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Report – Vulnerable Accused Persons

Report following roundtable event on how to achieve effective stakeholder communication of information for vulnerable persons across the Scottish criminal justice system

29 April 2019



Executive Summary

The Criminal Law Committee of the Law Society of Scotland held a roundtable event on 16 November 2018 to consider how to achieve effective stakeholder communication of information for vulnerable persons across the Scottish criminal justice system. The roundtable focused on vulnerable accused persons as there appears to be significantly less policy development attention devoted to these individuals. However, the issues identified and recommendations made in this report apply to all vulnerable persons.

Vulnerable persons engage with the Scottish criminal justice system in a number of ways as a witness, victim or accused person. To individuals who may be unfamiliar with the criminal justice system it can be difficult to understand the processes, procedures and technical or legal language. Every accused person is entitled to respect for their human rights. However, some persons who have a vulnerability are not immediately identified in the criminal justice system. This could affect the way in which a vulnerable person is dealt with, depending on where they live and their individual involvement and familiarity with the system.

The roundtable considered three themes:

1. Identification of vulnerable accused persons and their needs
2. The progress of a vulnerable accused person through the criminal justice system
3. Flow of information (data) about a vulnerable accused person through the criminal justice system

Following the roundtable, five key recommendations have been identified as practical steps to be taken forward in the short and medium term. We have suggested that the ownership of a number of the recommendations would lie best with the Law Society. However, to gain the maximum effect, the Scottish Government may be best placed to co-ordinate and lead on other recommendations. We will discuss who is best to lead on each of the recommendations with all interested parties.

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

Introduction

The Law Society is the professional body for 12,000 Scottish solicitors and has a statutory duty to work in the public interest where that role includes influencing the creation of a fairer and more just society. Our members, both as defence solicitors and solicitors acting for the Crown, are involved in interacting with and representing vulnerable persons through each stage of their criminal justice journey, mainly by providing information, legal advice, and support. Our members must act in the best interests of their clients.¹

Our Criminal Law Committee held a roundtable event on 16 November 2018 to consider how to achieve effective stakeholder communication of information for vulnerable persons across the Scottish criminal justice system. We would like to thank all of the organisations and individuals who participated in the roundtable and who have given their support following its conclusion.

Vulnerable persons engage with the Scottish criminal justice system in a number of ways as a witness, victim or accused person. To individuals who may be unfamiliar with the criminal justice system it can be difficult to understand the processes, procedures and technical or legal language.

Criminal justice procedures and practices that include provisions for vulnerable accused persons are set out in the evolving body of caselaw along with legislation, rules and guidance. It appears that the successful operation of the system relies much on the goodwill and informal practices of those involved in promoting the principles of fairness. There is little consistency.

The Scottish Government is committed to putting supports in place for vulnerable witnesses. These include existing and future legislative measures such as the Vulnerable Witnesses (Criminal Evidence) Bill² that is currently progressing through the Scottish Parliament.

The problems that arise generally in the criminal justice system are exacerbated when considering the needs and challenges faced by a vulnerable accused person. Every accused person is entitled to respect for their human rights. However, some persons who have a vulnerability are not immediately identified in the criminal justice system. This could affect the way in which a vulnerable person is dealt with, depending on where they live and their individual involvement and familiarity with the system.

¹ Rule B.1.4 of the Law Society of Scotland Code of Criminal Conduct www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-b/rule-b1/rules/b1-4-the-interests-of-the-client/

² [www.parliament.scot/S5_Bills/Vulnerable%20Witnesses%20\(Criminal%20Evidence\)%20\(Scotland\)%20Bill/SPBill34S052018.pdf](http://www.parliament.scot/S5_Bills/Vulnerable%20Witnesses%20(Criminal%20Evidence)%20(Scotland)%20Bill/SPBill34S052018.pdf)

Safeguards such as the right to a fair trial are set out under Article 6 of the European Convention on Human Rights, which also includes procedural safeguards such as being informed promptly, with sufficient detail, of the nature and cause of the accusation in a language which the accused person understands.³

The roundtable was designed to focus on developing a number of themes, including enhancing an understanding of the issues that affect vulnerable accused persons, ascertaining what and where evidence exists for change, the identification of good practice, raising awareness of the issues, suggesting practical solutions and considering ways in which better consistency of practices could be promoted and developed. This is particularly pertinent at a time when public resources are limited and constrained. It aimed to identify the salient issues from a practical perspective with a view to producing a report as an output from this event.

The roundtable focused on vulnerable accused persons as there appears to be less policy development attention devoted to these individuals. However, the issues identified, and recommendations made in this report apply to all vulnerable persons.

