

Widening the scope of the current victim statement scheme

Consultation Analysis

February 2021

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About this report

This report provides an analysis of responses to the Scottish Government's (SG) consultation on "widening the scope of the current victim statement scheme" which ran from 1 September 2019 until 29 November 2019.

The consultation paper and published responses can be accessed here:

<https://consult.gov.scot/justice/current-victim-statement-scheme>

Background

In Scotland, victims of the most serious crimes may be eligible to make a victim statement¹. This is a written statement that gives a victim the chance to tell the court – in their own words – how a crime has affected them physically, emotionally and financially. In reaching their sentencing decision the Judge or Sheriff will take into account a number of different factors, reports and other information available to them, including the victim statement.

The list of offences in relation to which a statement can be made was prescribed in 2009². Since then a number of new, serious offences have come into force in Scotland in relation to which a victim statement cannot be made, for example stalking³ and the domestic abuse aggravation⁴. In addition, the courts in which a victim statement can be taken into account are limited to solemn proceedings.⁵

The consultation sought views on the current victim statement scheme and on proposed changes relating to:

- Extending eligibility to make a victim statement
- Other forms of victim statement
- Other ways the scheme could be improved

Consultation engagement

On 19 July 2019 SG officials met with Victim Support Scotland (VSS). This meeting helped to inform the questions that were included in this consultation and a consultation event held in November 2019. A summary of the points raised at this meeting is included at **Annex A**.

On 1 November 2019 SG officials held a consultation event which was attended by representatives of victim support organisations, justice organisations, and people with lived experience of crime. The event was an opportunity for the SG, along with representatives from the Crown Office and Procurator Fiscal Service (COPFS) and VSS to: describe the current victim statement landscape; explain the rationale for the consultation; and explore the consultation document section by section. The

¹ <https://www.mygov.scot/victim-statement/>

² <http://www.legislation.gov.uk/ssi/2009/71/contents/made>

³ <http://www.legislation.gov.uk/asp/2010/13/section/39/enacted>

⁴ <http://www.legislation.gov.uk/asp/2018/5/contents>

⁵ Solemn proceedings involve the most serious of criminal cases and may ultimately lead to a trial on indictment, either before a judge in the High Court or before a sheriff in one of the sheriff courts. Trials under solemn procedure are conducted with a jury.

consultation questions were then discussed in groups. Attendees were invited to either leave their group answers or use them to inform their individual responses to the consultation. A summary of points collated by facilitators is included at **Annex B**.

On 22 November SG officials met with Community Justice Scotland (CJS) to discuss the consultation. CJS used the outcomes of this meeting to inform their written response to the consultation.

Overview of respondents to the consultation

A total of 38 responses were received. As explained above, feedback received from the engagement events is shown separately in Annexes A and B. A list of all organisations that responded can be found at Annex C.

Of the 38 responses, 34 have been published on the Scottish Government website. The remaining four were submitted by individuals who stated they did not want their response to be published.

All responses have been included in this analysis, irrespective of whether or not they have been published.

The published responses can be accessed here:

- https://consult.gov.scot/justice/current-victim-statement-scheme/consultation/published_select_respondent

The following table shows the breakdown of respondent group and organisation type:

Respondent group	Number of responses	
Individual		15
Organisation		23
Justice Sector	2	
Professional Organisation	8	
Third Sector	13	
Workshop and Victim Support Scotland engagement		2*
Total		40

* Responses included individually in Annex A & B

Overview of Responses

General

- A clear majority expressed the opinion that the scheme should be expanded to enable as many victims as possible to make a victim statement. Additionally, a slim majority of respondents expressed a desire for the scheme to be expanded to enable all victims of crime to make a victim statement.
- The majority of respondents noted that if the scheme was widened, then there would likely be greater demand on victim support services to help the victim both complete the form and provide emotional support to deal with any trauma associated with revisiting the impact of the crime. It was also noted that this may require an increase in funding for these support services.
- The majority of respondents were in favour of expanding the ways in which victim statements could be made, for example by the judiciary or victim reading the statement aloud in court or the victim pre-recording the statement. However, various risks were also flagged up including: increased trauma for the victim; a requirement for additional resources and training for victim support services; improved access to technology being required; and a potential increase in inappropriate information being included in the statements.
- A number of respondents stated that the scheme should not just be available to family members of a deceased victim, but expanded to include people who would be considered close friends.
- The need to make the victim statement form available electronically was highlighted, as was the need for improved guidance on how to complete a victim statement.

