



The Scottish  
Government  
Riaghaltas na h-Alba

# Making Justice Work for Victims and Witnesses

Crime and Justice



social  
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# **MAKING JUSTICE WORK FOR VICTIMS AND WITNESSES**

**Sue Granville and Jo Fawcett  
Why Research**

Scottish Government Social Research  
2012

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## **ACKNOWLEDGMENTS**

Thanks to all at the Victims and Witnesses Unit, Justice Directorate who provided input and offered advice as required, and to the individuals and organisations who responded to the consultation.

# 1 EXECUTIVE SUMMARY

## Background overview

- 1.1 The Scottish Government is planning to introduce a Victims and Witnesses Bill during 2013. In May 2012 a consultation paper was issued to obtain views on a number of proposals aimed at improving the experience of victims and witnesses.
- 1.2 The consultation ran from May until July 2012.

## Overview of consultees

- 1.3 The Scottish Government received 77 responses to this consultation; 59 from organisations and 18 from individuals. Responses were assigned to sub-groups for analysis purposes and these were: Police organisation (6 responses), Local Authority (17 responses); Public Body (10 responses); Voluntary / 3<sup>rd</sup> sector organisation (20 responses); Legal Organisation (3 responses); other organisation (3 responses) and Individuals (18 responses).
- 1.4 While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, it should be noted that the findings reported here cannot be extrapolated to a wider population outwith the consultee sample.

## Overview of analysis

- 1.5 The consultation posed a series of 54 questions relating to the proposals; some consultees provided direct answers to these questions while others submitted a more open form of response.
- 1.6 Responses were examined and key themes, similar issues raised in a number of responses, were identified for each question. Sub-themes; including reasons for opinions, supporting arguments, alternative suggestions or other related comments; were also noted. The key themes were then examined to identify whether any particular theme was specific to any particular consultee group or groups; for example was the theme more prominent in responses from one group of organisations than others?
- 1.7 Wherever possible, comments indicating support or disagreement at specific questions were quantified. It should be noted, however, that although some of the questions included a yes/no option, not all consultees gave a definitive answer. It should also be noted that not all consultees provided answers to all of the questions.

## **Overview of responses**

1.8 For each of the proposals put forward in this consultation paper, there was majority support from those responding, although a number of consultees opted not to provide a definitive 'yes' or 'no' response. While the numbers responding made it difficult to analyse responses by sub-group, those involved in enforcement often focused on the logistics, application and enforcement of these proposals. Many of the individuals who responded to this used their own experience to illustrate their response and these often focused on the support needed by victims and witnesses.

1.9 Key themes throughout responses were:

- The need for access to information that is consistent, clear and accessible to all victims and witnesses;
- While there was support for a central hub and information sharing between agencies, there were also concerns over sharing information and the need to take into account data protection issues;
- Logistical issues in relation to administration and enforcement;
- The need to ensure that all agencies involved in this have access to adequate training, support and resources;
- A need to ensure that victims' and witnesses' expectations are managed and that they understand that information they provide is only one element of the process;
- A need to ensure that offenders' rights are recognised and that a balance between reparation and rehabilitation is managed effectively.

## **Improved information**

### **Case-specific information**

1.10 Fifty-five consultees agreed with the proposal for the Scottish Government to have a case-specific information hub for justice in Scotland; and no consultees disagreed with this (Q1). Key reasons for this support related to improved access to information and improved consistency and clarity of information. While there was a high level of support for this, some consultees highlighted the importance of accessibility to all; with opportunities for personal contact as well as electronic. Some consultees also raised issues over resourcing and funding for this; and the issue of data protection.

1.11 A wide range of different types of case-specific information that would be of value to victims and witnesses (Q2), was noted, with the four most common types of information being for:

- Reasons for not proceeding with an investigation or prosecution, or for proceeding with only part of a case;
- Reasons for sentencing decisions or out of court disposals;
- Information on whether the perpetrator was remanded to custody or bailed, and details of any bail conditions;



- Information on the updated status of a perpetrator e.g. changed address, prison relocation or temporary release, or progression through a community sentence.

### **Promoting information sharing**

- 1.12 When asked whether they believed a statutory framework is needed to promote information-sharing in the interests of victims and witnesses (Q3), 48 consultees agreed; the key reason being that without a framework, information-sharing will not happen. Once again, there were concerns over data protection issues and that this is a barrier to information-sharing.
- 1.13 Question 4 asked what protections would need to be built into such a system and the key theme related to the need for clear guidelines around confidentiality and the need for an agreed code of practice.

### **Understanding sentencing**

- 1.14 Question 5 asked ‘what information would help victims, witnesses and the public understand different types of sentences better?’ and question 6 ‘what is the best way to provide information about sentences to victims, witnesses and the public?’ A key theme at Q5 related to the style of information used rather than the content per se, with consultees referring to the need for information to be understandable or in plain English. A wide range of information types were suggested as being useful to victims, witnesses and the public and this included:
- Information on the options available to the judge / the types of sentence that can be imposed;
  - Information on the practical implications for both the offender and victim going forward i.e. how the sentence is enforced;
  - Information on the minimum time that will be served or the likely time to be served;
  - Information on the impact of risk on how sentences are supervised;
  - Information on factors potentially influencing the sentence;
  - Information on costs to the taxpayer of different types of sentence and also on the impact of different types of sentence in reducing reoffending.
- 1.15 In terms of providing information, key themes related to the need to use simple, accessible language and offering information in a variety of different formats, including leaflets, online channels and face-to-face communication.

### **Notifying bereaved relatives of return of an offender’s driving licence in road death cases**

- 1.16 Consultees were asked whether they agreed that bereaved families in road death cases should be a) advised when the offender’s driving disqualification is rescinded and their driving licence returned to them and b) given the chance to register any concerns about return of the driving licence (Q7). The consultation then invited comments on the reasons for answers given. Thirty two consultees agreed (compared to only seven who disagreed) with the first option and 28 agreed with the second option (compared to only 9 who disagreed). The key theme was that this would help bereaved families feel their views and feelings were being taken into account and to help them

understand the rationale behind the decision. However, there were also comments that individuals should be able to opt-out of receiving information or that bereaved families might have raised expectations in terms of their influence or that this might add to their distress.

## **Delivering greater certainty**

### **Standards of Service**

1.17 The Scottish Government is proposing to create a duty on relevant public bodies requiring minimum standards of service for victims and witnesses to be set and question 8 asked for views on this. Fifty-two consultees agreed with this proposal, compared to only two who did not. Key themes emerging were that:

- This will empower service users and let them know what they can expect;
- It will create a measurable standard to aim for and allow benchmarking of service standards;
- It will ensure consistency of service standards.

1.18 However, there were also comments on the need for a mechanism to deal with shortfall in standards and a complaints procedure; the need to ensure that standards are actually enforced; and the need to actively promote standards and make them accessible, not simply publish them.

1.19 Question 9 went onto ask '*do you agree that the standards should encompass both victims and witnesses*', and 48 consultees agreed with this; the primary reason being that it would be inappropriate to differentiate between the two. Question 10 then invited consultees to comment on any other issues that the standards should cover in addition to those outlined and the key recurring themes were:

- Court dates should be fixed and there should be reasonable notice of court dates;
- Minimum standards should encompass a complaints and comments procedure; as well as specified timescales to deal with complaints;
- Minimum standards should apply to facilities from which services are provided;
- There should be guidance and obligations under equalities legislation in recognition of all special needs;
- Best practice, support and advice should be available during, after and beyond conviction / post trial.

### ***Agreeing a closed court in advance***

1.20 Question 11 raised the question of whether a closed court should be a) requested through a motion at the pre-trial hearing or b) made a special measure; and 18 consultees opted for option a; while 15 supported option b.

## **Feeling supported**

### **Improving victim and witness care and support**

- 1.21 At question 12, the consultation paper proposed a number of ideas that would support victims and witnesses, and which might be tested locally; consultees were asked to provide their views on piloting these; and the subsequent question (13) then asked for suggested for other models of care and support that could be utilised.
- 1.22 The key theme emerging was one of general support for all the possible measures (a dedicated contact point, a co-ordination/liaison/care unit, a support programme for child victims/witnesses and a central hub). While a wide variety of alternative models were put forward, each was mentioned by only one or two consultees.

### **Definition and identification of vulnerability**

- 1.23 Question 14 introduced the proposal to change the definition of child witness to be up to age 18; and 47 consultees agreed with this, compared to only 3 who did not. Question 15 then suggested the amendment of the definition of vulnerable adult witness to match the requirements of the EU Directive on victims, and 49 consultees agreed with this proposal compared to only five who disagreed.

### **Rights-based entitlement to special measures**

- 1.24 Question 16 went onto ask if consultees agreed that the definition of a vulnerable witness should be extended to include a) victims of sexual offences, b) victims of domestic abuse and c) those defined as automatically vulnerable in the final version of the EU Directive on Victims. Fifty-one consultees agreed with options A and B, compared to only two who disagreed; and 52 agreed with option C, with only two disagreeing. Key reasons for agreement with these proposals were that automatic entitlement is preferable, that specified categories need support and help, and these measures will help to improve the quality of evidence given.
- 1.25 The current position with children is that they can opt-out of special measures to which they are entitled if they so wish and if it is accepted by the court, and the SG is keen to extend this to victims of sexual and domestic abuse. Fifty-six consultees agreed that any witnesses who are automatically entitled to standard special measures should be able to opt-out of using them; the key reason being that there should be as much choice as possible. That said, a number of consultees also noted that this assumes the witness has the capacity to understand and is properly counselled to make an informed decision.
- 1.26 Question 18 then asked consultees whether they had any comments on the proposal to include in the legislation flexibility to extend the range of standard special measures if necessary in the future. Responses were generally favourable, welcoming a flexible approach and highlighting the benefits of being able to adapt to emerging issues as they develop.

## **Notification/application arrangements**

- 1.27 Question 19 of the consultation invited “suggestions about how the administrative arrangements for special measures might be streamlined (a) for those witnesses automatically entitled to standard special measures (b) for other witnesses who may fall into the definition of vulnerable but do not automatically do so and (c) for those witnesses who wish to opt-out of using the standard special measures to which they are entitled”. A total of 23 consultees provided suggestions or comments at one part of the question or more.
- 1.28 Key themes arising from the comments across all parts of the question related to the need to ensure people know of their right to special measures as early as possible in the process, the need to minimise bureaucracy and offer a streamlined service; and that a dedicated service for supporting victims and witnesses would help streamline administrative procedures.

## **Additional support for child witness’ evidence**

- 1.29 At question 20 of the consultation consultees were asked “do you have any concerns about the proposal to put the Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland on a statutory footing?” Consultees answering “yes” were invited to provide further details of their concerns. Thirty-five consultees answered “no” they did not have concerns and only four consultees said they had concerns and went on to give comments.
- 1.30 Question 21 then went on to ask ‘should we seek to remove the presumption that child witnesses under age 12 in prescribed sexual or violence cases should give evidence away from the court building, while retaining the ability for them to do so?’ Nineteen consultees agreed with seeking to remove the presumption that child witnesses under age 12 in prescribed sexual or violent cases should give evidence away from the court building, while retaining the ability for them to do so; 18 consultees said ‘no’.
- 1.31 The key theme in comments from those who answered “yes” related to the need for flexibility to allow decisions on a case by case basis; a capacity for choice and to choose what suits a child best were also noted. Of those who answered “no”, a key comment was that the problem is not with the presumption but the way in which it is applied and it was suggested that an opt-out facility is needed. Several consultees who answered “no” felt that children needed protection at all times and that protection is essential.
- 1.32 Question 22 went on to ask ‘should the submission of Child Witness Notices be made a compulsory part of pre-trial hearings?’ and 31 consultees answered ‘yes’, compared to only 2 who disagreed. The key advantage was that this would help avoid unnecessary delays and would be in the best interests of the child.

## **Visual recording of vulnerable witness’ evidence**

- 1.33 Question 23 asked “Do you have any concerns about the proposal to make clear that section 271M of the Criminal Procedure (Scotland) Act 1995 does include provision for visual recording of evidence?” Thirty-three consultees

answered “no” and the key reasons were that this might improve the availability and quality of evidence and that this change is both logical and appropriate. Only 5 consultees had any concerns.

- 1.34 Question 24 then went onto ask ‘Do you believe we need specific provision allowing for visual recording of supplementary evidence “and invited further comments. Thirty-one consultees answered “yes”, compared to only 3 who answered “no”. The main themes emerging from those who answered ‘yes’ was a need for specific provision related to ensuring consistency of evidence and giving clarity within legislation. Several consultees also commented that this ensures the same measures are available throughout the UK.

### **Improved support for communication needs**

- 1.35 Question 25 asked consultees “do you agree with the principle of extending the types of special measures available specifically to help meet communication support needs? and 50 consultees answered “yes”, with only one consultee disagreeing.
- 1.36 Question 26 then asked “If you agree in principle we should extend the types of special measures available to meet communication support needs, do you have any views at this stage on which option/model you would favour? Intermediaries, witness profiles or some other means”. Twenty-six consultees favoured intermediaries, 16 favoured Witness profiles and 8 suggested some other option.

### **Existing support for people with mental disorders**

- 1.37 Question 27 asked “If the role of Appropriate Adults in relation to suspects is defined in statute, do you believe the same is necessary for their role in relation to victims and witnesses?” Forty-five consultees answered “yes”, compared to only 2 who answered “no.” The main themes emerging from those who answered “yes” were that everyone involved in proceedings should have the same rights, that this gives clarity and that it provides essential protection.

### **Feeling Safe**

#### **Right of victims of sexual violence to choose the gender of their interviewer**

- 1.38 Question 28 asked “Do you agree that victims of sexual violence should have the right to choose the gender of the person who interviews them?” and 47 consultees agreed, compared to only 5 who disagreed.
- 1.39 The key theme emerging from those who agreed with the proposal is that this represents good practice and a victim centred approach that will support victims appropriately. However, even amongst those who agreed with the proposal, there were some concerns about resource issues and that there might be difficulty in implementing this on all occasions. Other key themes were that this would ensure comfort with the interview process, it might help secure better evidence or, conversely, not doing so might jeopardise evidence.

### **Disclosure of personal details**

Question 29 asked “Do you agree with the proposal that it should not be necessary to disclose the witness’ personal circumstances (e.g. medical details) in an application for standard special measures?” and 43 consultees agreed, while only 5 disagreed.

- 1.40 The key theme emerging from those who agreed with this proposal were that there is no need for this to be public information. Other themes were that only enough information should be given to clarify the reason for an application, that an assessment of vulnerability should be sufficient or that only the person making the referral needs the information.

### **Advising victims about offender temporary release**

- 1.41 Question 30 asked ‘do you agree that victims (or parents, carers or relatives) should be given the opportunity to make written representations about what additional conditions might be included in the licence when an offender first becomes eligible for temporary release?’ The majority of consultees (46) were in agreement with the proposal and only 5 disagreed. A key theme emerging was that it is necessary for the victim to be heard or that victims and their families have a right to be heard or feel listened to.
- 1.42 However, while there was broad support for this proposal, a number of qualifying comments were also made, the key one referring to the need to manage victim expectations or that victims need to be made aware that their representation will be considered but not necessarily agreed to.

### **Investigative anonymity orders**

- 1.43 Question 31 asked ‘Should we seek to introduce Investigative Anonymity Orders in Scotland?’ A majority agreed with this, and only 5 disagreed. Key themes from those who agreed were that this would help witnesses to speak out; and that this allows courts to protect witnesses from intimidation or harm.
- 1.44 Question 32 then went onto ask ‘If you think we should, in what circumstances or for which cases should they [IAOs] be used?’ and 25 consultees provided a response. A wide range of crimes for which an IAO might be suitable were noted and these included serious and organised crime, serious sexual offences, murders/ homicides, drug related crime, serious violent offences, predatory crimes / stalking and drugs.

### **Feeling involved**

#### **Sentencing policy**

- 1.45 Question 33 of the consultation paper asked ‘what mechanisms could be used to ensure victims’ interests are taken into account when sentencing policy is developed?’ A wide range of suggestions emerged. Key suggestions were for consultation among victims and their representative organisations, representation from victim support groups at meetings on sentencing policy, research and evidence to feed into sentencing policy, impact statements / victim statements, greater clarity in sentencing policy and work in conjunction with Scottish Sentencing Council / establish Sentencing Commission for Scotland.

## **Oral representation to the Parole Board**

- 1.46 Question 34 in the consultation paper asked ‘do you agree with the proposal to allow victims (or relatives in appropriate cases) to speak to a member of the Parole Board before a Life Prisoner Tribunal considers the release of an offender on licence?’ A majority (44) of consultees agreed and only three disagreed. Key reasons for support for this proposal were that this would help victims feel their views count and are respected; and that it is important for victims to be consulted, kept informed and their views listened to.

## **Victim statements**

- 1.47 Question 35 asked ‘Do you agree with the proposal to allow Victim Statements to be submitted to the court at any time after the prosecutor moves for sentence (or the accused pleads guilty or is found guilty), but before sentence is passed?’ A total of 49 consultees responded to this question, all of whom agreed with this proposal. The key comment was that this allows for the victim’s views to be heard or for others to hear about the impact of the offence upon the victim.
- 1.48 Other key themes were support for the victim’s statement to be presented at any time before sentence is passed or that victims should not be deprived of the right to submit a victim statement simply because of court processes or early pleading by the accused.

## **Child under 14**

- 1.49 Question 36 asked ‘do you agree with the proposal to extend eligibility for the Victim Statement scheme so that a carer of a child under age 14, who is not the direct victim of the crime, can make a Victim Statement on their behalf?’ Forty-eight consultees agreed with this and none disagreed. Many simply reiterated their support, although some also noted that this proposal would ensure the views of victims and the impact of the crime upon them will be heard.
- 1.50 That said, while there was almost universal agreement with this proposal, there were some qualifying comments made. For example, if a child aged under 14 years wants to make their victim statement, they should be allowed to; or that children should still be encouraged to express their own feelings about the impact of the crime. There were also some calls for appropriate support mechanisms being in place, the need to take into account reports from professionals and support agencies and the need to extend this proposal to include other appropriate adults.

## **Extending eligibility**

- 1.51 Question 37 asked ‘do you agree with the proposal to amend the definition of carer in relation to the Victim Statement scheme so that the carer who makes the statement on behalf of a child under 14 does not have to have been the carer at the time of the (alleged) offence?’ Of the 45 consultees responding to this question, 44 agreed with the proposal and none disagreed. The key theme was that this would be a reasonable change, or that there is no need for the carer to have been there at the time of the offence.

- 1.52 Question 38 then went onto ask ‘what more could be done to acknowledge and take into account the interests of victims and witnesses?’ Forty-five consultees provided comment and a key theme was around provisions such as information, support, counselling and implementation of special measures for victims and witnesses. Other key themes emerging were the need for partnership working and training, data recording and research, the need for a Victims’ Commissioner or an independent, non-government agency to represent victims and witnesses and the need for improvements and / or streamlining the court process. There were also references to the need for restorative justice and independent legal representation.

## **Making Offenders Pay**

### **A right to compensation**

- 1.53 Question 39 of the consultation paper asked ‘do you agree that courts should be required to consider the issue of compensation in all cases where an identifiable victim has suffered injury, loss or distress?’ and 36 agreed, while only 7 disagreed. Key themes from those agreeing with this proposal were that courts need to be required to consider the issue of compensation in all cases where an identifiable victim has suffered injury, loss or distress; that this holds offenders directly accountable for their crime(s) or that it helps them to appreciate the impact of their actions upon their victim(s); that this links the crime to the victim or that this allows victims to be directly compensated to offset any loss or payments, including medical treatment, loss of earnings, counselling, stress and anxiety etc. However, a small number of consultees also noted a need to take the offender’s ability to pay into account or queried what would happen if a fine was not paid.

### **Victim Surcharge**

- 1.54 The Scottish Government is proposing to apply a surcharge in cases that result in a court fine, with the potential to roll out surcharge arrangements to custodial sentences, community sentences and direct measures after a bedding-in period and possible refinements in the light of that. Question 40 asked ‘Do you support the principle of adopting a victim surcharge?’ and the majority (30) of those responding answered yes, with only 7 disagreeing. However, there were some concerns over the logistics of enforcement and administration and the viability of, for example, an offender’s ability to pay or the practicalities of collection.
- 1.55 Question 41 then went onto ask ‘do you agree that the surcharge should only be applied to court fines in the first instance?’ and 18 consultees agreed, compared to 10 who did not. Again, there were some concerns over the collection and enforcement of the surcharge. Of the consultees disagreeing with this proposal, most noted that the surcharge should be applied to all people convicted of an offence, and not just court fines.
- 1.56 Question 42 of the consultation paper then went onto ask ‘should we consider the possibility that legislation could include a provision to roll out application of the surcharge to custodial sentences, community sentences and direct measures at a later date?’ Of those providing a definitive answer to this



question, 18 agreed and 10 disagreed. Once again, there were comments that this should apply to all people who have committed an offence. There were also some concerns over ability to pay and the impact on an offender's family or that this would not support the long term aim of reducing re-offending.

