WHO HELPS THE victims?

A public consultation document for a Victims’ Commissioner for Scotland

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We need a Victims’ Commissioner for Scotland.

One million people are victims of crime in Scotland each year - and being a victim of crime or criminal conduct can be extremely traumatic.

Shock, fear, anger, annoyance and low self-esteem often affect victims and leave them vulnerable during the criminal process.

My case proposing this Bill is that it should be the responsibility of the criminal justice system and support organisations to help, protect, compensate and guide victims through the maze of the justice system.

Victims can face a brutal reality during this process. They must recover from physical injury, damage to personal property, embarrassment and feelings of isolation. I feel strongly that they need a better deal.

Often in distress and not at their best to make decisions, victims may not know who to turn to or who can give them a voice.

It is ironic that convicted prisoners have their own Commissioner - but who is the champion for victims?

My Bill would create a Victims’ Commissioner for Scotland who can advocate, advance, and assert the rights of victims and witnesses to crime.

This consultation document sets out my proposals and asks for your views. I invite you to respond, and look forward to your feedback.

My intention is to bring the voice of victims and witnesses to the heart of government in Scotland.

Thank You,

David Stewart, MSP
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THE NEED FOR A VICTIMS' COMMISSIONER FOR SCOTLAND

The imbalance between the rights of offenders and the rights of victims

Offenders have a representative voice in Scotland: the Scottish Prisons Complaints Commission fields complaints relating to prisoners' treatment in prison and the legal system. However, there is currently no Commission or Commissioner dedicated to victims of crime or criminal conduct in Scotland.

The imbalance between the situation in Scotland and that in the rest of the UK

There is already a Commissioner for Victims and Survivors in Northern Ireland, and there is to be a Commissioner for Victims and Witnesses for England and Wales within the next year. Campaigner Sara Payne has been appointed Victims' Champion. Does this mean, effectively, that the one in five people in Scotland who are victims of crime would have had their rights better protected if the crime had happened in England, Wales or Northern Ireland than if it had happened in Scotland?

There is no one body in Scotland tasked with the oversight or co-ordination of legislation relating to victims' rights, and how that legislation interacts, or is supported by, various voluntary bodies. This is despite the fact that legislation relating to victims' rights exists at Scottish, UK and European levels.

Scotland's Commissioner for Children and Young People has a limited remit of support for child victims. The Commissioner has, for example, called for a 'truth and reconciliation commission' to address historic cases of abuse against children in care. The role is limited in scope and age; equally, adult victims should be entitled to a representative voice.

The benefits of a 'joined-up' approach

A Commissioner could add value by identifying a failing in systems in place for a vulnerable group, and bring about improvement.

It is intended that the Commissioner would have a certain independence from government, giving him or her the ability to assess the treatment of victims of crime by any and all of the bodies that interact with them. Scotland's Commissioner for Children and Young People (SCCYP) fulfils this kind of role currently in relation to the rights of children and young people.

For example, SCCYP recently identified previously overlooked concerns about the treatment of children of prisoners. The Commissioner researched the problem and produced a report for the Scottish Parliament in 2008 which addresses the fundamental rights of the children concerned.
Implementing a Victims’ Strategy for Scotland

The Scottish Strategy for Victims, published by the Scottish Executive in 2001, outlined the procedures, organisations and policies relevant to victims of crime. A primary role of the Strategy was to integrate the current legislation and organisations involved in victims’ services. The Progress Report on the Strategy stated that "All such initiatives, including the excellent work being done by criminal justice agencies and organisations, need to be fully integrated so that there are no gaps, so that accountability is clear and so that victims receive consistently high quality, well integrated services".

Five years later, in 2006, the Scottish Executive published research findings under the title of The Provision of Support to Victims and Witnesses of Crime in Scotland. This work explored the provision of support to victims and witnesses of crime, through a review of relevant literature and service provision in Scotland. The paper described a wide range of improvements in services and developments for victims.