Analysis

There were eight questions in the consultation document, which related to proposals for the eligibility, delivery, and impact of expanding the victim statement scheme.

All questions which asked for a “yes” or “no” answer have been broken down into the following categories for responses:

- Yes – the respondent selected “yes” when answering the question
- No – the respondent selected “no” when answering the question
- Not answered (NA) – the respondent did not answer the question and made no comments about the proposal
- Where a respondent did not answer the yes/no question but made comments about the proposal that clearly indicated a view in a particular direction, the answer was coded as appropriate and added to the yes/no responses.

The following analysis follows the structure of the consultation document. For each question it gives the breakdown of multiple-choice answers selected, a summary of the themes from comments given, and an example quotation from the responses.

Extending eligibility to make a victim statement

Question 1

Do you have a favoured option for how we could extend eligibility to make a victim statement?

Option	Number of responses
Option A - expanding eligibility to include the list of serious offences at section 4	2
Option B - expanding eligibility to all cases heard under solemn proceedings	5
Option C - as per Option B but also including a list of offences which would be eligible for a victim statement, even if they were tried as summary proceedings	26
Did not express a preference	5

As well as the list of offences included at section 4 of the consultation⁶ The respondents who selected option A also indicated that crimes in the following categories should be included:

- Any charge relating to gender based violence
- Intimate/indecent images

79% of the respondents who expressed a preference chose **Option C**, which suggested that the list of offences was expanded to all crime heard at solemn level along with a list of specific offences heard in summary court, as their preferred option. Respondents were invited to make suggestions and crimes relating to the following, when tried at summary proceedings, were proposed to be included;

- Fraud
- Embezzlement
- Bogus worker fraud
- Hate crimes
- Stalking
- Housebreaking
- Inappropriate communication particularly of a sexual nature
- Crimes which include a physical or emotional abuse element

Although the consultation was explicit that Options A, B and C were the only options that were being considered at this time, 22 respondents who expressed a preference suggested either a combination of options A, B and C or options which were not included in the consultation. This means that of the 33 respondents who offered an opinion, **67%** provided alternatives.

⁶ [List of offences at section 4 of the consultation](#)

Options other than those offered in the consultation	Number of responses
Allow for a victim statement to be made for any offence regardless of the nature of the offence, or court in which it is to be heard	18
Phased approach starting with option A then expanding to include all crime	2
Option B or C	1
Available for every witness that is deemed vulnerable	1

Therefore, of the 33 respondents who expressed a preference **61%** stated that they wanted all victims of crime to be able to make a victim statement if they desired. That is **53%** of all of those who participated in the consultation.

One respondent said:

“No one knows the impact even the most minor offences can have on a victim and so they should, if they wish, be able to express the impact that their own particular offence has had upon them as impact is relative to each victim”.

Whereas the Manda Centre stated:

“Option B is the preferred option since it affords a victim the opportunity to make statement in all cases heard under solemn proceedings and includes the benefit that any new offences that come into force in Scotland and are heard under solemn proceedings would automatically carry the right to make a victim statement, without the need to wait for a periodic review and update of the list of prescribed offences.”

Question 2

To help us decide how to extend the list of current offences for which a victim statement can be made, we need to identify any potential impacts that the changes may have.

Do you envisage any potential implications for you/your organisation if the list of current offences that are eligible to make a victim statement was extended?

Option	Total
Yes	18
No	9
Not Answered	11

The majority of those who answered this question felt that there would be an impact should the victim statement scheme be extended to include more offences.

Respondents were invited to provide more detail and there were 19 different potential impacts identified should the victim statement scheme be changed. Of the 19 different impacts, the greatest focus was on more resources being required for support organisations and more support for the victims themselves.

One respondent was concerned that the system would buckle under the strain of the additional work while another advised that more information was required before an informed decision could be made.

Comments following this question can be broadly grouped by the themes of impact on support, impact on safety, impact on the legal profession, other miscellaneous impacts, and suggested improvements. The main points within each of these themes are laid out below.

Impact on support	Total
More support required for/by victims	11
More financial support/resources required for support organisations	6
Support staff would need to upskill to support more/new victims	2
Increased victim protection would be required	1
There could be an increased risk of retraumatisation	1
There would be an increase in workload for COPFS	1

The Scottish Borders Rape Crisis Centre in their response stated:

“More survivors may enquire about Victim Impact Statements and seek guidance and support when they are deciding what they would like to include and the criteria of what is permitted to be included.”