### **Use of the revenue raised**

- 1.57 Question 43 then asked consultees 'do you agree that revenue accumulated from the surcharge should be used primarily to support victims?' and the majority of those (30) responding answered 'yes', with only 3 consultees disagreeing. Once again, there were concerns raised over the logistics, the operation and enforcement of this scheme and a reference was made to the possibility of funding restorative justice services.
- 1.58 Question 44 asked 'do you think the surcharge should be a flat rate or a variable scheme that reflects the size of a financial penalty?' Of those providing a definitive response, the majority (21) had a preference for a variable rate and only 5 consultees preferred a flat rate.
- 1.59 Most of those noting a preference for a variable scheme agreed that it is important for the surcharge to be flexible and relate to the crime committed, the penalty applied and the assets available to the perpetrator. This approach was also seen to reflect the gravity of the offence or the offender's ability to pay.
- 1.60 Those consultees who felt there should be a flat rate surcharge were then asked, 'if you think there should be a flat rate surcharge, what level should it be set at' and were offered the options of £15, £20, £30 or £other and asked to specify what this rate should be. Of the 5 consultees who had stated a preference for a flat rate surcharge, only 3 gave a response to this question. Two of these opted for a level of £15 and one suggested a flat rate but on a rising scale depending on the seriousness of the offence.
- 1.61 Consultees who had noted a preference for a proportionate surcharge were asked 'if you think there should be a proportionate surcharge, how do you think this should work?' and were given two options: a proportionate amount added to the value of the financial penalty, or other, and asked to specify what this should be (question 46). Of the consultees choosing one of these two options, views were polarised on whether this should be a percentage amount (mentioned by 7 consultees) or some other amount (mentioned by 9 consultees). Most of those suggesting the other option considered the surcharge should be relative to the seriousness of the crime and / or the circumstances of the offender.
- 1.62 Question 47 then went on to ask 'if you think there should be a proportionate surcharge, do you think there should be minimum and maximum levels set?' Of those responding, 7 agreed with the proposal and 12 disagreed.
- 1.63 Question 48 then went onto ask 'if you think there should be a proportionate surcharge, what should a) the minimum be? and b) the maximum be?' and 12

consultees responded. Only 2 consultees mentioned a specific amount for either a minimum or maximum figure; these were a minimum of £1 with no maximum figure, or a minimum of £25 with no maximum figure.

- 1.64 Question 49 asked 'do you agree that priority should be given to any compensation payment to the victim, followed by the surcharge and then the principal fine?' Of those responding to this question; the majority (28) agreed and only one disagreed.

### **Restitution Orders**

- 1.65 Question 50 asked 'Do you agree with the suggestion that there should be restitution orders whereby those who assault police officers may be sentenced to pay into a fund to support treatment and care of police victims?'; Twenty-one answered 'yes' and twelve answered 'no'. The key reason for support of this was that it is right for a contribution from offenders to support treatment and care of victims who are police officers; although those who disagreed felt this should apply equally to all public servants who are assaulted in the course of their work.
- 1.66 Question 51 then went onto ask 'do you agree that the Scottish Government should set the purposes to which the fund to support treatment and care of police victims should be applied?' and 20 consultees agreed, compared to 8 who did not. There was little by way of additional commentary.
- 1.67 Q52 then asked 'do you think limits for the size of a restitution order should be as described in paragraph 145 (the same limits as exist for compensation orders)?' Of those responding, 19 agreed compared to only 4 who disagreed. Most of those who agreed did not choose to provide any additional commentary, although 2 local authorities noted that the limits are appropriate providing the means and debts of the individual are taken into account when setting the amount of the restitution order. Of those who disagreed, 2 noted the need for access to an equal system for all victims of crime.
- 1.68 Question 53 asked consultees, 'do you agree that priority in collection and enforcement should be given to any compensation payment to the victim, followed by the restitution order and then any fine?' and the majority (26) agreed with the proposal compared to only 3 who did not.
- 1.69 The final question in the consultation paper asked 'do you think restitution orders should be extended to groups other than the police?' and, if so, to suggest which group(s) of workers should also benefit from a fund supported by restitution orders. The majority of those responding agreed with this proposal and only 4 disagreed.
- 1.70 The key groups of workers that consultees considered should also benefit from a fund supported by restitution orders were all groups of worker covered by the Emergency Workers Act, victims of crime as a result of service to the public / any public servant within the jurisdiction of the Scottish Government, local authority staff, health workers / social work staff, fire and rescue staff and ambulance service staff.

## **2 INTRODUCTION**

### **Background**

- 2.1 The Scottish Strategy for Victims was published in 2001 and set out an action plan based on three core principles; that victims should be provided with generic and case specific information; that they should receive appropriate support; and that they should have their voice heard. Subsequently in 2005 the National Standards for Victims of Crime set out the level of service that victims and witnesses should expect in their dealings with the criminal justice and children's hearing systems.
- 2.2 Much of the work on witnesses in recent years has focused on implementing the Vulnerable Witnesses (Scotland) Act 2004, phased in between 2005 and 2008; and providing greater focus on the needs of witnesses when giving evidence.
- 2.3 The Scottish Government is planning to introduce a Victims and Witnesses Bill, to improve the support available to victims and witnesses and in May 2012 issued a consultation to obtain views on a number of proposals to improve the experience of such individuals.

### **The consultation**

- 2.4 The consultation contained 54 questions in relation to a number of key proposals:
  - Introducing a victim surcharge so that offenders pay towards the cost of supporting victims;
  - Requiring the courts to consider compensation in every case where a victim has suffered injury, loss or distress;
  - Creating a duty on relevant public agencies to set clear standards of service for victims and witnesses;
  - Creating an automatic right to special measures for victims in cases involving sexual offences and domestic abuse;
  - Commissioning a feasibility study into how the SG can provide much better information for victims and the public about specific cases;
  - Improving the way cases are managed so that victims and witnesses can have far greater confidence that, where they are required to give evidence, the case will go ahead on the day as planned;
  - Victims should be able to make oral representations to a member of the Parole Board so that they can contribute effectively to decisions about parole for criminals subject to life sentences.

## Responses to the consultation

2.5 The Scottish Government received 77 responses to this consultation; 59 from organisations and 18 from individuals. Responses were assigned to sub-groups for analysis purposes. These sub-groups are shown in the following table.

**Table 1.1 Consultation responses**

<b>Sub-group</b>	<b>Number</b>
Police organisation	6
Local Authority	17
Public Body	10
Voluntary / 3 <sup>rd</sup> sector organisation	20
Legal organisation	3
Other organisation	3
Individual	18
<b>Total</b>	<b>77</b>

## Analysis and reporting

2.6 Comments given at each question were examined and key themes, similar issues raised or comments made in a number of responses, were identified. In addition, we looked for sub-themes such as reasons for opinions, specific examples or explanations, alternative suggestions or other related comments.

2.7 Where possible, we looked at whether consultees said they agreed or disagreed with the specific proposals; however as not all consultees replied using the consultation questionnaire, it was not possible to ascertain support or disagreement for all consultees; this should be borne in mind when reading any figures mentioned in the reporting.

2.8 The key themes were looked at in relation to sub-groups (individuals and organisation types) to ascertain whether any particular theme was specific to one particular group, or whether it appeared in responses across groups.

2.9 When reading sub-group differences, it must be also borne in mind that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups do not share this opinion, but rather that they have simply not commented on that particular point. In addition, the numbers in the organisation sub-groups were too small to allow for any meaningful conclusions to be drawn.

2.10 While the consultation gave all those who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to a wider population outwith the consultee sample.

2.11 Not all respondents answered each question directly; rather they chose to focus on issues of specific importance to them. As such, some responses do not address directly the question as it is asked.

- 2.12 This consultation addresses some complex issues and some of the responses ask for further clarification on specific issues rather than providing an answer to the question being asked. A few of the responses also suggest there is a degree of confusion over some of the proposals being put forward.
- 2.13 The following chapters document the substance of the analysis and present the main issues and views expressed in responses. These chapters follow the ordering of the sections in the consultation document.
- 2.14 Appropriate verbatim comments, from those who gave permission for their responses to be made public, are used throughout the report to illustrate themes or to provide extra detail for some specific points.

### 3 IMPROVED INFORMATION

- 3.1 The consultation paper explained that the Scottish Government proposes to legislate to create a right to information for victims which supports the principles of the draft EU Directive for Victims.

#### Case specific information

- 3.2 The consultation stated that ‘The Scottish Government will commission a feasibility study into developing an online information hub for justice that will provide case-specific data in Scotland. The study will also examine the extent to which such data can be made publicly available and the protections that would be needed to avoid unhelpful intrusion into the privacy of victims and witnesses or incursion into fundamental protections for accused persons. We will also investigate victims' and witnesses' views on the potential use of automatic notification of updates using text and email.’
- 3.3 The first question in the consultation asked “Do you agree with the principle of having a case-specific information hub for justice in Scotland” and invited consultees to comment on the reason(s) for their answer.
- 3.4 Fifty-five consultees explicitly answered “yes” they agreed with the principle of having a case-specific information hub for justice in Scotland and no consultees answered “no”. Those responding “yes” were represented across all sub-groups. Six consultees did not answer either yes or no but offered comments.
- 3.5 The most common theme in comments provided by those agreeing with the principle of having a case-specific information hub was endorsement that it would improve access to information. The next most common theme, related to accessibility, was that an information hub for justice in Scotland would help to ensure consistency and clarity of information.
- 3.6 The consultation document recognised that not all victims and witnesses will have online access and many will need support to deal with the information they receive. The intention is therefore to ensure that support groups can access information, with appropriate consent. The consultation also recognised that an online system should not be seen as removing the need for direct contact.
- 3.7 More than one in five consultees supporting the principle of a case-specific information hub included reference in their comments to the importance of personal and face-to-face contact in addition to the hub. Reflecting the points made in the consultation paper, typically these consultees emphasised that whilst electronic communication is efficient and appropriate for a majority of victims and witnesses it will not be accessible and helpful for everyone.
- 3.8 Other relatively common themes in responses included the suggestion that local hubs will be required in addition to a national hub and concerns that a hub will need to be properly resourced and that its feasibility will be dependent on adequate funding.

- 3.9 There were multiple comments, from those who answered “yes” they agreed with the principle and from those offering comments without specifically agreeing or disagreeing, relating to the importance of retaining the privacy of victims, witnesses and other parties. Some of these comments made very specific reference to the Data Protection Act and one consultee specifically recommended that a full Privacy Impact Assessment (PIA) is undertaken as part of the feasibility study.
- 3.10 The range of other comments from single consultees or small numbers of consultees included:
- The importance of plain language to make information easily understood and the suggestion that this should be stated as a principle within the legislation;
  - Concern that information collated, stored and shared may potentially prejudice the right of the accused to a fair trial;
  - A caveat that checks would be needed to ensure information is accurate and up-to date;
  - The need for a two-way process allowing victims to respond to information and ask questions;
  - The need for consideration as to how information can be shared with relevant third parties other than victims and witnesses in order to address wider public protection issues;
  - That case related information that is not publicly available will require password access;
  - The need to address barriers to information access due to language or disability;
  - The need to review information and advice to child victims and witnesses and ensure that confidentiality and data protection are understood by children specifically.
- 3.11 The draft EU Directive on Victims envisages making information available to victims on: any decision not to proceed with an investigation or prosecution; the outcome of any criminal proceedings; information about the state of the case or progress on it; the time and place of any trial; the opportunity to be notified about release or escape from detention.
- 3.12 The second question in the consultation asked consultees “*are there any other types of case-specific information that would be of value to victims and witnesses?*” i.e. over and above the information detailed in the draft EU Directive on Victims. Fifty consultees, from across all sub-groups, made comments.
- 3.13 The 4 most common themes within the comments regarding additional types of information that would be of value to victims and witnesses included:
- Reasons for not proceeding with an investigation or prosecution, or for proceeding with only part of a case;
  - Reasons for sentencing decisions or out of court disposals;

- Information on whether the perpetrator was remanded to custody or bailed, and details of any bail conditions;
- Information on the updated status of a perpetrator e.g. changed address, prison relocation or temporary release, or progression through a community sentence. One consultee, a public body, suggested that the current regime whereby victims may opt-in to receive certain information about the release from prison might be more appropriately operated on an opt-out basis.

#### 3.14 Other recurring themes included:

- Information about the court where the case will be heard e.g. the layout, where the victims and witnesses should go, details of support available and so on; one consultee specifically mentioned information on the protection that witnesses can expect during cross-examination;
- A file or folder on progression through the justice system, time deadlines and so on; the reasons for any delays were also cited as information that should be made available;
- Information regarding a designated access or contact point;
- An explanation of the trial process to help victims and witnesses prepare;
- Information on support services / referral mechanisms for victims and witnesses who attend court.

#### 3.15 The range of other types of case-specific information mentioned by single consultees or small numbers of consultees included:

- Reasons for appeals being allowed;
- Explanation of postponements;
- Information on non-court disposals, including compensation orders;
- Information on any threat or risk assessment;
- Information on how a victim's needs have been taken into account;
- Information on the unmet support needs of victims;
- Information to advise a victim if aggravation will be proceeded upon if evidence of statutory aggravation is passed to COPFS;
- Information for victims of offences by children, not just information on "criminal" proceedings;
- Who to contact if a community sentence has been imposed and is breached;
- Information on how authorities will protect a victim or witness;
- Any statement made by the accused with regards to remorse for the crime;
- Contact details for voluntary support groups;
- A facility for transactional services such as submitting compensation claims or expense claims.

### **Promoting Information Sharing**

- 3.16 The consultation document explained whilst the proposed information hub will go a long way to improve information-sharing in the interest of victims and witnesses, some have suggested that a duty to share information to the benefit of victims and witnesses would be helpful.



- 3.17 The third question in the consultation asked consultees “*do you believe a statutory framework is needed to promote information-sharing in the interests of victims and witnesses?*” and invited comments on the reasons for answering either yes or no.
- 3.18 Forty-eight consultees explicitly answered “yes” to this question and 3 consultees answered “no”.
- 3.19 One of the most common themes emerging from those who believed a statutory framework is needed was a belief that without a framework, information-sharing simply will not happen. A number of comments emphasised that whilst there is willingness to share information, there are currently barriers to doing so e.g. concerns regarding data protection issues. As one local authority commented:
- “(Yes) because there exists confusion and reticence to share information sometimes simply because of misunderstanding of the nature of the action of duties under Data Protection and confidentiality. As well serving a practical purpose, a statutory framework would help demystify information sharing in this area.”*
- 3.20 One consultee, a public body, recommended that all information sharing is undertaken in compliance with the Data Sharing Code of Practice which has been prepared under the Data Protection Act.
- 3.21 A second very common theme emerging from those who believed a statutory framework is needed was that it will help to ensure consistency of information provision and remove the possibility of regional or other variations. A number of consultees also noted that placing a statutory requirement on public bodies to share information has proven beneficial in other areas and is therefore likely to be effective here.
- 3.22 Around one in five consultees supporting a statutory framework commented that it will give confidence to victims and witnesses in the support they can expect. For example, that they will receive all the information they should reasonably expect and that it indicates a victim-centred approach.
- 3.23 The importance of training for those involved was a theme that emerged from a small number of individuals as well as one organisation responding to the consultation. Their comments reflected the need for all relevant parties to understand their duty of care as well as the need to prioritise the safety of victims and witnesses.
- 3.24 Other comments from single consultees or small numbers of consultees who answered “yes”, included:
- The need to build in checks and balances;
  - The need to impose clear obligations;
  - A suggestion that consideration could be given to a policy directive before legislation;

- The need for all communication to be tailored in terms of language and medium to meet individual needs;
  - The need for limits to information available from Criminal Justice agencies;
  - The need to ensure victims are referred to, or actively offered, support services, including an amendment to data protection legislation to allow sharing for the purposes of providing support in the interest of victims;
  - Comment on the need for adequate resourcing.
- 3.25 Those answering “no”, a local authority, a charity and another organisation, commented that commitment, appropriate guidance and support, and appropriate codes of practice would be more appropriate and effective than a statute.
- 3.26 A further 3 consultees were equivocal in their response or supported the idea of a statutory framework but with caveats. One commented that it is hard to give unqualified support without more detail as to what is being proposed and expressed concern that a one stop shop may not be the best approach to supporting victims and witnesses. Another commented that this is only necessary if there are existing legal barriers to information sharing. The third commented that whether a statutory obligation is necessary seems a matter of governmental technique.
- 3.27 The next question in the consultation asked consultees “What protections would need to be built into such a system?” and 48 consultees provided comments.
- 3.28 The predominant theme throughout the comments at this question related to the need for clear guidelines regarding confidentiality when sharing information. More specifically, some consultees referred to the need for an agreed code of practice e.g. encompassing statutory bodies and 3rd sector partners, including disclosure and performance frameworks. Others referred again to the Data Protection Act as shown in the example below from a local authority.

“The Data Protection Act 1998 is probably the main vehicle for controlling the processing of personal data and sharing data between agencies. Most areas have information sharing protocols which are agreed between the relevant agencies and we would expect a similar process for protections built into this proposed system.”

- 3.29 Other common themes included:
- The need for any online system to be password protected/ password controlled to avoid release of information to unauthorised parties;
  - That victims and witnesses should be able to determine what information relating to them individually can be made available and should not be compelled to make information available;
  - That safety and privacy must be balanced; some consultees mentioned the need to protect the privacy of offenders in the same way as victims and witnesses and make specific reference to human rights principles.

- 3.30 Other themes recurring with slightly less frequency but noted by multiple consultees, across different sub-groups, included:
- The framework should assess the needs of victims and witnesses in interpreting information;
  - The information shared should be limited to that affecting the security and safety of the victim or witness;
  - Sensitive personal data needs to be identified and protected from misuse;
  - Concerns that the confidentiality of 3<sup>rd</sup> parties e.g. families of offenders might be infringed;
  - Information must be removed or destroyed on a timely and appropriate basis;
  - The interests of the accused and their right to a fair trial must be protected.

### **Understanding Sentencing**

- 3.31 The consultation noted that the Scottish Government is considering what additional practical measures, over and above e.g. the COPFS' Victim Information and Advice (VIA) information leaflet on sentences, could be taken to try and improve public understanding of sentencing.
- 3.32 Question five of the consultation asked consultees "What information would help victims, witnesses and the public understand different types of sentences better?" and this was followed by a question asking "What is the best way to provide information about sentences to victims, witnesses and the public?"
- 3.33 Forty-seven consultees made comments on what information would help understanding of different types of sentence and a key theme amongst these comments related to the style of information used rather than the content per se. Around one in three of all consultees making comments at this question referred to the need for the information to be understandable or in plain English.
- 3.34 The predominant themes regarding the types of information that would be useful included:
- Information on the options available to the judge / the types of sentence that can be imposed;
  - Information on the practical implications for both the offender and victim going forward i.e. how the sentence is enforced;
  - Information on the minimum time that will be served or the likely time to be served;
  - Information on the impact of risk on how sentences are supervised;
  - Information on factors potentially influencing the sentence;
  - Information on costs to the taxpayer of different types of sentence and also on the impact of different types of sentence in reducing reoffending.
- 3.35 There were additional recurring themes regarding the format or channels for providing information, including suggestions that the proposed hub should house all existing information and literature in a central source. A number of comments included praise for the existing VIA leaflet believing that this

information needs to be more widely available and accessible. One consultee noted that the Sentencing Information for Scotland website should be reinstated and promoted as an information source.

3.36 Some consultees commented on the importance of providing translations of information as well as Braille and so on. There were also comments regarding the importance of face-to-face communication as part of the mix of information channels.

3.37 Other comments from very small numbers or single consultees included:

- Explanations that actions such as tagging or early release can affect apparent sentences;
- Use of the media in high profile cases to report on realistic terms of prison sentences;
- A simplified sentencing structure more generally in order to improve understanding and ensure greater consistency; one consultee also referred to a Sentencing Council and praised the guidelines produced by the Sentencing Council in England and Wales;
- The need for age-appropriate explanations and information for children.

3.38 At the subsequent question regarding the best ways to provide information about sentences to victims, witnesses and the public, there was a recurrence of most of the themes outlined above. Forty-eight consultees made comments and the key themes related to the need to use simple, accessible language and the need to offer information in a wide variety of formats.

3.39 Around half of all consultees commenting at this question made reference to the need for wide ranging formats depending on the complexity of the information and it was commonly observed there could be no single solution. Leaflets, online channels and face-to-face communication were mentioned by large numbers of consultees.

3.40 Other common themes emerging at this question included:

- The need for school education about the justice system;
- The need for a public education campaign;
- The need for media education;
- Suggestions for use of mass media channels including press and television statements;
- Suggestion for the use of social media;
- Suggestions for pooled national resources to be available online;
- The need to provide translations, Braille, ESOL and other formats to ensure equal accessibility of information.

### **Notifying bereaved relatives in road death cases**

3.41 The consultation noted that groups supporting bereaved families in road death cases have said how important it is for families to know when someone convicted of an offence which includes reference to a death has had their driving disqualification rescinded and driving licence returned. They also feel

families should have the chance to raise any concerns they have about return of the licence.

- 3.42 Consultees were asked whether they agreed that bereaved families in road death cases should be a) *advised when the offender's driving disqualification is rescinded and their driving licence returned to them* and b) *given the chance to register any concerns about return of the driving licence*. The consultation then invited comments on the reasons for answers given.
- 3.43 Thirty-two consultees agreed that bereaved families in road death cases should be advised when the offender's driving disqualification is rescinded and their driving license returned to them. Twenty-eight of these consultees also agreed that bereaved families should be given the chance to register any concerns.
- 3.44 Seven consultees (four local authorities, one individual, one police organisation and one other organisation) said "no", bereaved families should not be advised when the offender's driving disqualification is rescinded. Nine consultees (3 local authorities, 2 police organisations, 2 individuals and 1 other organisation) answered no to the second question, disagreeing that bereaved families in road death cases should be given the chance to register any concerns about return of the driving licence.
- 3.45 The predominant theme in comments from consultees answering "yes" to both parts of the question is that this will help bereaved families feel that their views and feelings are genuinely taken into account. Some consultees expressed shock and dismay that this is not already the case.
- 3.46 There were comments from several consultees that this would provide an opportunity to explain the rationale behind the decision to bereaved families. However, a number of consultees believed the decision should be case specific or that bereaved families should be able to opt-out of receiving information.
- 3.47 Some of the 9 consultees who answered "no" to the second part of the question expressed concerns about raising the expectations of bereaved families as to the degree of influence they might have. Others felt it was not appropriate for bereaved families to influence the decision and a third set of comments suggested that the views of bereaved families should have been taken into account at an earlier stage i.e. at the time of bereavement.
- 3.48 Consultees who answered "no" at both parts of this question also expressed a view that the views of bereaved families should be taken into account at the plea stage and there is therefore no need to inform or consult them. Some also believed it will add to the distress of bereaved families. There was also comment on the need to balance the needs and rights of all parties.
- 3.49 One local authority answered "no" to the first part of the question and "yes" to the second, making the following comment:

“Most road traffic accidents involving a death result in a lifetime or 10 year ban. There is a practical issue around tracing the deceased’s relatives following such a time lapse and also identifying who is a relevant family member, mother, sister, child? And whether they should all be contacted? Would they wish to be contacted following such a time lapse or would this reopen old wounds? The Judge/Sheriff or FAI would have taken into account all the facts of the case at the time of sentencing before imposing the ban under statutory law. The return of a driving licence is therefore a decision of the sentencing court and I believe that they should be allowed to make this decision unimpeded. I do believe that should victim’s families wish to register concerns they should be free to do so with the PF via the VIA service, though would envisage that the practicalities of victim’s families doing so, years later would be difficult, equally difficult if not impossible is the PF/crown, identifying and tracing victim’s families and contacting them, unsolicited, years later which would possibly cause more upset to victims and families than good.”

