Justice Committee

Victims and Witnesses (Scotland) Bill

Written Submission from the Scottish Campaign against Irresponsible Drivers

SCID (Scottish Campaign against Irresponsible Drivers) welcomes the opportunity to present comments to the Justice Committee, on the Victims and Witnesses (Scotland) Bill.

SCID¹, was formed in 1985 by Wendy Moss as a result of a fatal road crash in which her only son was killed. Since that time SCID has helped and advised hundreds of Scottish families who have lost a loved one as a result of a road crash.

The Justice Committee seek comments on:

1. The proposal to create a duty on relevant justice organisations to set clear standards of service for victims and witnesses.

Agree that justice organisations must set clear standards of service for victims and witnesses. However, to make justice work for bereaved families and victims injured in UK road crashes, they must be treated fairly, respectfully, equally, with dignity and autonomy. A system must be put in place to ensure that these standards are followed.

There have been many changes within the justice organisations to improve the service to victims and victim families. This has meant that in addition to the investigation and in appropriate cases the prosecution of crime, justice organisations now require to be victim (and witness) focussed. The Government has reacted by proposing legislation in the Victims and Witnesses (Scotland) Bill. To ensure that victims and witnesses are included in this process.

1.1. Clear standards of service should be communicated to victims and witnesses, verbally, by leaflet form and on relevant websites.

1.2. A monitoring system must be put in place to ensure standards are followed.

2. The proposal to give victims and witnesses a right to certain information about their case.

While victims and witnesses require accurate information on the progress of a case, with accurate information on court dates, reasons for delays etc. the length of time before a case comes to trial causes additional grief for bereaved families as during this time they have very little knowledge on the circumstances of their loved ones death. All too often SCID has witnessed in court the difficulty witnesses have in accurately recalling the sequence of events which happened one, two and even three years previously. The needs of victims and witnesses can be diverse; witnesses can be just that and victims can also be witnesses so their needs will differ

¹ www.SCID.org.uk
with regard to the information they require about the case. It has been SCID’s experience that families bereaved by irresponsible drivers require much more than the progress of their case through the Criminal Justice System; at the end of an investigation or criminal proceedings they require knowing how their loved one was killed and have a need to access the information gathered in the course of the investigation. Both the Crown Office Book of Regulations and the ACPOS Road Death Investigation Manual have clear guidelines, but guidelines are just that and open to interpretation by the individual and do not offer a standard of service to victims. The Procurator Fiscal acts in the “public interest” yet many victims and victim families continue to feel excluded and isolated from the process of law. They feel they are no longer part of the public. A feeling which is exacerbated by the fact that there is no dedicated PF to take them through the investigative process. By contrast in criminal/civil cases, accused persons have the right to be represented by a dedicated solicitor who acts in their interest and who will accompany them through the whole legal process and has access to share with the client, all investigative documents.

The Committee is familiar with the research and recommendations in the Dundee Law School report which was commissioned by SCID with support from the Campaign for Freedom of Information Scotland to examine Access in Europe by a bereaved family to information gathered during an investigation into a fatal road collision.\(^2\)

In the spirit of the 2011 of the DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing minimum standards on the rights, support and protection of victims of crime and the proposals contained in the Victims and Witnesses (Scotland) Bill; the information victims injured and families bereaved by road crashes require to know about their case includes:

2.1 A legal right, at the end of an investigation or criminal proceedings, for families bereaved by road crashes to access all the information gathered by the police and COPFS if they so wish.

2.2 Victims seriously injured and families bereaved by irresponsible drivers have the right to be informed when an offender applies to the court to have his/her driving licence rescinded.\(^3\)

Section 23 of the Victims and Witnesses (Scotland) Bill should be amended to facilitate this.

2.3 Victims seriously injured and families bereaved by irresponsible drivers have the right to have their voice heard before any decision is made by the court to return a driver’s licence before the period of disqualification has been completed.\(^4\)

2.4 Victims seriously injured and families bereaved by irresponsible drivers have the right to be informed when an offender has completed community service.

