inverness South Community Council)
Question 2

What do you see as the benefits of the proposed role and functions of a Victims’ Commissioner for Scotland?

The consultation document proposed that the Victims’ Commissioner would have five key functions, as follows:

- To promote an awareness and understanding of the rights of victims in Scotland.
- To engage actively with victims and also with those organisations working with, or on behalf of, victims.
- To keep under review current legislation, policy and practice relating to victims in order to assess adequacy and effectiveness.
- To make recommendations and issue guidance on best practice in relation to victims’ rights including publishing, promoting and commissioning research on victims rights.
- To conduct investigations.

34 respondents (72%) directly answered this question. The responses were largely positive, with 15 (44%) of those who commented stating that having a Victims’ Commissioner would benefit victims by giving them a dedicated person whose sole focus was to champion their rights.

Another key benefit identified was the Victims’ Commissioner’s role in raising awareness of victims’ issues, with five respondents (15%) stating that the creation of the role would increase public awareness of victims’ needs and their treatment in the justice system.

Six respondents considered that a Commissioner would play a key role in co-ordinating support for victims by promoting the sharing and development of good practice with existing victim support services.

Others (five) considered the Commissioner would play a key role in reviewing and, where necessary, reforming the treatment of victims within the justice system.

A number of respondents (four) believed a Commissioner could benefit victims by providing advice and information on victims’ issues, such as explaining the justice system and directing them to relevant support services.

Other benefits mentioned in responses included using the investigatory powers to ensure cases are treated correctly (“Ombudsman” role) and that all agencies work together; continuing the implementation of the Scottish Strategy for Victims 2001; and giving greater scrutiny to future legislation in relation to its impact on victims.

Only three respondents (10% of those who answered the question) said there would be disadvantages in establishing the role of the Commissioner. Two of those expressed concern that the Commissioner’s proposed remit appeared to overlap with that of existing agencies and questioned the benefit of having an additional role.
Question 3

Do you foresee difficulties with any aspects of the proposed role and functions of the Commissioner? If so, please provide more information.

29 respondents (62%) directly answered this question. Six (21%) of these said they could foresee no difficulties whilst 23 (79%) believed there may be some problems.

The main concerns expressed related to the remit of the Commissioner, with five (17%) respondents believing this required clarification. Nine respondents (28%) who answered stated that a Commissioner would face difficulties with the duplication of work and conflict with other services. Families Outside said that this lack of clarity gave them concern that the new role may threaten the viability of existing independent victim services.  

One respondent from Strathglass Community Council felt there would be a public perception that the Commissioner was there to take up individual cases which would be difficult to change. Another respondent felt that the Commissioner’s remit should include taking up individual cases.

In addition, Stonewall Scotland considered that the remit should include all victims regardless of whether they had reported a crime or not, whilst the Scottish Council on Deafness wanted clarification on whether victims who are also prisoners or serving sentences in the community would be covered.

Two respondents stated concerns that it would be difficult to ensure the Commissioner was independent from government. Others believed the Commissioner would face difficulties in changing the way victims are treated by the justice system and existing support services, particularly as they perceived the system is currently weighted towards offenders’ rights and that there would be opposition to the Commissioner from offenders’ support bodies.

There were a number of other perceived difficulties mentioned, including ensuring that victims were consulted adequately and their concerns acted upon, ensuring that enough information was given to victims and families and difficulty in getting victims to actively play a part in policy development.

In addition, Glasgow University School of Law expressed concern that the proposed Commissioner’s investigatory role was unclear, stating “If it was to extend to decisions by police officers or prosecutors this could create a number of difficulties such as prosecution decisions being reviewed by external, non-expert bodies”.

---

7 Consultation response no.24 (Families Outside)
8 Consultation response no.16 (Glasgow University School of Law)
Question 4

Can you identify any equal opportunities issues (either positive or negative) arising from this proposal?

24 respondents (51%) answered this question. Of those, 10 (42%) could not identify any equal opportunities issues.

A number of responses indicated that the role and functions of a Commissioner must address all equalities issues. A number also stressed that a Victims’ Commissioner needs to represent all victims on an equal basis, regardless of factors such as race, age, gender, sexuality and status and, for example, whether the victim is also a prisoner.

The main theme mentioned in responses centred around the need for the Commissioner to continually consult all categories of victims and to review his or her policy and practice as well as that of the justice system and other support services.

Victim Support Scotland stressed the need for a robust system of equality assessment, stating “Any adverse effects, arising from the practical functioning of the Victims’ Commissioner, must be continuously assessed and reported on through equality impact assessments, to ensure they are properly addressed and minimised”.9

Another major theme in responses was that the creation of a Victims’ Commissioner would go a long way towards correcting the perceived existing inequality. A number of respondents stated that the lack of representation for victims made them unequal to prisoners, who are represented by the Scottish Prison Complaints Commission. Repair and Mediation Parent Support at Renfrewshire Council commented that the creation of Commissioner would mean “victims as well as offenders have a voice”.10

Additionally, a number of respondents believed that victims in Scotland would be put at a disadvantage to those in the rest of the UK, given that there is already a Commissioner for Victims and Survivors in Northern Ireland and there is to be a Commissioner for Victims and Witnesses in England and Wales by 2010.