Invitations to attend were sent to a range of interested parties including the criminal justice organisations,⁴ representatives of the third sector organisations involved with vulnerable accused persons and policy officials from the Scottish Government. The roundtable considered three themes:

1. Identification of vulnerable accused persons and their needs
2. The progress of a vulnerable accused person through the criminal justice system
3. Flow of information (data) about a vulnerable accused person through the criminal justice system

³ The requirement to a fair trial is enshrined in Article 6 of the European Convention of Human Rights www.echr.coe.int/Documents/Convention_ENG.pdf

⁴ These include Crown Office and Procurator Fiscal Service (COPFS), Scottish Prison Service, Scottish Courts and Tribunal Service and Police Scotland. The event was chaired by Sheriff Duff, Director of the Judicial Institute

Chapter 1: Identification of vulnerable accused persons and their needs

Scottish criminal justice system

The Scottish criminal justice system is adversarial in nature. Identifying vulnerability is relevant to all stages of the criminal justice system. The four stages are illustrated below:

Stage 1: From the first interaction with the criminal justice system to the report

This is usually but not necessarily with the police. Includes assisting with police inquiries and police investigations; interview; charge and arrest; and release on police undertaking; or being held in custody.

Stage 2: From the report from Police Scotland to COPFS

A decision is taken on whether there is sufficient evidence to prosecute.⁵ Diversion measures may apply at COPFS's discretion. Following this decision, a vulnerable accused person is cited or appears in court until the conclusion of the court proceedings through acquittal or conviction⁶.

Stage 3: From conviction including the passing of sentence

This covers the implications for vulnerable accused persons regarding the sentence imposed⁷. Considerations include how to ensure an accused person can participate effectively in court and consideration of currently available defences⁸ to the determination of sentence. For example, this may be custodial or community disposal.

⁵ In accordance with the COPFS Prosecution Code www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Prosecution20Code20_Final20180412_1.pdf

⁶ Cases may of course be deserted pro loco or simpliciter

⁷ The Scottish Sentencing Council provides information on how judges sentence. Exactly how vulnerability fits into sentencing is a matter for the judge to consider. As part of the roundtable event, mention was made of the role and recognition that Adverse Childhood Experience (ACE) is now a factor to consider. ACE is defined as "intra-familial events or conditions causing chronic stress responses in the child's immediate environment. These include notions of maltreatment and deviation from societal norms." ACE has been found to have lifelong impacts on health and behaviour. Further exploration lies outwith the scope of the roundtable.

⁸ These include insanity and loss of control defences such as diminished responsibility, self-defence and provocation. The roundtable did not explore these defences in detail as they form part of criminal evidence and the provision of legal advice. These defences are being considered by the Scottish Law Commission programme of work on homicide - www.scotlawcom.gov.uk/law-reform/law-reform-projects/homicide/. The roundtable focused on issues specifically involving the wider public perspective. Our recommendations recognise the role of defences in relation to definition within existing legislation and at common law.

Stage 4: Post sentence

This stage covers the period from the passing of any sentence to the re-integration of the accused person back within society.⁹

The successful identification of vulnerable accused persons at the earliest possible stage has a significant impact on the outcome of criminal proceedings and in achieving justice in the criminal justice system. A range of problems may arise where that identification is not made timeously, such as potential delays in the court process.

Identification of a vulnerable accused person

The question of ‘what is vulnerability?’ was considered during the roundtable. The understanding of vulnerability is continuing to evolve, partly in response to changes in society and better understanding of the wide range of vulnerabilities that may affect a person and prevent them from participating fully and effectively in the process.

One useful starting point is provided by a statutory definition of vulnerable accused persons for whom support is to be given, as provided in Section 42 of the Criminal Justice (Scotland) Act 2016:

“where owing to mental disorder¹⁰, the person appears to the constable to be unable to (i) understand sufficiently what is happening, or (ii) communicate effectively with the police.^{11”}

The consensus from attendees at the roundtable was that there is no common understanding of what vulnerability is or what triggers a need for support. The decision-making process is inevitably subjective and may vary from person to person, between different criminal justice organisations and at what stage in the process a decision as to support requirements is made. An individual’s vulnerability can also change over time.

⁹ A sentence can only be passed once the facts of a case have been heard by the judge in a court and the vulnerable accused person has been found guilty of the crime that they were accused of committing. The judge then determines the type of sentence recognising the need to impose punishment, the reform and rehabilitation of the vulnerable accused person and the need for public protection.