## 4 DELIVERING GREATER CERTAINTY

### Standards of Service

- 4.1 The consultation stated that *‘the Scottish Government proposes to create a duty on relevant public bodies requiring minimum standards of service for victims and witnesses to be set’*. Question 8 of the consultation asked whether consultees agreed with the proposal and invited comments on the reasons for giving a “yes” or “no” answer.
- 4.2 Fifty-two consultees explicitly said “yes” they agreed with the proposal to create a duty on relevant public bodies to publish minimum standards of service for victims and witnesses. Of these 49 went on to give comments.
- 4.3 Only 2 consultees, one individual and one voluntary organisation, said “no” and a further 3 gave no direct answer but offered comments.
- 4.4 The key themes that emerged from large numbers of consultees agreeing with this proposal, and across sub-groups, were:
- This will empower service users and let them know what they can expect;
  - It will create a measurable standard to aim for and allow benchmarking of service standards;
  - It will ensure consistency of service standards.
- 4.5 Other recurring themes included:
- The need for a mechanism to deal with shortfall in standards and a complaints procedure;
  - The need to ensure that standards are actually enforced;
  - The need to actively promote standards and make them accessible, not simply publish standards.
- 4.6 The range of other comments from single consultees or very small numbers of consultees who answered “yes” they agreed with the proposal included:
- The need for standards to be explicit;
  - The lack of any reason not to create a duty;
  - The need to ensure the rights of victims are as well recognised and resourced as the rights of the accused;
  - The need to go further than a charter or minimal standards and a suggestion that a victim’s law is required;
  - The need for standards in relation to cases of children dealt with in the Children’s Hearing System and via other interventions;
  - The need for standards to apply to both statutory and voluntary agencies, was noted by one voluntary organisation; conversely another voluntary organisation commented that a statutory obligation is not appropriate for the voluntary sector;
  - The need to create an accessible document that victims can refer to in order to understand their entitlement in terms of support and information;

- The benefit of introducing minimum standards as a statutory requirement but not part of legislation, in allowing amendments to accommodate new or changing requirements in the future;
  - The benefit of removing a necessity for each agency to develop its own set of standards;
  - The need for information on standards in accessible formats including e.g. symbol enhanced versions;
  - The need for standards to also cover vulnerable accused;
  - The need for standards to cover all children up to age 18.
- 4.7 The 2 consultees who answered “no”, one individual and one voluntary organisation commented, like some of those who answered “yes”, on the need to do more than simply publish minimum standards, reinforcing comments that the standards must be monitored and enforced.
- 4.8 Consultees were asked at question 9 “do you agree that the standards should encompass both victims and witnesses?” and were invited to make further comment if they answered “no”. Forty-eight consultees explicitly answered “yes” they agreed that the standards should encompass both victims and witnesses and 21 of these gave comments supporting their stance even though they were not asked to do so.
- 4.9 The key theme within the supporting comments of those who answered “yes” was that a differentiation between victims and witnesses would be inappropriate in this context and that both deserve equal treatment; there was recognition in some comments that victims may also be witnesses. One or two consultees commented that a tailoring of standards may be needed for each audience.
- 4.10 Only 3 consultees said “no”, an individual, a voluntary organisation and a legal body. Their comments were that victims and witnesses should be dealt with differently and that sometimes their agendas may come into conflict, that their needs may be different and that whilst victims may also be witnesses, a majority of witnesses will not be victims.
- 4.11 The consultation paper detailed an expectation that the core standards will set out for victims and witnesses:
- The levels of service that they can expect to receive e.g. about the type and timing of information about their case;
  - The information they can expect about what their rights are, including the information they are entitled to about why decisions have been made;
  - The information they can expect before giving evidence in court e.g. about the court process and about special measures;
  - That information will be provided in plain language, translated if necessary;
  - That they will be treated with dignity and respect, and that high standards will be provided regardless of race, age, gender, disability, ethnicity, religion or sexual orientation;
  - That suitable arrangements will be made for those with a disability;
  - How information they provide can be used in the justice system;



- How to make a complaint if unhappy with the service provided and informal attempts to resolve the matter have been unsuccessful.

4.12 At question 10, consultees were invited to comment on any other issues that the standards should cover in addition to those already outlined. Thirty-nine consultees made comments at this question and the key recurring themes across sub-groups included:

- Court dates should be fixed and there should be reasonable notice of court dates; one consultee also commented that there should be advance notification if not required in court on particular days;
- Minimum standards should encompass a complaints and comments procedure; comments included suggestions of the need for specified timescales to deal with complaints;
- Minimum standards should apply to facilities from which services are provided i.e. courts and cover wide ranging aspects such as a safe environment, separate facilities for victims and witnesses and so on;
- There should be guidance and obligations under equalities legislation in recognition of all special needs;
- Best practice, support and advice should be available during, after and beyond conviction / post trial.

4.13 The range of other comments from single consultees or small numbers of consultees included:

- Standards should address meeting the needs of those with protected characteristics e.g. those who are transgender;
- There should be specific standards or variations to standards for certain categories of offence e.g. sexual offences;
- Standards should include procedures for the review of decisions;
- Standards should encompass staff training requirements;
- Standards should encompass physical safety and witness protection issues;
- Standards should encompass all of the rights contained in the EU Directive;
- Standards should encompass redress if rights are breached;
- A suggestion that a duty might be placed on Local Authority Criminal Justice Services to work in a prescribed way with offenders to address issues of victim impact;
- Standards should encompass the use and handling of information provided by victims and witnesses;
- Standards should comprise part of a wider set for the police and other agencies to create excellence in service provision.

### **Agreeing a closed court in advance**

4.14 The consultation stated that ‘the Scottish Government wishes to ensure that the matter of a closed court is considered at an early stage in appropriate cases and that vulnerable witnesses know as early as possible if they will be able to give their evidence in private’.

- 4.15 At question 11 consultees were asked “do you agree that a closed court should be: (a) requested through a motion at the pre-trial hearing (First Diet, Intermediate Diet or Preliminary Hearing)? or (b) made a special measure (i.e. the subject of a Child Witness Notice or Vulnerable Witness Application)?”
- 4.16 Eighteen consultees agreed that a closed court should be requested through a motion at the pre-trial hearing and answered “no” or did not answer at part (b). Fifteen consultees agreed that a closed court should be made a special measure (i.e. the subject of a Child Witness Notice or Vulnerable Witness Application) and answered “no” or did not answer at part (a).
- 4.17 Two consultees answered both “yes” and “no” at part a) and 9 consultees answered yes to both parts of the question believing it should not be an either/or option but closed courts should be considered in both circumstances.
- 4.18 The main themes in comments from those answering “yes” solely to option a) included:
- Resolving the issue as early as possible would avoid unnecessary stress;
  - That this is best agreed at a pre-trial hearing;
  - This gives greater certainty as to whether victims or witnesses will be required to give evidence in open court;
  - That courts should decide on a case by case basis not on predetermined criteria;
  - That a closed court should be automatically granted for certain circumstances involving children or other vulnerable witnesses unless the defence provide valid objections;
  - That all possible measures should be taken not to deter witnesses from coming forward.
- 4.19 The main themes in comments from those answering “yes” solely at option b) included:
- Vulnerable people should be protected from the earliest possible stage;
  - The process should be incorporated with other arrangements;
  - Applications should have to meet set and appropriate criteria;
  - Courts should be open unless victims or witnesses have good reasons to request this;
  - This would reduce anxiety for those concerned.
- 4.20 The main themes from those consultees who did not choose just one option were as follows:
- Both measures are appropriate depending on the circumstances;
  - Both options ensure the maximum flexibility for witnesses to request an arrangement that supports them;
  - Closed courts should be considered when there is a probability of questioning of a victim’s or witness’s personal circumstances.

## 5 FEELING SUPPORTED

### Improving victim and witness care and support

5.1 The consultation paper explained that there is an opportunity to look at how services are provided to support victims and witnesses and outlined a number of ideas already proposed and which might be tested locally. These suggestions included:

- **A dedicated contact point** - appoint a single professional to advise and update the victim or witness throughout the criminal justice process (pre, during and post). This could help deliver information tailored to individual needs.
- **A co-ordination/liaison/care unit** - a multi-justice organisation team which would take responsibility for dealing with victim and witness contact, information and organisation of support measures (legislative or otherwise). This could help deliver more effective information-sharing between organisations and a more stream-lined service for individual victims and witnesses.
- **A support programme for child victims/witnesses** - make available, as a matter of course, a support programme which focuses on preparing a child for court in a way that ensures they are able to give their best evidence but does not prejudice the right of the accused to a fair trial. The programme would focus on building a child's resilience and could have a therapeutic element to help them move on from and beyond the justice process. This could help improve participation in the justice process and individual recovery.
- **A central hub** - to support professionals with awareness, training and preparation for dealing with child and other vulnerable witnesses and their families. This could also be developed to act as an information and contact point for vulnerable witnesses and their families at various stages of the judicial process. This could help improve engagement with and support of victims, witnesses and families.

5.2 Question 12 said “Please let us have your views on the possible options for piloting improved care and support for victims and witnesses” and the subsequent question invited suggestions for other models of care and support. Fifty-four consultees made comments at question 12 and 29 consultees made comments at question 13.

5.3 The key theme arising from comments at question 12 was an expression of general support for all possible measures outlined and enthusiasm for the pilots going forward.

5.4 Almost one in two consultees making comments specifically praised the idea of a dedicated contact point. A small number of these consultees noted the importance of arrangements to deal with situations where there are staff changes that might impact on continuity.

5.5 Large proportions specifically praised the idea of a co-ordination/liaison/care unit as did large proportions support the proposal of a support programme for

child victims/witnesses. The proposal for a central hub was also widely mentioned although it was singled out by slightly fewer consultees.

5.6 A second common theme, from some individuals as well as organisations, was the offer of advice and assistance going forward, particularly with regards to piloting of these proposals. Further, one consultee commented that past victims should be consulted or included in the piloting process.

5.7 The range of other comments from single consultees or small numbers of consultees included:

- Support for any and all measures to improve care and support to victims and witnesses;
- Comment that provision of appropriate care and support can influence the quality of evidence provided by victims and witnesses and also increase numbers coming to court;
- Positive comment on the idea of a Victims' Commissioner;
- The suggestion of a Victim Advisory Council;
- Some concerns about the resource implications for any or all of the options outlined;
- The suggestion that group support, treatments, online forums and counselling should be available;
- The suggestion of a "legal advice clinic" for victims and witnesses to deal with questions relating to compensation and general advice about their rights;
- The suggestion of educational and community work;
- A suggestion for bespoke support in specific circumstances e.g. families involved in fatal accident inquiries;
- A suggestion for funding of a respite or retreat centre in the run up to and following trials;
- A suggestion for a multi-agency team, with involvement from a third sector organisation, to deliver care and support;
- A suggestion for a nominated contact to support the victim or witness throughout the process, along the lines of the dedicated contact point outlined;
- A suggestion for therapeutic support, along similar lines to that outlined in the consultation;
- A suggestion for a Liaison Unit for large, busy courts.

5.8 A wide variety of alternative models for improving care and support were each suggested by one or two consultees at question 13. The most common theme, albeit from only three consultees (two individuals and a voluntary organisation), was that the Scottish Government should consider evidence regarding the impact of Independent Legal Representation for victims.

5.9 Other suggestions from single consultees or small numbers of consultees included:

- A health service "key worker" working across agencies;
- A website similar to SAMM but for Scotland;

- The Victim Support (England and Wales) model of dedicated “homicide case worker”;
- A model similar to Children’s Panels;
- Something similar to the West Lothian Domestic and Sexual Assault Team model and service;
- A Charter of Victims’ rights;
- A Victims’ fund;
- A Victim Implementation Committee;
- A roll out of specialist courts across the whole of Scotland;
- A more pro-active witness service at Courts;
- Peer support;
- A community orientated approach;
- Witness Support Units as used in England;
- An audit of correspondence to victims and witnesses to check for plain English and improve standards and test of the value of Inclusive Communication best practice in support services;
- An effective co-ordination unit (a suggested model was provided by the consultee);
- Better provision for separating victims/witnesses from accused in court buildings;
- Consideration of financial support to Local Authorities for services provided to V&W;
- The “No Witness No Justice” programme used in England and Wales;
- The model used by the Multi Agency Tasking and Coordinating group in Strathclyde;
- The Pilot model in Tayside where Victim Support Scotland provide services on behalf of VIA;
- A bespoke allocated independent advocacy service for victims and witnesses;
- A Restorative Justice Approach;
- Funding and support of specific helplines;
- A referral to research findings at [www.scotland.gov.uk/Topics/Justice/crimes/youth-justice/confidence/young-victims-report](http://www.scotland.gov.uk/Topics/Justice/crimes/youth-justice/confidence/young-victims-report)
- The example cited in the Hidden in Plain Sight Report (p156, Equality and Human Rights Commission, 2011) of The National Centre for Victims of Crime in America.

### **Definition and identification of vulnerability**

- 5.10 The consultation stated that the Scottish Government intends to make provision so that the definition of a child witness will be changed to someone up to the age of 18 for the purposes of eligibility for automatic entitlement to standard special measures.
- 5.11 At question 14 of the consultation, consultees were asked “do you agree with the proposal to change the definition of child witness to be up to age 18.” Those saying they disagreed were invited to comment on their reasons.

- 5.12 Forty-seven consultees agreed with the proposal to change the definition of child witness to be up to age 18. Only three 3 consultees answered “no” and went on to give comments. One observed it does not fit with other legislation, another specifically commented that it is different to the Adult Support and Protection (Scotland) Act 2007 which defines an adult as anyone over 16 and the third explained that their objection was semantically based since traditionally in Scotland you are considered to be an adult at the age of 16. Some consultees who answered “yes” they agreed with the proposal also commented that the age of 18 would be anomalous.
- 5.13 One consultee, a legal organisation, commented that whilst agreeing with the proposal they suggest that any accused person aged 18 and below should also be classified as a child for specific purposes.
- 5.14 At question 15, consultees were asked “*do you agree that we should amend the definition of vulnerable witness to match the requirements of the EU Directive on Victims?*” Those saying “no” were invited to give comments.
- 5.15 Forty-nine consultees agreed that the definition of vulnerable witnesses should be amended to match the requirements of the EU directive on victims.
- 5.16 Only 5 consultees answered “no” and further comments from those disagreeing included:
- That Scotland should have its own definition that would constitute a minimum standard;
  - That the definition is too prescriptive and too narrow;
  - That it would be preferable to remove the Vulnerable Witness Act and widen access to standard measures to cover all witnesses.

### **Rights-based entitlement to special measures**

- 5.17 The consultation stated that the Scottish Government ‘propose to extend an automatic right to standard special measures to:
- victims of sexual offences;
  - victims of domestic abuse;
  - any other category defined as automatically vulnerable in the final version of the EU Directive on Victims’.
- 5.18 At question 16 of the consultation, consultees were asked whether they agreed the definition of a vulnerable witness - and therefore automatic entitlement to standard special measures – should be extended to include: (a) victims of sexual offences, (b) victims of domestic abuse and (c) those witnesses defined as automatically vulnerable in the final version of the EU Directive on Victims. They were then invited to comment on the reasons for their answers.
- 5.19 Fifty one consultees agreed that the definition of a vulnerable witness – and therefore automatic entitlement to standard special measures – should be

extended to include victims of sexual offences. Only two consultees disagreed.

- 5.20 Fifty one consultees agreed that the definition of a vulnerable witness – and therefore automatic entitlement to standard special measures – should be extended to include victims of domestic abuse. Only 2 disagreed.
- 5.21 Fifty-two consultees agreed that the definition of a vulnerable witness – and therefore automatic entitlement to standard special measures – should be extended to include those witnesses defined as automatically vulnerable in the final version of the EU Directive on victims. Only 2 disagreed.
- 5.22 The one consultee who disagreed with all three proposed extensions did not wish to see a hierarchy of victims and preferred to see removal of the Vulnerable Witness Act and widening access to standard measures to cover all witnesses.
- 5.23 A consultee who disagreed with extensions to include victims of sexual offences and victims of domestic abuse did not agree that automatic entitlement should be beyond that in the directive i.e. a child, preferring that for adult witnesses the vulnerability should relate to the individual concerned.
- 5.24 The consultee disagreeing with part c also felt that special measures over and above certain specified categories should be subject to a needs-based assessment.
- 5.25 Amongst the very large majority agreeing with each proposed extension, the predominant themes included in their responses were that automatic entitlement is preferable, that the specified categories need support and help and that these measures will help improve the quality of evidence given. Three consultees pre-empted the next question in the consultation, mentioning here that there should be a right to opt-out.
- 5.26 The range of other comments from single consultees or small numbers of consultees included:
- This would afford the same protection as for others in the EU;
  - An expression of agreement in principle;
  - A suggestion that victims of forced marriage and honour crimes should also be included;
  - Comment that this works elsewhere;
  - A suggestion that the definition of vulnerability would benefit from inclusion of witnesses considered to have a 'significant impairment of intelligence and social functioning' ;
  - Comment that “standard special measures” are aimed at making the court environment less intimidating and that further consideration should be given to other personal support needs;
  - Comment that some offences contain an underlying element of sexual or domestic abuse that is not explicit in the charge and queries as to how these might be managed.

- 5.27 The consultation document explained that “under current legislation, children can opt-out of using the standard special measures to which they are entitled if they so wish and it is accepted by the court”. It stated that the Scottish Government are keen to ensure that victims of sexual offences and domestic abuse can also opt-out in the same circumstances.
- 5.28 At question 17, consultees were specifically asked “do you agree that any witnesses who are automatically entitled to standard special measures should be able to opt-out of using them?” They were also invited to make further comments on their reasons.
- 5.29 Fifty-six consultees agreed that any witnesses who are automatically entitled to standard special measures should be able to opt-out of using them. Only one consultee answered “no”, commenting that safeguards are there for a reason and should not be set aside without a very good reason. Another consultee answered “yes and no”, believing the opt-out should not be automatic but there should be an option.
- 5.30 Fifty-three of the consultees who answered “yes” went on to make detailed comments and two significant themes were apparent and identified by a large majority:
- There should be as much choice as possible;
  - This assumes the witness has the capacity to understand and is properly counselled to make an informed decision.
- 5.31 A number of consultees commented that some witnesses prefer to tackle things “head on” or that they need the process to bring closure.
- 5.32 The range of other comments from single consultees or small numbers of consultees included:
- It seems fair to extend the opt-out option if it is already available to one group of witnesses;
  - That opt-out should be seen as exceptional;
  - That this assumes the court has no objections;
  - That the opt-out is not under duress or coercion.
- 5.33 Finally in this section, consultees were asked “do you have any comments on the proposal to include in the legislation flexibility to extend the range of standard special measures if necessary in future”?
- 5.34 Thirty-seven consultees made comments and these comments were very predominantly of a generally supportive nature, welcoming a flexible approach and highlighting the benefits of being able to adapt to emerging issues as they develop.
- 5.35 More specific comments, each made by single consultees or very small numbers of consultees, included:
- The flexibility allows new opportunities linked to technology advances;



- This means future problems can be dealt with swiftly;
- A caveat from one consultee that they support this as long as it is not about reducing or cutting back special measures;
- An observation that the expansion of access to special measures should not result in a reduction in the quality of support;
- A comment emphasising the importance of courts receiving prior notification of requirements for special measures;
- An observation that there are likely to be increased costs linked to increased demand and use of special measures;
- A comment that victims of stalking should be considered;
- A small number of consultees querying precisely what this proposal actually means;
- An observation that provision appears to be available in terms of section 271H of the 1995 Act;
- An observation that victim safety goes far beyond the court process and that convicted criminals should not be allowed to live with a suggested geographical distance of the person or persons against whom an offence has been committed.

### **Notification/ application arrangements**

- 5.36 The consultation document acknowledged that widening the definition of vulnerability and a rights-based approach to special measures, and extending the range of special measures available for application have the potential to increase demand for them.
- 5.37 Question 19 of the consultation invited “suggestions about how the administrative arrangements for special measures might be streamlined (a) for those witnesses automatically entitled to standard special measures (b) for other witnesses who may fall into the definition of vulnerable but do not automatically do so and (c) for those witnesses who wish to opt-out of using the standard special measures to which they are entitled”.
- 5.38 Fourteen consultees had suggestions about how administrative arrangements for special measures might be streamlined for those witnesses automatically entitled to standard special measures, 14 had suggestions for other witnesses who may fall into the definition of vulnerable but do not automatically do so and twelve made suggestions for those witnesses who wish to opt out of using the standard special measures to which they are entitled. A total of 23 consultees provided suggestions or comments at one part of the question or more.
- 5.39 Key themes arising from the comments across all parts of the question related to the need to ensure people know of their right to special measures as early as possible in the process, the need to minimise bureaucracy and offer a streamlined service and that a dedicated service for supporting victims and witnesses would help streamline administrative procedures.
- 5.40 Other themes arising from one or more consultees included:

- These matters can be covered at Intermediate / First Diet to deal with any issues not covered by default provisions;
- Decisions should be taken soon after the crime as to whether a vulnerable witness will be granted special measures;
- If there is to be a dedicated service for support of victims and witnesses, this service could clarify what special measures are being sought;
- As soon as a person is identified as a vulnerable witness, support should be delivered through a specialist support team;
- If victims and witnesses are given an opportunity to decide how best to give evidence this could be built into procedures and given to COPFS to be discussed as standard at hearings;
- Whatever proposals are brought forward, consideration should be given as to whether and how they could be available for children’s hearings; in addition, a comment that all special measures should be available to all child and young person victims and vulnerable witnesses;
- A suggestion of removing the terms ‘standard special measures’ and making all measures available as ‘standard measures’;
- A suggestion that for all categories, consideration should be given as to whether proposed witnesses should be represented at any or all hearings where their status is to be determined;
- An observation that the arrangements need to ensure adequate time for a proper assessment of ‘victims’ and witnesses’ needs;
- A reiteration that the quality of support should not suffer;
- A suggestion that a quality standard “Communication Support Needs Profile” be introduced for those requiring special measures where communication competence is a cause of vulnerability;
- Comment on the need for additional training to police officers dealing with vulnerable witnesses;
- An observation that standard special measures should be discussed with all vulnerable victims entitled to receive those measures and that they should apply unless a victim expresses a strong desire to give evidence without the benefit of those measures.

