

Victims Taskforce – Victims Commissioner Discussion Paper – 9 December 2020

Purpose

1. To provide information to the Victims Taskforce on the potential scope, remit, governance arrangements, costs and other implications of introducing a Victims Commissioner in Scotland.
2. To provide a set of options for the Taskforce to consider and decide on an agreed way forward.

Background

3. Part of the Taskforce's workplan is to consider the case for a Victims Commissioner in Scotland. This issue has been raised a number of times since devolution, particularly in relation to victims focussed legislation going through the Scottish Parliament and in comparison to the equivalent post in England and Wales (E&W). Some further information on the Victims Commissioner in E&W and similar posts in other jurisdictions can be found at Annex A.
4. The Taskforce last considered the issue at its meeting in September 2019 (see this [paper](#) for details) , and members sought further information on what Victims Commissioner's in other jurisdictions can and cannot do, where there may be duplication with existing victims services and the cost of the role. Members were also interested in the potential role for a Victims Commissioner in Scotland in relation to accessibility to senior figures in the justice sector and the existence of the Taskforce itself.
5. Scottish Government officials undertook an information gathering exercise to help develop this paper, meeting with the Chief Executive of the Office of the Victims Commissioner in E&W; the Chief of Staff to the Domestic Abuse Commissioner (E&W) and Ministry of Justice officials who have a sponsorship role for the Victims Commissioner in E&W.

Previous consideration in Scotland

6. The concept of a Scottish Victim Commissioner has been raised several times since devolution. David Stewart MSP introduced a private members bill on this issue in 2010 and it has also been the subject of a number of Parliamentary Questions. There was also an online petition in 2018 by a bereaved family which attracted around 1500 signatures.
7. Consideration of this issue previously in Scotland has focussed on the benefits to victims of creating a specific role which would act as spokesperson for their concerns and provide a focal point for assessing the effectiveness of current provision. This was weighed against: the risks of duplication in terms of work already being done by victim support organisations, government and the criminal justice agencies; the potential for another layer of bureaucracy; and the benefits of maximising resources to frontline support services.

Issues for Consideration

8. Views have previously been sought from members of the Taskforce on the case for introducing a Victims Commissioner in Scotland, most recently in November 2020 to inform this paper. The following paragraphs set out the key themes and arguments presented.

Timing of consideration

9. Taskforce members previously suggested that the issue of a Victims Commissioner in Scotland should be considered once the Taskforce has been in operation for some time - enabling members to consider whether a Victims Commissioner role could be a logical next step to take over from the Taskforce to drive continuous improvement.
10. Members also suggested that as the development and delivery of Taskforce work streams progresses it is likely to become clearer where there are points of less effective practice or communication across systems and to give some thought to whether this may or may not be addressed by the introduction of a Victims Commissioner.
11. Now that the Taskforce has been in operation since December 2018, members may feel in a more informed position to consider this issue. In addition, members may wish to consider what bearing, if any, the implications of the pandemic for the justice system, the consequential impacts on victims and the necessary changes which are being brought forward as a result, have on this issue.

Need / demand for such a role in Scotland

12. Some members questioned what unique role a Victims Commissioner in Scotland would undertake that is not replicated by the Taskforce, or whether there is a clear and compelling case for the introduction of such a post in Scotland. The Taskforce was considered to be in the unique position of bringing victims experts together in one room and building a sense of collaboration and prioritisation to make real improvements. Concerns were raised that a Victims Commissioner at this time, would add another expensive layer, would require access to the same expertise as the Taskforce and in many ways would replicate the work and intention of the Taskforce. It was also argued that there are already good links between victim support organisations, government and justice agencies, which enable victims' organisations to raise issues which require to be addressed, in addition to the Victims Taskforce.
13. Other members argued that the introduction of a Victims Commissioner has a number of potential benefits, primarily to make a valuable contribution to the improvement of the experiences of victims. Potential benefits might include the additional capacity afforded by the role to monitor policy and practice and to ensure agency compliance with existing policies, protocols and legislation (as happens elsewhere) as well as the instigation and production of thematic reports on pressing issues. It was also suggested that there could be benefits

in a Commissioner being seen as a figurehead to better champion the causes of victims, as opposed to what could potentially be viewed as an anonymous Taskforce.

