Justice Committee

Victims and Witnesses (Scotland) Bill

Written submission from Her Majesty’s Inspectorate of Constabulary for Scotland

1. Introduction and overview

1.1 Her Majesty’s Inspectorate of Constabulary for Scotland (HMICS) is grateful for the opportunity to provide evidence to the Justice Committee in relation to the Victims and Witnesses (Scotland) Bill Sections 1-25, hereinafter referred to as ‘the Bill’.

1.2 Whilst this submission will highlight a number of issues and challenges, it is important to note that HMICS welcomes the proposals within the Bill particularly those that aim to improve support to victims and witnesses, put the victims’ interests at the centre of improvements to the justice system and ensure that witnesses are able to effectively fulfil their public duty.

2. Previous reports and submissions and concerns

2.1 HMICS undertook joint thematic inspections with the Inspectorate of Prosecution in Scotland (IPS) into services for victims;

- Victims in the Criminal Justice System phase 1 published in October 2010
- Victims in the Criminal Justice System phase 2 published in November 2011

2.2 Both reports investigated how victims are treated within the criminal justice system in Scotland. The first joint report covered cases where no court proceedings were commenced while the 2011 report investigated cases in which court proceedings were commenced at a summary level, either in the Sheriff Court or Justice of the Peace Court. The 2011 report highlighted a number of recommendations and suggestions for the Police Service and Crown Office and Procurator Fiscal Service (COPFS). The Victims and Witnesses Working Group had undertaken responsibility for eight of the sixteen points, and it is anticipated that many of the recommendations will be strengthened by the passing of the Bill.

2.3 The previous joint submissions by HMICS and IPS to the Victims and Witness Unit Consultation made additional comments that were broadly in agreement with the proposals. However, some concerns were highlighted, as noted below:

2.4 Victims of sexual violence having the right to choose the gender of the person who interviews them would be desirable, however this might not always be possible, and it may be difficult to guarantee such a choice in court.

1 http://www.hmics.org/publications/victims-criminal-justice-system-i
2 http://www.hmics.org/publications/victims-criminal-justice-system-ii
2.5 Providing victims with an opportunity to make written representations about additional conditions may be included in a licence when an offender first becomes eligible for temporary release is included within the Bill. As stated in the consultation applying consistent standards to such representations is a concern.

2.6 Investigative Anonymity Orders (IAO) are currently used throughout England and Wales. IAOs were introduced by sections 74 – 85 of the Coroners and Justice Act 2009. It is noted that the IAO is not included within the Bill, although it has been outlined in the consultation. Currently, IAOs are used in England and Wales following submission to a Justice of the Peace to prohibit the disclosure of information relating to the identity of an individual who is able to assist a qualifying criminal investigation. Under the IAO, the identity of witnesses will be protected throughout the investigation and thereafter, by a court order. In operations that include cross border work, there could be some witnesses that are protected under the Order and others that are not within the same investigation. While it is acknowledged that section 90 of the Criminal Justice and Licensing (Scotland) Act 2010 introduced Witness Anonymity Orders (WAOs) that can preserve the anonymity of a witness when giving evidence, the IAO can provide anonymity earlier in the process albeit for a smaller selection of crimes.

2.7 There were concerns expressed about the cost of administering the victim surcharge, including the collection of fines. That said, the explanatory notes accompanying the Bill outline the anticipated costs of administering the surcharge. It is stated that the victim surcharge would initially be imposed on all offenders who are subject to court fines, although the collection of the victim surcharge, in the event they are applied when court fines are not, is likely to increase the cost of collection.

3. Victims and Witnesses (Scotland) Bill (Sections 1 to 25)

3.1 HMICS views the main issues and challenges within the Bill as:

- the identification and updating of vulnerable victims and witnesses
- sharing of information provided to victims and witnesses by partners in the Justice System
- the potential for aspects of the Bill to have financial and resource implications for Police Service of Scotland (PSoS) and the Scottish Police Authority (SPA).

3.2 As highlighted in the HMICS/IPS 2010 report it is important to consider victims and witnesses in their own right rather than in the terms of the court process. For the majority of victims of crime where the crime is detected, experiencing a crime does not result in court proceedings as the case is resolved via a caution, a warning letter, a direct measure or results in no proceedings for any other reason. In 2009/10: there were 902,000 recorded crimes and offences, of which over 690,000 (76%)
were cleared up by the police\textsuperscript{7}. Therefore, the role the PSoS has in ensuring that victims and witnesses initial contact with the justice system is positive should not be underestimated.