### **Additional support for child witnesses**

- 5.41 The consultation paper made reference to recent EU Directives that include provisions to ensure effective participation of child witnesses in proceedings and seek to ensure entitlement to giving evidence using appropriate communication technologies. It also noted that equipment to visually record joint investigative interviews with child witnesses in serious cases is currently being introduced in Scotland. Further, the paper noted that the Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland makes clear that these interviews should be visually recorded unless there is a good reason why this is not appropriate.
- 5.42 At question 20 of the consultation consultees were asked “do you have any concerns about the proposal to put the Guidance on Joint Investigative Interviewing (JII) of Child Witnesses in Scotland on a statutory footing?” Consultees answering “yes” were invited to provide further details of their concerns.

- 5.43 Thirty-five consultees answered “no” they did not have concerns and only 4 consultees said they had concerns and went on to give comments.
- 5.44 One consultee who answered “no” expressed concern that evidence obtained in a manner which does not comply with the prevailing guidance in relation to joint investigative interviews is likely to be flawed; the consultee questioned what benefit there would therefore be in placing this on a statutory footing.
- 5.45 A second consultee observed that that Guidance has been criticised in the Journal of the Family Law Association and commented that the matters raised in that article should be addressed before the Guidance is put on a statutory footing.
- 5.46 A third consultee expressed concerns about the consequences if, in a particular case, an interviewer did not have regard to the guidance. The consultee noted that since hearsay evidence is admissible in most proofs, the evidence of the JII frequently avoids the need for the child to give evidence. There is therefore a concern that this proposal should not cause difficulties for this principle if an interviewer did not have regard to the guidance.
- 5.47 The fourth consultee answering “no” noted that the guidance involves recording equipment and expressed concern regarding the resource implications on police/staffing and the compatibility, availability and reliability of technology within police stations and smaller courts. The consultee observed that under the current Guidance flexibility is retained in instances where there is an emergency situation and time and/or access to equipment would impact on the child and/or investigation.
- 5.48 Question 21 of the consultation asked ‘should we seek to remove the presumption that child witnesses under age 12 in prescribed sexual or violence cases should give evidence away from the court building, while retaining the ability for them to do so?’ Consultees were invited to make comment on the reasons for their answer.
- 5.49 Nineteen consultees agreed with seeking to remove the presumption that child witnesses under age 12 in prescribed sexual or violent cases should give evidence away from the court building, while retaining the ability for them to do so; 18 consultees said ‘no’.
- 5.50 The key theme in comments from those who answered “yes” related to the need for flexibility to allow decisions on a case-by-case basis; a capacity for choice and to choose what suits a child best were also noted.
- 5.51 Other comments from single consultees or very small numbers of consultees who answered “yes” included:
- That this change would be in the interests of UK-wide consistency;
  - That there should be statutory provision to create a legal framework that is flexible to different needs;
  - That this would reduce stress for child witnesses;

- That child and parent witnesses sometimes have to attend different venues; one consultee noted that if adequate family support can be given at a remote location, or all the family can give evidence from this remote location, it might improve use of the facility.
- 5.52 A large proportion of those who answered “no” to question 21 went on to comment that the problem is not with the presumption but the way in which it is applied; 7 of the 18 consultees made this observation and it was suggested that an opt-out facility is needed.
- 5.53 Several consultees who answered “no” felt that children needed protection at all times and that protection is essential. Two consultees who answered “no” commented that there is no benefit to children giving evidence in court and one consultee felt that this would result in the erosion of good practice.
- 5.54 One consultee answering “no” and supporting retention of the presumption gave their reason as being the possibility that a child might be taken to a separate location from their parent and / or carer to give evidence; hence this argument is presented both in support and against any proposal to remove the presumption.
- 5.55 The consultation paper noted that some support organisations have suggested that the submission of Child Witness Notices should be a compulsory part of pre-trial hearings in order to avoid unnecessary last-minute applications and better ensure the needs and rights of child witnesses are built into the courts process.
- 5.56 Question 22 of the consultation asked “should the submission of Child Witness Notices be made a compulsory part of pre-trial hearings?” Consultees were invited to provide comments on the reasons for their answer.
- 5.57 Thirty-one consultees answered ‘yes’ the submission of Child Witness Notices should be made a compulsory part of pre-trial hearings and only 2 answered ‘no’.
- 5.58 One consultee who answered “no” highlighted a resource issue if broadening the category of witnesses that may require special measures results in an increase in the number of these cases in the court; the other commented that in summary cases the Child Witness Notice needs to go in after the plea of not guilty at the pleading diet when the trial diet is set and noted that the fact that there is a child and the availability of special measures including a remote facility would need to be known prior to setting the trial diet and extra time.
- 5.59 Only twenty-five of the consultees who answered “yes” went on to make comments; the predominant theme from these consultees was that it would help avoid unnecessary delays and would be in the best interests of the child.
- 5.60 Other comments included:
- That this would remove unnecessary anxiety;
  - This would help ensure that special measures are made available;

- This would ensure consistency;
- This would allow time for planning by prosecution and defence;
- This will ensure that protection is discussed with witnesses.

### **Visual recording of vulnerable witness' evidence**

- 5.61 Question 23 asked “Do you have any concerns about the proposal to make clear that section 271M of the Criminal Procedure (Scotland) Act 1995 does include provision for visual recording of evidence?” Consultees were invited to comment further on the reasons for their answer.
- 5.62 Thirty three consultees answered “no” they had no concerns and only 5 answered “yes” they had any concerns about the proposal to make clear that section 271M of the Criminal Procedure (Scotland) Act 1995 does include provision for visual recording of evidence.
- 5.63 Comments from the small number expressing concerns included:
- A need for further information as to who decides about recording;
  - Potential resource and training implications;
  - Concerns about disclosure arrangements for video recordings.
- 5.64 The main themes emerging in comments from those who did not have concerns were that this might improve the availability and quality of evidence and that the change is both logical and appropriate.
- 5.65 Several consultees also commented that anything that improves the experience of vulnerable witnesses is welcome and that this serves to give clarity and enshrine current practise in law.
- 5.66 Other comments from smaller numbers included:
- There are no concerns as long as court service has resources to respond;
  - That there are no concerns as long as this is used and conducted properly;
  - This encourages prosecutors to have more confidence in support to witnesses and effective outcomes;
  - This fits with other proposals in the consultation.
- 5.67 Question 24 asked “Do you believe we need specific provision allowing for visual recording of supplementary evidence “and invited further comments. Thirty one consultees answered “yes” they believed we need specific provision allowing for visual recording of supplementary evidence and only three answered “no”.
- 5.68 Those answering “no” commented that this seemed unnecessary in the 21st Century, that there should be no need for this provision if the proposal detailed at Question 23 was followed and that this should be implicit in original provision.

- 5.69 The main themes emerging from comments of those who believe there is a need for specific provision related to ensuring consistency of evidence and giving clarity within legislation. Several consultees commented that this ensures the same measures are available throughout the UK.
- 5.70 Other comments from single consultees or small numbers of consultees included:
- This is a logical and progressive step;
  - This ensures transparency;
  - This allows sifting of evidence at an early stage;
  - This ensures all relevant evidence will be heard;
  - That it is important that the option is available.

### **Improved support for communication needs**

- 5.71 In the consultation paper the proposal was put forward “to extend the types of support measures available incrementally to include means of meeting communication support needs. We intend to do this in a way that allows Ministers to pilot a measure in a specific area and, if appropriate following monitoring and evaluation of the pilot, roll-out the measure out across Scotland.”
- 5.72 Question 25 asked consultees “do you agree with the principle of extending the types of special measures available specifically to help meet communication support needs? Those answering “no” were invited to detail further comments.
- 5.73 Fifty consultees answered “yes”, they agreed with the principle of extending the types of special measures available specifically to help meet communication support needs. Only one consultee answered “no”, querying the definition of “communication difficulties”.
- 5.74 Question 26 asked “If you agree in principle we should extend the types of special measures available to meet communication support needs, do you have any views at this stage on which option/model you would favour? Intermediaries, witness profiles or some other means”. Those indicating other means were asked to specify details and consultees were invited to comment on the reasons for their choices.
- 5.75 Twenty-six consultees favoured intermediaries, sixteen favoured Witness profiles and eight suggested some other option. Comments from the eight who indicated alternative suggestions included extending the Appropriate Adults scheme, case studies involving role play to prepare witnesses and, most commonly, assessment of needs on an individual basis.
- 5.76 Key themes emerging from those favouring intermediaries included:
- Use of intermediaries has been tried and tested;
  - Intermediaries can provide additional support;
  - As long as intermediaries are properly trained they would be beneficial.

- 5.77 The key theme emerging from those favouring witness profiles was that one size does not fit all and that profiling in each case would allow appropriate, tailored help and support. Some consultees commented that this might include an intermediary.
- 5.78 Other general comments were made regarding the need to pilot both options and also the need the tailor provision on an individual basis.
- 5.79 Question 27 asked “If the role of Appropriate Adults in relation to suspects is defined in statute, do you believe the same is necessary for their role in relation to victims and witnesses?” Forty-five consultees answered “yes” they believe that if the role of Appropriate Adults in relation to suspects is defined in statute, the same is necessary for their role in relation to victims and witnesses. Only 2 consultees answered “no.”
- 5.80 One consultee who answered “no” attributed this to it being unnecessary because any new agency set up will have provided sufficient contact and support throughout the process, and the second commented:
- “There is a difference between the arrangements and role for support by an AA for a suspect or an accused person and that provided to a victim or complainer. The former will not be chosen by the vulnerable person, whereas the latter generally will be. The former should be carefully vetted as they fulfil an official, detached, public role and are acting for strangers. The latter are usually committed volunteers with much personal understanding and empathy of the witness experience and likely to develop a longer term support relationship with the witness.”
- 5.81 The main themes emerging from comments of those who answered “yes” were that everyone involved in proceedings should have the same rights, that this gives clarity and that it provides essential protection.
- 5.82 Three consultees mentioned that there are significant and potentially challenging resource implications if this is defined in statute and two others commented that it will increase use.
- 5.83 Other comments from single consultees included:
- That it will secure better evidence;
  - That it is an appropriate development of the role;
  - That there is evidence that the service is valued by victims.

## 6 FEELING SAFE

### Rights of victims of sexual violence to choose the gender of their interviewer

- 6.1 The consultation paper noted that the draft EU Directive envisages that all interviews with victims of sexual violence, unless conducted by a public prosecutor or judge, are conducted by a person of the sex chosen by the victim if they so wish and it would not be prejudicial to the proceedings. The Scottish Government propose to enshrine the right of victims of sexual violence to choose the gender of the interviewer.
- 6.2 Question 28 asked “Do you agree that victims of sexual violence should have the right to choose the gender of the person who interviews them?” and invited further comments.
- 6.3 Forty-seven consultees agreed that victims of sexual violence should have the right to choose the gender of the person who interviews them and five consultees answered “no”.
- 6.4 The comments of those who answered “no” highlighted some concern about resource issues and the practicality of delivering such a choice. A legal organisation, a police organisation and a local authority included comments highlighting the practical difficulties in accessing, for example, appropriately trained female personnel at short notice. Another police organisation commented that this might result in evidence not being secured by a more skilled interviewer.
- 6.5 An individual and a local authority also commented that delays in conducting interviews in order to access an interviewer of the preferred gender may impact negatively on investigations or even increase risk to the public by allowing a suspect time to escape.
- 6.6 The key theme emerging from those who agreed with the proposal is that this represents good practice and a victim centred approach that will support victims appropriately. However, even amongst those who agreed with the proposal, five consultees commented on resource challenges and observed that there might be difficulty in implementing this on all occasions.
- 6.7 Around one in five of those who agreed with the proposal commented that this would ensure comfort with the interview process and six consultees commented that it might help secure better evidence or, conversely, that not doing so might jeopardise evidence.
- 6.8 Three consultees commented that gender should not be a barrier to giving evidence and other comments from single consultees included:
- This is in line with other EU jurisdictions;
  - This would balance the rights of victims with the rights of the accused;
  - This does not compromise fairness to the accused;
  - The approach mirrors those in other services.



- 6.9 Three consultees, all voluntary sector organisations, suggested extending the proposal to other victims; one mentioned extending this to cover children, one suggested covering victims of domestic abuse and one wanted this extended to all victims regardless of the crime.
- 6.10 Three consultees, all voluntary sector organisations, suggested that the choice for victims should extend to cover medical examiners as well as interviewers.
- 6.11 One consultee commented that it would be helpful to define which interviews are covered by the proposal and another noted that the definition of interviewer should not include a Reporter of proof proceedings.

### **Disclosure of personal details**

- 6.12 The consultation paper noted that concerns have been expressed about the extent to which a witness' personal circumstances require to be disclosed in a Child Witness Notice or a Vulnerable Witness Application. The Scottish Government is proposing that it should not be necessary to disclose the witness' personal circumstances in an application for standard special measures.
- 6.13 Question 29 asked "Do you agree with the proposal that it should not be necessary to disclose the witness' personal circumstances (e.g. medical details) in an application for standard special measures?" and invited further comments.
- 6.14 Forty-three consultees agreed with the proposal that it should not be necessary to disclose the witness' personal circumstances (e.g. medical details) in an application for standard special measures. Five consultees answered "no" and one answered both "yes" and "no".
- 6.15 The comments of those who answered "no" focused on ensuring measures are not abused and predominantly that judges require sufficient information to make their decisions. As one consultee, an individual, commented "to be granted this you would need to know why it should be granted". A legal organisation observed,
- "Although no irrelevant information should be contained in an application, there must be sufficient detail for the defence to consider its position (it may agree to the application). More importantly, the Judge needs sufficient information to make a reasoned decision, not only as to whether a vulnerability exists, but also as to which measures are most appropriate."
- 6.16 The consultee answering both "yes" and "no" commented:
- "I believe that some personal circumstances would require to be disclosed to allow the sheriff/judge to instruct the defence/pf to re phrase questions etc. I'm unsure about the need to disclose all personal information, though can see both sides of the argument." (local authority)

- 6.17 The key theme emerging from the comments of those who answered “yes” was that there is no need for this to be public information (sixteen mentions). Six consultees commented that only enough information should be given to clarify the reason for an application and another four consultees believed that an assessment of vulnerability should be sufficient or that only the person making the referral needs the information.
- 6.18 Six consultees commented in general terms that this would limit anxiety or distress for witnesses and seven consultees specifically commented that this would protect witnesses from unfair use of information or attacks on their character.
- 6.19 Three consultees, two voluntary organisations and one local authority, commented that personal information should not be disclosed without the specific consent of the witness. Another individual consultee suggested that confidentiality contracts should be agreed.
- 6.20 Other comments from single consultees or small numbers of consultees included:
- The need to disclose could present a barrier to accessing special measures;
  - There should be equality/ fairness to witnesses as well as the accused;
  - Victims of serious crime should have automatic rights to special measures;
  - Statements of general support for the proposal.

### **Advising victims about offender temporary release**

- 6.21 Section 16 of the Criminal Justice (Scotland) Act 2003 gives victims or parents, carers or relatives the right to receive certain information about the person convicted of the offence against them or their family member. This applies in instances where an offender is given a custodial sentence of 18 months or more. The scheme under which this information is provided is called the Victim Notification Scheme (VNS).
- 6.22 The EU Directive on Victims includes a right for a victim to be informed, if they so wish, if someone remanded, prosecuted or sentenced has been released or escaped detention in cases where there might be a danger or identified risk of harm to the victim unless there is a risk of harm to the offender which would result from the notification. Currently, victims or their representative are notified by the Scottish Prison Service (SPS) when a prisoner first becomes eligible for temporary release but they do not have the right to make representations about what conditions should be attached to a temporary release licence.
- 6.23 Question 30 asked ‘do you agree that victims (or parents, carers or relatives) should be given the opportunity to make written representations about what additional conditions might be included in the licence when an offender first becomes eligible for temporary release?’ and invited consultees to comment on any concerns they had or any implications they thought the proposal had.

- 6.24 A total of fifty-five consultees responded to this question, with the majority (46) in agreement with the proposal. Only five consultees answered 'no' and a further four provided commentary only.
- 6.25 A key theme emerging, from 19 consultees, was that it is necessary for the victim to be heard or that victims and their families have a right to be heard or feel listened to. Those noting this were from a range of sub-groups; local authorities (6), police organisations (4), voluntary sector organisations (4), a public body, a legal organisation and 3 individuals. Other comments made in relation to representation from victims were that:
- These need to be considered to help prevent upset, abuse or intimidation of a victim (a police organisation and 2 local authorities);
  - Concerns over the geographic location of the victim or the setting of areas that the offender cannot enter (voluntary organisations and an individual);
  - Another 3 consultees referred specifically to cases of domestic abuse (all voluntary sector organisations); and an individual commented that there is a need to consider the victim's safety and protection prior to release of an offender;
  - It may be helpful to take these into account (a local authority and an individual);
  - Victims and their families should have the opportunity to suggest conditions but only in relation to their protection (local authority).
- 6.26 One organisation noted 'This is potentially major shift in practice. It may create unrealistic expectations for victims and also open up a potentially unhelpful and punitive connection between victim and perpetrator. It would be helpful to put in place mechanisms that improve victims' ability to get and understand information about release dates and licence conditions. It may be helpful as well as for victims to be consulted/advised about licence conditions as they are drafted. This could include being given an opportunity to describe concerns about a person on licence with a duty for authorities to consider whether there is good reason to act on them'.
- 6.27 However, while there was broad support for this proposal, a number of qualifying comments were also made, the key one referring to the need to manage victim expectations or that victims need to be made aware that their representation will be considered but not necessarily agreed to (mentioned by 13 consultees; 4 police organisations, 3 local authorities, 2 voluntary sector organisations, a public body and 3 individuals).
- 6.28 Three local authorities and one police organisation also noted that additional conditions of licences are decided upon by the relevant agencies or that the victim's family should not have a role in imposing licence conditions. Three local authorities and a public body also commented that there is a need to keep a fine balance between punishment, public safety and rehabilitation. A police organisation also felt that offender's rights need to be taken into account. A voluntary sector organisation noted that there should be the potential to consider the views of others on whom the offence will have had indirect impact; and an individual noted that information needs to be gathered from various sources within the criminal justice system. Another voluntary

organisation noted that they agreed in principle with the proposal, providing there are clear criteria for assessing the merits of proposed licence conditions; these should be preventative rather than punitive and proportionate, reasonable and necessary.

6.29 A voluntary sector organisation and an individual noted that victims should be given the opportunity to make representations about what conditions to include in the licence.

6.30 The issue of support to victims was raised by a number of consultees; with four individuals noting that victims may need support or guidance for written representations. A local authority and a voluntary sector organisation also suggested that there should be an opportunity to make representation through an intermediary.

6.31 Other issues raised in response to this question included:

- There should be feedback to victims from the SPS (3 voluntary organisations);
- The victim needs to feel comfortable that the offender is ready for release;
- Questions over how this, in practice, would work; for example, who would be responsible for evaluation of the victim's written representation; what happens if a victim puts forward unrealistic or unworkable conditions?;
- This may place additional anxiety on the victim;
- An updated victims statement should be available to the Parole Board or SPS;
- Requests need to be fair and assessed on a case-by-case basis;
- If there is a high level of participation in the scheme, it may be more appropriate to make this opt-out rather than opt-in, as at present;
- VNS should be an automatic opt in scheme;
- The victim / family should be able to provide information on a confidential basis;
- Courts should consider the original impact statement at all times;
- Victims should receive the same levels of support as an offender;
- The perpetrator needs to understand the impact of their crime;
- Concerns over logistics such as training of staff;
- A query over whether the court would accept representation in British Sign Language if this is the victim's first language.

### **Investigative anonymity orders**

6.32 Section 90 of the Criminal Justice and Licensing (Scotland) Act 2010 introduced Witness Anonymity Orders (WAOs). These allow courts, where there is a serious threat to witness' safety or property or where it would be undesirable for the identity of a witness to be disclosed, to grant an order preserving the anonymity of a witness when giving evidence. Investigative Anonymity Orders would offer earlier protection in similar circumstances to those who would subsequently be considered for a WAO. The Scottish Crime and Drug Enforcement Agency have suggested these would be helpful in cases they deal with. Question 31 asked 'Should we seek to introduce

Investigative Anonymity Orders in Scotland?’ and asked consultees to comment on the reasons for their answer.

