

Victims and Witnesses (Scotland) Bill

The Law Society of Scotland

Introduction

The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

The Mental Health and Disability sub-committee (the committee) has considered the Health and Sport Committee's call for written evidence on the Scottish Government's Victims and Witnesses (Scotland) Bill and has the following comments to make in relation to sections 26 and 27, which provides for the establishment and functions of a National Confidential Forum (NCF).

It should be noted that the Society's Criminal Law Committee has responded separately to the call for evidence issued by the Justice Committee and which relates to all sections of the Bill other than sections 26 and 27.

General Comments

The committee is supportive of the policy intent behind the proposals as set out in sections 26 and 27, and the overall objective of the Bill. However, the committee does have further observations and comments for consideration by the Health and Sport Committee.

1. The committee suggests that the functions of the NCF be very clearly specified and defined, as those persons who participate in providing their testimony may be vulnerable adults who have experienced abuse in institutional care as a child.
2. It is the committee's understanding that the broad function of the NCF is to act as an acknowledgment forum (section 4ZB(b)) and not as a reparatory forum. There would be benefit to ensuring this is clear, either in the Act or in the Explanatory Notes to the Act.
3. The general functions of the NCF are specified at section 4ZB. The committee note that these do not include the duty to make a disclosure to a constable in the circumstances described at Part 6 paragraph 13(4) or the discretion to make a disclosure in those circumstances set out in paragraph 13(5). There are a range of other provisions in relation to disclosure in Part 6. However, those specified in relation to disclosures to constables should, in the committee's opinion, appear in the section which specifies the general functions of the NCF, either as a specific function to make disclosures in those circumstances set out in Part 6 or by importing the terms of paragraphs 13(4) and (5).

4. The committee believe that the parameters and limits on “confidentiality” will be an essential ingredient of the NCF, particularly as it is specified that one of the general functions is to provide means for “*persons...to describe in confidence...*” It is crucial therefore that any duties or discretion on the NCF to make a disclosure are reflected clearly under the NCF functions.
5. The committee note that the NCF has a duty to submit its annual report to the Scottish Ministers (part 5(12)). Section 4ZB(c) places a duty on the NCF to identify patterns etc and to make recommendations about policy and practice etc and to prepare reports on the testimony it receives and its recommendation in relation to them (section 4ZB(d)). However, it is not specified to whom they are to report. The committee suggests that this needs to be clearly set out.
6. The NCF Head must account to the [Mental Welfare] Commission for the carrying out of the NCF functions (section 4ZC(2)), however, the Commission must delegate the NCF functions to the NCF. It is unclear to whom the NCF will report or make recommendations. The accountability structure needs to be clearly and unambiguously set out.
7. The committee note that section 4ZB(e) refers to information about advice and assistance available to persons giving, or proposing to give testimony. This is a broad provision and the committee hope this is intended to encompass health support. The committee envisages much work will have to be done to ensure the NCF Head, those members and employees of the NCF are clear on their range of responsibilities in this respect. The committee suggests that this is expanded upon in the Explanatory Notes which will accompany the Act.

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8 April 2013