¹⁰ Section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003

¹¹ Section 42 of the Criminal Justice (Scotland) Act 2016

Within the police station processes (stage 1 above), recognition of vulnerability identified on any criteria or basis by the police should trigger the requirement for the attendance of an Appropriate Adult. The Appropriate Adult will attend at the police station to support the vulnerable accused person. The Criminal Justice (Scotland) Act 2016¹² has enhanced and consolidated the rights of a vulnerable accused person to have a solicitor present during their interview. An Appropriate Adult and a solicitor may require to attend the police station where there may be a degree of overlap between their roles. Consideration of the role of Appropriate Adults is part of ongoing work being led by the Scottish Government. There is a need for both to understand their respective roles and the extent of their professional responsibilities in supporting and representing the vulnerable accused person. Adequate remuneration is required for individuals providing these services, especially as they are now required during the day and night, 365 days a year.

Within the court environment (stage 2 above), any decision on vulnerability should involve the need for practical measures to be put in place which may include restricting the length of the court day, support in court, possibly through an interpreter and practical measures to support a vulnerable accused person when giving evidence.

A distinction may be drawn between a vulnerable accused person and a vulnerable witness. The factors that require a person to be identified as a vulnerable accused person are based on their own characteristics and vulnerabilities. Each vulnerable accused person's case should be considered on an individual basis, irrespective of the nature or seriousness of the alleged crime or offence.

The measures developed to protect a vulnerable witness tend to include additional consideration of external factors such as the nature and type of trial.¹³ For instance, trials involving significant intimate details automatically trigger consideration of the need for utilising special measures in court.

Age, mental health, learning difficulties, communication problems and physical impairment are all readily identifiable terms that may trigger and allow an assessment of vulnerability to follow. These factors reflect the "protected characteristics" as defined in the Equality Act 2010. These could provide a starting point for considering vulnerability, but the roundtable discussion highlighted that this alone may not fully address the issue. Attendees at the roundtable confirmed that there are no clear guidelines on what account and

¹² In force since January 2018

¹³ High Court of Justiciary "Taking evidence of a Vulnerable Witness by a Commissioner (Practice Note No 1 of 2017)

relevance should be placed on alcohol or substance abuse, fear, minority interests, Adverse Childhood Experience (ACE), distress and homelessness in establishing vulnerability.

We recommend consideration is given as to which members of society would benefit from additional support as a result of vulnerabilities that may not have been as prevalent or recognised previously in the Scottish criminal justice system, for example ACE.

Identification of, and support for, accused persons with more than one vulnerability can create further complexity within the criminal justice system. A vulnerable accused person may be concerned about being stigmatised as vulnerable. They may perceive that it will cause issues for them outside of the criminal justice system. They may also perceive it causing problems with the suspected offence (such as police screening questions around whether the individual is under the influence of alcohol, on drugs or a suicide risk). They may decline support that has been offered. Ensuring fairness, which is the overall objective of the criminal justice system, may be challenging to achieve as a vulnerable accused person must be respected and have their human rights observed when declining support or assistance.

Consideration of vulnerability should not be restricted to only those individuals with noticeable and identifiable conditions. Anyone who interacts with the criminal justice system may be vulnerable at any given time. Support for vulnerability is required consistently from the criminal justice system in order to achieve the interests of justice. Support requires to be tailored to the individual's requirements rather than the application of a one-size fits all approach. A vulnerability of an unrepresented accused person who has pled guilty to a charge may not be identified until or unless they personally appear in court for sentencing¹⁴.

Vulnerability cannot be assumed to exist as a result of one factor taken in isolation, such as age. For example, one 70-year-old person may be fully fit to engage in the process, but another 30-year-old person may not be and may require additional support based on an identified vulnerability. The issue to be considered is the capacity of the individual rather than focusing solely on a particular characteristic or condition.

We have already participated in European initiatives such as developing Scottish police station interview training for solicitors.¹⁵ We are participating in the adaption of that training to meet the challenges for

¹⁴ In a road traffic case where the accused person has pled guilty, sentence may be deferred for their personal appearance to consider matters relating to their fitness to drive.

¹⁵ This refers to the train the trainer event to deliver "Supralat" inspired training for solicitors undertaking police station interviews. JUSTICE Scotland also produced a report on legal assistance in the police station - - <https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/JUSTICE-Scotland-Legal-Assistance-in-the-Police-Station.pdf>

solicitors in supporting vulnerable persons, in particular a vulnerable accused person, and vulnerable persons who require the support of interpreters.

There is scope for the Scottish Government to develop a framework of understanding to be shared across the Scottish criminal justice system following a multi-agency review of definitions and interpretations of vulnerability.

Needs of a vulnerable accused person

The discussion from the roundtable suggested a lack of clarity of what the criminal justice system expects from a vulnerable accused person and what a vulnerable accused person can expect from the criminal justice system in return.