However the research found evidence of unmet need in the services and information provided to victims, some of which it described as ‘patchy’:

There remain some gaps in support to victims and witnesses including:
- gaps and barriers in the criminal justice system;
- gaps in availability of provision;
- gaps in forms of support;
- cross cutting constraints to services; and
- gaps in knowledge and information. (Paragraph 5.17)

[…]

There are also gaps in current knowledge and information about support to victims and witnesses, including information about:
- the overall impact and effectiveness of particular measures;
- the views of victims and witnesses;
- the situation across jurisdictions;
- particular initiatives; and
- specific groups of victims/specific types of crime. (Paragraph 5.27)
A Victims' Commissioner for Scotland would play an essential part in addressing these individual issues, and in developing a comprehensive and effective victims' strategy in Scotland.

THE ROLE OF A VICTIMS' COMMISSIONER FOR SCOTLAND

The Office of the Commissioner would be new and unique. No existing office or organisation combines the breadth, independence and statutory status of the proposed remit.

Remit and general functions of the Commissioner
The primary role of the Commissioner would be to promote and safeguard the rights of victims.

The remit would:

- as far as is reasonably possible, complement and add to services to victims, not replace or duplicate work already being done;
- cover all victims regardless of age. The Commissioner would work on behalf of all age groups from the elderly to the young.

In order to fulfil this role, I propose that the Commissioner would have five key functions:

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

1. Promotion
The primary function would be to promote and safeguard the rights and interests of victims and witnesses of crime and anti-social behaviour. The Commissioner would have a key role in promoting awareness and understanding of exactly what those rights are throughout the whole population.
2. Engagement

Engagement with victims
Involving victims would be central to the aims and working practices of the Commissioner. It is proposed that the Commissioner will be placed under a duty to take all reasonable steps to encourage this involvement as an on-going process. Ultimately it will be for the Commissioner to decide how best to carry out that duty, putting the principles of consultation, participation and accessibility into practice and establishing mechanisms to encourage constructive involvement of victims.

Whilst the Commissioner would not provide direct support to individual victims of crime, he or she would provide a signposting service to enquirers, supplying details of relevant sources of advice and help.

The Commissioner would also be expected to work alongside other agencies to consider, develop and promote good practice and a diversity of approaches to engaging with victims. It might entail working through existing structures/networks, the media or modern communications technology.

Engagement with organisations
The Commissioner would seek to minimise overlap and duplication with other agencies. Therefore it would be essential to establish good working relationships with relevant organisations, such as: ombudsmen; statutory bodies, including the Parliament and the Scottish Government, and victims' organisations.

Scottish Ministers could require the Commissioner to provide advice to the Scottish Government which relates to victims or witnesses of crime and anti-social behaviour.

3. Review

The Commissioner would be expected to keep under review current law and practice that relates to victims and witnesses.

In the course of his or her work, the Commissioner may identify vulnerable groups of victims not covered by the work of existing agencies or provision of services. The Commissioner would be able to consider how best their needs can be met.

The Commissioner would not be expected to intervene on behalf of any one individual or case: for example, he or she could not ask the courts to impose a particular sentence or review a particular sentence. However, the Commissioner would be able to highlight particular cases of injustice regarding victims' rights.

There are already mechanisms in place to handle individual complaints; the Commissioner would not duplicate those processes, but would direct victims to appropriate organisations as necessary for further support and information (for example, to the Police Complaints Commission, the Scottish Public Services Ombudsman or to Victim Support Scotland). However, if those mechanisms were not working effectively, the Commissioner might need to address the problems by highlighting and researching the problem issues raised.
4. Research and recommendations
In co-operation with relevant organisations, the Commissioner would promote best policy and practice in relation to the rights and interests of victims.

The Commissioner would have the power to commission research to find out, for example, how the rights of victims are being exercised. This would enable him or her to perform an 'outward facing' role, backed up by facts.

This proposal fits well with the findings of a recent Scottish Executive study into the provision of support to victims and witnesses of crime in Scotland. A key recommendation was that research was needed into: victims' and witnesses' experiences and perceptions; various aspects of the impact of support, and some of the methodological constraints which can be problematic in research with victims and witnesses.

Scotland's Commissioner for Children and Young People has a duty to promote and protect the rights of children and young people. The statutory nature of the research element of their role strengthens the potential for effecting significant positive changes. For example, children, young people and staff in residential care situations made the Commissioner aware of restrictive health and safety practices. SCCYP was able to commission research from the Scottish Institute for Residential Childcare (SIRCC) which made a series of recommendations for changing 'risk aversion' practices. Local authorities are co-operating with the Commissioner to turn these recommendations into guidelines on managing risks associated with leisure and play opportunities.