2.5 Victim Notification Scheme should be extended to give victims seriously injured and families bereaved by irresponsible drivers the right to make representation when an offender is eligible for release from custody or when first eligible from

\(^2\) http://www.dundee.ac.uk/law/smallnews/edocs/scid_report.pdf

\(^3\) http://www.direct.gov.uk/en/Motoring/DriverLicensing/EndorsementsAndDisqualifications/DG_402248

\(^4\) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0275:EN:NOT Article 3
temporary release. Agree with the Government’s proposal in the Bill to follow the 
EU Directive to remove the list of prescribed offences in relation to the VNS, so 
that victims of all offences will potentially be eligible.

3. The proposal to give vulnerable witnesses a right to access certain 
special measures when giving evidence.

Any victim and or witness could be vulnerable depending on the person and nature 
of the crime and therefore any victim and or witnesses should be offered special 
measures.

4. The proposal to require the court to consider compensation to victims in 
certain cases.

In the majority of road traffic cases victims will seek reparation from insurance 
companies or the Motor Insurance Bureau through a Civil Action. Agree existing 
legislation to be amended to place a duty on the courts to consider a compensation 
order with relevant cases clearly defined.

5. The proposal to introduce a victim surcharge and restitution orders, so 
that offenders contribute to the cost of supporting victims.

SCID disagrees with the term “victim surcharge” the preferred terminology is being 
“offender’s levy” as used in Northern Ireland. “Victims surcharge” conjures up images 
of victims being directly compensated by offenders. The media has already 
suggested it is a tax on motorists which panders to the “war on motorists” lobby. This 
is not surprising given that 60% of all fines come from motor vehicle offences. In the 
interests of road safety it must be made clear by Government that it is not a tax on 
motorists but a tax on motorists who have broken the law.

Agree in this economic climate money has to be found to give support to victim 
organisations However it must be made clear by Government that the money raised 
is not going to victims per se but is being channelled into Victim Support Scotland to 
be used with discretion.

Section (3c) of the General principles of the Victims and Witnesses (Scotland) Bill 
states that a victim or witness should have access to appropriate support during and 
after the investigation and proceedings. SCID campaigns for post impact care for 
victims and victim families of road crashes. The response received from the Scottish 
Government to the Justice Committee, 13th December 2012 makes reference to 
post-impact care being a health issue and that there is representation on the 
Strategic Partnership Board to ensure governance of the Road Safety Framework 
and its commitments. While much good work has been done by the Strategic 
Partnership Board to publicise and promote road safety, all of which is more than 
welcome, there has been no discussion or provision for post impact care for victims 
seriously injured or families suddenly bereaved by road crashes. The emphasis of 
the group which could loosely be termed as a “health” issue has been on publicity 
surrounding drink driving and recidivist drink drivers and not on post impact care for 
victims. Many individuals affected by fatal road crashes experience some or many 
degrees or post-traumatic stress disorder. These individuals may seek counselling.
Immediate; not joining a long waiting list, help in tackling physical, psychological, emotional and financial issues

As 60% of all court fines come from driving offences it is reasonable to seek assurances from the Government that the much needed provision for the post impact care of victims of road crashes will be put in place.

6. **Any human rights implications arising from the victims and witnesses provisions in the Bill.**

SCID welcomed the amendment to the Road Traffic Act 1988 which created a new offence of *causing serious injury by dangerous driving*; a charge which at long last gives recognition to some victims seriously injured by irresponsible drivers. The new charge became effective from 3rd December 2012 in Scotland. The charge recognises the consequences of dangerous driving yet it discriminates against those victims who suffer grievous bodily harm or severe physical injury by other criminal driving offences. As the law now stands; innocent victims seriously injured in road crashes in Scotland and England & Wales have their right to life less well protected than those seriously injured in Northern Ireland where serious injury is included in all the Causing death offences. SCID has campaigned vigorously to have all victims seriously injured by driving offences to have recognition in law.

Any amendment to the Road Traffic Act is a reserved matter but the continuance to discriminate victims seriously injured within driving offences raises issues of human rights to be addressed from which the Scottish Government cannot shirk. To make justice work, the Scottish Government, must actively pursue the implementation of Article 2 and Article 8 of Human Rights Act 1998 – to give recognition, in law, to victims seriously injured by driving offences.

SCID
2 April 2013

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5Legal Aid, Sentencing and Punishment of Offenders Act 2012
http://www.legislation.gov.uk/ukpga/2012/10/section/143/enacted?view=plain