

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from Victim Support Scotland

INTRODUCTION

1. Victim Support Scotland welcomes the introduction of the Criminal Justice (Scotland) Bill. Victim Support Scotland regards the Bill as an important and progressive step towards achieving equitable and effective access to justice for victims of crime in a 21st century Scotland.

POLICE POWERS AND THE RIGHTS OF SUSPECTS

2. Victim Support Scotland welcomes the grounds for arrest being clearly set out in section 1; the concept of arrest on grounds of reasonable suspicion, with an investigation continuing beyond that, is likely to be more straightforward and easily understood by the general public.

Decision on charge – victims’ right to information

3. The Bill provides that the police may report a case to the Procurator Fiscal without charging the suspect. If a decision on charge isn’t taken until the Procurator Fiscal formally charges a suspect in court, this may result in a long delay for the victim – in some cases up to a year – before the victim is informed of the official evaluation / seriousness of the case, which can result in uncertainty and confusion on the part of the victim.

4. Whether the police decide to charge a suspect or report the case to the Procurator Fiscal without charge, it is pertinent that victims are informed at the earliest possible opportunity of any decisions taken. Victims’ right to information, set out in the EU Directive establishing minimum standards on the rights, support and protection of victims of crime,¹ includes a **right to receive information “enabling the victim to know about the state of affairs of the criminal proceedings.”** In Scotland, this would certainly apply to decisions made on charges or reports to the Procurator Fiscal, but also to the **nature** of any charges brought.

5. Furthermore, both the aforementioned EU Directive and the proposals contained in the Victims and Witnesses (Scotland) Bill give victims the **right to receive information about any decision not to proceed with or to end an investigation or not to prosecute, and the reason for that decision.**

6. The need for the dissemination of this information is further emphasised by the victim’s **right to review a decision not to prosecute**, also introduced by the EU

¹ http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf

Directive establishing minimum standards on the rights, support and protection of victims of crime^[2]; it is crucial that the victim is informed of any decision taken regarding the prosecution of a suspect in order for them to timeously act on this right, as this would form an initial reference point for review.

Liberation from custody

7. Section 6 sets out the information that is to be recorded by police in relation to any arrest. Section 6 (4) (a) provides that if a person is released from custody there must be information recorded regarding details of the conditions imposed.

8. Any decision to liberate a suspect from custody must, as a priority, take the safety and security of the victim(s) and any witnesses into consideration. It is also pertinent that the victim is informed of the decision as quickly as possible.

9. Learning that a suspect will be released from custody may be a great source of anxiety and distress for a victim; they may be fearful that the suspect may get in contact or that they may run into the suspect in the local community. At the stage of release, with the investigation ongoing and the police gathering witness statements etc., there may be an increased risk of threat and intimidation towards the victim and other witnesses.

10. If a suspect is released and conditions are set, for instance that the suspect must refrain from contacting the victim, **it is vital that the victim is informed of these conditions and where he/she should turn to report a breach.**

11. Victim Support Scotland would welcome provision included in the Bill to ensure that the safety and security of victims and witnesses is routinely addressed, and that victims are timeously informed, when a decision is taken to release a suspect.

Period of custody

12. Victim Support Scotland notes that the Bill does **not** provide for an extension of custody without charge beyond the maximum 12 hours in exceptional circumstances.

13. Victims of any type of crime, no matter how 'serious' it is considered to be, may be vulnerable to threats and intimidation from the suspect. Therefore any decision about releasing a suspect must, in our view, consider first and foremost the safety and security of the victim, in addition to other factors mentioned such as seriousness of the crime and possibility that the suspect will attempt to destroy evidence.

Investigative liberation

14. It is stated that these powers are most likely to be of use in the investigation of serious crime (Policy Memorandum, page 12, para 58).

15. Again, the safety and protection of the victim and other witnesses must be the priority consideration when deciding whether or not to liberate a person from custody.

²http://ec.europa.eu/justice/policies/criminal/victims/docs/com_2011_275_en.pdf

Where investigative liberation is granted, it is vital that the victim is informed of the liberation, any conditions and where he/she should turn to report a breach of conditions.