- 6.33 Thirty-five consultees responded to this question, and the majority (27) agreed with the proposal to introduce IAOs. Only 5 disagreed with the proposal and a further 3 consultees provided comment but no definitive agreement or disagreement.
- 6.34 Of those agreeing with the proposal to introduce IAOs in Scotland, 8 (3 police organisations, a voluntary sector organisation, a legal organisation and 3 individuals) noted that this would help witnesses to speak out; and 4 (2 police organisations, a local authority and an individual) that this allows courts to protect witnesses from intimidation or harm.
- 6.35 Two police organisations also noted that this would help to protect witnesses from media intrusion; a local authority that this would allow early protection from those likely to ultimately be protected by WAOs; and an individual simply noted that this would be important as it will allow justice to be done.
- 6.36 Two organisations (a police organisation and a local authority) noted that this would be good for cross border work.
- 6.37 There were some references to specific types of crime that could be covered by an IAO, with 3 organisations (2 police and one voluntary sector) citing that this would be of most benefit in cases involving serious and organised crime groups; and 2 local authorities that this should be used for cases of serious gender based sexual or violent offences.
- 6.38 While there was majority support, 5 of the consultees who agreed with this proposal, also provided some qualification to their response:
- An IAO should only be used if there is serious threat to witness safety (2 local authorities);
  - Grounds should be the same as for WAOs (local authority and an individual);
  - This should be subject to the same limits as in England and Wales (police organisation);
  - This should be decided by a sheriff (local authority);
  - This needs to be controlled carefully (individual);
  - This should only be used when there are important criteria to be met (individual).
- 6.39 A legal organisation asked whether when an application is made, if the defence will be provided with the right to make representations and also queried why the current procedure is not considered suitable.
- 6.40 One local authority noted their support for this but also requested further detail on the nature of the Orders and a public body noted their agreement with SCDEA on this issue.

- 6.41 Of those disagreeing with the proposal, 2 consultees (a legal organisation and an individual) felt there was no demand for this or that it was not needed in Scotland; a legal organisation wanted to see how this operates in England and Wales and a voluntary sector body simply noted that they agreed with comments made by the UK Parliament's Human Rights Committee. An individual commented that justice should remain transparent.
- 6.42 Of the 3 consultees not providing a definitive response to this question, a voluntary sector organisation requested more information, a police organisation noted their support for the SCDEA view and a public body felt this would lead to an increase in court / judicial time.
- 6.43 Question 32 then went onto ask 'If you think we should, in what circumstances or for which cases should they [IAOs] be used?' and 25 consultees provided a response. Most of the responses listed specific types of crimes for which it was felt an IAO should be used, although there were also some general comments from a small number of consultees.
- 6.44 Five consultees felt that an IAO should be used where there is a credible reason to believe that an individual or family member may be at risk of harm or intimidation in serious cases (2 local authorities, a legal organisation, a police organisation and an individual). Another individual noted that this should be used where there is suspicion or evidence of potential harassment.
- 6.45 A police organisation and a local authority felt that these should be used in the same way as in England and Wales; and a voluntary organisation asked for more discussion and information on IAOs.
- 6.46 A public body and an individual commented that the grounds for using an IAO must be the same as for a WAO; and 2 individuals noted that using an IAO may help encourage witnesses to come forward.
- 6.47 Consultees noted a wide range of crimes for which an IAO might be suitable and these were as follows:
- **Serious and organised crime** (10 consultees: 3 police organisations, 3 local authorities, a public body, a voluntary sector organisation and 2 individuals);
  - **Serious sexual offences** (7 consultees: 3 local authorities, 2 police organisations and 2 individuals);
  - **Murders/ homicides** (5 consultees: 2 police organisations, one local authority, a voluntary sector organisation and an individual);
  - **Drug related crime** (4 consultees: a police organisation, a local authority and 2 individuals);
  - **Serious violent offences** (4 consultees: 3 local authorities and a police organisation);
  - **Predatory crimes / stalking** (4 consultees: 2 local authorities and 2 individuals);
  - **Drugs** (4 consultees: a police organisation, a local authority and 2 individuals);

- **High profile crimes** such as murders / rapes **with extensive media coverage** (3 consultees: 2 police organisations and a voluntary sector organisation);
- **Child abuse** (2 consultees: a police organisation and an individual);
- **Gang related offences** (2 consultees: a local authority and an individual).

6.48 Other crimes where it was felt an IAO would be appropriate, and which were mentioned by only one consultee were forced marriage, hate crimes, causing death by driving, firearms, conspiracy, fraud, corruption, money laundering, businesses, instances where there is fear of retaliation or reprisal or where national security is at issue. An individual noted they were not supportive if there is a threat to property unless the threat risks the life of others.

## 7 FEELING INVOLVED

### Victims' Interests

- 7.1 The Scottish Government is keen to ensure that the justice system acknowledges what has happened to victims and bereaved families in the most serious cases, and reflects their legitimate interests in the investigation, prosecution and outcome. The SG believes that victims' interests can be acknowledged and given a legitimate hearing on a par with the rights of accused and offenders.

### Sentencing Policy

- 7.2 The SG is proposing to reflect victim interests by considering how the views of victims could help inform development of sentencing policy, in both custodial and non-custodial cases; in terms of how general sentencing policy develops, rather than individual sentencing decisions. Question 33 of the consultation paper asked 'what mechanisms could be used to ensure victims' interests are taken into account when sentencing policy is developed?' A wide range of suggestions emerged and those made by two or more consultees were:

- **Consultation among victims and their representative organisations** (18 consultees: 7 local authorities, 6 voluntary sector organisations, 2 police organisations, one organisation in the 'other' category and 2 individuals); one of the voluntary sector organisations noted that victims, members of the public, offenders and others involved in the justice system should all have an opportunity to be consulted on sentencing policy;
- **Representation from victim support groups at meetings on sentencing policy** (12 consultees: 5 local authorities, 2 police organisations, a public body, a voluntary sector organisation and 3 individuals);
- **Research and evidence to feed into sentencing policy** (11 consultees: 4 local authorities, 5 voluntary sector organisations, an individual and one organisation in the 'other' category); one of the voluntary organisations referred to research published by SmartJustice and Victim Support, conducted among victims;
- **Impact statements / victim statements** (8 consultees: 3 voluntary sector organisations, 2 police organisations and 3 individuals);
- **Greater clarity in sentencing policy** (5 consultees: 2 voluntary organisations and 3 individuals);
- **Work in conjunction with Scottish Sentencing Council / establish Sentencing Commission for Scotland** (5 consultees: one voluntary sector organisation, one public body, one legal body and 2 individuals);
- **Advocacy for victims** (3 consultees: one police organisation, one voluntary organisation and one individual);
- **Victim support statements** (3 consultees: one police organisation, one local authority and an individual);
- **One stop shop providing information and support** to victims and witnesses (2 voluntary sector organisations);



- **Establish a Victims' Commissioner** (2 consultees: one local authority and an individual);
  - **Better preparation for victims on possible outcomes** (2 consultees: both individuals);
  - **Less frequent use of automatic release of prisoners/ early release** (2 consultees: one voluntary sector organisation and one individual);
  - **Consider victim's safety prior to offender release from prison** (2 consultees: one voluntary sector organisation and one individual);
  - **Involve victim's interests when sentencing** (2 consultees: both voluntary organisations);
  - **Criminal Justice System to contact victims to invite their views on the offender's sentence** (2 consultees: a local authority and an individual).
- 7.3 A legal organisation asked how the proposal to allow victims of crime greater opportunities to have an input into sentencing would work in practice and whether there would be obligations placed upon the Council; if so, there could be an issue with resources.
- 7.4 Three consultees (a local authority, a voluntary sector organisation and an individual) referred to Australia's Sentencing Advisory Council as a good example. A voluntary sector organisation referred to the process of consultation developed by The Sentencing Council for England and Wales which enables the views of all those involved in the justice system to be consulted in the formation of sentencing policy and suggested the SG should introduce a Scottish Sentencing Council.
- 7.5 Other suggestions, from only one consultee were:
- Means of separating victims and their offender's family at court (voluntary sector organisation);
  - Direct consultation with victims on sentencing policy (voluntary sector organisation);
  - Mock trials (voluntary sector organisation);
  - Introduction of Sentencing Guidelines as per Criminal Justice and Licensing (Scotland) Act 2010 (public body);
  - Victims' forums (local authority);
  - Witness statements (individual);
  - GP reports (individual);
  - Managing victim expectations (individual);
  - CJS to contact victims with information on the offender's sentence (individual);
  - Clear simple language used in explanations (individual);
  - Bring into force Part 1 of the Criminal Justice and Licensing (Scotland) Act 2010 (individual).
- 7.6 A legal organisation noted that the need for sentences to reflect public concerns and that the rights of victims would already be considered by sentencing commissions and councils and the Scottish Government and Parliament. A public body referred to previous work undertaken by the

Sentencing Commission for Scotland and suggested that further work could be undertaken to see how aggravated factors are reflected in sentencing. A local authority noted that children and young adults would have been supported through the GIRFEC (Getting it Right for Every Child) process and that vulnerable adults and their needs and requirements should be taken into consideration in a similar way.

### **Oral representation to the Parole Board**

- 7.7 The Parole Board for Scotland is not concerned with punishment but in assessing the risk to the public if a prisoner is released. Section 17 of the Criminal Justice (Scotland) Act 2003 provided victims with the opportunity to make written representation to the Parole Board before any decision is taken to release an offender. Since then there has been debate on a number of options on how to provide the opportunity for victims to be heard while ensuring safety and that any process is not unfair to the prisoner. The SG has considered that in the first instance any change should apply to life sentence prisoners. The SG is proposing to implement a scheme which will allow victims (or relatives in instances where the victim is a child or is deceased) to meet and put their views to a member of the Parole Board who is not a member of the Life Prisoner Tribunal that will make the decision in a particular case.
- 7.8 Question 34 in the consultation paper asked ‘do you agree with the proposal to allow victims (or relatives in appropriate cases) to speak to a member of the Parole Board before a Life Prisoner Tribunal considers the release of an offender on licence?’ and those who responded were invited to provide comments on the reason for their answer.
- 7.9 A total of 55 consultees responded to this question, with 44 agreeing and only 3 disagreeing; a further 8 consultees provided commentary only.

### **Support for oral representation**

- 7.10 Thirteen consultees (6 voluntary organisations, 4 local authorities and 3 individuals) noted their specific support for this proposal. Two of these voluntary sector organisations additionally noted that this is valuable as a protective mechanism for women, children and young people; and another that this proposal presents a fair balance between the rights of the offender and the victim. Two individuals noted that it is important for victims / their families to be given the opportunity to speak; another individual that it is already common practice in many EU countries.
- 7.11 Six consultees (2 public bodies, a police organisation, a voluntary sector organisation and 2 individuals) felt that this would help victims to feel that their views count and respected in the process. A further four consultees (a voluntary sector organisation and 3 individuals) noted that it is important for victims to be consulted by Parole Boards or that victims should be kept informed and their views listened to.

- 7.12 Three consultees (a public body, a local authority and an individual) felt this would allow for greater understanding on the part of victims and the Parole Board.
- 7.13 Other suggested benefits to this proposal were that it would:
- Provide opportunities for victims to be a source of relevant information prior to release of an offender (a police organisation and 2 individuals);
  - Help with the recovery of the victim (2 local authorities);
  - Help the Parole Board to understand the full impact of the offender's actions (local authority);
  - Help a victim to be aware of the current position and give them an opportunity to highlight issues they perceive to be of relevance (police organisation);
  - Help to increase the victim (or family's) understanding of the Parole Board (local authority);
  - Provide an opportunity for victims to highlight any concerns they may have, for example, the impact of the release upon them and their safety (local authority).
- 7.14 A local authority agreed that an independent board member should act as an intermediary with no direct oral presentation from a victim to the Parole Board (local authority), and an individual felt that information should be provided to the victim as to how an offender has responded to treatment or support while in prison.
- 7.15 Five consultees referred specifically to victim impact statements (VIS), with 2 police organisations and an individual noting that a VIS will be available and / or that this will reflect concerns prior to the release of a prisoner; one of these police organisations also queried what weight will be given to a VIS. A local authority perceived that it could be more appropriate to have a VIS than oral representation and noted that support to the victim would be needed. A voluntary sector organisation suggested there should be a VIS prior to the sentencing of offenders.
- 7.16 While most of those responding to this question were supportive of the proposal, there were a number of qualifications noted by some. The key issue related to the need for victims to understand that they are only part of the process and that all information needs to be considered (cited by 2 police organisations, a public body, a voluntary sector organisation and 2 individuals). The voluntary sector organisation also went on to say that it is important that the Parole Board's main aim is to ensure that prisoners are no longer regarded as presenting a risk to society and it is not the responsibility of the board to consider the questions of punishment and deterrence. Three consultees (a public body, a police organisation and an individual) also noted that victims need support during this process. Other issues raised were:
- Any decision taken must be made in relation to the offender's rehabilitation and risk assessment (2 local authorities);

- Comments should be restricted to the safety of the victim, their family or any special information they hold about the offender that may not have been available to the original court (local authority);
- This could present new trauma for a victim or their family (police organisation);
- Concern over logistics, such as the location of any consultation with the victim, travel etc. (voluntary organisation);
- The structure of the victim's family will have changed over time and it may present logistical difficulties to hold consultations or that someone serving a life sentence can repeatedly apply for parole and this could cause repeated stress to the victim's family (local authority);
- Pilot this scheme and monitor outcomes before introducing this on a national basis (voluntary sector organisation);
- Victims should not have to see the offender at a consultation (individual);
- Victim information should be kept confidential if this is desired by the victim (individual);
- There may be victim reticence because of a real or perceived threat to their safety (individual).

7.17 Of those disagreeing with this proposal, a legal organisation noted that this could be unfair to the accused; a police organisation that victim input would not add anything to an experienced Parole Board and that this could cause distress to a victim. An individual felt that the current system of written submissions should remain.

7.18 Six consultees provided comments only at this question and these largely echoed issues already noted:

- A need for victims to realise they are part of the process and that all information needs to be considered (2 local authorities);
- Concern over the logistics eg data protection or the weight of the evidence given and a need for offenders to be able to challenge information presented by a victim (public body);
- Request for further information on this proposal (local authority);
- A need to ensure that representations made available to offenders does not contain unnecessary information about the victim or others affected by the potential release (public body);
- A need for proportionate weighting of representations "the balance of victims' needs and safety, offenders' punishment, restriction, reparation and rehabilitation needs to be sustained" (local authority).

7.19 This sentiment was also echoed by a legal organisation concerned that oral representations could take the focus away from the offender's rehabilitation. They went onto suggest that the current system allowing for written representation should be sufficient for decision making. They felt that if this proposal was adopted, then consideration should be given to the operational practicalities.

- 7.20 One voluntary sector organisation felt it should be the duty of all Parole Board members to hear all submissions. Another voluntary sector organisation requested a review of parole board processes.

### **Victim Statements**

- 7.21 Currently, Section 14 of the Criminal Justice (Scotland) Act 2003 provides for Victim Statements to be submitted when the prosecutor moves for sentence (solemn) or when a guilty plea is tendered or the accused is convicted (summary). At present they are only used in solemn cases; this is considered by the judge or sheriff although it will not always have an effect on the sentence. There are occasions when the Victim Statement may not be available for the court at the relevant time and the SG is proposing to amend the legislation so that Victim Statements can be submitted to the court prior to sentence. This will ensure that, if the statement is not available at the time of the guilty plea, this does not prejudicially affect the victim.
- 7.22 Question 35 of the consultation paper asked 'Do you agree with the proposal to allow Victim Statements to be submitted to the court at any time after the prosecutor moves for sentence (or the accused pleads guilty or is found guilty), but before sentence is passed?' and invited comments.
- 7.23 A total of 49 consultees responded to this question, all of whom agreed with this proposal; 44 of these consultees also provided additional comment.
- 7.24 The key comment, from 20 consultees (7 voluntary sector organisations, 3 local authorities, 3 police organisations, a public body and 6 individuals) was that this allows for the victim's views to be heard or for others to hear about the impact of the offence upon the victim. One of these voluntary sector organisations also noted that it provides an opportunity for an offender to understand the harm they have done and take responsibility for this. Three individuals noted that victim statements are valuable in that they help to prevent distortions or misrepresentations and a local authority also noted that this ensures that the victim is not disadvantaged. A police organisation commented that this allows greater flexibility and a local authority that this will ensure the victim statement will be available at any time regardless of the circumstances.
- 7.25 Another 2 consultees (a legal organisation and a local authority) noted that this would be a logical extension of the current position and another 2 individuals that victim statements should be mandatory in all serious cases or that they should be an integral part of the process. An individual also noted that this proposal would bring Scottish courts into line with those in England.
- 7.26 A local authority and a voluntary sector organisation also noted that a victim statement can have a direct bearing on the sentence.
- 7.27 There was support for the victim's statement to be presented at any time before sentence is passed from 7 consultees (4 voluntary sector organisations and 3 local authorities). An additional 6 consultees (2 voluntary sector organisations, a local authority and 3 individuals) felt that victims should not

be deprived of the right to submit a victim statement simply because of court processes or early pleading by the accused. Three individuals also felt that victims should have the right – if they request it – to be able to read their statement out in open court or at sentencing.

7.28 A number of suggestions were made by consultees and these were that:

- Specialist support services should be an integral part of the process (a local authority, a voluntary sector organisation and an individual);
- Victims should be able to submit updated statements, for example for consideration by the Parole Board (3 voluntary sector organisations) or that victim statements should be able to be submitted to the court any time following admittance or establishment of guilt (individual); although 2 local authorities felt there should be a finite time period for submission of a victim statement;
- If requested, victim statements should be available at the intermediate diet stage for the court (2 local authorities);
- Victim statements should be available to the defence (legal organisation);
- Victim statements should not form part of the case papers (voluntary sector organisation);
- The right to a victim impact statement should be extended to the appeals process (individual).

7.29 A number of suggestions, from local authorities and a public body were made in relation to the victim specifically and these were:

- A need to set parameters for information from victims;
- Information on the impact of the statements should be given to the victim so they understand the wider considerations of the sentencing process;
- Information about writing the victim statement should be raised with the victim as quickly as possible after the alleged offence.
- Victims need to be aware that their statement will only be part of the information laid before, and considered by, the court;

7.30 Two individuals asked for more detailed consideration or information on the mechanisms for this process. A legal organisation noted that the impact and effect of this would be minimal.

### **Child under 14**

7.31 Under current legislation, children under 14 years are entitled to have a victim statement made on their behalf by their carer if they are a direct victim of the crime. However, where the victim has died, children under 14 are not eligible to make a statement or have one made on their behalf by a carer, although relatives over 14 years can make a statement in these cases. Until the Criminal Proceedings (Reform) (Scotland) Act 2007, this also applied under the Victim Notification Scheme (VNS), where the carer of a child under 14 who was the direct victim of a crime could apply to join the VNS on the child's behalf but if the victim was dead, there is no such right. Once this Act was passed, it allowed the carer of a child to apply to receive information on their behalf whether or not the child was the direct victim of the crime.

- 7.32 The SG is proposing greater consistency between the two schemes and is proposing to extend eligibility to reflect victim interests by allowing the carer of a child under 14 the right to make a victim statement on the child's behalf where the victim has died. Question 36 asked 'do you agree with the proposal to extend eligibility for the Victim Statement scheme so that a carer of a child under age 14, who is not the direct victim of the crime, can make a Victim Statement on their behalf?' and invited comments.
- 7.33 Forty-nine consultees responded to this question; of which 47 agreed with the proposal. Two consultees provided commentary but no definitive answer. Twenty-two consultees (across all sub-groups with the exception of legal organisations and public bodies) noted their support for this proposal. Five (a police organisation and 4 individuals) also noted that this proposal would ensure the views of victims and the impact of the crime upon them will be heard; one of these individuals also commented that parents or relatives can identify the impact of a crime on a child and present this to court as evidence.
- 7.34 Once again, while there was almost universal agreement with this proposal, there were also some qualifying comments made. Three consultees (a police organisation, a voluntary sector organisation and an individual) felt that if a child aged under 14 years wants to make their victim statement, they should be allowed to; and another 5 consultees (3 voluntary sector organisations and 2 individuals) noted that children should still be encouraged to express their own feelings about the impact of the crime. One individual noted that it is routine practice in family cases for children aged under 14 years to be consulted on their opinions.
- 7.35 Seven consultees (4 voluntary sector agencies, 2 local authorities and an individual) made general comments about the need to have appropriate support mechanisms in place and / or that support agencies are needed. A further 3 consultees (a voluntary sector organisation and 2 individuals) suggested that there is a need to also take into account reports from professionals and support agencies as they will be in a position to comment on the health and wellbeing of a child. One local authority also felt that support needs to be in place for carers.
- 7.36 Five consultees (2 police organisations, a legal organisation, a voluntary sector organisation and a local authority) referred to the issues raised in paragraph 121 of the consultation paper which noted a number of sensitivities around this issues and the need to take account of these; for example, the trauma that could be experienced in revisiting the crime.
- 7.37 There was also some commentary about the need to extend this proposal to include other appropriate adults; for example, 5 consultees noted that if there are no relatives there will be a need to be able to use another appropriate adult; 2 voluntary sector organisations simply noted that in some cases a carer might not be the best person to present a victim statement. Two local authorities also suggested that consideration should be given to the appointment of an independent person who could help the child complete the statement and prevent any bias in attitude from the carer.

7.38 Finally, one local authority queried why the age had been set at 14.



## Extending eligibility

- 7.39 Another anomaly in the 2003 Act is the definition of the carer eligible to make statements on a child's behalf. Under Section 14(6)(a)(ii) of this Act, the carer was defined as being the person who cared for the child immediately before the (apparent) offence took place. However, this does not allow for situations where a child might have no eligible parent or carer. Question 37 asked 'do you agree with the proposal to amend the definition of carer in relation to the Victim Statement scheme so that the carer who makes the statement on behalf of a child under 14 does not have to have been the carer at the time of the (alleged) offence?' and invited comments on the reasons behind responses.
- 7.40 Forty-five consultees responded to this question, of whom 44 agreed with the proposal. Thirteen of these consultees (5 local authorities, 2 voluntary sector organisations, 2 police organisations and 4 individuals) reiterated their support that this would be a reasonable change, or that there is no need for the carer to have been there at the time of the offence. Another 4 consultees (a local authority, a voluntary sector organisation and 2 individuals) noted the importance of every victim having the right to have their voice heard, either directly or indirectly or that this ensures that children are not disadvantaged.
- 7.41 Three consultees (a police organisation, a voluntary sector organisation and an individual) commented that if there are no relatives to take on a carer role, then a person who has a close relationship with the child should be considered. A further 5 consultees (2 local authorities, 2 police organisations and an individual) also felt that this would help in situations where children are looked after, in kinship care, foster care or where a carer is not the most appropriate person.
- 7.42 However, 9 consultees noted concerns and these were:
- Victim statements should only be presented if a young person has agreed to be represented in this way (a local authority and a voluntary sector organisation);
  - The carer should have more than 3 months day to day caring responsibility for the child (local authority);
  - This proposal needs further discussion and to be approached with caution (voluntary sector organisation);
  - The carer must be someone the child trusts (other organisation and an individual);
  - All relevant information about the carer and their role in the child's life should be made available (individual);
  - Courts would need to refer to other care professionals such as schools, social workers, G.P.s etc for further evidence (individual);
  - A need to ensure the carer has detailed knowledge of the child (an individual).
- 7.43 There were suggestions from some consultees in relation to support and these were:

- An independent person should be appointed (2 local authorities);
- There may be professionals other than the carer who are more appropriate to represent the child (a voluntary sector organisation and other organisation);
- There needs to be victim centres (a local authority);
- Carers also need support (a local authority);
- Local authorities have corporate parent responsibilities that need to be taken into account (a local authority).