Legislative basis for a Victims Commissioner

14. Victims Commissioner roles as they are carried out elsewhere tend to rest on a statutory underpinning. Legislation sets out the functions to be carried out by the post holder and often contains reporting obligations and governance structures and a requirement to consult with victims and survivors. However, there are other examples where the appointment is more loosely defined (e.g. as a mayoral appointment in London and the Victims Champion role that preceded the statutory Victims Commissioner in E&W).
15. The creation of a statutory Victims Commissioner role in Scotland would likely require new legislation with associated time and resource implications.

Scope of the role of a Victim Commissioner

16. Typically, Victims Commissioner roles elsewhere tend to be heavily focussed on engagement with victims and witnesses, their representative organisations, government and criminal justice agencies and the taking forward of reviews and reports on matters of interest. There may be a perception amongst victims / families who are interested in a Victims Commissioner role being created in Scotland that they would then be able to take on their individual case and provide support. Based on other Victims Commissioner roles, that is not the case.
17. The majority of Victims Commissioner roles are clearly focussed on identifying and addressing issues which are of general application and affect a number of victims and do not involve the Commissioner in providing support or advice in relation to individual cases. The roles tend to be advisory in effect and therefore do not cut across existing legislative or regulatory processes, or affect the handling of specific cases which are already underway.
18. The Victims Commissioner in E&W states clearly that they 'can't champion individual cases or challenge criminal justice agencies to make different decisions. For example, the Commissioner can't ask the Criminal Injuries Compensation Authority to overturn a decision to refuse compensation for a victim, or ask the Crown Prosecution Service to make a different charging decision.' The Victims Commissioner office in E&W also told us that they receive a high volume of calls from individual victims, which they usually refer onto an appropriate victim support organisation.
19. Taskforce members also previously questioned how the role of a Victims Commissioner would dovetail with the Children's Commissioner in Scotland who also looks into issues relating to child victims and that there could be benefits in a Victims Commissioner taking a cross cutting, co-ordinating role, including with the Children's Hearing System.

Unique aspects of the Scottish context

20. Taskforce members noted that the justice landscape in Scotland differs greatly from that in England and Wales and that multi-agency cooperation at national and local level is more embedded.
21. It was also argued that there is a high degree of political consensus on the need to support the victims agenda in the Scottish Parliament, as shown in recent legislation, and the creation of the Taskforce itself, suggesting the strategic context is perhaps less disadvantaged than the practicalities of providing operational support. It was further suggested that providing operational resources to support victims (for example supporting the work of the community justice partnerships across the 32 local authorities) may be a more appropriate use of resources.

Resources

22. The costs of appointing a Victims Commissioner would vary significantly depending on the status and scope of the role. A statutory role would obviously require legislation with associated time and resource implications. Depending on the scope of the role there may also be a need to cost support functions such as office staff, research, travel etc.
23. The financial memorandum for the private members bill in 2010 (mentioned above) estimated a start-up cost of £481,159 with a subsequent annual cost of £404,159. Salary costs for the Victims Commissioner in E&W are £108,000 per annum.
24. The office of Victims Commissioner in E&W is a small team of 5 staff and has a current annual budget of around £0.5 million, with more than two-thirds of that allocated to staff costs. The Victims Commissioner for London is part-time (2.5 days a week) with an advertised salary of £45,000. The role of Domestic Abuse Commissioner in E&W, appointed in 2019, has a budget of around £1 million per annum and will have double the staff resource of the Victims Commissioner office in E&W.
25. Taskforce members suggested that there are several advocacy organisations which are already well-funded by the Scottish Government to deliver support for victims and that any budget required to set a Victims Commissioner role in Scotland may be of more use to them. It was also argued that allocating considerable resources to a Victims Commissioner should only be considered if there is clarity on what the tangible benefits would be for victims. Also that it may be better to resource local agencies to advocate on behalf of individual victims. It was suggested that establishing a new bureaucracy when there may be existing infrastructures/organisations who can deliver on this work should be considered.

