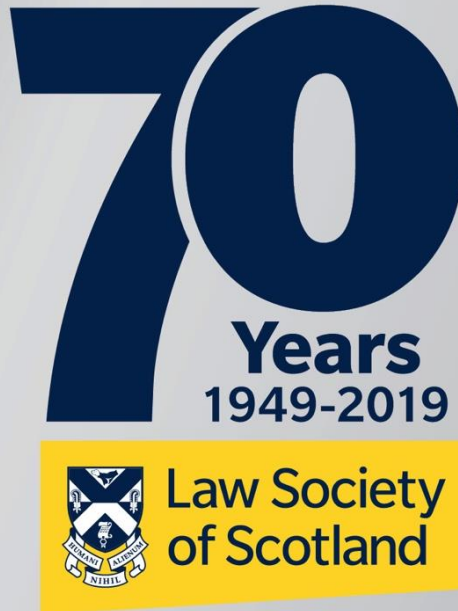




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“The Vulnerable Person in the Scottish Justice System: how do we respond?”

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“The Vulnerable Person in the Scottish Justice System: how do we respond?”

1. Introduction –Objectives/our Role
2. Why does vulnerability matter to the Scottish justice system?
3. The Society’s work
4. Questions of Definition
5. Now and Future
6. Questions

1. Introduction – Objectives

- To focus attention on vulnerability in the Scottish justice system with specific attention on criminal justice
- To consider why we should focus on the vulnerable person
- To consider who the vulnerable are in the Scottish justice system
- To consider what we can or should do more

1. Introduction – Our Role

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitor members.

It has a front-facing role with services extending to the public in:

- promoting law reform and
- protecting and promoting the rule of law.

2. Why does vulnerability matter to the Scottish justice system?



Possible problems arising from vulnerability

- Miscarriages of justice
- Unfairness
- Lack of clarity on processes
- Piecemeal or post code lottery - inconsistency
- Delay
- Expense
- Justice not being transparent
- Funding – legal aid
- Access to justice

Failure to identify?

Alice is an older lady who is arrested for shoplifting.

- **Why does early identification of issues matter?**
- **Whose responsibility is it to identify or transmit that information?**

Possible problems arising from vulnerability



Are the issues the same irrespective of the role in the criminal justice system?

Vulnerable accused

- Giving evidence in court
- Instructing their defence
- Understanding proceedings
- Participating in proceedings

Physical and mental
capacity

Vulnerable witness

- Giving evidence in court
- Attending Court
- Re- traumatised
- Retelling of story

Scottish Government's work

This work focuses on the vulnerable witness with the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 that received Royal Assent on 13 June 2019 <https://www.legislation.gov.uk/asp/2019/8/enacted>

Legislation ensures that child witnesses will be able to pre-record evidence which would support them in improving the quality of evidence to be recorded at an earlier stage in proceedings for the most serious offences

“ a milestone in Scotland’s journey to protect children as they interact with the justice systemwider work to strengthen support for victims and witnesses”

Advantages

- Not required to go to court. They do not have to give evidence in court. The exception to this would be if it is shown that this would significantly prejudice the interests of justice in the individual case.
- Questioning of the witness is still carried out by defence and prosecution lawyers, with a video recording being played during the trial.

The rule will cover criminal cases where the charge involves:

- murder, culpable homicide and assault to the danger of life
- rape and other sexual offences
- domestic abuse
- abduction and plagium (child kidnapping)
- human trafficking, slavery and female genital mutilation
- attempts

The Act includes powers to extend the rule to adult witnesses deemed to be vulnerable.

Scotland's Barnehus- Face of Future of child justice?



‘barnehus’ or ‘children’s house’ model, where children are able to give evidence in a dedicated building with a normal, home-like feel rather than, for example, a police station.



3. The Society's work on the vulnerable accused person

Milestones:

- Roundtable event in November 2018
- Report published on April 2019

<https://www.lawscot.org.uk/media/362501/vulnerable-accused-persons-report-final.pdf>

- Stage 2 project commenced

“Ensuring fairness: A review of the existing legislation measures and practices concerning vulnerable persons accused of criminal offences in Scotland”

- Report and conference due 2020

Vulnerable Accused Person Report

Recommendations:

1. 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
2. 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
3. A review of groups for whom there is limited support and representation within the Scottish criminal justice system
4. A review of the prevalence of individuals with vulnerabilities in the Scottish criminal justice system and the types of vulnerabilities most commonly encountered
5. A review of how the use of existing and innovative technology can better support information sharing and data protection



“Ensuring fairness: A review of the existing legislation measures and practices concerning vulnerable persons accused of criminal offences in Scotland”

Purpose and intent of the project

- Comprehensive review of existing legislation and practice and will be include a comparative EU and UK perspective
- Basis to argue for legal reform
- Seeks to focus attention to an area which is a significant cause for concern
- Less attention over the years

5. Questions of definition

- Who is included as the vulnerable in the Scottish criminal justice system?
- How should we identify them?

Who is included as the vulnerable in the Scottish criminal justice system?

Identified or Defined by

Dictionary

“exposed to the possibility of being attacked or harmed, either physically or emotionally.”

Statute

Section 42 of the Criminal Justice (Scotland) Act 2016

“where owing to a mental disorder the person appears to the constable to be unable to:

(i) to understand sufficiently what is happening and or (ii) communicate effectively with the police”

Identified or Defined by

- Equality Act 2010

“Protected
characteristics”

Any issues?

- Other ways:
- Homelessness/Poverty
- Dependence issues
- Immigration status
- Transient/permanent
- Adverse Childhood effect
- Language

5. Now and future

We are looking for examples from both perspectives, defence and Crown, which highlight the issues that arise in cases involving vulnerable accused persons. The more examples or information that you provide, the more it will identify the practices and concerns which will help frame the report.

Helpful for examples to include:

- how the situation arose;
- what was done, and by whom;
- when the situation occurred (to ensure the report is up-to-date examples from the past 12 months are preferred);
- the court or sheriffdom it occurred in.

Consider Alex

Alex is upset at a recent bereavement and goes to a relative's grave. It has been damaged. Alex picks up the temporary wooden marker- runs down the road shouting and swearing and brandishing the marker. Members of the Public are upset and frightened by the actions.

The police are called.

Alex is charged despite comments such as being upset and not fully understanding.

Is Alex vulnerable? What information do you require to make that assessment? What effect may that identification have on Alex's future?



Any Questions



Law Society
of Scotland

Thank you