While Community Justice Scotland said:

“In order to reduce the risk of retraumatisation for those involved, the implementation of the proposed extension must be accompanied by commensurate development and investment in support and trauma informed practice.”

Impact on safety	Total
We must consider the different safety needs of victim dependent on different ways of delivering a statement	1
There would be an increase in risk assessment requirements for domestic abuse cases	1

Impact on the legal profession	Total
There could be an increased need for legal advice	1

Impact on the legal profession	Total
There could be an implication on legal aid for defence lawyers should there be an increase due to an increased scrutiny on statements	1

Gillian Mawdsley of the Law Society of Scotland said:

“If any of the options are adopted as a result of the consultation, we would anticipate that there may be an increase in the number of victims seeking legal advice.”

And:

“We consider that as part of the consultation, it would be appropriate to consider how best to ensure that the victim understands why and when such victim statements would be passed onto the defence.”

Other impacts	Total
Victims expectations need to be managed	2
More info required before an informed decision can be made.	1
If opened to all, there will be greater clarity for support orgs/charities on who is able to make a victim statement	1
The system would buckle	1

Although the consultation asked for potential impacts to the system should changes be made, some respondents used this question as an opportunity to address other ways that the system could be improved.

Suggested Improvements	Total
Positive impact if victim statements could be passed to criminal justice social workers	3
Improved inter-organisational communication required	2
Independent advocacy needs to be highlighted	1
Sheriff should say that they have considered the victim statement	1
Change the way that the statement is requested from the victim	1
There should be procedural changes	1

One respondent asked:

“Can Sheriffs identify that they have considered the victim impact statement before sentencing?”

This question was also raised and discussed in some detail at the consultation event on 1 November 2019.

Three respondents indicated that there would be a positive impact on the system should the victim statement be made available to criminal justice social workers, with one respondent remarking that:

“... if Criminal Justice Social Work Services could also be given access to the victim statements - it would make writing CJSW Reports, risk assessments, and assessing impact of harm much more robust and victim-centred rather than largely relying on the offender's self-report.”

Other forms of victim statement

Question 3

Victim statements must currently be made in writing by the victim. Do you think we should look at piloting new ways for victim statements to be made?

If no, please set out your reasons why we shouldn't look at piloting different ways for victim statements to be made.

Option	Total
Yes	33
No	2
Not Answered	2
Not explicitly answered (a view on new ways to make a statement was expressed but no view on whether a pilot should be held)	3

The third question focused on alternative forms of making a victim statements with four options presented for consideration and comment. Respondents were also asked to provide other suggestions in addition to the options presented.

The majority of respondents were in favour of expanding the ways in which victim statements could be made. All four options presented received broad support – with between 23 and 25 respondents (out of the 33 that said that we should look at piloting new ways for victim statements to be made) supporting each option, indicating appetite for the scheme to move beyond just written statements.

Option	Total
Victims reading their statement in court	23
Pre-recording the statement on video	24
Pre-recording the statement with audio only	23
The judge reading the statement aloud to the court	25
Other options (provide details)	17

Option	Total
Not Answered	10

Summary of other options

Respondents were offered an opportunity to suggest other ways in which making a victim statement could be improved. The points made are summarised thematically in the tables below.

Delivered by others	Total
Other acceptable person/friend	7
Independent advocate	3
Prosecutor	1
VSS to give statement on behalf of victim	1

One individual felt that statements should be given by:

“Someone from an advocacy service or acceptable person of their choice.”

For children and young people	Total
Drawing/other nonverbal for youths	3
Snapchat	1
Augmentative Communication tools for children/vulnerable	1
Creative facilitation for children	1

Mark Ballard of Children 1st felt:

“that in exploring new ways for victim statements to be made it is most important to talk to child victims themselves, who will be able to share much better than we can how they would best prefer to communicate. This consultation and review also provides an important opportunity to consider what improvements can be made in terms of technology, given that many children are experienced or more comfortable with expressing views in different digital formats.”

And:

“ that children must be fully supported throughout this process so that the experience of explaining the impact is not further traumatising or distressing. We also believe that Judges and Sheriffs should be supported to understand the impact of trauma on child victims, and how this may shape how and what they communicate.”