Further Information

26. It was suggested that it may be helpful to set out in greater detail what the 'needs' are for victims in Scotland and then to demonstrate the comparative

opportunity and cost to meet those needs - either through existing structures, if that is feasible, and alternatively, how these might be addressed and at what cost via the introduction of a Victims Commissioner. It was also suggested that consultation with victims would be useful to determine their views on the introduction of a Victims Commissioner and that any formal evidence of the impact that the introduction of a Victims Commissioner (or similar) has had elsewhere may be helpful to inform a decision.

Conclusion

27. Based on the information presented above and feedback received from members, the following set of options have been developed. The Taskforce are asked to consider these options with a view to deciding on an agreed way forward at the meeting on 9th December

A - Victims Taskforce consider there is currently a clear and compelling case for the introduction of a Victims Commissioner in Scotland.

B - Victims Taskforce consider there is currently no clear and compelling case for the introduction of a Victims Commissioner in Scotland.

C - Victims Taskforce consider there is currently no clear and compelling case for the introduction of a Victims Commissioner in Scotland but would make further recommendations on how victims' interests are represented.

D - Victims Taskforce consider further information/reaction is required in order to inform a decision.

E - Victims Taskforce consider this issue should be reconsidered at a future date, in light of particular circumstances (e.g. the context of the pandemic, or in light of further review of need/alternatives).

Victims Commissioner for England and Wales (established 2010)

This is a role defined by statute. It is independent of Government but appointed by the Justice Secretary in consultation with the Attorney General and Home Secretary and must produce an annual report to them and give advice when required to do so. The legislation prescribes that the Commissioner must promote the interests of victims and witnesses; encourage good practice in their treatment; and keep under review the operation of the Victims Code. The Commissioner may also make proposals for amending the Victims Code; make a report to the Justice Secretary or make recommendations to an authority within their remit.

The role is full time and was recently advertised at a £108,000 salary. The wider office which supports the Commissioner means a total cost of around £500,000 per annum. Dame Vera Baird was appointed to the role in June 2019 to become the third Victims Commissioner, following on from Baroness Newlove and her predecessor Louise Casey.

From 2015-2019 the Commissioner's office have published reviews and reports on: Restorative Justice; Provision of Registered Intermediaries; Children's Entitlements; Complaints and resolution processes; Victims of mentally disabled offenders; Criminal Injuries Compensation; anti-social behaviour; and a two part scoping review entitled 'Are Victims Satisfied?' Rapid evidence assessments of what works in supporting victims of crime and specifically on victims' advocates have been carried out. There has also been a particular focus on Victim Personal Statements with an annual report analysing offers and take up rates.

STRATEGIC AIMS 2019 - 2022

The VC is committed to ensuring victims are supported in coping and recovering from the impact of crime and are empowered to play a full part in the criminal justice system of England and Wales. This means they are able to access victim services that are tailored to their needs, they receive their entitlements as set out in the Victims' Code, and they are treated with respect and decency by all the agencies who come into contact with them.

She intends to work towards a Victims' Law, so that these aims become their legal rights and she wants to see the provisions of the Human Rights Act 1998 and the Equality Act 2010 utilised to ensure equality and diversity of provision and support.

She is further committed to championing the cause of victims in all forums where their interests are at stake, including Crown and Magistrates Courts, Coroners inquests, Parole Board hearings and Mental Health Review Tribunals.

She is determined to be a voice for all victims, and intends to inform her message to policy makers and service providers by reference to victims and witnesses' lived experience.

The VC has five key strategic aims:

A. Work with criminal justice agencies to ensure victims of crime are treated well, with a focus on the treatment of victims in the court room, so as to aid them to give best evidence as well as the support on offer to enable them to cope and recover from the impact of crime.