16. The Bill provides that a suspect can apply to a sheriff to have any conditions amended and/or terminated. Victims should be kept informed of any amendments or terminations, particularly those which relate to them directly.

17. Victim Support Scotland welcomes the provisions in section 14(3) setting out that a breach of any condition may be penalised by a fine or a prison sentence. The bill provides that any breach which would constitute an offence were the person not subject to liberation conditions **may** be taken into account in sentencing for that offence. **Victim Support Scotland calls for stronger provision to ensure breaches are penalised and routinely taken into account in sentencing.**

Questioning

18. Victim Support Scotland welcomes the provision allowing the police to question a suspect after charge. In so far as the rights of the suspect are protected, and further questioning would offer benefits to the investigation of crime, we believe this provision is justified and indeed conducive to an effective justice system.

CORROBORATION, ADMISSIBILITY OF STATEMENTS AND RELATED REFORMS

19. Corroboration represents an unfair and unnecessary barrier to justice for many victims of crime, particularly those for whom the crime was committed against them in private, such as many crimes of sexual or domestic violence. One likely consequence of the *Cadder* decision giving a suspect access to legal advice is that it will become even more difficult for police and prosecutors to provide corroboration of evidence as it will be less likely that a suspect will admit to a crime or provide corroborating statements. We are concerned and compelled by the statement on page 24 of the Policy Memorandum (para 137) that *“it [corroboration] plays a major part in the solicitor’s decision to advise the client to say nothing for fear of the client inadvertently corroborating other evidence and thereby creating a sufficiency, which would otherwise not exist. As a result, whether a person is prosecuted for and convicted of an offence conviction which would be inevitable in other jurisdictions can depend entirely on whether the person elects to respond to questioning by the police.”* The likely consequence is that fewer cases will proceed to court.

20. Victim Support Scotland therefore strongly agrees with and supports the Scottish Government’s assertion, stated on page 7 of the Policy Memorandum, that:

21. *“abolition of the requirement for corroboration is a necessary step towards a system which is able to take account of all fairly obtained evidence, respecting not only the accused but also victims and their families”.*

22. Removing the requirement for corroboration whilst retaining the ‘beyond reasonable doubt’ test required for a conviction will enable more cases to be prosecuted

in court on the basis of *quality* of evidence, as opposed to only those which pass the current rigid and bureaucratic *quantitative* test of the evidence. This means more victims will be granted access to justice, as is their right.

23. It is important to acknowledge that this does not mean that in practice the judge or jury will not take account of corroboration, or lack thereof, when determining how much weight should be given to the testimony of a witness. Even without requirement for corroboration, cases will still need to carry, according to the Crown's judgment, a 'reasonable prospect of conviction' in order to proceed to court. Additionally, the judge or jury will still need to be satisfied that the evidence presented convinces them 'beyond reasonable doubt' that the accused committed the crime.

24. We are compelled by the findings of Lord Carloway's research which found no evidence to support the argument that the requirement for corroboration protects against unsafe convictions. Victim Support Scotland wants to see a criminal justice system which acquits the innocent and convicts the guilty. It is important to remember that **miscarriages of justice do not only occur when an innocent person is wrongly convicted,**

25. ***"They also occur when the guilty are acquitted or when it's impossible to prosecute when there is sufficient evidence there to convict."***³

26. Victim Support Scotland would wish to reiterate the point made in the Policy Memorandum (page 23, para 134):

27. *"It is not clear why, on the one hand, a case where there is a single independent and impartial eye-witness to an offence could not be prosecuted, while one involving a number of witnesses who may be unreliable (e.g. rival gang members in a street fight or feuding neighbours in a dispute) should be subject to this artificial restriction."*

COURT PROCEDURES

Increase to jury majority required for conviction

28. If the requirement for corroboration is removed, juries will still need to take into account the quality of all the evidence that has been led and to believe that the case has been proven 'beyond reasonable doubt' in order to convict. Moreover, a case will still require to pass the prosecutorial test to enable it to reach the stage of a trial; and the current provision to uphold a claim from the defence that there is 'no case to answer' will still be available to judges who believe there is insufficient evidence to prove a case after all evidence from the prosecution has been led. As such, we would welcome further information as to why there is a need to increase the jury majority required to convict in order to provide an additional 'safeguard' in light of the removal of the requirement for corroboration. The inference seems to be that the current majority required to convict is unsafe. Victim Support Scotland is concerned that the ultimate

³ Frank Mulholland, Lord Advocate. European Victims Week Conference, Glasgow 20 Feb 2012.

outcome is that one barrier to justice (requirement for corroboration) is simply being replaced by another (an increased jury majority required to convict).