5. Investigation
It is not envisaged that the Commissioner would investigate individual cases, per se, or become another tier of the legal process. However, he or she would have the power to investigate where a concern arose, from consultation, research, information gathering etc, indicating a possible systemic failure or procedural flaw affecting victims.

It is proposed that the Commissioner would have the power, if necessary, to require the production of documents and the attendance of witnesses during the course of an investigation.

Having carried out an investigation, the Commissioner would report to Parliament setting out any recommendations that the Commissioner may have.

Accountability: duty to report
The Bill will propose that the Commissioner be subject to a duty to publish and lay before the Parliament an annual report, setting out:

● a review of current issues relevant to victims;
● a review of the Commissioner's activity over the previous year;
● an overview of work to be undertaken over the following year;
● a strategy for actively engaging with victims on the work of the Commissioner; and
● any other information that the Commissioner considers to be relevant.
The Bill will propose that the Commissioner also publish and lay before the Parliament all reports relating to investigations undertaken by the Office and any other reports as the Commissioner sees fit.

In seeking to influence and encourage decision-makers to implement victim-centred policy and practice, the Commissioner would represent the views of victims to the Parliament, the Scottish Government and others. The proposed statutory basis of the office, its independence, a duty to report to the Parliament and active engagement with victims would enable these views to be heard.

The Office of the Victims' Commissioner for Scotland
A Scottish Parliamentary Committee is currently considering the structure of six different Commissioners' organisations in Scotland. The Committee is looking at whether any of the organisations could be combined. This consultation document seeks views on whether a Victims' Commissioner for Scotland would be more effective as a 'stand alone' Commissioner or whether the proposed office would fit within a broader 'rights' body.

CURRENT SUPPORT AND PROCEDURES FOR VICTIMS

A victim may be in contact with many organisations, such as the police, the courts system, support groups and solicitors. Each group or organisation may provide information aimed at supporting and guiding a victim through the relevant process.

The Scottish Government has published a Victims' Information leaflet, which summarises the stages of the criminal justice process and provides references to victims' support organisations especially Victim Support Scotland (VSS). VSS is a charity that provides emotional and practical support for victims of crime. The police automatically make referrals to VSS on contact with a victim of crime and, according to the VSS Annual Report 2007-2008, 91% of all of the referrals to VSS are from the police.

The police follow specific procedures in dealing with victims of crime, including ensuring that any evidence that the victim has is considered, answering enquiries and updating victims on proceedings of investigations. Victims may have to present evidence in court against their perpetrator. In court proceedings, victims will soon be allowed to make a victim statement in which they can describe how the crime affected them. Victim statements will be introduced in Scottish courts of solemn jurisdiction on 1 April 2009; statements will only be sought after a decision has been made to prosecute to alleged offender, and only presented once the accused is found guilty.

The Criminal Justice Act 2003 introduced measures to ensure that victims are provided with certain information, including being made aware of their assailants' release from
prison. This applies in cases where the offender has received a sentence of eighteen months or more and is carried out under the Victim Notification Scheme of the Scottish Prison Service.

The Criminal Injuries Compensation Scheme provides payment to victims of violent crime, subject to set criteria, and is regulated by the Criminal Injuries Compensation Authority, which is a UK-based organisation, not specific to Scotland.

**CASE STUDY:** An example where the current system - for all the support it does provide - is nonetheless not working as well as it should for victims.

Many groups supporting women survivors of rape feel there is an imbalance in relation to victim/survivor rights. An example of this is the fact that one rapist has received £100,000 legal aid to fight for his works pension, while one of his victims has had to try to find money herself for all the security measures the police have recommended she implement at her house now that he has been released from prison.

_A Victims' Commissioner would be in a position not to take up her specific case but to look at the measures suggested by police forces and liaise with support bodies to establish if funding is or could be available and make appropriate recommendations to Government._

**BACKGROUND ON CURRENT LEGISLATION**

Victims in Scotland have rights under European, UK and Scots law.