Alternative ways of making a victim statement	Total
Electronic version/online	7
Partial written/video/audio if preferred	1
Home video	1
Video link/extend special measures	1
Speak directly to the judge	1
Ability to provide statements in other languages	1
Sheriff can decide to read or not as required	1

Criminal Justice Voluntary Sector Forum suggested :

“ that the option to have a form that can be completed online should also be explored. This may be easier for some people to complete than a hard copy form and could improve the efficiency of the process.”

This was echoed by the South Lanarkshire Gender Based Violence Partnership who stated that:

“when considering improving the Scheme, to test a mixture of options, including the opportunity for the victim statements to be presented partly in writing and partly by some other medium such as an audio recording of the victim speaking. Victims may also want the opportunity to complete the victim statements form online. Whatever the process or approach, it must be trauma- informed and ensure children and adult victims are fully supported throughout.”

Other considerations	Total
Victim must have right to change their mind about how the statement is recorded	2
The current system where the victim must write their statement is very difficult for those who find writing challenging	2
Specialised location for VC/audio recording	1

The Scottish Women’s Convention felt:

“The victim should have the right to change her mind regarding how the victim statement is delivered. This must be done without prejudice to her case or character.”

Question 4

To help us decide whether we should pilot new ways for victim statements to be made, we need to identify any potential impacts that any changes may have.

Do you envisage any potential implications for you/your organisation if we were to pilot different ways of victim statement being made?

Option	Total
Yes	16
No	13
Not Answered	9

This question explored what kind of impact piloting new ways of providing victim statements would have on individuals and organisations. The respondents were fairly evenly split on whether they or their organisations would be affected by a pilot.

Summary of responses

The main themes emerging from comments received were about resourcing for organisations and staff training. One respondent specifically advised that piloting an expanded scheme would be a positive impact for survivors. Key themes from respondents comments on this issue are included in the table below.

Support resource issues	Total
Increase in resources for support organisations required	4
Additional support staff training would be required	3
Proper support for prepping statements required	2
Improved access to appropriate technology required	2
Issues around presenting the audio/visual in court	1
Increase in support time after statement is made may be required	1
Greater workload for volunteers	1
There could be issues for the Scottish Courts and Tribunals Service (SCTS) in relation to court management	1
Increased assistance/support required for victims (NHS/ Housing/ addiction/ child protection)	1

One individual summed up the issue of support with:

“cognisance needs to be given to the support required for the victim prior to and after the statement is given and for how long they may need this assistance and the type of assistance required, which

could impact on addiction services, child protection, adult support and protection, NHS and housing. To be honest it could be any area of their life and we must have enough resources to be able to address this quickly, give support and monitoring quickly and for as long as it is required...”

Other impacts to consider	Total
There could be an increase in inappropriate information being included in the statements/issue for the accused	2
Clearer instructions for victims will be required	1
There may be issues around sentencing	1
What impact if there was a criminal justice social work tie-in to victim statements	1

Andrew Tregoning of the Faculty of Advocates warned that:

“... it could be counterproductive to the whole process and distressing to a victim of crime if, when they read out their Victim Impact Statement, or their video was played, the content of their statement was challenged in court or, the contents changed at a very late stage, excluding material they consider essential to the judge’s decision on sentence. Supportive and careful management of this exercise, involving a clear explanation of the process involved, would be essential to ensure the success of any change in the way the victim’s views are provided, either in person or on video.”

Whilst Louise Johnson of Scottish Women’s Aid noted that they

“... would anticipate increased engagement by Women’s Aid workers in supporting women and children who wish to engage their rights under the 2014 legislation to determine whether the court had taken their victim statement into account during sentencing.”

Other considerations

Question 5

Are there any other aspects of the current victim statement scheme which you consider could be improved?

Option	Total
Yes	19
No	9
Not Answered	10

Over half of those who answered this question felt that there were other ways in which the victims statement scheme could be improved. Respondents were invited to provide suggestion on improvements. This question also led to a broad set of suggested improvements from those who answered yes, with 30 separate proposals. Some of the suggestions repeated points made by respondents earlier in their consultation responses, however it is clear that strong feelings are held about how the victim statement scheme could be improved. Points made relating to these themes are summarised in the table below

Summary of Responses

Considerations for a new system	Total
System needs to be trauma informed	4
Avoid creating unreasonable expectations/manage expectations of victims	2
We should get Judicial opinion on changing the system	1
There could be a perception of an erosion of judicial independence	1
Only certain stalking charges should be allowed for victim statements	1
Clarification on the purpose of the scheme is needed (Information for judges or a cathartic experience for victims)	1
Guarantee long term funding for support organisations	1
If victim statement not available to all victims it will limit access to justice	1
Clarify how a victim statement will be used	1

One individual advised that changes need:

“to be written and designed with a trauma informed lens, ensuring that the process does not compound the trauma further.”