3.3 HMICS welcomes the proposals within the Bill which create a duty on relevant justice organisations to set clear standards of service for victims and witnesses overall. However, sections of the Bill, such as sections 6-9, relate to witnesses who are ‘giving or is to give evidence… in relevant criminal proceedings’. This reiterates findings that currently a victim’s standing and the services they receive relies, to a large extent, on the initiation of court proceedings and the requirement to be a prosecution witness. This creates a narrow focus on the court aspect, rather than ensuring that victim and witnesses are central to the process and receive the information and support they require regardless of proceedings.

3.4 With reference to vulnerable witnesses, the 2011 report\textsuperscript{8} highlighted that the police were proficient at identifying and reporting on obvious vulnerability categories, such as disability. Conversely, the identification of more hidden vulnerabilities, such as mental health problems, was more challenging. It is noted that the Bill expands the definitions of vulnerable victims and witnesses and sets standards of service, however the identification of such witnesses remains an area for improvement.

**Responsibility for updating victims or witnesses**

3.5 Clarity about the handover of responsibility for updating victims between police and COPFS was highlighted in the HMICS/IPS 2010\textsuperscript{9} report. HMICS considers that greater clarity is required to identify which agencies have the primary responsibility for meeting the needs of victims and witnesses at each stage of the process to ensure there are no gaps in provision.

3.6 The Bill states that victims and witnesses can request information regarding their case. However, being more proactive and ensuring victims and witnesses are kept fully appraised in relation to their case is not explicitly outlined. HMICS considers this proactive element is critical to ensuring victims and witnesses are at the centre of the justice process and should be included in any standards of service issued by those listed at section 2 subsection 2 of the bill.

**Sharing of information**

3.7 When information is shared with victims and witnesses, consideration should be given to the wider sharing of information within the Justice System. Sharing information more widely, such as that requested within section 3 of the bill, would support continuous improvement. Providing a statutory framework for sharing information would encourage information sharing to agreed protocols.

\textsuperscript{7} Source: Audit Scotland: An overview of Scotland’s criminal justice system \url{http://www.audit-scotland.gov.uk/docs/central/2011/nr_110906_justice_overview.pdf}

\textsuperscript{8} \url{http://www.hmics.org/publications/victims-criminal-justice-system-ii}

\textsuperscript{9} \url{http://www.hmics.org/publications/victims-criminal-justice-system-i}
**Financial and resources implications**

3.8 The Police Service of Scotland came into effect on 1\textsuperscript{st} April 2013, previously for the majority of victims and witnesses of crime, the process did not result in court proceedings rather cases were disposed of by the relevant police force. The eight police forces had processes in place to proactively provide information to victims and witnesses throughout investigations and this should continue. However, this process can be time consuming process and was not consistently applied across Scotland.

3.9 The provision of information outlined in the Bill is, over time, likely to have significant financial and resource implications for the PSoS and SPA. While it is acknowledged that information requests are difficult to predict it is anticipated that, as awareness increases among the general public, so too will information requests. HMICS is concerned at the lack of costs outlined and believes this should be revisited once actual figures can be gathered.

3.10 In the majority of cases vulnerable victims and witnesses will be initially identified by the PSoS and subsequently highlighted in their report submitted to the COPFS where this route is deemed appropriate. The increased number of witnesses automatically entitled to special measures and those who can now access special measures is likely to increase substantially. The implications on this increase to the PSoS and the SPA is as yet undefined and difficult to estimate. However, the increased use of screens is likely to result in an increased demand for identity parades which will utilise staff time and resources. A review of the actual cost implications over the coming years would be appropriate.

3.11 With any revision of a process or procedure, there can be unintended consequences or costs that cannot be predicted. HMICS will work with the PSoS and the SPA to identify and assess the impact of the Bill and would welcome the opportunity to present any implications to the Justice Committee in the future if this was considered helpful.

3.12 HMICS would be willing to provide oral evidence to the committee if this was deemed appropriate.

HMICS

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