European legislation includes:

- the EU Framework Decision on the Standing of Victims in Criminal Proceedings;
- the European Convention on the Compensation of Victims of Violent Crime (according to the Convention, compensation is provided to the victim in case of serious bodily injury or impairment of health directly attributable to an intentional crime of violence even if no prosecution or punishment is possible. The compensation covers loss of earnings, medical and hospitalisation expenses and funeral expenses (for dependants loss of maintenance)); and
- the European Council Directive 2004/80/EC relating to compensation to crime victims which are intended to make it easier for victims to get compensation if they are injured by violent crime in an EU Member State other than the one where they normally live ('cross-border' cases).
In January 2009, the Prime Minister, Gordon Brown, announced the appointment for one year of a Victims' Champion for England and Wales, campaigner Sara Payne. A Commissioner will be appointed subsequently. The Prime Minister stated that he will create an independent commissioner who will stand up for victims, witnesses and families - the people the courts and the police exist to serve.

There have been many developments to legislation and policy which affect victims and witnesses in Scotland. These include the Protection from Abuse (Scotland) Act 2001, the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, the Criminal Justice (Scotland) Act 2003, the Vulnerable Witnesses (Scotland) Act 2004, the Antisocial Behaviour etc (Scotland) Act 2004, the Antisocial Behaviour Strategy and the Criminal Procedure (Amendment) (Scotland) Act 2004.

In Scotland there have also been many service developments for victims and witnesses, with a change in focus from 'witness management' to a greater emphasis on meeting the needs of individual victims of crime. Alongside this, there have been many developments to the provision of services and support to victims. These include changes to existing services, such as the expansion of the Witness Service; new projects and services, such as the establishment of Victim Information and Advice (VIA); new groups and organisations; new methods of provision, and new information.

I consider that Scotland's unique criminal justice system deserves a unique Victims' Commissioner. He or she would ensure that Scottish legislation could be further developed to provide a more comprehensive scheme of services and support to victims of crime, and also determine a distinctively Scottish perspective to UK and European legislation.
CONSULTATION QUESTIONS

Your comments will be very helpful to us in refining this legislation. I would be very grateful if you could respond to the questions below.

Q1 Do you have any comments about the need for a Victims' Commissioner for Scotland?

Q2 What do you see as the benefits of the proposed role and functions of a Victims' Commissioner for Scotland?

Q3 Do you foresee difficulties with any aspects of the proposed role and functions of the Commissioner (p7-12)? If so, please provide more information.

Q4 Can you identify any equal opportunities issues (either positive or negative) arising from this proposal?
Q5 Do you have any specific comments about costs involved?

Q6 Do you have any other comments on the proposal?

How to respond
You are invited to read these proposals, and comment on any issues that you feel may be relevant. Responses must be submitted by 1 July 2009, and should be sent to the following address:

David Stewart MSP
The Scottish Parliament
Edinburgh
EH99 1SP

Alternatively, please email responses to
david.stewart.msp@scottish.parliament.uk
Telephone: 0131 348 5766
Fax: 0131 348 5767

In addition, please pass this consultation document on to any other interested parties that you may be aware of. Additional copies of the paper or alternative formats can be requested using the contact details above and calls via Typetalk are welcome. Further copies of this consultation paper are available from the above address. It can also be downloaded from the Scottish Parliament website at:
http://www.scottish.parliament.uk/s3/bills/MembersBills/index.htm

To help inform debate on the matters covered by this paper and in the interests of openness it is intended all the responses submitted on this consultation document will be made public. You should therefore be aware that by submitting this response you are indicating consent to the publication of all the material contained in your response. Unless you indicate otherwise this will include your name and address and any other biographical information you have provided about yourself.

You should note that personal data referring to third parties included in the response cannot be accepted without explicit written consent from the third party. This consent should be provided with your response.

We are not entitled to process your personal data by publication without your consent. If therefore you want parts of your response to remain confidential please indicate which parts are not for publication. Similarly, if you wish all of the contents of your response to be treated in confidence and not made public then please indicate so.

All responses will be included in any summary or statistical analysis, which does not identify individual responses.
PRO-FORMA

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Address: ................................................................................................................................................

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email address: ....................................................................................................................................

Please indicate whether you are responding as an individual member of the public or on behalf of an organisation.

Member of the public  □

On behalf of an organisation  □

If you are responding on behalf of an organisation please give details below:-

Name of Organisation: ............................................................................................................................... 

Your title: .............................................................................................................................................

Address: ................................................................................................................................................

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