Things that can be considered for the current system	Total
Better COPFS guidance required	3
Use an electronic victim statement form	3
Make sure that the forms and info on how to complete them are freely available	3
Change the name of the scheme to avoid confusion with witness statements – for example - Victim Impact Statements	2
Victims should be contacted to provide their victim statement differently than at present	1

Things that can be considered for the current system	Total
There needs to be assurance that judges pay attention to a victim statement	1
A link to the Scottish Legal Aid Board should be included in the victim statement information	1
Remove any restrictions on what can be said in a VS	1

In relation to the name of the scheme, Louise Johnson of Scottish Women's Aid suggested that:

“Given that the purpose of the Scheme is stated as allowing victims the opportunity to tell the court about the impact of the crime on them and how it has affected them physically, emotionally and financially, consideration should be given to formally re-naming the document as “Victim Impact Statements.” The terminology would both differentiate them from statements given by victims to the police and to clarify and underline their purpose.”

Victim statement recording	Total
Victim statement should not be taken by the police	3
Partner organisations/ Victim support organisations take statements	2
Victims should work with an appropriate support worker	1
Personal direct support providers should not help fill in forms due to recent abuses of that position	1
Barnahus – single interview model for children	1

The Manda Centre stated that:

“making the statement can be extremely traumatic and it would be beneficial if they could make the statement to an organisation providing both practical, emotional and holistic support rather than to the police.”

Timing of the statement	Total
Change the time in the process at which the forms are issued	2
Take victim statement at the time of the Witness statement	2
Witness Support could prepare victim statement on the day that the trial concludes	1
Statement shouldn't be collected by COPFS until after the verdict is passed. Potential issues with COPFS receiving the victim statement early	1

Timing of the statement	Total
in process that contained discrepancies or facts not in evidence that need to be disclosed to the defence lawyer.	

In relation to disclosure of the victim statement Gillian Mawdsley of the Law Society of Scotland asked:

“Would there be means to have the victim statement provided direct to the Court which remains unread until such time as a guilty plea is tendered or conviction obtained? That would resolve any issue about requiring disclosure. It is outside of the Crown’s control and knowledge.”

Victim statement and wider justice	Total
Make victim statement a key part of restorative justice	3
Improve support for victims during and after filling in the form	2
Allow victim statement to be used to help create criminal justice social work reports	2
Link victim statement to parole – akin to England and Wales.	1

James Maybee of Social Work Scotland said:

“justice social work prepared 28,400 criminal justice social work reports (CJSWR) in 2017/18 to assist the court in determining the right sentence for the individual. Each report analyses the offence(s) and requires an explicit analysis of ‘the level of recognition by the offender on the impact/consequences of the offence(s) on the victim/community’...

However, in most cases the justice social worker is reliant on the terms of the charge(s) and what the individual tells them in interview. The social worker does not receive the Crown Office’s Summary of Evidence or any other independent and objective account of an offence and the consequences for a victim. (There are exceptions to this...) This not only disadvantages the social worker in providing a fully informed analysis and assessment of risk and need, but also denies the victim an opportunity to articulate how the crime has impacted them.”

Tom Halpin of Sacro stated that:

Sacro believes that this is an opportunity for victims to be given a choice to explore the option of restorative justice with a facilitator. This may bring a range of benefits for the victim and is congruent with the Scottish Government’s Action Plan for the introduction of restorative justice across Scotland by 2023.

Question 6

Do you have any views on whether we should consider amending the definition of who is eligible to make a victim statement (as set out in section 14 of the Criminal Justice (Scotland) Act 2003), to help ensure all relevant victims are able to make a statement if they wish - This would, for example, ensure the statutory aggravation related to a child in the Domestic Abuse (Scotland) Act 2018, would trigger the right for a child named as being involved in the offence to make a victim statement.

Another potential issue explored in the consultation relates to developments in criminal law in some areas whereby people who are recognised as victims in the relevant legislation may not always be captured by the definition of who is currently eligible to make a victim statement (as set out in section 14 of the Criminal Justice (Scotland) Act 2003)⁷.