B. Monitor and report on criminal justice agencies' compliance with the requirements of the Code of Practice for Victims of Crime and the Witness Charter; identify areas that are deficient and make recommendations for change based on evidence of best practice; improve public awareness of entitlements.

C. Ensure the interests of victims and witnesses are fully considered at all stages in any proposals for development and/or change to the criminal justice system and its constituent agencies, including to victim support services and any related or other agencies whose activities may impact on victims.

D. Through regular contact with victims and practitioners of victims' services, articulate a view of the criminal justice system from the perspective of victims; contribute to, review and challenge decisions taken by policy makers and those responsible for developing practice.

E. Through gaining first-hand knowledge and understanding of victims' services, identify and actively promote examples of good practice and excellence.

Website: <https://victimscommissioner.org.uk/victims-commissioner/>

Victims Commissioner for London (established 2017)

This is a Mayoral appointment. The purpose of the role is to be an independent champion for victims and survivors of crime. This involves identifying and reporting on possible improvements to victims' experiences and ensuring the voice of victims are heard. The Commissioner is expected to produce an annual report, support the Deputy Mayor in providing oversight of the Met and provide challenge to the criminal justice agencies. The role is part-time (2.5 days a week) with an advertised salary of £45,000. The Commissioner published a Review of Compliance with the Victims' Code of Practice in March 2019.

The Commissioner's current work programme is:

- A wide-ranging consultation with survivors of violence against women and girls, to inform the Mayor's Violence Against Women and Girls Strategy (VAWG).
- A full victims' needs assessment via an in-depth survey to gather the views and feedback of victims of crime in London to inform future service provision and ensure all victims can access the support they need.
- An extensive review into rape cases and justice outcomes in London, to identify why cases take so long to get to court, why so many victims disengage from the process before the case can be concluded; and a thorough investigation into disclosure practices.
- Establishing a Victims Board comprising of justice agencies which supports the delivery of the commitments set out in the Police and Crime Plan and provides the opportunity for the victims' voice to be at the centre of decision making.

- Forming a Victims Reference Group for ongoing engagement with stakeholders including victims of crime to inform her work and the work of the Victims Board.
- Commissioning a new online resource for victims to act as a virtual 'one front door' to ensure that victims' can easily access comprehensive information, advice and the pathways available to them when they need it.
- Convening London's Victims' Summit, bringing together senior leaders from all justice agencies, voluntary and community groups, local councils and victims of crime, to galvanise a partnership effort to improve victims' experiences of navigating the justice system and support options post incident.
- Working closely with the Metropolitan Police Service to address recent findings of the decline in victim satisfaction rates, delivering on a suite of recommendations including 14,000 frontline officers receiving specialist victims care training and improving police correspondence & communication to victims.
- Working closely with the Ministry of Justice to help shape their Victims' Strategy and continuing to work with partners to ensure the Government deliver their recommendations outlined in strategy and fulfil their commitment in delivering a Victims' Law.

Website: <https://www.london.gov.uk/what-we-do/mayors-office-policing-and-crime-mopac/victims-commissioner>

Commissioner for Victims and Survivors – Northern Ireland

This is a statutory role tied to the legacy of the Troubles. The Commissioner's role is to promote an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests and to keep under review the adequacy and effectiveness of law, practice and services. The Commissioner provides advice to the Secretary of State, the Executive Committee of the Assembly and service providers on request or as appropriate. The Commissioner is required to consult with victims and survivors and to arrange a forum for this purpose.

Website: <https://www.cvsni.org/>

Commissioner for Victims Rights – South Australia

This is a statutory position appointed by the Governor. The primary focus of the Commissioner is to help victims in their dealings with the state's criminal justice system, public officials and public agencies.

