



Law Society
of Scotland

70
Years
1949-2019

ECBA Conference

Vulnerable Accused Person Project

1 October 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee is interested in issues regarding the vulnerable in the Scottish criminal justice system and is seeking to:

- raise awareness of the work on the vulnerable in the Scottish criminal justice system
- provide a focus on the vulnerable accused person.

Vulnerable Accused Person Project

Introduction:

The UK has an adversarial system compared to the European inquisitorial system. Exactly what difference that makes is not known.

The Scottish Government has been working actively on policies supporting the vulnerable witness.

"Vulnerable" witnesses are those likely to suffer significant risk of harm as a result of giving evidence. But what does this definition mean? In practice, it includes those who are victims of sexual assault, domestic abuse, trafficking and stalking and those under the age of 18.

As with other countries, our vulnerable witnesses are supported in court by the use of special measures (remote links and screens). What is important is to support that witness to provide their best evidence. Recently, the Vulnerable Witness (Criminal Evidence) (Scotland) Act 2019 will ensure more child-witnesses will be able to pre-record evidence to minimise distress and improve the quality of evidence by recording evidence at an earlier stage in proceedings for the most serious offences. That Act includes powers to extend the rule in time to vulnerable adult witnesses.

No-one would suggest that measures should not exist to support the vulnerable witness in giving evidence. Justice needs to be done quickly and to support them from “repeated” distressing and traumatic experiences. However, turning to the much broader question about the treatment of the vulnerable, there is a growing need to be able to identify and support the vulnerable accused person. Ultimately where there is inadequate support, miscarriages of justice may arise through unfairness, piecemeal approaches (with a post code lottery), delay within the court system, funding of the defence (Legal aid) and access to justice.

Many issues are like those affecting vulnerable witnesses. But the vulnerable witness focuses only on giving evidence whereas the vulnerable accused person must understand the court proceedings (physically and mentally), instruct legal representatives and give evidence if they elect so to do.

Initial work:

The Society decided for one of its Public Policy Committee projects to focus on the vulnerable accused person. There was a need for those who were accused of a crime in Scotland to be treated consistently and fairly. These recommendations suggested improvements to how vulnerable accused person are identified and progress through the criminal justice system and included:

- Development of a framework of understanding to be shared across the Scottish criminal justice system following a multi-agency review of definitions and interpretations of vulnerability
- A review of existing legislation, measures and practices, including ongoing consultations, in relation to vulnerable persons leading to the development of a central portal of knowledge and information
- A review of groups for whom there is limited support and representation within the Scottish criminal justice system
- A review of the prevalence of individuals with vulnerabilities in the Scottish criminal justice system and the types of vulnerabilities most commonly encountered
- A review of how the use of existing and innovative technology can better support information sharing and data protection

Our event was conducted as a roundtable event that brought together practitioners, representatives from the criminal justice organisations, third sector groups involved with vulnerable accused persons and Scottish Government policy officials. The roundtable considered vulnerable persons across the Scottish criminal justice system but focused on accused persons which was an area that has received less policy development attention.

Our then President Alison Attack said:

“the greater protections being developed for vulnerable witnesses are welcome, but we must not lose sight of how vulnerable people accused of criminal offences themselves experience the criminal justice system. Everyone accused of a crime is entitled to respect for their human rights but if vulnerabilities are not identified early on there is a risk people will not be treated consistently and fairly and can cause delay in the justice system.”

Subsequent work:

The Society's work continues in:

1. Seeking examples of good practice as well as examples where identification of vulnerabilities or the practicalities of providing support mechanisms in court led to inconsistencies in the way these issues were approached.
2. A further project "Ensuring fairness: a review of the existing legislation measures and practices concerning the vulnerable persons accused of criminal offences in Scotland." The aim is to produce a new report which is fully up-to-date and relevant for practitioners in making out any case for reform.

Next steps – Questions to ponder

Consider what role you play?

Could you do more to help those vulnerable accused persons at the outset?

Where should advice be available?

How would you identify vulnerability? What approach would you suggest? What definition?

Where should information be located to inform the vulnerable accused person?

We are interested in a comprehensive review of the existing legislation and practice with a UK and EU dimension. We welcome domestic and international examples from the defence and Crown perspectives highlighting issues arising in cases involving vulnerable accused persons.

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