A new statutory aggravation related to a child provided for in the Domestic Abuse (Scotland) Act 2018 which can be attached to the domestic abuse offence. The child, in some circumstances, may be considered a victim and would therefore be entitled to make a statement under the existing scheme. However, in other circumstances, depending on the manner in which the aggravation is triggered, then the entitlement to make a victim statement would not apply.

We are also aware of other circumstances in which the current eligibility set out the 2003 Act does not reflect those people who were in reality most closely connected to a deceased victim, or most directly affected by the offence.

27 respondents replied to this question expressing a broad variety of views. The most prevalent, with five responses, was that everyone should be given a choice and support to make a victim statement and that children should be able to complete a victim statement. Points made relating to these themes are summarised in the table below.

Summary of responses

Who should be able to make a statement	Total
Everyone should be given a choice and support to undertake a victim statement	5
All victims	2
Close friends should be able to complete a victim statement should a victim be deceased. They are sometimes closer to the victim	1
Close relative	1
Other relevant agencies on behalf of vulnerable victims such as Social Work or Child hearings	1

⁷ <http://www.legislation.gov.uk/asp/2003/7/contents>

Who should be able to make a statement	Total
Other relevant people (close friends, support worker) should be able to complete a victim statement	1
Partners in obscene images offences	1
Persistently targeted victims	1
Secondary victims should be able to complete a victim statement	1
Support workers for people with limited capacity	1
Vulnerable or intimidated victims	1

Rhona Willder of Scottish Independent Advocacy focused on modern familial models and stated that they:

" would like to see an amendment to the definition of who is eligible to make a victim statement. The current list is outdated and does not reflect modern relationships. We would like to see recognition within the list that not everyone will have close living relatives. Frequently a close friend may be more appropriate than a family member to take on the role of making the victim statement if they choose to.

Some people who have limited capacity or communication may not have anybody in their life. They might have an independent advocate or a positive relationship with a support worker. People should be given the option of making the victim statement in these cases."

A focus on Children	Total
Children should be allowed to complete form	5
12 year old is arbitrary – younger children can be capable	3
Parent/carer/sibling of child victim	2
Use child aggravator laws properly	3
Don't arbitrarily assess capability of vulnerable witness	1
Improve Section 14 of The Criminal Justice (Scotland) Act 2003) in relation UN Convention on the Rights of Persons with Disabilities	1
Make sure changes link to Article 12 UNCRC	1
Make sure changes link to Children (Scotland) Bill 2019 ⁸	1

⁸ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/112969.aspx>

South Lanarkshire Gender Based Violence Partnership stated that:

“it is also crucial that the child aggravator is used correctly and children are appropriately named in charges.”

Oonagh Brown of the Scottish Commission for Learning Disabilities stated that

“To ensure legislative consistency, SCLD believes it will be critical that Section 14 of The Criminal Justice (Scotland) Act 2003 is amended to reflect this commitment to advancing children’s rights in Scotland.”

And that:

“section 14 (of The Criminal Justice (Scotland) Act 2003) requires strengthening to ensure a closer alignment to Article 13 of The United Nations Convention on the Rights of Persons with Disabilities with regard to people with learning disabilities access to justice and ensuring their, “...role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages”

Other Considerations	Total
Address any inconsistencies in scheme	1
it should be written in law to ensure it actually happens	1
More investigation and consultation is required	1

Rose McConnachie of Community Justice Scotland noted that

“It would make sense to adjust the definition [of a victim] in order to address potential inconsistencies produced by the impact of new legislation, as with the example set out in the consultation paper.”

Impact assessments

Impact assessments will be carried out alongside the development of any new legislation which would be required to implement changes to the current victim statement scheme.

These include a Data Protection Impact Assessment and an Equality Impact Assessment (related to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

Views were sought on these areas to help in the future development of these assessments.

Question 7

Are there any data protection related issues that you feel could arise from the proposals set out in this paper?

Option	Total
Yes	13
No	12
Not Answered	18

Although this question focused on any data protection issues that may arise from changing the victim statement scheme, a number of responses addressed issues that go beyond those that are strictly data protection related.

Summary of Data Protection related responses	Total
Do a robust DPIA	4
Protect complainer address/identity	3
Must be GDPR compliant	2
Close the court for video/audio victim statement	1
Consent would be required to contact the victim	1
Probably	1

Susie Stein of the Scottish Borders Rape Crisis Centre advised that:

“If a survivors wished to opt for a pre-recording in audio or video we would suggest that the court is closed to protect their identity in cases where their evidence would be heard in a closed court.”