7.44 Question 38 then went onto ask ‘what more could be done to acknowledge and take into account the interests of victims and witnesses?’ Forty-five consultees provided comment and a number of key themes emerged.

7.45 Perhaps not surprisingly, a general theme cited by 19 consultees was that of provisions for victims or witnesses; within this theme a number of sub-themes were mentioned by 2 or more consultees:

- Improved information for victims and witnesses (mentioned by 6 consultees; a police organisation, a public body, 2 voluntary sector organisations and 2 individuals);
- A need to ensure human dignity is offered to victims / witnesses and increased awareness of victim issues (2 voluntary sector organisations, a public body and an individual);
- A need for mediation, counselling, workshops or events to help support victims and minimum standards to access information, support, protection and compensation (3 voluntary sector organisations and an individual);
- The need to implement special measures and standards (a local authority), wider access to / implementation of special measures or making all special measures into standard measures (2 voluntary sector organisations); another voluntary sector organisation noted that the absence of the same range of special measures for vulnerable witnesses is an anomaly;
- Concerns over the terminology used within the criminal justice system (2 voluntary sector organisations and an individual);
- Victims and witnesses should have the same rights as offenders such as the right to choose representation, the right to mental health professionals and so on (2 voluntary sector organisations and an individual); one legal body also called for a balance to be struck between the rights of the victim and the rights of the accused;
- For agencies working alongside victims to full their requirements under the EU Directive (3 voluntary sector organisations);
- Training on how to deal with media intrusion (2 voluntary sector organisations and an individual);
- Encouragement for victims to participate in working groups and committees so that they can provide evidence for the criminal justice system (a local authority and an individual);
- Greater recognition of the rights of victims such as privacy (3 voluntary sector organisations) and protection or personal safety (2 individuals); one legal organisation made specific reference to the needs to protect the

interest of the young child; and a public body noted the need to involve victims appropriately when the offender is a child;

- Access to court transcripts free of charge (2 individuals).

7.46 Other issues mentioned by only one consultee, all of whom were individuals or voluntary sector organisations were:

- Access to legal aid for victims;
- The right to a review of the decision not to prosecute;
- A need for greater understanding of gender-based violence among those working in the CJS in Scotland, especially links between child abuse and domestic abuse;
- A concern of a lack of identification of individuals requiring additional support;
- That many prisoners, former prisoners and ex-offenders will have also been victims and deserve the same services as those not convicted of offences and that currently there is no support available to victims in prison, unless an offence is serious;
- The need for a Victims' Charter;
- Increased understanding by the Scottish Legal Complaints Commission on the needs of bereaved families;
- Support that is tailored to individual needs;
- No limit to the number of victim statements that can be made;
- Support tailored to individual needs.

7.47 Sixteen consultees referred to partnership working and training in some form; with calls from 8 organisations for joint conferences, the sharing of good practice and training for professionals (4 voluntary sector organisations, a public body, a police organisation and 2 individuals). A further 4 consultees (2 voluntary sector organisations and 2 individuals) suggested co-operative working and integrated support provision; another 4 consultees (a public body, a police organisation, a voluntary sector organisation and an 'other' organisation) requested improved sharing of information between partner agencies and / or with the voluntary sector. Two other suggestions were the monitoring and evaluation of the availability and quality of support (2 voluntary sector organisations) and guidance on how to decide who and how to present a statement (local authority).

7.48 Data recording and research was cited by 14 consultees, with calls from 5 consultees for better data recording such as the impact of service delivery, mandatory surveys of victims or how many victims a support organisation has worked with (3 voluntary sector organisations, a police organisation and an individual). Two local authorities also requested a system of feedback and consultation when new standards and services are piloted. A local authority and a public body noted the need for the volume and rate of victimisation to be included as an outcome and performance measure within relevant local and national strategies and plans.

- 7.49 Two other consultees (a voluntary sector organisation and an individual) requested reviews of what is done in other countries to support victims and witnesses; one of whom referred to an insurance scheme such as that offered in Sweden to cover victims' legal aid costs. Other suggestions, each made by only one consultee were for:
- Research to ascertain the impact of different elements of the justice process such as sentencing on victims or early release;
  - Summaries of evidence and witness statements provided to the authorities of criminal justice social work to help understand the impact of crime;
  - Obtaining feedback from victims / witnesses;
  - Analysis of victim personal statements;
  - Annual reporting to the Scottish Parliament.
- 7.50 A specific form of support suggested by 7 consultees was a Victims' Commissioner or an independent, non-government agency to represent victims and witnesses (3 voluntary sector organisations, a public body and 3 individuals). Another individual noted support for an alliance between support organisations and 2 voluntary sector organisations suggested the creation of a centralised hub service specifically for children.
- 7.51 Seven consultees referred to an aspect of the court process, with 3 organisations and an individual calling for the prevention of unregulated contact between victims/ witnesses and offenders, for example, offering separate facilities and court entrances. A local authority and a voluntary sector organisation suggested streamlining the court process to avoid delays.
- 7.52 Suggestions for further improvements included a witness service being available in all criminal courts (a voluntary sector organisation); greater use of digital technologies (an 'other' organisation) and more agreement of witness evidence at the preliminary hearing and intermediate diets to help witnesses avoid having to attend court (an individual). One voluntary sector organisation noted their concern over the impact of court closures.
- 7.53 Logistical issues were raised by 6 consultees, with 4 of these referring specifically to the need for more financial support for victims (2 voluntary sector organisations and 2 individuals). A voluntary sector organisation noted concerns over accessibility issues and an individual suggested that statutory agencies should offer telephone lines charged at local rates.
- 7.54 There were some specific references to restorative justice from 7 consultees, with 2 voluntary sector organisations and an 'other' organisation calling for a review of restorative practices. A public body called for more direct restorative justice approaches and cited the VOYCE project as an example and an individual asked for adult restorative justice schemes to be introduced. Another individual commented that the consultation did not refer to the possibility of victims' access to restorative justice and noted that in England and Wales there is currently consideration being given to incorporating restorative justice into a Victims' Code. A voluntary sector organisation commented that there is a postcode lottery for participation in restorative justice. Another voluntary sector organisation requested increased

opportunities for restorative justice, quoting research data to back this up, as well as noting that the number of restorative justice warnings issued in Scotland has reduced in recent years.

- 7.55 Two voluntary sector organisations referred to independent legal representation (ILR), with one asking for an examination of the principle of ILR and another suggested this should be introduced for complainers of sexual offences.
- 7.56 Seven consultees referred to their support for the proposals in the consultation; 4 commented that this would help to create a more central role for victims in the criminal justice system (2 local authorities, a police organisation and an individual); 3 that this would provide greater transparency in decision making and empowering victims (a voluntary sector organisation, a police organisation and an individual). A police organisation simply noted that the consultation paper identified most of the major factors impacting on the experiences of victims and witnesses in the criminal justice system. However, a voluntary sector organisation commented that the proposals offer limited scope to address the experiences and treatment of victims in the court process.
- 7.57 Three consultees referred to examples of initiatives they felt had been successful and these were:
- Amethyst in Edinburgh - a multi agency purpose built facility;
  - Making Amends: restorative youth justice in Northern Ireland;
  - Dundee on Call project which had a Witness Care model.
- 7.58 There were suggestions from three consultees for further changes to be introduced and these were:
- An overhaul of Criminal Injuries Compensation Authority;
  - Use of Post Offices to provide some services;
  - Use of safety audits to ensure that support services and organisations are able to respond to victim needs;
  - The introduction of domestic homicide reviews as in England and Wales.

## 8 MAKING OFFENDERS PAY

### A Right to Compensation

- 8.1 The consultation paper notes that the draft EU Directive on Victims envisages that victims will be entitled to obtain a decision on compensation by the offender within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings. Member States are required to promote measures to encourage offenders to provide adequate compensation to victims. The Scottish Government is also committed to establishing a more direct link between offenders and compensation for their victims. Section 249 of the 1995 Act provides for a compensation order to be granted and where a person receives a fine and a compensation order but cannot pay both, the compensation order takes priority.
- 8.2 The SG considers that where an offender has caused harm, loss or distress to an identifiable victim, the first recourse should be to ensure the offender pays compensation direct to the victim. The current law is phrased to allow the courts to consider compensation and SG proposes to strengthen this position so that courts are required to consider the provision of compensation wherever a victim has suffered injury, loss or distress. This will not affect the ability of the victim to apply to the Criminal Injuries Compensation Scheme (CICS) where an award ordered by the court is lower than the relevant CICS tariff due to considerations over the offender's ability to pay. Question 39 of the consultation paper asked 'do you agree that courts should be required to consider the issue of compensation in all cases where an identifiable victim has suffered injury, loss or distress?' and to provide comments on their reasons.
- 8.3 A total of 55 consultees responded to this question; with a majority (36) agreeing and only 7 disagreeing. A further 12 consultees did not provide a definitive response but did provide commentary.
- 8.4 Those responding 'yes' were represented across all sub-groups, with the exception of public bodies and 'other' organisations; these were 12 local authorities, 6 police organisations, 6 voluntary sector organisations, a legal organisation and 11 individuals. All bar 3 of these provided additional comments.
- 8.5 Of the 7 answering 'no' to this question, 3 were voluntary sector organisations, 3 were local authorities and one was a public body.
- 8.6 Fifteen consultees were in general agreement of the need for courts to be required to consider the issue of compensation in all cases where an identifiable victim has suffered injury, loss or distress (8 local authorities, a legal organisation, 3 voluntary sector organisations, a police organisation and 2 individuals). These consultees noted their general support for this proposal and noted that this issue needs to be given consideration or that they supported the general principles of payment.

- 8.7 Seven consultees noted that this holds offenders directly accountable for their crime(s) or that it helps them to appreciate the impact of their actions upon their victim(s); this was cited by 2 local authorities, 2 police organisations and 3 individuals. Linked to this point, 6 consultees also noted that this links the crime to the victim (2 local authorities, a police organisation and 3 individuals).
- 8.8 Five consultees (2 police organisations and 3 individuals) felt that this allows victims to be directly compensated to offset any loss or payments, including medical treatment, loss of earnings, counselling, stress and anxiety etc. Three consultees (a voluntary sector organisation, a local authority and an individual) also noted that the CICS can take a long time to process and pay out applications. One individual referred to specific types of crime including stalking, abuse and serious crimes.
- 8.9 While there was support for this scheme, 3 consultees (a police organisation, a local authority and a voluntary sector organisation) felt that the offender's ability to pay needs to be taken into account. For example, the local authority noted,
- “Whilst we agree that compensation must be **considered** in all cases, cognisance must be taken of the offender's ability to pay compensation. We are aware that many offenders have limited income and already find difficulty in paying fines. An increased use of compensation will also punish the families of offenders, which is clearly not the point of compensation. It could also lead to additional problems for the system if these are not paid. Many offenders are already not paying fines and are having Level 1 Unpaid Work Requirement CPOs, imposed, (previously Supervised Attendance Orders were imposed for fine default). A significant increase in the use of compensation could lead to increased non-payment of fines. Also if a compensation scheme took into account the offender's limited financial circumstances in imposing compensation there could be the potential for the amount of compensation imposed to be seen as derisory by the victim and therefore be counterproductive.”
- 8.10 Linked to this latter point in the above quote, 3 consultees also commented that the amount of compensation awarded could be considered inadequate by some victims (2 voluntary sector organisations and a local authority). Furthermore, 2 consultees (a police organisation and a local authority) also queried what would happen if a fine was not paid or that this proposal could lead to increased numbers of fines not being paid. Two other consultees (a voluntary sector organisation and a local authority) also noted that the impact on the offender's family needs to be considered. This voluntary sector organisation also noted that additional consideration would be needed for offences occurring within a domestic context where the offender and victim are part of the same household.
- 8.11 Other comments made by only one consultee were:
- Introduction of a process to secure compensation payments;

- A need for the formal recognition and acknowledgment of the suffering of the victims;
- Victims should not have to pursue non-payment of compensation;
- Concern that proposed changes to the CICS will reduce the numbers of victims able to apply to the scheme and set up barriers for application from other victims;
- Stringent penalties in instances where compensation payment is not made;
- Protection measures in place in cases where there might be repeat offending;
- A requirement to consider this but not to be automatically implemented; with the prime source being the Criminal Injuries Compensation Board;
- This might not be the most appropriate disposal in all cases but should be considered by the court;
- This should not only be limited to court disposals;
- Baseline information on compensation levels used in civil court actions and CICA levels of awards is needed;
- This is important in the context of restorative justice.

One respondent also suggested that interest free government loans should be provided to victims who have suffered financial loss.

- 8.12 A voluntary sector organisation suggested the abolition of fines from the justice system to be replaced with victim compensation so that all money retrieved would go towards victim support, which would be administered by a national Victims' Fund. Another voluntary sector organisation referred to the consultation currently being undertaken by the Ministry of Justice on Getting it Right for Victims and Witnesses.
- 8.13 Of the 7 consultees disagreeing with this proposal, 3 (2 voluntary sector organisations and a local authority) perceived that this proposal is not necessarily appropriate. They cited instances of domestic abuse or assault where the use of compensation could impact detrimentally on the victim or family; or where compensation paid directly by the offender could be repugnant to the victim.
- 8.14 Two consultees (a local authority and a public body) felt that the current system is sufficient and had concerns about the ability of an offender to pay compensation. The local authority noted that a lump sum paid by the Criminal Injuries Board is a better option. Another voluntary sector organisation queried whether victims would want this to be introduced and noted concerns over implementation and logistics (e.g. economic viability, administration of the scheme, issues over non-payment). Another local authority noted that the offender might not be in a position to pay compensation, although they suggested a revised system where the Crown paid the compensation and then reclaimed this from the offender.
- 8.15 Comments made by the 12 consultees, mostly organisations, who did not provide a definitive answer to this question, largely echoed points made by other consultees and included:



- Support for a wider definition of compensation as this puts too great a focus on compensation as a form of reparation, to the detriment of other forms of compensation such as rehabilitation;
- Any compensation order introduced will need to be fair, proportionate and determined at the time of sentence; and that financial reparation is more likely to have impact if it is given on a voluntary basis as part of a restorative justice process;
- Concerns over the logistics of this proposal e.g. increased costs related to enforcement and recovery or determining the amount of compensation;
- This does not introduce any real change;
- Level of payment needs to be matched to ability to pay and the offender's circumstances - research data was used to illustrate this;
- Offenders should fully compensate their victims;
- Concerns that this scheme would be used to reduce payments from the CICS;
- Difficulties in quantifying payments;
- CICA compensation thresholds may be higher;

### **Victim Surcharge**

- 8.16 The key aim of a victim surcharge is to make offenders more accountable for the harm or damage that their actions cause to victims of crime. The SG is proposing to apply a surcharge in cases that result in a court fine, with the potential to roll out surcharge arrangements to custodial sentences, community sentences and direct measures after a bedding in period and possible refinements in the light of that.
- 8.17 Question 40 asked 'Do you support the principle of adopting a victim surcharge' and those answering no were asked to provide their reasons for this. A total of 49 consultees responded to this question, the majority of which (30) answered 'yes'. Only 7 consultees disagreed with this, and 12 did not provide a definitive answer but did provide commentary.
- 8.18 Those responding yes were spread across most sub-groups, with the exception of public bodies or legal organisations. Of those responding, 9 were local authorities, 7 voluntary sector organisations, 5 police organisations and 9 were individuals. While not asked to provide further commentary, 12 of these consultees did so; 4 of whom (2 local authorities, a police organisation and an individual) noted that this may be an appropriate way to pay for additional support required by vulnerable witnesses or that this is a constructive step. Another local authority noted that offenders need to appreciate the consequences of their actions and that if there is an identifiable victim, then a victim surcharge should be applied. Two police organisations noted that this would help to lessen the burden on the state and hold the accused directly accountable for their actions.

- 8.19 An individual suggested this should be a statutory amount set against a series of crimes in the same way that compensation is awarded under health and safety.
- 8.20 Four consultees (a local authority, a police organisation, a voluntary organisation and an individual) noted logistical concerns over this; specifically, whether offenders would be able to pay this and the practicalities of collecting any fines, penalties, compensation or surcharge. One also asked for further information as to how this would be operated. The voluntary organisation also asked what proportion of the monies raised would be allocated to fund victim services in Scotland and noted a preference for the term 'offender levy' to be used instead of 'victim surcharge'.
- 8.21 Of the 7 consultees (a public body, a voluntary organisation, a police organisation, a local authority, a legal organisation, an individual and an other organisation), giving a 'no' response, all cited concerns in relation to the enforcement and administration of this proposal. A public body suggested that the income obtained via the existing system of fines (or a percentage of this) should be directed to a victims' fund similar to the Cashback to Communities funding. A police organisation suggested that an independent assessment of the costs of administering such a scheme would need to be undertaken and a voluntary organisation requested further information on the proposal.
- 8.22 Twelve consultees (4 local authorities, 2 public bodies, 3 voluntary organisations, 2 legal organisations and an individual) while not providing a 'yes' or 'no' response, did provide further comments; most of which related to the logistics and administration of a victim's surcharge and whether or not this would be economically viable; and / or commented that many offenders would not be in a position to make this payment. One voluntary organisation also noted that this should not be intended as an alternative to government funding of services. The legal organisation noted that a victim's surcharge was not needed but that a proportion of revenue raised by court sentencing could be paid into the relevant fund. A voluntary sector organisation noted that any victim surcharge will need to be fair, proportionate and determined at the time of sentence; and that financial reparation is more likely to have impact if it is given on a voluntary basis as part of a restorative justice process. They also went on to note that the level of payment needs to be matched to ability to pay and the offender's circumstances and pointed to research data to back this up.
- 8.23 Two of the local authorities noted recognition of the importance of providing support for victims' services but had no position as to whether this would be an appropriate mechanism. Two voluntary organisations noted that a victim surcharge should be operated as in England and Wales and apply only to those over 18 years of age. A legal organisation queried how the revenue from this would be distributed, how hardship would be assessed and whether this would be as a consequence of the crime.
- 8.24 Question 41 then went onto ask 'do you agree that the surcharge should only be applied to court fines in the first instance?' and for those not agreeing, to

provide reasons why. Thirty-four consultees responded; with 18 agreeing with the question, 10 disagreeing and 6 providing commentary only.

- 8.25 Of the 18 providing a yes response (3 police organisations, 7 local authorities, 4 voluntary sector organisations and 4 individuals), 6 also provided additional information. Two local authorities noted that there is an established system for collecting fines and penalties for non-payment and the surcharge should come under the current fine arrangements. A police organisation and an individual commented that a staged or incremental approach would be appropriate. Another local authority noted that the surcharge should only be applied to court fines in the first instance where there is no clearly identifiable victim.
- 8.26 Of the 10 consultees providing a 'no' response (2 police organisations, 2 voluntary sector organisations, a public body, a local authority and 4 individuals), 7 of them noted that the surcharge should be applied to all people convicted of an offence, and not just court fines.
- 8.27 A public body did not agree with a victim surcharge but suggested that existing income from fines could be used to support victims. A local authority suggested that the surcharge should assist to provide for immediate need and that this could be administered by the hub. An individual suggested that the victim surcharge should be a statutory amount set against a series of crimes similar to those applied under HSE compensation.
- 8.28 Of the 6 consultees providing additional commentary (2 local authorities, a voluntary organisation, a public body, a legal organisation and an individual), issues were raised over the logistics of introducing this, for example, collection and enforcement of the surcharge. Two consultees suggested the scheme would need to be piloted in the first instance; and one of these – a voluntary organisation – suggested that the pilot should be carried out with persons sentenced to community sentences. A local authority queried whether such a scheme would be an appropriate mechanism to support victims' services. An individual felt that more detail was needed as to what the scheme would entail and how it would work.
- 8.29 Question 42 of the consultation paper asked 'should we consider the possibility that legislation could include a provision to roll out application of the surcharge to custodial sentences, community sentences and direct measures at a later date?' and if they did not agree, consultees were asked to provide their reasons. Thirty-eight consultees responded to this, with half (18) agreeing with the question and ten disagreeing. Ten consultees provided commentary but no definitive yes or no response.
- 8.30 Of the 18 agreeing with this proposal, six chose to provide additional comments; 5 of these (2 police organisations, a voluntary sector organisation, a local authority and an individual) noted that this is a practical approach or simply confirmed their agreement with the proposal. The voluntary sector organisation additionally noted,

*“this is important as these are generally the offenders whose actions have the greatest consequences on victims. Failure to do so would be seen as having more affluent offenders sentenced for minor offences pay the compensation on behalf of more serious violent offenders.”*

8.31 However, another voluntary sector organisation qualified its response and noted that this should take into account the impact that this disposal would have on the rehabilitation of the offender.