Families Outside, whilst supporting the need for better representation for victims, felt that parity with prisoners was not a valid justification for the creation of this post as “our understanding is that the office of the Prisons Complaints Commission is shortly to be eradicated, with its role subsumed under the Scottish Public Services Ombudsman”.11 They also felt that creation of this post should be based on need and current provision for victims rather than whether or not the rest of the UK had equivalent representation.

9 Consultation Response no.14 (Victim Support Scotland)
10 Consultation Response no.45 (Repair & Mediation Parent Support, Renfrewshire Council)
11 Consultation Response no.24 (Families Outside)
Families Outside sought clarification of the term “victim” and whether this would include all who suffer the effects of a crime, such as the offender’s family.  

**Question 5**

*Do you have any specific comments about costs involved?*

24 respondents (51%) answered this question directly.

10 (42%) of these believed that the benefits of having a Victims’ Commissioner would outweigh the cost. Comments included that cost should not be an issue or was irrelevant, that it was a worthwhile proposal deserving an adequate budget, that costs should be recovered from taxation and that no funds should diverted from existing victims’ services.

An individual from Strathglass Community Council said “lots of money is already spent on legal aid etc. perpetrators of crime. Money should also be available to help the victims”. Another respondent stated that “costs should be irrelevant as it will hopefully help victims or victims families and it will probably still only be a fraction of what it costs to take offenders to trial and then to keep them in prison”.

A further five (21%) were supportive of the creation of a Victims’ Commissioner but expressed some reservations about costs, including that they should not impact negatively on existing victims’ services. Kincraig and Vicinity Community Council said “A small well-run organisation is most likely to contain costs and achieve value for money for the tax payer, while still providing the necessary support to victims with the minimum of bureaucracy.”

Six (25%) respondents considered that the consultation did not give enough detail about costs involved and where they would come from to enable them to comment.

Two respondents believed the costs would outweigh the benefit of having a Victims’ Commissioner. An individual from Strathglass Community Council stated “I have doubts about need for this role to be separate from the existing Scotland’s Commissioner for Children and Young People from a cost point of view.” Inverlochy and Torlundy Community Council were of the opinion that “there would undoubtedly be significant additional costs involved for little or no material benefit.”

---

12 Consultation Response no. 24 (Families Outside)
13 Consultation Response no.7 (Individual from Strathglass Community Council)
14 Consultation Response no.36 (Anonymous)
15 Consultation Response no.17 (Kincraig and Vicinity Community Council)
16 Consultation Response no.4 (Individual from Strathglass Community Council)
17 Consultation Response no.22 (Inverlochy and Torlundy Community Council)
Invergordon Community Council took the view that all the costs associated with a Victims’ Commissioner should be fully funded from assets recovered from criminal activity.\(^{18}\)

**Question 6**

*Do you have any other comments on the proposal?*

Ten respondents commented. The main issue to arise was the powers and/or influence that the proposed Victims’ Commissioner should have. One respondent said “I would like to see the Commissioner being allowed to make positive changes in how victims of crime are treated and not merely be a figurehead or a talking shop”.\(^{19}\)

Another stated “higher level research/consultation must translate into individuals’ support. So the post needs real power to influence.”\(^{20}\)

One respondent stressed the importance of having a Victims’ Commissioner who is able to provide a personal and continuous service for victims whilst another believed that strong back-up for existing organisations would make a “huge difference”.

Highland Community Planning stressed that it was vital a Victims Commissioner put in place a framework for gathering information directly from victims. Inverness Women’s Aid (responding as a member of Highland Community Planning) sought clarification on whether women trafficked into Scotland would be included in the definition of “victim” for the purposes of the Victim’s Commissioner’s remit.\(^{21}\)

**Additional issues**

A number of respondents expressed or implied in their answers that the proposed Victims’ Commissioner should take up individual cases, for example where victims or their families may not have been treated very well by the justice system or existing victim support services.

**Summary**

80% of people who answered Question 1 (the need for a Victims’ Commissioner) supported the creation of the role. The most popular reasons for this were to give victims better representation and to put them on an equal footing with other groups including prisoners (who are already represented) and with other areas of the UK which have, or soon will have, dedicated Victims’ Commissioners.

The key benefit of the role was identified as giving victims a dedicated person solely focussed on championing victims’ rights. Other benefits included promoting good practice amongst other victims’ support services and

\(^{18}\) Consultation Response no.20 (Invergordon Community Council)
\(^{19}\) Consultation Response no.39 (Anonymous)
\(^{20}\) Consultation Response no. 40 (Anonymous)
\(^{21}\) Consultation Response no. 47 (Highland and Community Planning Partnership)
reviewing and, where necessary, reforming the treatment of victims in the justice system.

The main difficulty, identified by 31% of respondents, related to duplication of work with existing support services for victims. Another major concern, expressed by 15% of respondents, was clarification of the remit of the Commissioner, particularly the role in practical terms and who is included in the definition of “victim”.

71% of respondents did not identify any equal opportunities issues and some believed that the creation of a Victims’ Commissioner would go a long way to help to improve or define equality issues for victims. The main issues identified included the need to clarify the definition of victim in terms of who it may include or exclude, the need to consult all victims and to continually review the Commissioner’s practices by carrying out equality impact assessments.

63% of respondents who commented on funding believed that the costs associated with a Victims’ Commissioner would be justified by the benefit to victims the role would bring, with a third of those stressing that costs should be kept to a minimum and funding should not be diverted from existing services.

Conclusions

The responses to consultation have provided a number of ideas that the member will consider and use to refine policy before completing the drafting of a bill.

August 2009