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 Law Society of Scotland’s Criminal Law Committee (the committee) welcomes the opportunity to consider and respond to the call for written evidence on the Victims and Witnesses (Scotland) Bill and has the following comments to make.

It should be noted that the Society’s Mental Health and Disability sub-committee has responded separately to the call for evidence issued by Health and Sport Committee relating to sections 26 and 27 of the Bill. A link to this response is included for members’ information.

General comments

The committee responded to the related Scottish Government consultation; Making Justice Work for Victims and Witnesses in July 2012.

The committee is supportive of the policy intent and the overall objective of the Bill. However, as previously set out in its response to the Scottish Government’s consultation, the committee question how the additional services are to be funded and resourced given the current funding constraints and financial cut backs which is affecting the criminal justice system, including the Crown Office and Procurator Fiscal Service, the police and including the proposed court closure. Expectedly, victims and witness are anxious to avoid any further additional upset and stress and are keen that their case is managed in the most speedily and efficient way possible. Although the provision of further information and help, as set out within the Bill, will address one possible level of victims’ and witnesses’ concerns, an increased level of anxiety and dissatisfaction may arise due to prolonged cases which are as a result of insufficient and reduced resources.

The committee notes that the Bill is entitled the Victims and Witnesses (Scotland) Bill, and the Bill consistently refers to these two groups of persons. However, the committee further notes that other than a minimal definition under section 2(3) that “victim” includes a prescribed relative of a victim’ no clear and full definition of victim appears or is referenced on the face of the Bill. The committee suggests, and would

welcome, a statutory unambiguous definition to avoid any unnecessary anxiety by person who may consider themselves as “victims”.

Specific comments

Section 3 Disclosure of information about criminal proceedings
The committee notes the General Principles as set out in section 1(3) of the Bill, providing that a victim or witness should be able to obtain information regarding the investigation or proceedings relating to the alleged or suspected offence, and further notes that Section 3 (6) (a) includes ‘a decision not to proceed with a criminal investigation and any reason for it’.

The Scottish Government recently consulted upon, and proposed that the requirement of corroboration be abolished\(^2\), to which the committee responded\(^3\). The committee is concerned that without any requirement for corroboration, the expectation of many victims and witnesses will be for an increased likelihood of a prosecution. If a decision is taken not to proceed with a prosecution due to the credibility or reliability of victim’s and witnesses’ evidence, the committee question how this will be conveyed to the victim or witness as this may cause increased anxiety. Where the investigation or case arises from a single witness complaint, this may cause difficulties for the Scottish Court service, the Crown Office and Procurator Fiscal etc.

Section 3(2)(c) states that the information may be given to a person who has given a statement in relation to the offence or alleged offence. This suggests to the committee that any person may request information, even where that person will be taking no further part in the investigation or criminal proceedings. The committee believes that this is too wide a definition of persons for the purpose of section 3(2).

Section 3(4) provides that a qualifying person need not comply with the request where they consider it inappropriate to do so. The committee notes that there is no guidance provided as to when this discretion should be applied. For example, what factors should the qualifying person take into account when deciding to comply or not comply with the request for information? The section makes reference to the term ‘where it would be inappropriate to disclose’ but again there is no guidance of what is and is not considered inappropriate. The term ‘inappropriate’ is very wide and ambiguous. For the purposes of transparency and for clarification it is suggested clear guidance must be provided.

In conclusion to Section 3, the committee suggest and envisage that there will be many practical difficulties in considering and fulfilling any duty under section 3. A qualifying person may find it difficult to determine to whom the information should be released to and if it is appropriate to release this information.

\(^3\) [http://www.lawscot.org.uk/media/596278/crim_additional_safeguards_following_the_removal_of_the_requirement_for_corroboration_final_15_march.pdf](http://www.lawscot.org.uk/media/596278/crim_additional_safeguards_following_the_removal_of_the_requirement_for_corroboration_final_15_march.pdf)
Section 4 Interviews with children
The committee notes that a child for the purposes of section 4 is defined in Section 4(6) as a person under 18 years of age, and under section 6 (1)(a) a vulnerable witness is considered as a person under 18. Currently, under the 1995 Act a person is treated, for the purposes of arrest, detention and prosecution as a child if under 16\textsuperscript{4}. Any person over the age of 16, except in limited circumstances, for example where a person is subject to a supervision requirement, is effectively treated as an adult. The committee repeats its suggestions, put forward in response to the to the earlier consultation, that there should be consistency throughout the criminal justice system and all persons under the age of 18 should be defined as a ‘child’.

