

Summary Justice Reform: Victims, Witnesses and Public Perceptions Evaluation

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This report presents the findings from an evaluation of victims', witnesses' and public perceptions of the reforms to summary criminal justice in Scotland. The evaluation took place between January 2010 and August 2011, and ran alongside separate evaluations of the specific reforms to direct measures, summary criminal legal assistance and disclosure, bail and undertakings, fines enforcement and lay justice.

Main Findings

- There was mixed awareness and understanding of the summary justice reforms. While professionals had some awareness, members of the public and victims and lay witnesses knew little of the reforms or the Scottish summary criminal system overall.
- When explained, most of the reforms were viewed positively by professionals and members of the public alike, and there was general agreement that the changes were a move in the right direction. There remained some scepticism about whether some of the specific reforms would meet the desired outcomes over time.
- In terms of **fairness**, there was a view among all groups that the system currently appears to favour the accused over victims and witnesses, and that the system is not geared up to support victims and witnesses through the justice process.
- **Effectiveness** was determined largely in terms of case outcomes and proportionality of sentences to the crimes committed. Repeat offenders were viewed by all as being treated too leniently in the current system.
- It was perceived that there was room for greater **efficiency** in terms of citing police, expert and lay witnesses to court only when necessary, and that adjournments and later guilty pleas may still be hindering attempts to reduce unnecessary inconvenience to witnesses across the board.
- Better communication about what is required of victims and witnesses involved in the system may be needed and, for victims, overall experiences seem to be heavily determined by having case progress and case outcome information. For members of the public, confidence in the system is driven by proportionate sentencing and fair treatment of victims and witnesses.
- There was a general feeling that case journey from incident to sentence or final outcome was perhaps **quicker** than pre-reform, although this was not resulting in overall positive experiences for victims and witnesses. Waiting times at court, the **complexity** of the system, and the perceived weighting of the system in favour of the accused remained key issues for both professionals and the public.

Aims and Objectives

The main aim of the evaluation was to explore the impact of the whole package of reforms on victims and witnesses, as well as to gauge public perceptions of the summary justice system, and the reforms overall.

In particular, the work sought to establish if a number of specific policy objectives that were set out for victims, witnesses and the public had been met. These were:

- improved effectiveness and speed of the system both court and non-court disposals;
- victims, witnesses and the public will see the reformed system as fair, effective, efficient, quick and simple;
- victim, witness and public confidence in summary justice will increase; and
- summary justice will be perceived to be credible by victims, witnesses and the public.

Methodology

The evaluation comprised review of key performance indicator data, alongside primary data collection by way of interviews with a range of stakeholders. This included victim and witness support, information and advice organisations (for example, Victim Support Scotland), police and expert witnesses (for example, forensic scientists), civilian witnesses and victims. An innovative deliberative workshop approach was used to obtain views from the general public, and produced some of the most robust data available to date on general public views of the summary criminal justice system in Scotland.

The work was undertaken in three case study Local Criminal Justice Board areas, these being Glasgow and Strathkelvin; Lothian and Borders; and Grampian. There was inevitable bias in the findings due to the unique experiences of those who took part and an element of self-selection. This aside, the report seeks to provide an in-depth insight into the views of those interviewed.

Main Findings

Awareness and understanding of the reforms varied considerably, both at the overall level and for specific areas of change. Police and expert witnesses and information, support and advice professionals were more informed than lay witnesses, victims and members of the public, for whom there was almost no awareness of the summary justice reforms and quite limited understanding of the system overall.

Different Stakeholder Perspectives

Among information, support and advice professionals, there was consensus that victims, and particularly witnesses, are still subject to inconvenience during their case due, primarily, to waiting times for trials to come to court, adjournments (colloquially known as ‘churn’) and waiting times in court. There was also consensus that the system was neither quick nor simple for victims or witnesses, and in some cases, the reforms had introduced new concepts which needed to be more clearly explained to victims. Fairness for victims and witnesses was still largely felt to be determined by case outcomes, although the way that victims and witnesses were treated in court had perhaps the greatest impact on overall perceptions of the system.

For police and expert witnesses, there was agreement that there was little change in terms of effectiveness or efficiency of the system overall. On speed, expert witnesses were the only group that did not consider that an increase in speed was necessarily desirable since it was adding to their work pressures. The biggest issue that remains for this group is inconvenience around citation to court.

For victims and lay witnesses, most did not perceive their journey from the incident to case closure to have been efficient or speedy, and participants cited examples of being called to attend on multiple occasions due to court business being cancelled at the last minute. Fairness was largely defined in terms of ‘appropriate’ outcomes for offenders and a key unmet need for victims was not knowing case outcomes. Even where people did know case outcomes, sentences were generally not perceived to be proportionate and so were considered unfair to victims. Fairness also seems to be perceived in terms of personal satisfaction with the outcome of the case for the victim or witness (including an apology or a sense of justice) and there is some evidence that people felt a need for personal or community compensation in order to believe that the system was truly fair. Most people did not consider the sentences awarded in their case (where known) to be ‘effective’ in deterring future offending.

For members of the public, proportionality seemed to be a key driver of whether the system was considered to be fair, with a view that sentences needed to fit the crime. The overwhelming view was that the accused received more favourable treatment in the system than either victims or witnesses.

Perceived high levels of re-offending also contribute to a general perception that the system is not as effective as it could be. A general lack of understanding translated in many cases to the conclusion that the system was not transparent.