8.32 Of the 10 consultees who answered ‘no’ (5 local authorities, 2 voluntary sector organisations, 2 individuals and an other organisation), 4 noted that this should apply to all people who have committed an offence and that it should be rolled out now rather than waiting for a further roll out. As one voluntary sector organisation noted,

*“we believe the surcharge should apply to all people convicted of an offence, including people given a custodial sentence, community sentence or a direct measure. As such, no further roll out should be required.”*

8.33 Two local authorities noted that many offenders come from lower social and economic groups and rely on welfare benefits and some will have compensation requirements as a requirement or separate part of their sentence. They also referred to recent changes with the introduction of Community Payback disposals where offenders are required to pay back to the community as a whole for their offences. One of these local authorities also suggested that the impact on the offender’s family also needs to be considered and that the Court needs to balance the likelihood of the offender complying with all aspects of the sentence with the additional costs which would be incurred in collection and enforcement if an offender fails to comply with the sanctions imposed. Another local authority felt that imposing a surcharge on those reliant on benefits would not support the long term aim of reducing re-offending and that the roll out of any surcharge will only have impact where the offender is in a position to pay this.

8.34 The other organisation suggested that sentencing practice would need to change, for example, in terms of reduced prison sentences or the number of conditions and hours on a community payback order and also queried what evidence there is to suggest that victims want a surcharge to be levied on an offender.

8.35 Of the 10 consultees providing commentary only to this question, 4 (2 local authorities, a legal body and a public body) raised issues in relation to the logistics of imposing this surcharge, for example, how this would be applied or the ease of administering the process. Two consultees (a local authority and an individual) also noted their disagreement with the proposal because of the logistical issues of its application.

8.36 Another local authority noted their agreement that support needs to be provided for victims’ services but queried whether this proposal was the appropriate vehicle.

- 8.37 Two consultees (a public body and an individual) requested further detail on this proposal and how it would work; and this individual had concerns that an offender on minimum welfare benefits could have difficulties in paying any substantial deductions.
- 8.38 A public body noted their disagreement with the principle of a victim surcharge and suggested that the existing income from fines could be used to support victims.

### **Use of the revenue raised**

- 8.39 The intention of the SG is that the revenue raised will be used for the benefit of victims; some may be used to fund improvements in information and support for victims, but with the bulk of the revenue being used to alleviate hardship among victims, particularly victims of more serious crime. This would be administered through the third sector and involve a minimum of bureaucracy. Consultees were asked 'do you agree that revenue accumulated from the surcharge should be used primarily to support victims?' and, if they disagreed, to say why. Thirty-six answered this question (question 43). The majority of those (30) responding answered 'yes' (7 voluntary sector organisations, 5 police organisations, 7 local authorities and 11 individuals). Only 3 consultees responded 'no' and these were 2 local authorities and one legal organisation. Additionally, 2 local authorities and a public body provided commentary but no definitive answer.
- 8.40 Eight of those responding yes to this question provided further detail and reasoning for their response. Two voluntary sector organisations noted their support for this proposal, with one commenting that a national victims' fund should be used to provide direct compensation to victims and the other that revenue from the surcharge should go directly to victims rather than via additional agencies, each of which would have overheads to be supported. Another voluntary sector organisation qualified their response by suggesting that the majority of revenue is likely to be raised from motor vehicle offences, and as such, a significant proportion of this revenue should be allocated to provide post-crash services to families and victims of road crashes.
- 8.41 Even among those agreeing with this suggestions, a small number of concerns were raised and these were:
- A wide range of factors need to be taken into account and there is a need to avoid compensating any victims that have been party to serious criminality that harms society;
  - All revenue should be used to support victims;
  - The needs of individual victims are likely to differ and this needs to be taken into consideration;
  - The funding of restorative justice services would be an appropriate means of utilising revenue raised from the surcharge;
  - That a balance needs to be struck between supporting individual victims and victims in general and gave the example of funding restorative justice services.

- 8.42 A police organisation noted there are resource implications for the Bill but that this will help offset some of the associated costs. An individual made reference to the cost of funding support agencies and commented that 10% of these funds could provide jobs, support and care for victims. They also noted that the use of peer support to help victims could reduce costs by up to 40%.
- 8.43 Of the 3 who disagreed with this question, a number of concerns were raised and these included:
- The third sector agency would become a social fund provider and need to make decisions about hardship that might not be totally related to the funding;
  - The management of the budget;
  - Ensuring the system of support is personal centres and responsive and of greater importance than alleviating hardship, and made reference to the DWP social fund and the Social Work (Scotland) Act 1968 and duties under Section 12;
  - A dilemma over individuals who are subject to supervision in the community but who are also a witness or victim;
  - Consideration needs to be given to dependents of offenders who may experience hardship because of fines, compensation or surcharges imposed;
  - The level of the surcharge and whether this is a fixed rate or a proportionate rate, how surcharges would be imposed for individuals with a custodial sentence;
  - The administration and bureaucracy involved in the scheme;
  - All revenue should be used to support victims.
- 8.44 Three consultees, all organisations, who provided commentary only noted that:
- They did not hold a position as to whether this was the appropriate approach to be adopted;
  - It would be too complicated to impose and too difficult to enforce;
  - The allocation of sums from the victim surcharge should not be a matter for the courts which impose the surcharge.

### **Administration of the surcharge**

- 8.45 The consultation paper noted that ideally the SG would wish to apply a progressive scheme that related the amount of the surcharge to the size of the fine; and the simplest way of doing this would be to deduct a percentage of any fine and retain it as a surcharge. However, a significant proportion of fine revenue in Scotland is remitted to HM Treasury and, as such, this would be difficult to impose. The suggestion is that the surcharge would be applied as a flat rate or variable charge on top of any other penalty. A flat rate would be simpler on an administrative basis although a variable arrangement would allow the system to reflect the seriousness of the offence and the offender's ability to pay the fine. Question 44 asked 'do you think the surcharge should

be a flat rate or a variable scheme that reflects the size of a financial penalty?’ and asked for comments in support of their answer.

- 8.46 Thirty-two consultees responded to this question, with the majority (21) having a preference for a variable rate and only 5 preferring a flat rate. Five consultees did not provide a preference but did provide commentary. One consultee supported both options.
- 8.47 Most of those noting a preference for a variable scheme agreed that it is important for the surcharge to be flexible and relate to the crime committed, the penalty applied and the assets available to the perpetrator. This was noted by 14 consultees; 5 voluntary organisations, 3 police organisations, 4 local authorities and 2 individuals.
- 8.48 Two organisations (a voluntary organisation and a local authority) cited examples of what other countries impose and these were:
- Finland where traffic fines are based on the severity of the offence and the driver’s income and sliding scale financial penalties are imposed for a wide range of offences;
  - Canada where there is a variable surcharge based on different categories of crime.
- 8.49 Three consultees – all individuals – were critical of a flat rate charge; noting that this approach could be inadequate and fail to reflect the gravity of the offence or the offender’s ability to pay or that it could be derisory in certain cases. Another individual noted that the rate should be set at between 5-10%.
- 8.50 Of the 5 consultees (2 local authorities, 2 police organisations and a public body) noting a preference for a flat rate, their reasoning was that:
- A variable rate scheme may negatively impact on individuals on low income and could be to the detriment of their children;
  - This could lead to inconsistencies in the way different judges deal with the surcharge;
  - A variable rate could initially cause problems;
  - It would be easier from an administrative viewpoint to introduce a flat rate surcharge;
  - It is not clear how a variable rate would be applied if it is rolled out to other non-financial disposals.
- 8.51 Of the 5 consultees providing commentary only, 2 (a public body and a local authority) disagreed with the principle of introducing a surcharge. Another local authority queried whether this approach is the most appropriate mechanism to provide support to victims’ services and a legal organisation noted that this would be unnecessarily complicated to introduce.

## **The rate of a flat rate surcharge**

- 8.52 Question 45 then asked consultees supporting a flat rate surcharge ‘if you think there should be a flat rate surcharge, what level should it be set at’ and were offered the options of £15, £20, £30 or £other and asked to specify what this rate should be. Of the 5 consultees who had stated a preference for a flat rate surcharge, only 3 gave a response to this question. Two of these – both local authorities – opted for a level of £15 and one (a police organisation) suggested a flat rate but on a rising scale depending on the seriousness of the offence.
- 8.53 Four other consultees who had not stated a preference for either a flat or a variable rate, also provided some comments. A voluntary sector organisation felt that surcharges should cover all convicted offenders and the amount should be based on the seriousness of the crime or the procedure for dealing with the case and noted that Northern Ireland and Canada use similar systems. An individual noted that if this was going to work, it should be set at a nominal amount and suggested a level of £5, although then went on to note that the cost of collecting this might outweigh the sum recovered. Three consultees – a public body, a local authority and a legal organisation reiterated their opposition to the surcharge.

## **How should a proportionate surcharge work?**

- 8.54 Consultees who had noted a preference for a proportionate surcharge were asked ‘if you think there should be a proportionate surcharge, how do you think this should work?’ and were given two options: a proportionate amount added to the value of the financial penalty, or other, and asked to specify what this should be (question 46).
- 8.55 In total, 25 consultees responded to this question, and of those choosing one of these 2 options, views were polarised on whether this should be a percentage amount (mentioned by 7 consultees) or some other amount (mentioned by 9 consultees). Nine consultees did not choose either option but provided commentary instead.

## **Percentage Amount**

- 8.56 Of the 7 (4 individuals, one local authority, one police organisation and one voluntary sector organisation) opting for a percentage amount added to the value of the financial penalty, one (an individual) suggested a level of 5-10% and another individual noted that this would have to be subject to means testing to ensure the offender could meet the required surcharge.



## Other

- 8.57 Seven of those suggesting the other option noted that the surcharge should be relative to the seriousness of the crime and / or the circumstances of the offender and their ability to pay and / or the impact the crime has had on the victim. One – a voluntary sector organisation – again referred to the system adopted in Finland of a sliding scale of financial penalties depending on the crime committed.
- 8.58 A voluntary sector organisation noted that the scheme not only has to provide the support needed by victims but that it also needs to cover the costs of administration and asked for further detail to demonstrate the scheme would provide best care for all victims. A local authority suggested that a percentage amount should be taken from the whole fine.
- 8.59 Two consultees (a police organisation and an individual) noted that flexibility is needed for this to work; the police organisation noted that the amount of the surcharge should be dependent on the crime, the penalty applied and the assets available to the perpetrator. The individual commented that a percentage addition is simple and may be appropriate in most cases but that in some cases a more individual calculation may better reflect the impact of the offence.
- 8.60 Other suggestions, all from organisations, were:
- A percentage should be taken from the whole fine;
  - Percentages taken should be linked to the seriousness of the offence and the perpetrator's ability to pay should not be taken into account;
  - A sliding scale of surcharge that is transparent and related to the seriousness of the offence.
- 8.61 One individual felt that there are difficulties with both options presented at this question; a flat rate impacts negatively on those with a low income, while the drawback for the variable option in Scotland is that the amount of a financial penalty is discretionary and decided upon by the sentencing court, which could lead to differences in surcharge for the same offences.

### **Should there be maximum and minimum levels set?**

- 8.62 Question 47 in the consultation paper then went on to ask 'if you think there should be a proportionate surcharge, do you think there should be minimum and maximum levels set?' Of the 23 responses, 7 agreed with the proposal, 12 disagreed and 4 provided comments only.
- 8.63 Of the 7 consultees providing a 'yes' response (3 local authorities, 2 police organisations, one voluntary sector organisation, and one individual), 2 consultees (both police organisations) did not provide any further information. One of the local authorities noted that the amount would be determined in accordance with the crime committed.

- 8.64 The other 2 local authorities felt that if the surcharge is additional (rather than taken from the whole fine imposed), then the percentage should be fixed at a reasonable level that is likely to be paid. They also felt the sentence may need to take account of other fines and compensations outstanding as well as other financial commitments. They also raised the question as to what the possible sanctions would be if the surcharge were not paid and asked whether the surcharge should be treated as part of the fine for Community Payback or custodial purposes or whether this will be treated as a separate entity with a different sanction for non-compliance.
- 8.65 An individual commented that if the proposal was to go forward as a proportion of the fine, there should be a maximum set in order to mitigate the impact of judicial variation.
- 8.66 Seven of the 12 answering 'no' to this question, did not provide any further commentary. Of the 4 who did provide commentary, comments were that:
- Setting a minimum and maximum would reflect the seriousness of the crime and an offender's ability to pay the surcharge;
  - The system needs to be flexible and able to adapt to changes in legislation and finances; that imposing a maximum could create future problems if rules needed to be changed;
  - That a common sense approach is suitable and if a surcharge is too high, it will be subject to appeal;
  - This would need to be subject to means testing to ensure an offender can pay the surcharge.
- 8.67 Two of those providing commentary only to this question reiterated their disagreement with the surcharge (a public body and a police organisation). Another police organisation suggested that a minimum level needs to be set to ensure that administration costs will be covered and that no maximum penalty should be applied in certain circumstances, providing the example of large fraud. They also noted the surcharge should be dependent on the penalty applied and the assets available to the perpetrator. Finally, in response to this question, a local authority noted that if a surcharge is set within a banding, then it is not proportionate.

### **What should the maximum and minimum be?**

- 8.68 Question 48 then went onto ask *'if you think there should be a proportionate surcharge, what should a) the minimum be?; and b) the maximum be?'* and 12 consultees responded (3 police organisations, 3 voluntary organisations, 3 individuals, a public body, a local authority and a public body). Three of these consultees reiterated their opposition to a victim surcharge.
- 8.69 Only 3 consultees mentioned a specific amount for either a minimum or maximum figure and these were:
- Minimum of £1, with no maximum to ensure that that crime affecting large numbers of the public or the public interest would attract a high level of surcharge (police organisation);

- Minimum of £25, with no maximum to cover large fraud (police organisation);
  - 5-10% of the fine imposed (individual).
- 8.70 A police organisation felt that any minimum level set needs to cover administration costs involved and that there should be no maximum level set in order to relate the surcharge to the seriousness of the crime. Another voluntary organisation noted that the scheme has to be able to cover administration costs as well as provide support to victims and asked for further information on the scheme to demonstrate that it would be providing best care to victims.
- 8.71 A voluntary sector organisation again suggested a model should be adopted such as that used in Finland and provided detail on how this system operated.
- 8.72 An individual noted that any surcharge imposed would have to be subject to means testing to ensure the offender was able to pay; another individual that the maximum needs to be an amount that can be paid by the offender who is likely to be on a low income.

#### **Priority to compensation for the victim?**

- 8.73 Section 250 (1) of the 1995 Act currently provides that where a person receives a fine and a compensation order but has insufficient means to pay both, the compensation order takes priority. The Scottish Government is proposing that priority should be given to any compensation payment to the victim, followed by the surcharge and then the principal fine. Question 49 asked *'do you agreed that priority should be given to any compensation payment to the victim, followed by the surcharge and then the principal fine?'* and, if they disagreed, to say how they would prioritise the payments.
- 8.74 A total of 35 consultees provided a response to this question; the majority (28) agreeing, only one disagreeing and 6 providing commentary only.
- 8.75 Of the 28 consultees agreeing that priority should be given to compensation payment to the victim, followed by the surcharge and then the principal fine, 3 provided additional comments:
- A voluntary organisation commented that their preferred outcome would be abolition of fines, replaced with compensation payment;
  - A police organisation felt that the fine results in the exchequer collecting money via an individual's misfortune and that payment of compensation allows greater opportunity for victims to help in their own recovery, although this can be weakened in instances where compensation is paid in instalments;
  - A local authority noted the victim is more important than collecting additional funding for the 'system'.
- 8.76 One of the individuals who disagreed with the proposal noted that there is an argument for prioritising the surcharge before compensation because of the likelihood of non-payment by the offender. Another individual commented that

victims of crime should be entitled to compensation by right and not by application and that the scale of compensation should be relative to the gravity of the crime.

- 8.77 Of the other comments made, 3 consultees (a public body, a local authority and a legal body) reiterated their opposition to a victim surcharge. A voluntary sector organisation and a public body both referred to the need to cover the administrative costs of the scheme and the additional costs of introducing this into existing IT systems.

### **Restitution Orders**

- 8.78 The consultation paper noted that police officers form a particular category of victim, as they can be exposed to criminal damage and injury in the course of their duties and as a result of carrying out these duties. As such, there is a specific charge of assaulting a police officer in the execution of his or her duty. The police are also in the unusual position of paying to treat the damage done to themselves. Although they have access to NHS services in the same way as any other individual, they also contribute to the work of the Police Benevolent Fund and also for Treatment Centres that provide convalescent care.
- 8.79 The Scottish Government is proposing to introduce a mechanism whereby those who carry out assaults on the police, pay to support the specialist non NHS service which treat or assist the victims of these assaults. This would take the form of allowing sentencers enhanced discretion through an additional sentencing option. The sentencer may choose to order an offender convicted of a relevant charge of assault on a police officer to pay a restitution order instead of or in addition to either or both of a compensation order (where appropriate) to the individual, and a fine. The option of imprisonment in addition to all these kinds of financial penalties would also be retained. The sentencer will have discretion, subject to other provisions of the Bill, to decide on the most appropriate disposal(s). Proceeds from restitution orders would go to a fund which would make disbursements to purposes approved by the Government and the Scottish Parliament through the passing of the required legislation. Consultees were asked five questions in relation to these restitution orders.
- 8.80 Question 50 asked ‘Do you agree with the suggestion that there should be restitution orders whereby those who assault police officers may be sentenced to pay into a fund to support treatment and care of police victims?’ If they disagreed, they were asked to give their reasons. A total of 40 consultees provided a response to this question; 21 answered ‘yes’, 12 answered ‘no’ and 7 provided additional commentary only.
- 8.81 Of the 7 who answered yes and provided additional commentary, 3 (2 police organisations and one from the voluntary sector) agreed that it is right for a contribution from offenders to support treatment and care of victims who are police. That said, 3 other consultees (a police organisation, a legal organisation and a voluntary sector organisation) commented that this should

apply equally to all public servants who are assaulted in the course of their work with the public. The Police organisation commented,

“The principle that an assault on someone whose role is to intervene and help the public is an aggravating factor, has some merit. However, this argument applies equally to police, fire and rescue, ambulance and accident and emergency hospital staff. It is difficult to select individually from this group and indeed there may be arguments for widening it.”

- 8.82 One consultee from the voluntary sector noted that police officers already have good levels of support in place and further noted that the suggestion would be complicated by the common practice of Procurators Fiscal choosing not to proceed with charges under the Police (Scotland) Act 1967 Section 41 in order to obtain guilty pleas to other charges, which would in effect prevent the courts from awarding a restitution order. Another consultee – an individual – noted that at present compensation tends to be awarded to police officers who receive minor injuries where the offender is not imprisoned and that in more serious cases where the accused is imprisoned, imposing a compensation order is not practical. A legal organisation queried what the position would be of for police officers no longer serving at the time of sentencing.
- 8.83 Of the 12 consultees answering ‘no’, the most common response was that there should not be a specific fund for police but that all emergency workers should be treated equally (cited by 8 consultees; 4 local authorities, 2 organisations in the voluntary sector and 2 individuals). One of these individuals also commented that there is already a mechanism in place for police compensation; and a voluntary sector organisation called for a central national victim’s fund to be put in place.
- 8.84 Two local authorities also asked whether sanctions for non-payment would be treated in the same way as for a fine and turned into a Community Payback Order as well as noting concerns about the levels of financial payback expected from offenders ‘these potentially could include a fine, plus a surcharge, plus compensation, plus restitution, this may well lead offenders to prefer to serve a custodial sentence’. One of these also asked whether it would be possible to introduce a victim’s surcharge without introducing a third financial order to Court. A legal organisation noted the need to ensure that financial circumstances and ability to pay are taken into account.
- 8.85 Four suggestions emerged:
- An accused who assaults a police officer could be given a more punitive sentence to reflect the integrity of the criminal justice system;
  - The SG could simply provide more financial support to the Police Benevolent Fund;
  - Monies from fines should be paid into the treasury which could then decide to donate more to police funds if they wished;

- If there is to be a victim surcharge, it would be appropriate for assets recovered through POCA to be allocated in this way.
- 8.86 One organisation noted a concern that this could create an incentive to charge minor breaches of the peace as police assaults, and provided the example of police being shoved while trying to break up a drunken scuffle.
- 8.87 Of the 7 consultees who provided commentary only, 2 local authorities noted their support in principle but did not feel they were in a position to respond to the details of this proposal; another local authority noted that the police have adequate resources and access to support and back up. A public body disagreed and suggested that such a provision should not only apply to the police and another public body suggested that further discussion would be required in relation to the finer detail of imposition and enforcement.
- 8.88 A voluntary sector organisation noted that any restitution order introduced will need to be fair, proportionate and determined at the time of sentence; and that financial reparation is more likely to have impact if it is given on a voluntary basis as part of a restorative justice process. Also, that the level of payment needs to be matched to ability to pay and the offender's circumstances and pointed to research data to back this up.

### **Should the SG set the purposes to be applied?**

- 8.89 Question 51 went onto ask 'do you agree that the Scottish Government should set the purposes to which the fund to support treatment and care of police victims should be applied?' and asked for comments from those who disagreed. Twenty consultees agreed (7 local authorities, 5 police organisations, 2 voluntary organisations and 6 individuals). Only 8 disagreed, 4 of which were in the voluntary sector, one legal organisation, one local authority and 2 individuals. Seven consultees did not provide a definitive response but did provide some commentary.
- 8.90 Of the 4 agreeing with this question and who provided additional commentary, a local authority noted that the SG should set the purpose; another (Police organisation) that this should be in agreement with the police; another (police organisation) reiterated their view that this should apply to all emergency staff and an individual noted that it is important to consult the victims and survivors of crime about these forms of support.
- 8.91 Of the 8 disagreeing with this, a voluntary organisation noted that this is unnecessary and cited the Ministry of Justice's current consultation on Getting it Right for Victims and Witnesses which is looking to reform tariffs for criminal injuries. Two voluntary organisations noted that this should be decided by the Scottish Government in conjunction with the Scottish Police Federation and subject to regular review, or decided by an independent panel convened by the Scottish Government and accountable to the Scottish Parliament.
- 8.92 Four reiterated views expressed at question 50:
- All monies raised from fines should be paid to the treasury;

- It is unnecessary to re-invent a new form of sentence;
- All monies raised should be paid into a central fund and all victims of crime should be treated equally;
- This should apply to all emergency workers and that there is already a mechanism in place for compensation.

