

Victim Statements

SUBMISSION FROM SOCIAL WORK SCOTLAND, TO SCOTTISH GOVERNMENT CONSULTATION

28 NOVEMBER 2019

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services.

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

Option A - expanding eligibility to include the list of serious offences at section 4 of the consultation paper

Option B - expanding eligibility to all cases heard under solemn proceedings

Option C – as per Option B but also including a list of offences which would be eligible for a victim statement even if they were tried as summary proceedings

We favour Option C, in that it ensures the widest extension of the scheme and puts victims more firmly at the centre of the criminal justice system. The right to make a Victim Impact Statement should be open to all victims, allowing their voice to be heard.

If you favour option C, which offences do you think should be considered for inclusion so they would be eligible for a victim statement even if tried as summary proceedings?

We think all offences in the extended list should be included.

We understand the complexity and resource implications of allowing a victim statement to be made for any offence, and that there is evidence to suggest there is less demand for less serious crimes. However, the principle of giving every victim the right to say how any offence has impacted on them is one we think Scotland should consider, as is the case in other jurisdictions.

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

No

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

Victims reading their statement in court

We think there is some merit in exploring this option as it would provide the victim with an opportunity to be directly involved and in control of the statement they wish to make, and to express their thoughts and feelings as they would wish.

However, we are also cautious about this option. Victims would need to be well supported to make an informed choice, as well as prepared and supported through the process itself. There is a risk, potentially significant, that victims are re-traumatised by the experience of reading out their statement in court. Ensuring support workers are trained in trauma-informed practice would be essential.

Some victims may also have difficulty with reading, which would impact on their ability to articulate their statement clearly. We know that a sentencing diet can be postponed for many reasons, including at very short notice and on the day of the court. This may happen more than once. This may engender considerable frustration, even anger on the part of the victim, and may prevent victims being able to move forward with their lives. It is a balance between respecting the rights of victims and the unintended consequence of causing more harm.

Pre-recording the statement on video

There is less risk with this option than physically reading a statement, but it would maintain the value of victims feeling in full control of their statement and its delivery. It would allow the victim to record their statement safely and without undue pressure and to directly express themselves without the potential pitfalls expressed above. It would address the issues around literacy.

Pre-recording the statement with audio only

Like a video statement, but this option offers a degree of anonymity whilst still allowing the victim's 'voice' to be directly heard.

The judge reading the statement aloud to the court

Whilst precluding physically seeing and/or hearing the voice of a victim, it is a safe option that offers protection for the victim and certainty that their written statement will be heard.

Other options

We think another option should be for a relative or friend of the victim to read the statement out in court. In situations where the victim, for whatever reason, felt unable to do this him/herself, being able to select a person of their own choosing to act on their behalf means they would retain more ownership and control over the Victim Statement than, for example, if it was read out by a judge or sheriff.

Another option would be for Victim Support Scotland given their current role and expertise in supporting victims and offering advice and guidance on Victim Statements, to offer a service to facilitate the provision of Victim Statements to the court.

For options (1) – (5) there would need to be clear guidelines as to how they are conducted, e.g. use of language, tone of voice, use of self, etc.

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

No

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

Victims often question the extent to which their voice is heard within the criminal justice system. The system is seen as all about the individual that has offended, with little attention paid to victims.

We believe there is some truth in this, and that more could and should be done to put victims at the heart of the criminal justice system. Victim Statements offer a potentially powerful tool with which to articulate the impact on victims at different points in the journey, and to hold people to account for their actions, decisions, etc.

For example, justice social work (JSW) prepared 28,400 criminal justice social work reports (CJSWR) in 2017/18 to assist the court in determining the right sentence for the individual. Each report analyses the offence(s) and requires an explicit analysis of 'the level of recognition by the offender on the impact/consequences of the offence(s) on the victim/community' (question taken from the national CSJWR template, Scottish government 2011). However, in most cases the justice social worker is reliant on the terms of the

charge(s) and what the individual tells them in interview. The social worker does not receive the Crown Office's Summary of Evidence or any other independent and objective account of an offence and the consequences for a victim. (There are exceptions to this, for example some sexual and domestic offences.) This not only disadvantages the social worker in providing a fully informed analysis and assessment of risk and need, but also denies the victim an opportunity to articulate how the crime has impacted them.

Notwithstanding GDPR and setting out the terms of information sharing and use, with the consent of the victim the statement could be shared with JSW to help inform the CJSWR and supervision with the individual on a Community Payback Order, and his or her progression through a prison sentence, including the parole process (and we welcome the clear consensus to strengthen the voice of victims in the parole process as summarised in the Transforming Parole in Scotland: consultation report [Scottish government, November 2019]). This information would better ensure people are held to account for their crimes and ensure the victim's voice is heard.

This change would cost little but the impact would be considerable and ensure the rights of victims are continually heard throughout an individual's order or sentence. We think this is worth considering with victims and Victim's organisations.

Similarly, there is also the potential to consider how Victim Statements can enhance Restorative Justice processes.

We also think this is an opportunity to review the Victim Statement template, its availability (it's not currently freely available, including on-line), the timing of when it is done and ensuring victims know what happens to their statement.

6. Do you have any views on whether we should consider amending the definition of who is eligible to make a victim statement (as set out in section 14 of the 2003 Act), to help ensure all relevant victims are able to make a statement if they wish?

Although this is not something being planned alongside changes to the current scheme, SWS think there is merit in reviewing the current eligibility set out in the 2003 Act. Specifically, this should consider extending this to children, or their parent/carer on their behalf, as is the case in victim statement schemes in other jurisdictions. This is in accordance with the principle of respecting the rights of children (including UNCRC Article 12) and in acknowledgment of the impact of domestic abuse and other crimes upon them.

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

GDPR legislation came into force in 2018 and any revised statement would require to be proofed against this. This would also apply to the implications if people other than the victim were involved in, for example, recording or reading out a victim's statement.

As referred to at (5) above careful consideration would be required of widening out the scheme as described.

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

No.

For further information, please do not hesitate to contact:

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