Victim Support Scotland

Mental Health (Scotland) Bill

Victim Support Scotland is the largest voluntary organisation in Scotland supporting people affected by crime. We provide practical help, emotional support and essential information to victims, witnesses and others affected by crime, both in the community and in every Sheriff and High Court in Scotland. The service is free, confidential and is provided by volunteers. Victim Support Scotland welcomes the opportunity to provide written evidence to the Scottish Parliament’s Health and Sport Committee on the Mental Health (Scotland) Bill, with specific reference to the rights of victims of mentally disordered offenders (MDOs).

Do you have any comments to make on Part 3 of the Bill and the introduction of a victim notification scheme for mentally disordered offenders?

Information for Victims of MDOs

It has been acknowledged\(^1\) that victims of mentally disordered offenders (MDOs) are given less information about the offender than other victims, which will include the offender’s whereabouts, the reasons behind the crime, and details on the release of the offender into the community. This is very frustrating for victims and the fear of not knowing when the offender will be released may serve as an impediment to the victim’s recovery process. If victims feel that they are not being kept informed of what is happening in their case, this can result in a lack of confidence in the criminal justice system as a whole, possibly affecting the likelihood of future engagement with the system.

The right to information is one of the most important rights for victims of crime. This is found in Article 6 of the 2012 EU Directive establishing minimum standards on the rights, support and protection of victims of crime\(^2\), and is now included as a statutory right under section 6 of the recent Victims and Witnesses (Scotland) Act 2014\(^3\). The provision of information to victims is vital for a number of reasons. Firstly, the provision of case-specific information can help victims to understand the role that they are expected to play. Secondly, keeping the victim informed at all stages of the criminal justice system, including after the trial, will ensure that the victim feels that their interests are respected and taken into account. It is not merely the sentence that determines the victim’s sense of justice; it is also influenced by the manner in which they are treated throughout.

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the entire criminal justice procedure. Finally, the provision of information can assist victims of crime when planning their safety. Everybody has a right to feel safe in the communities in which they live. For victims, having been the target of a criminal offence, their sense of safety has often been jeopardised by the event; many victims are worried about meeting the offender in the street or in the local community. They therefore often want to know if the offender has been released, either with or without conditions. If they are aware that the offender is released back into the community, either temporarily or permanently, they may choose to take steps to increase their own sense of safety. Without information about the whereabouts of the offender, the victim is unprepared for the risk of meeting the offender in the community.

Taking all of these points into consideration, **Victim Support Scotland welcomes the Bill’s provisions for the introduction of a Victim Notification Scheme for victims of mentally disordered offenders (MDOs).**

**Criminal Justice Victim Notification Scheme Proposals**

The expansion of the Criminal Justice Victim Notification Scheme (CJVNS) to include victims of MDOs sentenced to imprisonment and subject to Hospital Direction (HD) or Transfer for Treatment Direction (TTD) will bring the reassurance and peace of mind associated with the provision of information regarding an offender to a greater number of victims than is currently the case. This proposal will also minimise the administrative burden placed on victims as it will avoid the need for them to join two separate schemes. To further alleviate this burden, Victim Support Scotland supports an opt-out scheme for all Victim Notification Schemes, whereby the information is provided unless the victim has stated that they do not wish to receive it.

VSS welcomes the recent implementation of section 27 of the Victims and Witnesses (Scotland) Act 2014, which amends the CJVNS to allow victims of any offence to be part of the scheme, rather than solely prescribed offences as is currently the case. We also note the Scottish Government’s commitment to lowering the threshold of sentence length to 12 months through their current order making powers within the Criminal Justice (Scotland) Act 2003.

**Separate VNS Proposals**

Additionally, the Bill’s proposals to establish a Victim Notification Scheme for victims of offenders subject to a compulsion order and restriction order (CORO) is a major step forward in establishing a system of information provision as specified in the Victims' Directive. Being a victim of crime can be a particularly distressing and challenging experience if the crime has been perpetrated by an

4Victims and Witnesses (Scotland) Bill Policy Memorandum, paragraph 52
http://www.scottish.parliament.uk/S4_Bills/Victims%20and%20Witnesses%20(Scotland)%20Bill/b23s4-introd-pm.pdf
individual whom society believes needs care, support or treatment; victims can often be more fearful in these circumstances and are in particular need of reassurance and protection. As such, VSS strongly supports the introduction of a VNS for victims in such situations.

We note that the VNS proposed by the Bill as introduced does not include victims of offenders who are subject to a compulsion order under section 57A of the Mental Health (Care and Treatment) (Scotland) Act 2003. In accordance with article 6 of the Victim’s Directive, it is the view of Victim Support Scotland that victims should be able to access information about the release or escape of prisoners without limitations or exclusions, meaning that all victims, regardless of sentence length or whether or not the offender is mentally disordered, should receive the same amount of information. We believe that the Bill should go further in ensuring that information is provided to victims of offenders subject to compulsion orders (COs); our suggestion is that the Victim Notification Scheme that is currently proposed to cover only offenders with a compulsion order and restriction order should be expanded to include offenders with a compulsion order if and when this order is extended on review at the six month point.

Victims’ Representations

Victim Support Scotland believes that victims should be consulted and given the right to provide information before any key decisions are taken in the case. As such, we agree with giving victims an opportunity to make representations to decision-makers about the effect of the decisions to be made and any other concerns they have as this ensures that the victim gets the opportunity to make their voice heard and give an input into the decisions made. In addition to the impact of the crime and any additional information that may be of interest, the victim should also be able to raise any concerns they have regarding their own safety and security following the release of the offender. Conditions restraining the offender from contacting the victim or entering certain geographical areas, for instance where the victim lives, should be set if deemed appropriate.

As previously indicated\(^5\), Victim Support Scotland believes that in order to ensure that all victims are given equal opportunity to participate, all victims should be able to give information orally, in person or by pre-recording, in relation to any key decision about the offender. Regardless of the type of order the MDO is subject to, victims should be given the chance to provide information in the manner of their choosing.

Victim Support Scotland would like to highlight the need for further clarity regarding the right for victims to make representation. To ensure transparency and accountability, the circumstances under which representation is allowed should be made clear and communicated to victims in a timely manner. We

believe every victim should have the ability to make their voice heard throughout the assessment process and that their voice should be considered and taken into account as an integral part of the decision-making process.

Conclusion

Victim Support Scotland supports the general principle of Part 3 of the Bill, as regards the introduction of a Victim Notification Scheme for victims of Mentally Disordered Offenders. In order to maximise the number of victims who would benefit from these proposals, we suggest that the scheme should also cover victims of offenders subject to compulsion orders which have been extended at the six month review. We look forward to further discussions on how victims of MDOs can access their rights to information as detailed in the Victims’ Directive, and are pleased to be currently working in partnership with other relevant agencies in developing practical suggestions and options for the implementation of the updated legislation.

Victim Support Scotland
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