I would like to thank you for the opportunity to give evidence to the Justice Committee on 16 April 2013 in relation to the Victims and Witnesses Bill. On that date the Committee asked that further information be provided in relation to the following:

- The number of people who have accessed the Victim Notification Scheme since its inception and how well the scheme has been received by victims. The Committee is particularly interested in how successful victims deem the scheme to be.
- The level of information that is routinely provided in Sheriff Courts in relation to bail cases, the process whereby, if a particular risk is highlighted, the court is made aware of that. The Committee would also be interested to know whether victims are being told when their offender is bailed and when a condition of bail is that they do not approach the victim or do not go into a certain area, as anecdotal evidence was provided that this was not happening on a regular basis. If victims are not being routinely told about bail conditions, the Committee would welcome details of why this is not happening.

I have set out a response in relation to these matters below.

**Victim Notification Scheme**

The Criminal Justice (Scotland) Act 2003 introduced the Victim Notification Scheme, which provides that Scottish Ministers must (unless they consider that there are exceptional circumstances which make it inappropriate to do so) give a person against whom a prescribed offence has been perpetrated information about:-

- the release date of the convicted person;
- their date of death if they die before that date;
- the date they are transferred to a place outwith Scotland;
- the date they become eligible for temporary release; or
- if the person is unlawfully at large, the date they absconded and the date they are returned to custody.

This information is provided where the convicted person was sentenced to a period of imprisonment of 18 months or more and victim has intimated that they wish to receive such information. The scheme also allows victims to make representations about any specific conditions if the convicted person is being considered for release on licence or home detention curfew.

COPFS is responsible for issuing the relevant forms to victims where an accused has been convicted of a prescribed offence and receives a prison sentence of 18 months or more. However, COPFS is not involved in the completion of the forms or
in any further administration of the scheme. The forms are sent by the victims directly to the Scottish Prison Service. Therefore, no records are kept by COPFS on the number of victims who wish to participate.

However, it is understood from the written evidence submitted to the Justice Committee by the Scottish Prison Service that they do have a record of how many victims have applied to the scheme. They stated that,

“By the end of the first year of the scheme in 2004, 278 victims had registered with SPS rising to 557 by the end of 2006. At the end of the financial year 2012-2013 more than 4000 victims had registered on the scheme and there are currently more than 1900 victims actively receiving information. These comprise of victims of 645 life sentence prisoners, 990 long term prisoners and 319 short term prisoners.

The successful operation of the VNS is largely dependent upon our IT system which alerts us to any changes in the circumstances of the prisoner against whom the victim is registered. Each change must be interrogated to establish whether the circumstances require further communication with the victim, for example, should the prisoner receive a further sentence as a result of an unconnected matter– we will write to tell the victim that the prisoner’s release date has changed. In a typical day we review around 30 “alerts”. Not all of these will require action but in the financial year 2012-13 we sent information to victims on more than 1200 occasions.”

COPFS is not aware of any feedback process for victims in relation to the Victim Notification Scheme. Furthermore, there would appear to have been no formal evaluation of the scheme.

However, it has come to the attention of COPFS that some victims may find the process of formally applying to participate in the scheme too traumatic at the time of sentencing. There is a danger that they may decide to leave this until a later date and then miss the date that the accused has been released from custody. Alternatively, they may forget to return the forms at all.

For this reason COPFS would welcome consideration of running the scheme on an ‘opt-out’ basis, as opposed to the current ‘opt-in’ basis. This would ensure that victims are provided with the necessary information without any formal application process on their part. If a victim does not want to receive any further information about the accused, then it would still be open to them to choose not to participate in the scheme.

The process for notifying the victim of the procedure for opting out would be subject to discussion between COPFS, Scottish Prison Service and the Scottish Court Service.

**Application for Special Bail Conditions**

Prosecutors have a responsibility to have regard to any available information about the likely impact on the victim and/or vulnerable witness of release of an accused
person from custody at any stage in criminal proceedings. Recent guidance to legal staff within COPFS emphasises that the risk the accused poses to the public or particular victims is the paramount consideration in deciding whether bail should be opposed.

In cases reported from custody, information about the victim can be crucial in informing decisions about bail and the use of special conditions. A prosecution report received from the police may convey a victim’s fear of intimidation, or feeling of being at risk. The prosecutor will ensure that any information as regards the victim’s safety is brought to the attention of the court.

In appropriate cases the prosecutor will consider asking for additional bail conditions colloquially referred to as special bail conditions, given the nature of the offence. These bail conditions can often afford important legal protection to the victim while criminal proceedings are ongoing. This is particularly relevant to sexual offending and cases involving domestic abuse. These special conditions may include a requirement not to approach or contact the victim. Similar conditions may be sought on behalf of any child or vulnerable victim, any identifiable victims of hate crime and any victims where the case is proceeding at solemn level.

**Intimation of Bail Conditions**

COPFS is committed to providing victims and witnesses with the information they need, when they need it. This includes any information about the details of any special conditions attached to the bail order.

In cases where Victim Information and Advice (VIA) have an involvement, all bail information is provided pro-actively. These cases include:

- any case involving domestic abuse
- any case involving a sexual offence
- any case involving a hate crime
- any case where there is a child victim or witness
- any case where the accused has appeared on Petition
- any case where a victim or witness appears vulnerable for any reason
- any other case where a legal member of staff believes that the victim would benefit from VIA involvement

If a special condition of bail has been requested to the effect that the accused must not approach or contact a named witness, it is likely that a particular vulnerability has been identified. Therefore, the case will fall within the VIA remit and the victim will be pro-actively contacted regarding the bail conditions.

VIA staff intimate bail details to a victim or witness as soon as possible after the accused’s appearance in court. Contact will normally be made by telephone on the same day, or within 24 hours.

It is recognised that in cases involving domestic abuse, victims may be particularly vulnerable following the release of an accused person from custody. Therefore, where VIA staff cannot contact the victim by telephone on the same day, they will
raise an incident with the police, requesting that they inform the victim in person. This ensures that the victim is provided with the relevant information timeously.

In all other cases, where VIA does not have an involvement, this information is provided to victims and witnesses upon request. This is due to the number of cases calling in court in any one day. However, given the wide scope of the VIA remit, priority has been given to pro-actively informing those victims and witnesses who may be considered most vulnerable.

I hope that the Committee finds this information helpful.

David B Harvie
Director of Serious Casework
1 May 2013