8.93 Of the 6 consultees providing only commentary to this question, an individual noted that these should be set in consultation with the relevant bodies; a Police organisation referred to the good work of the Police Benevolent Fund and a public body perceived that the allocation of money from restitution orders should not be a matter for the courts which impose the orders. A local authority noted that the police have adequate resources and access to support and back up. Three consultees simply reiterated points made to question 50.

### **Limits for restitution orders**

8.94 The Scottish Government is proposing to use the same limits for restitution orders as are in place for compensation orders. In summary proceedings the limit on compensation orders is the prescribed sum – currently at a level of £10,000 – in sheriff and stipendiary magistrates’ courts, and in JP courts it is Level 4 on the standard scale – currently £2,500. Question 52 asked consultees, ‘do you think limits for the size of a restitution order should be as described in paragraph 145 (the same limits as exist for compensation orders)?’ and for reasons from those who disagreed.

8.95 Twenty-eight consultees responded to this question, with the largest number (19) agreeing compared to only 4 who disagreed. Five consultees reiterated points made at earlier questions and provided commentary but no definitive response. While most of those (15) who agreed, did not provide any additional commentary, 2 local authorities noted that the limits are appropriate providing the means and debts of the individual are taken into account when setting the amount of the restitution order. One reiterated the need to extend this to all emergency staff.

8.96 Of the 4 who disagreed with this proposal, 2 (a local authority and a voluntary organisation) noted the need for access to an equal system for all victims of crime, one of whom also referred to the need for a central national fund (voluntary organisation). A legal organisation reiterated that it was unnecessary to reinvent a new form of sentence.

8.97 Other points reiterated were:

- Disagreement with the principle of a surcharge in any form and the need to apply this to all persons assaulted in the course of their work;
- Opposition to restitution orders but if they are introduced, all monies raised from fines should be paid to the treasury;
- Support for the principle of the restitution orders;
- Need to have regular reviews of the set limits;
- Reference to the Ministry of Justice’s current consultation.

## **Priorities in collection and enforcement**

- 8.98 Currently when a person is sentenced to both a compensation order and a fine but cannot afford to pay both, priority is given to the compensation order. The consultation paper proposed that collection and enforcement of a restitution order would take priority after a compensation order but before a fine. Question 53 asked consultees, 'do you agree that priority in collection and enforcement should be given to any compensation payment to the victim, followed by the restitution order and then any fine?' If consultees did not agree, they were asked to say how they would prioritise the payments.
- 8.99 Thirty-five consultees chose to respond to this question and the majority (26) agreed with the proposal. One of these – a police organisation – reiterated that this should apply to all police, fire and rescue, ambulance and accident and emergency hospital staff. A local authority noted that the sanctions that may be applied are relevant as Community Payback and Custody also come with a cost and referred to a need for a balance between financial and other recompense from offenders who have limited means. An individual noted that fines should be paid to the victims.
- 8.100 Three of those who disagreed with this question provided additional commentary. This included a local authority which noted compensation payments to any victim should take priority to the collection and enforcement of fines and all victims of crime should be entitled to receive compensation payments. A voluntary sector organisation reiterated their view that all victims of crime should be treated equally and any money obtained from offenders should be paid into a central national fund. Another legal organisation reiterated that it is unnecessary to introduce this.
- 8.101 Of the 6 consultees who did not provide a definitive answer but who did provide commentary at this question, a local authority noted that they did not agree with this overly complicated way of collecting money. A public body noted that there would be logistical issues in relation to setting up such a system. A public body noted they would agree to the priority of payments as envisaged here if these orders became available to a court.
- 8.102 Three reiterated points made earlier:
- Disagreement with the principle of a surcharge in any form and the need to apply this to all persons assaulted in the course of their work;
  - Support for the principle of the restitution orders;
  - Reference to the Ministry of Justice's current consultation.

## **Extending restitution orders?**

- 8.103 The consultation paper noted that emergency workers, other than the police, can also be subject to assault. The final question in the consultation paper asked 'do you think restitution orders should be extended to groups other than the police?' and, if so, were asked to suggest which group(s) of workers should also benefit from a fund supported by restitution orders.



8.104 Thirty-eight consultees responded to this question, and the majority (29) agreed. Only 4 (a local authority, a voluntary organisation, an individual and a legal body) disagreed with this proposal; the legal body again reiterated their view that a new form of sentence does not need to be introduced.

8.105 The groups of workers that consultees considered should also benefit from a fund supported by restitution orders were:

- **All groups of worker covered by the Emergency Workers Act** – 13 mentions (5 local authorities, 3 police, 2 individuals, one voluntary sector, a legal organisation and a public body);
- **Victims of crime as a result of service to the public / any public servant within the jurisdiction of the Scottish Government** – 5 mentions (2 local authorities, a police organisation, a voluntary, an individual);
- **Local authority staff** e.g. environmental officers, members of multi-agency partnerships – 3 mentions (2 local authority, an individual);
- **Health workers / social work staff** – 3 mentions (all local authority);
- **Fire and rescue staff** – 3 mentions (a local authority, a voluntary sector, an individual);
- **Ambulance service staff** – 3 mentions (a local authority, a voluntary sector, an individual);
- **Parking attendants / medical staff** – 2 mentions (2 individuals);
- **Victim support organisations** – 2 mentions (2 individuals);
- **Those working with offenders in the criminal justice service** – 2 mentions (a local authority, an individual);
- **Nursing / medical staff** – 1 mention (individual);
- **Those working in A&E departments** – 1 mention (local authority);
- **Emergency health workers dealing with offenders with mental health / addiction problems** – 1 mention (local authority);
- **Families of homicide victims** – 1 mention (voluntary organisation); this consultee referred to the ongoing needs of these victims and that the current compensation system does not meet the needs of these victims;
- **Any person assaulted in the course of their employment** – 1 mention (local authority).

8.106 One local authority agreed that restitution orders should be extended to other groups of workers but suggested that it might be best to implement them for the police in the first instance and have an option to extend this to other groups at a later date. A police organisation noted that the money paid into charities and facilities to support recovery of injured police officers and enable them to return to work means that a high proportion of money for restitution meets its intended aims and is not lost in administration costs. A local authority also reiterated concerns over sanctions for non-payment and whether it would be treated in a similar way as a fine and turned into a Community Payback Order, as well as concerns over the levels of financial payback that would be expected from some offenders. A public body noted they had no objection to this order being extended to other emergency works if it is introduced.

8.107 Three consultees again reiterated points made earlier:

- Reference to the Ministry of Justice's current consultation;
- Opposition to restitution orders but if they are introduced, all monies raised from fines should be paid to the treasury;
- The introduction of restitution orders could lead to a proportion increase in the costs associated with accounting and enforcement.

## 9 OTHER COMMENTS

- 9.1 A number of consultees provided additional commentary over and above their responses to specific questions and these are detailed in this chapter.
- 9.2 A number of consultees (15) provided background information on themselves or their organisation in order to provide some context for their responses. Nine consultees welcomed the opportunity to respond to this consultation; and 9 also noted their support for the broad principles of this consultation in terms of improvements for the experiences of victims and witnesses, one of whom (a voluntary sector organisation), also noted the importance of endeavours to prevent individuals becoming victims in the first instance.
- 9.3 That said, 5 consultees had concerns over the logistical implications of this Bill, namely:
- How additional resources would be funded, whether additional resources would be made available or how additional costs will be met;
  - The need for budgets within groups and organisations providing support to victims and witnesses;
  - How some of the practicalities of the proposals would be put in place;
  - That a central hub and databases containing all information could be difficult to set up.
- 9.4 While there was broad support for the proposals contained in the consultation document, a small number of consultees noted additional areas that they felt should also be included, and these were:
- Consideration of victims of human rights violation, human rights relevant to victims and a broader definition of victim according to international human rights; reference to recent EHRC inquiries;
  - Inclusion of restorative justice in terms of reparation and mediation;
  - Outline which of the six objectives on page 3 of the consultation paper apply where children commit an offence;
  - Reference to the provision of information relating to offences committed by children, and that this needs the same balance as under section 53 of the Criminal Justice (Scotland) Act 2003; additionally, more reference to the Children's Hearings system;
  - Reference to the public sector equality duty; one consultee made specific reference to disabled people needing equal access to justice which they felt does not currently happen;
  - That information will also be provided proactively to victims whose cases will not proceed to court;
  - Definition in statute of an Appropriate Adult.
- 9.5 A number of consultees reiterated points made during their response to questions and these included:
- A need for standards to be developed to provide help, support and special protection;

- A need for various types of information, support and protection to be provided to victims and witnesses at various points in time throughout the process;
- That the process should be expeditious, inexpensive, accessible and fair;
- The need for improvements in the way cases are managed e.g. no time delays;
- That there is a general lack of knowledge from many in the justice system about different aspects such as an understanding of gender-based violence, different legal processes;
- Specific reference to the needs of victims of road crashes;
- That all agencies and organisations involved in delivering services to victims and witnesses need to follow the standards of service being suggested;
- Support for the concept of a general hub.

9.6 Other suggestions included:

- SG to address issues relating to Timebar so that the Criminal and Civil Scottish Justice System is equitable and accessible for all, including historical abuse victims and to provide equitable redress and remedies based on Victim's needs which Scottish Justice system fails to address issues.

9.7 One consultee suggested that the SG should give consideration to the concept of payback hours or a local community time bank scheme. Another provided a possible model for communication support services. Additionally, there were references to a number of relevant studies that have been undertaken and instances where data was used to back up points being made in responses to the consultation paper.

9.8 Another consultee noted the importance of victim inclusion in the process and the need to ensure that victims are treated as first class citizens.

## 10 SUMMARY

- 10.1 The Scottish Government received 77 responses to this consultation; 59 from organisations and 18 from individuals.
- 10.2 A number of consultees welcomed the opportunity to provide their views on the issues raised in this consultation paper, although some did not provide definitive yes / no responses to specific questions.
- 10.3 Many consultees welcomed the overall concept of a scheme that helps to improve the experience of victims and witnesses and noted their support for the key proposals outlined in the consultation paper.
- 10.4 For each of the proposals put forward in this consultation paper, there was majority support from those responding, although a number of consultees opted not to provide a definitive 'yes' or 'no' response. While the numbers responding made it difficult to analyse responses by sub-group, those involved in enforcement often focused on the logistics and enforcement of these proposals. Many of the individuals who responded to this used their own experience to illustrate their response and these often focused on the support needed by victims and witnesses.
- 10.5 Key themes throughout responses were:
- The need for access to information that is consistent, clear and accessible to all victims and witnesses;
  - While there was support for a central hub and information sharing between agencies, there were also concerns over sharing information and the need to take into account data protection issues;
  - Logistical issues in relation to administration and enforcement;
  - The need to ensure that all agencies involved in this have access to adequate training, support and resources;
  - A need to ensure that victims' and witnesses' expectations are managed and that they understand that information they provide is only one element of the process;
  - A need to ensure that offenders rights are recognised and that a balance between reparation and rehabilitation is managed effectively.

## APPENDIX 1: LIST OF ORGANISATIONS

Scottish Transgender Alliance Equality Network
Fife Constabulary
West Lothian Council
Black and Ethnic Minority Infrastructure in Scotland (BEMIS)
Capability Scotland
South Lanarkshire Council – Social Work Resources
Former Boys and Girls Abused Quarriers Homes
Glasgow City Council Social Work Services
North Lanarkshire Council
Scottish Human Rights Commission
Information Commissioner’s Office
The Moira Fund
Parole Board for Scotland
Zero Tolerance
Scottish Children’s Reporter Administration
Dundee Violence Against Women Partnership
Victim Support Scotland
Faculty of Advocates
South West Scotland Community Justice Authority (SWSCJA) on behalf of Scotland’s Community Justice Authorities
Scottish Women’s Aid
Ross-shire Women’s Aid
Scotland’s Campaign against Irresponsible Drivers (SCID)
North Lanarkshire Adult Protection Committee
Stirling and Clackmannanshire Councils Criminal Justice Services
Falkirk Council Social Work Service
Scottish Women’s Convention
Equality and Human Rights Commission
Scottish Police Federation
East Renfrewshire CHCP
Inspectorate of Prosecution in Scotland/ HM Inspectorate of Constabulary (Scotland)
North Ayrshire Council
ACPOS Criminal Justice Business Area
Families After Murder
Brake
Law Society of Scotland
Rape Crisis Scotland
Scottish Centre for Crime and Justice Research
Fife Council
Logica (UK) Ltd
Aberdeenshire Council
East and Midlothian Adult Protection Committee
Dundee City Council Social Work Department
Scottish Council on Deafness
Skills for Justice

Prison Reform Trust
Royal College of Speech and Language Therapists
Crown Office and Procurator Fiscal Service
Scottish Court Service
Strathclyde Police Criminal Justice Department
Central Advocacy Partners
Association of Directors of Social Work
Scottish Justices' Association
Association of Scottish Police Superintendents
Renfrewshire Council
Children 1 <sup>st</sup>
Children in Scotland
Sheriff's Association
Perth and Kinross Council
Scottish Borders Council Child Protection Committee

## **APPENDIX 2: CONSULTATION QUESTIONNAIRE**



## APPENDIX 2: CONSULTATION QUESTIONNAIRE



### Making Justice Work for Victims and Witnesses: Victims and Witnesses Bill – A Consultation Paper

#### VICTIMS AND WITNESSES BILL - CONSULTATION QUESTIONNAIRE

Please tick and add comments as appropriate

**Q1 Do you agree with the principle of having a case-specific information hub for justice in Scotland?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q2 Are there any other types of case-specific information that would be of value to victims and witnesses?**

Comments

**Q3 Do you believe a statutory framework is needed to promote information-sharing in the interests of victims and witnesses?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q4 What protections would need to be built into such a system?**

Comments

**Q5 What information would help victims, witnesses and the public understand different types of sentences better?**

Comments

**Q6 What is the best way to provide information about sentences to victims, witnesses and the public?**

Comments

**Q7 Do you agree that bereaved families in road death cases should be**

**(a) advised when the offender’s driving disqualification is rescinded and their driving licence returned to them?** Yes  No

**(b) given the chance to register any concerns about return of the driving licence** Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q8 Do you agree with the proposal to create a duty on relevant public bodies to publish minimum standards of service for victims and witnesses?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q9 Do you agree that standards should encompass both victims and witnesses?**

Yes  No

If you have answered “no”, please comment on the reason(s) why.

Comments

**Q10 Are there any other issues that you think standards should cover?**

Comments

**Q11 Do you agree that a closed court should be:**

**(a) requested through a motion at the pre-trial hearing (First Diet, Intermediate Diet or Preliminary Hearing)?** Yes  No

or

**(b) made a special measure (i.e. the subject of a Child Witness Notice or Vulnerable Witness Application)?** Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q12 Please let us have your views on the possible options for piloting improved care and support for victims and witnesses (a dedicated contact point, a co-ordination/liaison/care unit, a support programme for child victims/witnesses, central hub)?**

Comments

**Q13 Are there any other models for improving care and support that you would like to tell us about? If so, please provide details.**

Comments

**Q14 Do you agree with the proposal to change the definition of child witness to be up to age 18?**

Yes  No

If you have answered “no”, please comment on the reason(s) why.

Comments

**Q15 Do you agree that we should amend the definition of vulnerable witness to match the requirements of the EU Directive on Victims?**

Yes  No

If you have answered “no”, please comment on the reason(s) why.

Comments

**Q16 Do you agree the definition of a vulnerable witness - and therefore automatic entitlement to standard special measures – should be extended to include:**

**(a) victims of sexual offences?** Yes  No

**(b) victims of domestic abuse?** Yes  No

**(c) those witnesses defined as automatically vulnerable in the final version of the EU Directive on Victims?** Yes  No

Please comment on the reason(s) for your answers.

Comments

**Q17 Do you agree that any witnesses who are automatically entitled to standard special measures should be able to opt-out of using them?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q18 Do you have any comments on the proposal to include in the legislation flexibility to extend the range of standard special measures if necessary in future?**

Comments

**Q19 Do you have any suggestions about how the administrative arrangements for special measures might be streamlined**

**(a) for those witnesses automatically entitled to standard special measures?**

Yes  No

**(b) for other witnesses who may fall into the definition of vulnerable but do not automatically do so?**

Yes  No

**(c) for those witnesses who wish to opt-out of using the standard special measures to which they are entitled?**

Yes  No

Comments

**Q20 Do you have any concerns about the proposal to put the Guidance on Joint Investigative Interviewing of Child Witnesses in Scotland on a statutory footing?**

Yes  No

If you have answered “yes” please give details of your concerns.

Comments

**Q21 Should we seek to remove the presumption that child witnesses under age 12 in prescribed sexual or violence cases should give evidence away from the court building, while retaining the ability for them to do so?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q22 Should the submission of Child Witness Notices be made a compulsory part of pre-trial hearings?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q23 Do you have any concerns about the proposal to make clear that section 271M of the Criminal Procedure (Scotland) Act 1995 does include provision for visual recording of evidence?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q24 Do you believe we need specific provision allowing for visual recording of supplementary evidence?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q25 Do you agree with the principle of extending the types of special measures available specifically to help meet communication support needs?**

Yes  No

If you have answered “no”, please comment on the reason(s) why.

Comments

**Q26 If you agree in principle we should extend the types of special measures available to meet communication support needs, do you have any views at this stage on which option/model you would favour?**

Intermediaries       Witness profiles       Some other means   
(please specify)

Please comment on the reason(s) for your choice

Comments

**Q27 If the role of Appropriate Adults in relation to suspects is defined in statute, do you believe the same is necessary for their role in relation to victims and witnesses?**

Yes  No

Comments

**Q28 Do you agree that victims of sexual violence should have the right to choose the gender of the person who interviews them?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q29 Do you agree with the proposal that it should not be necessary to disclose the witness' personal circumstances (e.g. medical details) in an application for standard special measures?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q30 Do you agree that victims (or parents, carers or relatives) should be given the opportunity to make written representations about what additional conditions might be included in the licence when an offender first becomes eligible for temporary release?**

Yes  No

Please comment on any concerns you have about this or any implications you think the proposal has.

Comments

**Q31 Should we seek to introduce Investigative Anonymity Orders in Scotland?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q32 If you think we should, in what circumstances or for which cases should they be used?**

Comments

**Q33 What mechanisms could be used to ensure victims' interests are taken into account when sentencing policy is developed?**

Comments

**Q34 Do you agree with the proposal to allow victims (or relatives in appropriate cases) to speak to a member of the Parole Board before a Life Prisoner Tribunal considers the release of an offender on licence?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q35 Do you agree with the proposal to allow Victim Statements to be submitted to the court at any time after the prosecutor moves for sentence (or the accused pleads guilty or is found guilty), but before sentence is passed?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q36 Do you agree with the proposal to extend eligibility for the Victim Statement scheme so that a carer of a child under age 14, who is not the direct victim of the crime, can make a Victim Statement on their behalf?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q37 Do you agree with the proposal to amend the definition of carer in relation to the Victim Statement scheme so that the carer who makes the statement on behalf of a child under age 14 does not have to have been the carer at the time of the (alleged) offence?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q38 What more could be done to acknowledge and take into account the interests of victims and witnesses?**

Comments

**Q39 Do you agree that courts should be required to consider the issue of compensation in all cases where an identifiable victim has suffered injury, loss or distress?**

Yes  No

Please comment on the reason(s) for your answer.

Comments

**Q40 Do you support the principle of adopting a victim surcharge?**

Yes  No

If not, please comment on the reason(s) for your answer.

Comments

**Q41 Do you agree that the surcharge should only be applied to court fines in the first instance?**

Yes  No

If not, please comment on the reason(s) for your answer.

Comments



**Q42 Should we consider the possibility that legislation could include a provision to roll out application of the surcharge to custodial sentences, community sentences and direct measures at a later date?**

Yes  No

If not, please comment on the reason(s) for your answer.

Comments

**Q43 Do you agree that revenue accumulated from the surcharge should be used primarily to support victims?**

Yes  No

If not, please comment on the reason(s) for your answer.

Comments

**Q44 Do you think the surcharge should be a flat rate or a variable scheme that reflects the size of a financial penalty?**

Flat rate  Variable

Please comment on the reason(s) for your answer.

Comments

**Q45 If you think there should be a flat rate surcharge, what level should it be set at:**

£15   
£20   
£30   
£other (please specify)

Comments

**Q46 If you think there should be a proportionate surcharge, how do you think this should work:**

a percentage amount added to the value of the financial penalty  
or other (please specify)

Comments

**Q47 If you think there should be a proportionate surcharge, do you think there should be minimum and maximum levels set?**

Yes  No

Comments

**Q48 If you think there should be a proportionate surcharge, what should (a) the minimum be, and (b) the maximum be?**

Comments

**Q49 Do you agree that priority should be given to any compensation payment to the victim, followed by the surcharge and then the principal fine?**

Yes  No

If not, please comment on how you would prioritise the payments?

Comments

**Q50 Do you agree with the suggestion that there should be restitution orders whereby those who assault police officers may be sentenced to pay into a fund to support treatment and care of police victims?**

Yes  No

If not, please comment on the reason(s) for your answer.

Comments

**Q51 Do you agree that the Scottish Government should set the purposes to which the fund to support treatment and care of police victims should be applied?**

Yes  No

If not, please comment on the reason(s) for your answer.

Comments

**Q52 Do you think limits for the size of a restitution order should be as described in paragraph 145 (the same limits as exist for compensation orders)?**

Yes  No

If not, please comment on the reason(s) for your answer.

Comments

**Q53 Do you agree that priority in collection and enforcement should be given to any compensation payment to the victim, followed by the restitution order and then any fine?**

Yes  No

If not, please comment on how you would prioritise the payments?

Comments

**Q54 Do you think restitution orders should be extended to groups other than the police?**

Yes  No

If so, please comment on what group(s) of workers should also benefit from a fund supported by restitution orders

**Social Research series**  
ISSN 2045-6964  
ISBN 978-1-78256-286-3

**web only publication**  
[www.scotland.gov.uk/socialresearch](http://www.scotland.gov.uk/socialresearch)

APS Group Scotland  
DPPAS13716 (12/12)