And the Scottish Borders Council VAW Partnership noted that thought should be given to:

“ensuring that any victims who wished to pre-record their victim impact statement are provided a safe environment to do so e.g. confidential room, away from the main court etc. based on protecting their identity.”

Issues not necessarily data protection related	Total
Do a Children’s rights assessment	1
Do an EQIA re: human rights	1
Give the victim statement to social worker	1
Provide info on press reporting to complainer	1

Issues not necessarily data protection related	Total
Single point of contact at COPFS	1
There should be a safe environment to make statement	1

One individual stated that the:

“Address of complainer should be protected at all times. Press reporting should be advised to complainer so they know their statement may be reported in press.”

Question 8

Are there any equality related issues that you feel could arise from the proposals set out in this paper?

Option	Total
Yes	13
No	15
Not Answered	10

Summary of responses

Summary of Equality issues to consider	Total
More support needed for victims whose first language is not English	3
Do a thorough EQIA	2
Does more need to be done to reach the disadvantages or vulnerable with victim statement form? (the homeless, those in temporary accommodation, etc.)	1
Assess equality requirements on a case by case basis	1
Chance of cross examination could put victims of Domestic abuse off providing a victim statement	1
Ensure that the information from a victim statement is used positively in relation to the perpetrator (ensure they also have support)	1
Every organisation involved with supporting victim statements should undertake training on independent advocacy	1
Identify whether women are more likely to be complainers	1
Sexual violence, Domestic abuse, gender crimes	1
The new proposals will make things more equal	1

Summary of Equality issues to consider	Total
The resilience of victims could impact on victim statement produced	1
There should be a legal duty to have a statutory body monitor victim statement equalities data and publish annually before parliament	1
There will be an impact if victim statement are not available to everyone	1
Vulnerable adults may need advocacy	1
Vulnerable groups beyond just those with protected characteristics may be impacted	1
We should ensure that all children are assumed to have capability as per UNCRC article 12	1

Professor Joanna Shapland noted that:

“Currently, it is unclear whether fiscals are able properly to contact all those in more disadvantaged groups (e.g. who do not have a fixed address or cannot read or write (including children)) and those from ethnic minorities for whom English is not their native language.”

Gillian Mawdsley of the Law Society of Scotland stated that:

“Care needs to be taken to ensure that they [vulnerable victim] understand the implications of and are supported where a victim statement is to be given. That need for vulnerable groups may be wider than merely the group of “protected characteristics” as that does not seem to be fully met at present.”

There was slightly more focus on people with protected characteristics, with three areas specifically mentioned.

Equality and Protected Characteristics	Total
Changes could have an impact in regard of protected characteristics, especially age	1
Disability – accessibility	1
More support may be required for those with communication issues (dyslexia etc)	1

One of the individuals that responded to the consultation said that:

“ the Equality Impact Assessment - if done in a thorough way - should bring up and address any equality-related issues but there are lots of considerations relevant to people with the different protected characteristics such as language barriers, disability barriers, heteronormative practices in our criminal justice system, etc.”

Meeting At VSS Glasgow
Victim statement Discussion
Thursday 19 July 2019

We had an informative visit with frontline VSS staff to discuss the parameters of the upcoming victim statement (VS) Consultation.

The informal round table chat brought forward a number of interesting points, some of which touched operational matters.

Key points following the themes in the discussion document were as follows:

1. It was felt strongly that the point of VS is to give victims a voice.
2. Some victims feel that VS is pointless if they expect it to influence the sentence.
3. Victim statements should be available for all crimes.
4. Crimes which people have asked to fill in a statement for, but been unable to do so:
 - Anti-social behaviour;
 - Domestic abuse,
 - intimate image abuse
5. One case where a woman's purse had been stolen had a major impact on the victim, as the purse contents included irreplaceable personal items, the loss of which caused significant and ongoing distress to the individual concerned. Dealt with in summary court but a crime with a major impact on victim.
6. Other ways to present statements would be useful, some people can't read or write. Audio or video would be useful. Drawing was mentioned. Can diary extract be used for impact statement?

