Justice Committee
Victims and Witnesses (Scotland) Bill
Written submission from the Equality and Human Rights Commission

Introduction

The Equality and Human Rights Commission is the regulatory body for equality and anti-discrimination law in Scotland, England and Wales, working across the nine protected grounds set out in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. We are also one of Scotland’s two “A status”1 National Human Rights Institutions (NHRIs2). We share our human rights mandate in Scotland with our colleagues in the Scottish Human Rights Commission (SHRC).

We welcome the opportunity to give evidence to the consideration at Stage 1 of the Victims and Witnesses (Scotland) Bill.

Our comments will be framed in part around the findings of our inquiries into disability-related harassment and human trafficking in Scotland, but will not consider the provisions for a National Confidential Forum for survivors of institutional abuse. Our colleagues in the SHRC, who have previously worked on this issue3, are better placed to respond to this section of the Bill.

Access to justice is a fundamental equality and human rights issue, enshrined in domestic and international law. All public authorities in Scotland are required under the Public Sector Equality duty provisions (the general duty) of the Equality Act 2010 to have due regard to, among other factors, the need to eliminate discrimination and harassment (S149, (1) (a)).

As well as the legal and regulatory context, the policy context against which the Bill is being considered is one which recognises that equality and human rights are central to transforming public service delivery and to ensuring more responsive and person-centred services in the future4. It is encouraging that the Scottish Government’s new Justice Strategy for Scotland clearly demonstrates that ministers are attempting to develop approaches to delivering better justice outcomes in Scotland which reflect the Christie Commission’s emphasis on equality.5

Our evidence will draw on some of these factors, and also on evidence gathered and recommendations made in our inquiries into disability-related harassment6 and human trafficking in Scotland7.

1 www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf
Comments on Bill

General Principles
These are welcome, and evidence from our disability harassment inquiry suggests that they can play a role beyond the purely aspirational. Professionals working to the new adult protection regime ushered in by the Adult Support and Protection (Scotland) Act 2007 pointed to the general principles on the face of that legislation as referred to regularly by those working in adult protection to shape thinking on if, when and how to make the most effective intervention where an adult may be at risk of harm.

It is important however that the definitions of “appropriate” at 1, (3) (c) and (d) are not overly restrictive. We recommend that the Government issues further guidance on the interpretation of what is deemed “appropriate” as the term has no legal definition. Needs may not always be immediately apparent – a victim or witness to human trafficking, who could be suffering from post-traumatic stress or have serious concerns for the safety of family members in their country of origin, may need support during an investigation or court proceedings, or to effectively participate, which go beyond immediate basic needs (such as translation and interpretation).

Information
One of the seven key cross-sectorial recommendations in our disability harassment inquiry is that “definitive data is available which spells out the scale, severity and nature of disability harassment and enables better monitoring of the performance of those responsible for dealing with it.”

Information is essential then, not just to ensure that victims and witnesses can participate effectively in the investigation and proceedings, but to provide an end-to-end narrative from initial incident, through arrest, charge, trial, sentencing and rehabilitation, so that criminal justice agencies can build up a much clearer picture of the journey through the criminal justice system for victims, witnesses and perpetrators of different classes of offence. At present, arbitrary organisational and systems boundaries militate against this kind of holistic picture.

Extension of Victim Notification Scheme
The Equality and Human Rights Commission supports lowering the notification threshold from sentences of 18 to 12 months. However, our inquiry into disability-related harassment highlights the effect of “low-level/high-impact” incidents which, while they may in isolation seem inconsequential, can have a profound cumulative effect. In 2007 Fiona Pilkington took her life and that of her disabled daughter Francesca after dozens of “low-level” incidents which agencies failed to identify as fitting a pattern of targeted harassment by local youths. Consideration should therefore be given to creating provisions for notification of release for sentences of less than 12 months where the sentence includes a proven statutory aggravation.

8 EHRC, Hidden in Plain Sight: Inquiry into disability-related harassment, September 2011, pp. 10-11
Vulnerable Witnesses
The Equality and Human Rights Commission supports the proposals for vulnerable witnesses, in particular the automatic trigger in proceedings for human trafficking offences. However, we would suggest that the provisions at section 6 to amend section 271 of the Criminal Procedure (Scotland) Act 1995 should be amended to encompass significant risk of harm not just to the victim or witness but to their immediate friends and family (s271, (1) (d)).

Equality and Human Rights Commission
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