29. Because the contempt of court legislation effectively bans research into how juries reach their decisions, it is impossible to produce evidence to support any particular formulation of the number required to reach a majority verdict. But Victim Support Scotland would suggest that it should not be so high as to act as an impediment to certain and swift decision-making in the interests of victims and accused persons

30. In conclusion, Victim Support Scotland agrees with Lord Carloway⁴ in his initial consideration of increasing the majority required for conviction, as he

31. ***“did not...regard such an alteration as either necessary or desirable. [The review] did not consider that the system of majority verdicts was directly comparable with those in common law countries where unanimity, or near unanimity, is required for either a “guilty” or a “not guilty” verdict. Thus in these countries, failure to have a majority in favour of guilty does not lead automatically to acquittal, as it does in Scotland. Rather the elaborate process of a retrial may follow with all the implications that such a process might have on accused, witnesses and victims...The Review has been presented with no material to suggest that the majority verdict presents a problem or indeed that it results in a greater conviction rate than in other common law jury systems.”***

Solemn procedure – implementation of Sheriff Bowen’s recommendations

32. Victim Support Scotland supports the provision requiring early communication between the defence and prosecution through the Compulsory Business Meeting.

33. Too often witnesses at Sheriff and Jury level are cited to appear on the first day of a sitting despite the fact that that they will not be needed on that day. The resolution at an early stage relieves witnesses from having to attend a trial, protecting them from the potentially stressful and traumatic experience of giving evidence.

34. It is pertinent that victims are kept informed if/when a plea is accepted. If a plea has been accepted, the victim should be informed at the earliest possible stage by the appropriately assigned agency.

35. While many victims and witnesses do not want to go through the ordeal of having to attend court and give evidence, there are others who will want the opportunity to have their story heard and acknowledged. Where an early guilty plea is made, it is imperative that in eligible cases victims are at the very least given sufficient time and opportunity to provide a victim impact statement to the court. The victim impact statement should be considered an important source of information, particularly in regards to the gravity and impact of the offence, as well as allowing the victim an opportunity to have their voice heard by the court.

⁴ <http://www.scotland.gov.uk/Resource/Doc/925/0122808.pdf>

APPEALS, SENTENCING AND AGGRAVATIONS

Increase in maximum sentences for handling offensive weapons offences

36. Victim Support Scotland welcomes the increase in maximum sentences for handling offensive weapons offences. However, it will only be an effective deterrent in so far as it is part of a wider policy approach encompassing education and support aimed at promoting positive attitudes and choices to discourage people from placing themselves and others at risk of harm through the carrying and/or use of offensive weapons.

Sentencing prisoners on early release

37. Committing an offence while on early release should be treated as a serious offence in its own right, demonstrating an abuse of trust, and should be punished accordingly. Victim Support Scotland therefore welcomes the provision placing a duty on the court to consider imposing a section 16 Order in relevant cases, the aim of which is to raise awareness of the existence of these important powers for the courts.

Appeals and SCCRC

38. Victims involved in appeal cases may find that the process brings back many traumatic memories and experiences suffered as a result of the crime. Victim Support Scotland supports any reforms which will reduce any source of unnecessary delay in the appeals process whilst ensuring the process remains fair both to the accused and to the victim. It is also important that victims are kept informed and supported throughout the appeal process.

Aggravations as to people trafficking

39. Victim Support Scotland welcomes the provision introducing a statutory aggravation of people trafficking where it can be linked to other offences, for instance fraud, immigration offences, brothel keeping, drugs offences etc., bringing Scottish legislation into line with obligations under Article 4.3 of EU Directive 2011/36/EU on preventing and combating trafficking in human beings.

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