Some points about victims and the VS process were raised:

7. Victims are often scared to say the wrong thing in a VS, but scared to say nothing as some victims feel that this would reflect badly on them.
8. Victims often don't realise the impact of the crime until they actually fill out the statement. This can be traumatic. It is especially difficult when victims only engage with VSS last minute to get form completed. Process is much more effective when VSS are already engaging with the victim, they know the VS will be issued to them and they have time to prepare the victim and help them complete it.
9. Victims who are not confident with spelling/grammar have said that this puts them off filling in the form and can add to the trauma.
10. Victims often don't appear to understand that filling in a statement it isn't compulsory.

11. Family of young victims look to make statements too. Sometimes the parent of a child needs to present the impact of the crime on the family and can't do so.
12. There are issues with accused seeing document for some victims it puts them off completing a VS as they don't want to show how badly affected they have been.
13. If no statement given and victim is re-traumatised by the process of trying to complete a statement, can this be communicated to the judge?
14. A common question from victims is "can someone else fill it out for them"? Some victims struggle with writing or expressing themselves and would find this useful. VSS staff find it difficult not being able to help in more depth with filling the form.

Some points were raised about the way that the current scheme was administered:

15. VS form sent out too early in process with no apparent follow up from VIA.
16. Can VIA follow up the VS invitation letters with a phone call? Better victim centre approach and this would also allow them to signpost VSS.
17. A reminder a couple of weeks before trial would be useful.
18. Can there be any flexibility from COPFS with date that VS is due to be returned? Especially if the victims is doing things last minute. It is an issue for VSS when a victim turn up at the last minute that the service has not been previously supporting, looking for help with a VS. It takes time to engage and draw out the relevant information.
19. Can there be a referral system from VIA to VSS which would allow VSS an opportunity to engage at an appropriate point with victims looking to do a VS?
20. Can a tick box like the VSS "common reactions to crime" sheet be used as a as part of the VS form as prompt? As current form very basic, too open (too much blank space) and intimidating for some victims.
21. Can the guidance be updated and made clearer and access to it better signposted?
22. Can there be an electronic version of the pack that can be completed online?
23. Is there a chance that the new victims suite in Glasgow could be used to record VS's?
24. Too many organisations involved with different deadlines and different forms to complete, this appears to confuse some victims.
25. Can they piggyback on existing GDPR sharing agreements for referrals?
26. Deaf and blind people, not many if any go through VSS, who is helping them and how?

**Victim Statement Consultation Engagement Event
1 November 2019**

Key Points Captured

General Statements

- Before considering extending the Scheme, there should be an evaluation of the operation of the current Scheme to determine why uptake is low.
- Improve uptake of the current scheme by using a focussed promotional marketing campaign.
- VIA should issue the full guidance booklet, DVD and VS Form, not just a letter advising of the victim's eligibility.
- It was suggested that whenever a VS is produced to the Sheriff or Judge, a Sentencing Statement should be made and provided to the victim or bereaved relatives. This should also include a statement of acknowledgement of the impact of the crime.
- In relation to extending the Scheme it was felt this should apply to victims in all Solemn cases only. Given the limited contact with victims in summary cases to extend it would be unmanageable.
- There is a consensus that other methods of giving a VS should be considered.
- Assistance should be provided to help victims complete the VS
- Lack of funding was perceived as a potential barrier but one attendee felt that COPFS has more than enough funding.
- It was also felt that a VS could be provided to the court on acquittal as well as on conviction as it would inform the judge or sheriff of the impact of the crime. While this may not affect the accused in any way the judge may wish to reflect on what has been said.
- There should be improved and smarter timescales.
- There should be monitoring of those responsible for identifying eligible victims.
- In relation to who should be able to complete a statement, there should be a more relaxed family hierarchy in cases of homicide, road death or death at work - where victim statements should be provided at FAI or Public Inquiry.

List of Organisations that responded to the Consultation

Children 1st
Community Justice Scotland
Criminal Justice Voluntary Sector Forum
Faculty of Advocates
Law Society of Scotland
Sacro
Scottish Borders Council VAW Partnership
Scottish Borders Rape Crisis Centre
Scottish Commission for Learning Disability
Scottish Community Safety Network
Scottish Courts and Tribunals Service
Scottish Independent Advocacy Alliance
Scottish Women's Aid
Scottish Women's Convention
Social Work Scotland
South Lanarkshire Gender Based Violence Partnership
Stonewall Scotland
The City of Edinburgh Council Criminal Justice Social Work
The Manda Centre
Victim Support Scotland
Victims Organisations Collaboration Forum (VOCFS)



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