Section 6 Vulnerable witnesses
The committee notes the inclusion of “victims of alleged sexual offences, human trafficking, domestic abuse or stalking”. It is not clear to the committee why separate categories have been set out, to the exclusion of others.

In the committee’s view Section 271(4) of the 1995 Act adequately covers all those over the age of 18. The committee also questions, whether domestic abuse and stalking offences should be included where special measures may be unnecessary.

Section 9 Objections to special measures; child and deemed vulnerable witnesses
The committee welcomes the amendment to section 271A of the 1995 Act, and believes that this will result in full and transparent consideration being given to applications for Special Measures.

Section 13 Objections to special measure; other vulnerable witnesses
As with section 9, and for the same reason, the committee welcomes the proposed amendment to S271C of the 1995 Act.

Section 14 Review of arrangements for vulnerable witnesses
The committee welcomes the proposed amendment to section 271D(1)(a) of the 1995 Act, which the committee believes will provide greater flexibility.

Section 16 Special measures; closed courts
The committee is concerned with the extension in the powers to allow closed courts. There may be occasions where the relatives of the victims and, or, accused may wish to hear the evidence direct, for example domestic abuse cases. To exclude relatives in these cases may cause them additional concerns as to the nature of the evidence and to speculation of what indeed this evidence is.

Also, Article 6 of the European Convention on Human Rights provides ‘everyone is entitled to a fair and public hearing’. The committee accepts that in limited circumstances a ‘closed court’ may be appropriate. However, the committee suggests that this should only be in very exceptional circumstances and the current provisions are adequate.

\textsuperscript{4} Section’s 15,\& Part V Criminal Procedure (Scotland) Act 1995
It is often the case now that, with the advancement of technology and the increased use of TV links and screens, witnesses do not have contact with the accused or the public attending.

**Section 19 Victim statements**
Although the committee agrees with the use of victim statements, it questions their impact and effect. It is not known to the committee to what extent consideration is given to the victim statements by a judge prior to sentencing. It is unclear as to why there should be an extension of victim statements.

In addition, the committee believes that this section may cause practical difficulties. By way of example, if an accused has pled, or is found Guilty, the Court will then normally hear a Crown narrative, or will have heard evidence in a trial. The Defence will address the court in mitigation. The case may then be deferred for reports. A social worker is then provided with a summary of evidence. Problems could then arise, where at the deferred diet, some weeks later, a victim impact statement is suddenly produced to the court. The victim impact statement may be at variance with the Crown narration, summary of evidence and indeed the social work report. The defence may challenge the statement resulting in further hearings and delay.

**Section 21 Restitution order**
The committee notes that section 21 inserts into the 1995 Act a new section 253A which provides that the court may make a restitution order where a person is convicted of an assault against a police officer. The committee agrees in principle with this, but again raises the question of why such a restitution order is restricted to offences related to assault of police officers and does not include the assault of other emergency service workers, such as ambulance and fire service workers, who themselves are often exposed to potential and actual assaults while carrying out their duties. The committee raises the question for consideration of what will happen should the police officer have retired or been suspended by the time the accused is sentenced.

**Section 22 Victim surcharge**
As the judge already has the power to make a compensation order, the committee questions if this will have any impact. In the committee’s view the Bill and Explanatory notes contain few details regarding the practicalities of the proposed surcharge. The committee welcomes further information on this, to allow full consideration to be given.

**Section 24 Life prisoners; victim’s right to make oral representations before release on licence**
The committee notes that section 24(b) provides the opportunity for victims to make oral representation to a member of the Parole Board who is not dealing with the convicted person’s case. The committee further notes that this increased right above the current right to only make written representations as at present. The committee expect that the Scottish Government will consult upon guidance to this and look forward to considering this when published.
Section 25 Temporary release; victim’s right to make representations
The committee notes that section 25 inserts a new section 17A into the 2003 Act. Section 17A(2) gives victims an opportunity to make written representations regarding the conditions to be attached to temporary release. The committee further notes that what conditions the victim may request is not clear on the face of the Bill. The committee understands that the range of conditions will be set out within guidance.

The committee looks forward to the publication of the consultation on the guidance, setting out the range of conditions which it will be open for the victim to consider, and will respond to this accordingly at that time.

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Law Reform
18 April 2013