



PE1455/A

PUBLIC PETITIONS PE1455:
RESPONSE FROM VICTIM SUPPORT SCOTLAND

What are your views on what the petition seeks?

Victim Support Scotland agrees that the public right to scrutinise the justice process is an important principle in a democratic society. Openness and transparency is vital to ensure the criminal justice system is held to account, and to ensure justice is done and is seen to be done. Making certain information more readily accessible may be important for improving confidence in the criminal justice system, both among victims and among the general public. **However, limitations and safeguards are necessary to ensure that, in applying the principle of open justice, the rights and needs of victims, witnesses and their families are given priority consideration and weighted fairly against the 'interests' of the public.** It must be borne in mind that victims may already be very distressed by their involvement in criminal proceedings, often compounding the distress already suffered as a result of the crime itself. Any decisions about making court documents available to the public must give due consideration and weight to the rights and needs of victims, witnesses and their family, such as their right to privacy, right to protection from harm and right to be treated with dignity and respect. It is in the interests of justice that the criminal justice system avoids placing victims at further risk of harm or distress.

We acknowledge that the courts are already 'open' for members of the public and the media to attend and report on the proceedings. We note that the petitioner is calling for *all* court documents to be proactively made available online, in full, to the public. This includes any documents not read out but '*referred to*' during court proceedings. Victim Support Scotland is already concerned by the use in some court proceedings by defence agents of highly sensitive personal information pertaining to victims, often bearing no relevance to the case, such as information about a victim's sexual history or personal character. We are also aware, as a result of our work piloting victim impact statements that one of the main concerns of victims is the possibility of the accused having access to the statement and being able to read and know potentially intimate details of the victim and how the crime impacted on them.

Victims and their families have the right to be protected from retaliation, threat, intimidation, and from repeat or further victimisation. **Criminal justice agencies should therefore have measures and safeguards in place to protect a victim's privacy.** Victim Support Scotland believes this should include measures such as only disclosing to the court and to the defence information that is **relevant to the case at hand.** **Victim Support Scotland believes personal details such as the victim's medical records and previous private activities unrelated to the crime should never be disclosed.**

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There is a real risk that public confidence in the justice system would diminish if individuals involved in criminal proceedings thought that others would be able to view information freely online.

What are the practical implications of making publically available the information set out in the petition?

Notwithstanding Article 8 of the European Convention on Human Rights which gives everyone the right to respect for his/her private and family life, publishing personal sensitive information online where it is open to public scrutiny and potentially held there indefinitely could seriously hinder a victim's ability to recover from their experience and could leave them open to threat, intimidation or harm. It could significantly compound the trauma already suffered by the crime and by involvement in criminal proceedings. We do not foresee instances arising where there would be a sufficiently compelling or overriding public interest to justify making such information publically available.

The petitioner seeks to address the concern about sensitive personal information by proposing a provision whereby 'parties' can apply for any sensitive information to be withheld from automatic disclosure. This would "specifically" have to be done "at the time of producing the sensitive information". Victims have no formal status in legal proceedings, so under this provision, may have no individual power to apply for the withholding of sensitive information about them. Should there be a move to publish court information online, Victim Support Scotland suggests consideration be given to provision which goes further; that is, that all sensitive personal information about a victim, witness or family member should be automatically excluded, or censored, from public disclosure.

By making documents and information readily available to the public, there is also a risk of victims finding out information specific to their case 'second hand' e.g. through the media, online or from members of the public. It is noted in the SPICE briefing accompanying the petition that "*journalists are already granted wider access to court documents in order to aid accurate reporting.*" Victim Support Scotland is concerned that this facilitates a situation whereby information on specific cases is communicated both to, and through, the media before it is communicated to the victim(s) to whom the case pertains. Currently, information often is not directly or proactively communicated to victims about proceedings in their case by criminal justice agencies. It is a very distressing situation for a victim to discover, only upon reading or watching their local news coverage, that the accused in their case has been acquitted or given a sentence which they may perceive to be unjust or which they might not understand.

Obligations and expectations regarding consent of 'data subjects', and the management and retention of information, in accordance with Data Protection legislation, presents some serious practical consideration which must be addressed. Who, for example, would be accountable for updating any

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information or data that is published online to ensure that it is accurate and who would people approach if they wanted data that was inaccurate removed as is a current right under existing laws? Many questions must be answered before consideration is given to making personal and sensitive data available to the public.

Unless a victim is able to be physically present in court throughout the trial, they will often find it difficult to follow proceedings in their case. Lack of information and poor communication is one of the key drivers of victims' lack of confidence in the criminal justice system. As such Victim Support Scotland believes there should be a duty on criminal justice agencies to take proactive steps to communicate case-specific information in a timely manner to victims in all cases. This should take precedence over making information available to the public.

The EU Directive establishing minimum standards on the rights, support and protection of victims¹ strengthens the rights of victims and enhances the role of the victim in criminal proceedings throughout Europe. The Directive aims to ensure that victims are recognised and treated in a respectful, sensitive, individual, professional and non-discriminatory manner. Relevant to the issue at hand, the rights of victims set out in the Directive include: ***right to understand and to be understood; right to receive information from the first contact with a competent authority; right to receive information about their case; right to protection of privacy.***

In relation to victims' right to information, the EU Directive states that Member States shall continually inform the victim regarding: *a) any decision ending the criminal proceedings, including reasons for that decision; b) on-going information throughout the criminal proceedings; c) the time and place of the trial; d) final judgment in a trial, including any sentence, including reasons for that decision; e) release of offender from detention*

Victim Support Scotland believes there is merit in making certain information about court proceedings available to the public. Greater clarity and openness of sentencing decisions including the process and factors leading to those decisions should help to improve the confidence victims, witnesses and the public have in the criminal justice system. However there has to be a distinction between provisions for informing the public about sentencing judgments and case-specific provisions for victims. For victims and witnesses, it is essential that information on sentencing decisions is accurate and communicated to victims in a timely manner. Enabling victims and witnesses to access this information readily will allow them to be proactive in obtaining the information relevant to their case. Specific information Victim Support Scotland believes would help victims and witnesses understand sentences better, include: *a summary of the factors that were taken into account in*

¹ DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

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deciding the sentence; what the sentence will mean in practice (e.g. how long will an offender spend in prison); possibilities for early release etc.

In summary, Victim Support Scotland supports the principle of 'open justice' providing there are **robust limitations and safeguards in place to prevent it from infringing upon the needs and protections of victims**. Priority must be given to making case-specific information readily available to victims in a timely and sensitive manner. Robust protocols and mechanisms should be in place to implement this. Any decision to make personal/sensitive information about victims publically available should only be made in consultation with the victim, giving due weight to their rights, needs and priorities. **Victim Support Scotland is opposed to making personal sensitive information about victims, witnesses and their families available to the public online.**