The Commissioner has the following main functions:

- to marshal available government resources so they can be applied for the benefit of victims in the most efficient and effective way;
- to assist victims in their dealings with prosecution authorities and other government agencies;
- to monitor and review the effect of the law and of court practices and procedures on victims;

In line with these functions, the Commissioner can provide information, advice and support to South Australians who are harmed and their families and friends to deal with the physical, emotional and financial impact of crime. The Commissioner can also participate in certain criminal proceedings and consult on victims' grievances.

Website: <http://www.voc.sa.gov.au/>

Victims of Crime Commissioner – Victoria, Australia (established 2016)

This is an independent statutory appointment, acting as a central point of contact for victims of violent crime who have experienced difficulties or confusion in their dealings with the justice system. The Commissioner is responsible for advocating for the recognition, inclusion, participation and respect of victims by government and criminal justice agencies. They can inquire into issues that victims may experience with government, service providers or the justice system processes. They can report to the Attorney General on ongoing issues which apply to many victims of crime and advise on improvements required. The Commissioner cannot provide direct support or legal advice.

Website: <https://www.victimsofcrimecommissioner.vic.gov.au/about-us/the-victims-of-crime-commissioner>

Comparison of Commissioners in England and Wales (developed by MoJ Officials)

Victims'	Anti-Slavery	Children's	Proposed Domestic Abuse
Role			
To promote the interests of victims and witnesses; encourage good practice in their treatment; and keep the operation of the Victims' Code under review.	To encourage good practice in the prevention, detection, investigation & prosecution of slavery and human trafficking offenses, as well as in the identification of victims. Five priority areas: victim Identification & care; driving improved law enforcement and response; promoting best practice; private sector engagement to encourage transparency and combat labour exploitation and international collaboration.	To promote and protect the rights of children in England; through: advising on how to act compatibly with the rights of children; encouraging persons to take account of the views and interests of children; advising the SoS on the rights, views and interests of children; consider the potential effect on the rights of children of govt policy.	To stand up for victims of domestic abuse and their children, raise awareness, and monitor and oversee delivery of services. Could work with local areas to ensure that services provided, are as effective, evidence-based and safe as they can be.
Powers			
Can make proposals to amend the Victims' Code; make a report to the Justice Secretary; make recs to an authority within their remit; consult any person they think appropriate.	There is a statutory duty to co-operate with the Commissioner, who may request a specified public authority to cooperate in any way necessary for the purposes of the Commissioner's functions.	May do anything which appears expedient in connection with, the exercise of functions. May at any reasonable time enter any premises, other than a private dwelling, for the purpose of interviewing a child, or observing standard of care provided. Any person exercising functions of a public nature must supply such information as may be reasonably requested.	Publish information to showcase and share best practice, as well as to highlight where local provision falls short of what is expected; Require local public bodies to cooperate and provide information; Oversee the Domestic Homicide Review Quality Assurance process; Oversee compliance with the Specialist Domestic Abuse Courts Manual.
Recourse			
The VICTIMS COMMISSIONER may make proposals to the Justice Secretary for amending the Code – no requirement for the MoJ/criminal justice agencies to respond or accept recommendations or reports made by the VICTIMS COMMISSIONER.	The Commissioner may make recommendations to any public authority; undertake or support research; provide information, education or training; consult public authorities (including the VICTIMS COMMISSIONER), voluntary organisations and other persons; co-operate with or working jointly with public authorities (including the VICTIMS COMMISSIONER), voluntary organisations and other persons, in the UK or abroad. Reports must be laid before Parliament.	Bring any matter to the attention of either House of Parliament and publish a report on any matter considered or investigated.	Map and monitor provision of domestic abuse services against the National Statement of Expectations Publish findings in reports, which will be laid before Parliament. Provide recommendations accompanied with a duty on the responsible person/ organisation to respond to these recommendations.
Accountability			
Required to produce an annual report (which must be published by the Commissioner) on performance to the Justice Secretary, the Attorney General and the Home Secretary.	Must prepare a strategic plan as well as an annual report which both need to be laid before Parliament.	Must publish a business plan and an annual report which must be laid before Parliament.	Must produce a strategic plan and annual report, which must be published and laid before Parliament.