View on Specific Reforms

Overall, there was general support for **direct measures** (including all measures used by the police and Fiscals). There was some feeling that fines present a lenient option in some cases, especially for repeat offenders and for those where the fine is easily affordable.

There were mixed views regarding early guilty pleas as a result of changes to legal aid. From an information, support and advice organisation perspective, the view was that both churn and waiting times in court have not improved as a result of changes to legal aid and disclosure regimes. Even though cases may be appearing in court more quickly, the actual court experience for victims and witnesses remained in need of improvement.

For members of the public, views of legal aid suggest that they prefer the new payment method to the old. However, the main point of contention for the public was whether early pleas should result in discounted sentences. The general feeling was that they should not.

Both police and expert witnesses also suggested that **disclosure** (of evidence) was impacting negatively on their workloads and that there was room to improve efficiencies. One of the main gaps in information and support for civilian witnesses was not being able to access statements that they had previously given to the police. Months will have passed between the incident occurring and the trial going ahead and they may not be able to recall what they said in their statements. This was perceived to potentially add to the intimidating prospect and anxiety of appearing in court as a witness.¹

Overall, changes to **bail**, including the more serious treatment of breach of bail, were not viewed as having the desired effect, and it was believed that many accused would simply choose to ignore bail conditions, regardless of the perceived consequences. There was general concern about the continued likelihood

¹ Sections 54 and 85 of the Criminal Justice and Licensing (Scotland) Act 2010 make provisions for statements to be made available to witnesses but this would not have been implemented or experienced by those interviewed at the time of the evaluation.

of breaches of bail by a core of accused, including the commission of other offences. There was also consensus that bail should not be given to people who have previously failed to comply with bail conditions.

Most of those consulted did not know anything about **undertakings** (police bail) but people agreed that they seemed to present a common sense approach and that their use was fairer to the accused than alternatives. Most stakeholders felt that breach of undertakings would continue to occur in some cases since they would not be taken seriously. As with bail, there was no appetite for allowing undertakings for people who have previously demonstrated a lack of willingness to comply.

The research identified confusion among victims over the **shift of business to JP courts**. Some victims had reported to support service staff that they felt their case had been 'downgraded' when it was heard in a JP court. For police witnesses, lay witnesses and victims, experiences of appearing in JP courts do not seem to have been positive and this is contributing to negative perceptions of the appropriateness of more summary cases being heard in JP courts.

Finally, although all those consulted were in favour of changes to the recruitment, training and appraisal of Justice of the Peace, there were some doubts about how representative of the community this group would ever be. Importantly, for members of the public, there was a poor understanding of the existence and role of JPs and JP courts at all, suggesting that this in itself might present a barrier to recruitment of a broad spectrum of Justices.

Messages for Policy

The reforms had specific ambitions for victims, witnesses and the general public and it was hoped that many of the system changes would indirectly impact on users to increase confidence and perceived credibility of the system. Whilst system users support the principles of the reforms, they still do not perceive that the system meets their needs.

For police and expert witnesses, the key messages seem to be that:

- there is still scope for increasing effectiveness of the system in terms of the guidelines around disclosure; and
- there is room for greater efficiency around citing witnesses to court.

For victims and lay witnesses it was felt that their experiences would be improved if:

- they were subject to fewer instances of repeat citation to court, and waiting times at court were kept to a minimum on the day;
- they were made to feel more valued during any court appearance experience;
- they could be kept separate from accused at court;
- they were kept up-to-date with case progress and supported throughout the system if required;
- explanations were given to them about the allocation of cases to different court jurisdictions;
- bail was not seen to be used in cases where previous breaches of bail were in evidence;
- sentences were perceived to more appropriately match the offence;
- cases were concluded as quickly as possible, and ideally within six months of the offence, whilst still being fair; and
- arrangements were made to always notify victims and witnesses of case outcomes in writing.

For members of the public, confidence in the system and perceived credibility may be further improved if:

- they perceived that tougher sentences were being used for repeat offenders;
- the system was more transparent so that the public had a greater awareness of the true prevalence of crime and victimisation, and understood better how sentencing decisions were made; and
- the system was seen to be more supportive of victims and witnesses throughout.

Across all groups, the system was perceived to be heavily weighted in favour of the accused and people felt that more could be done to improve

communications with victims and witnesses at all stages in the justice process. There also remains considerable room for improvement in the efficiencies of getting people to and through court.

Wider Lessons

The evaluation uncovered a number of key messages regarding victims' and witnesses' experiences which SJR was never set up to address. One such message is that victims' and witnesses' experiences are greatly affected by not knowing case outcomes. This is a long-standing gap, and is a key cause of frustration which may be leading to overall negative sentiments being expressed about the fairness, transparency and credibility of the summary criminal justice system.

Secondly, there remains considerable frustration for victims that their voice is not heard. This may be because they perceive that the questioning in court does not allow them to say what they wish, or because they do not routinely have an opportunity to meet with Fiscals to discuss the case before it goes to trial. Such expectations could be better managed to prevent some victims feeling that their views are not heard and they are not being sufficiently well represented.

Therefore, it can be said that some of the systems and practices that were altered as a result of SJR may have improved the experience for victims and witnesses overall. However, a step change is still required to result in overall positive experiences for victims and witnesses involved in the summary (and wider) criminal justice system.

Conclusions

The evaluation has provided evidence of which of the reforms are directly and indirectly impacting on victims to date. It has also provided valuable insight into the main issues that are important to victims, witnesses and the public with regards to the delivery of summary justice now and in the future.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.