Understanding what a vulnerable accused person requires by way of support to be able to participate effectively and to make fully informed decisions in relation to the different stages of the criminal justice system is essential.

All individuals ought to understand whether they require to answer any questions at the police station, the right to remain silent during a police station interview¹⁶ and the nature of the charge(s) against them.

At court, all individuals should understand whether to plead guilty or not guilty and the implications of this¹⁷, be able to provide instructions to their representatives when legally represented¹⁸, the nature of court proceedings, the process for giving evidence and the consequences of their decisions or instructions.

As a participant at the roundtable said: *“a vulnerable accused person is not a parcel to be passed along the criminal justice system but should be an active participant engaged with the options around the case and any adjustments”*.

A vulnerable accused person who lacks capacity or competence should not necessarily be the subject of a conventional prosecution or trial procedure. It may be relevant to put a plea in bar of trial in respect of

¹⁶ Section 261ZA of the Criminal Justice (Scotland) Act 1995 has implications as to the evidential standing of any statement made during the police interview.

¹⁷ There should be no pleas of convenience. All judges require to ensure that the accused person understands what they are pleading guilty to and that they accept their guilt.

¹⁸ An unrepresented vulnerable accused person may require support and assistance from the judge in providing explanations and in understanding proceedings.

insanity.¹⁹ Discussion of these alternative measures lay outwith the scope of the roundtable but may be an issue which warrants further consideration.

Identification and quantification of individuals with vulnerabilities who interact with the Scottish criminal justice system are hard to establish with any accuracy as each organisation defines vulnerability differently. That makes any detailed research and consideration of data or statistical analysis difficult to undertake.

We recommend that data is collated to ensure that any proposed future reforms are based on a complete understanding of the number of vulnerable accused persons appearing in the Scottish criminal justice system, the stage of the process when any vulnerability is identified, and the range and types of vulnerabilities most commonly encountered.

Provision of information

The identification of a vulnerable accused person is only the first step. Equipping those involved in the criminal justice system with the necessary skills and knowledge of how to (1) identify and (2) assist and support is essential. Naturally, each organisation involved in the process provides its own in-house training.

While there is also much to commend the current level of training, there would be benefit from considering the development of a central portal of knowledge and information available to all. The portal could contain training materials, data and research on best practice and appropriate guidance. This would be supported and informed by input from those representing vulnerable groups and the criminal justice organisations. In order to help inform this development, we recommend a systemic review is undertaken of all criminal legislation and practices currently in place to support vulnerable persons. This review could be informed by developments in the civil justice context where the participation of vulnerable persons in civil disputes includes courts, tribunals, ombudsmen, complaints processes and internal reviews across a huge range of different practice areas.

Clear, practical and accessible information would ensure and permit a better understanding of what the potential vulnerabilities are. This would support the development of specialist training for organisations and as a resource for organisations themselves. It would provide a similar function for individuals and organisations who engage with, and on behalf of, vulnerable accused persons. Further discussions between criminal justice organisations and the third sector organisations would be beneficial in

¹⁹ Section 168 of the Criminal Justice and Licensing (Scotland) Act 2010

ascertaining what comprises best practice and what training would be most appropriate to develop. Consideration should also be given to individuals who are not legally represented so that vulnerabilities can be readily identified and appropriate information and support provided. Information to support an unrepresented accused is already available from various organisations, including the Scottish Courts and Tribunals Service. The roundtable discussion identified a need to review currently available information to ensure it provides tailored information for all individuals who interact with the criminal justice system, including the vulnerable accused person.

Chapter 2: The progress of a vulnerable accused person through the criminal justice system

An awareness of the potential for vulnerabilities to exist, and identification of them, should be considered at all stages of the criminal justice system.

When a vulnerable accused person arrives in police custody, they will be asked a number of detailed questions to identify what their social and welfare needs are.²⁰ The questions seek to identify if they are at risk of self-harm or require medication. These procedures need to be carried out effectively by police officers who are appropriately and adequately trained. That training should be broadened to include identification of any vulnerabilities. Consideration of the adoption of processes similar to those in England and Wales may assist in developing best practice in this area of police procedures. Cornwall²¹ has been identified as an example of the police involving paramedics in undertaking such assessments within the police station. This brings a medical background to such complex assessments.

Investing in resources upfront will help obtain the relevant information and inform decisions to be taken later, both by the police and COPFS. The police station environment itself presents stressful circumstances and time constraints which may not be conducive to carrying out the necessary risk assessments of persons being arrested and in identifying vulnerabilities such as mental illness, learning disabilities, alcohol and drug withdrawal and suicidal assessments. Other issues may include:

- Children and individuals with mental illness being held in custody because there is no alternative provision available
- A vulnerable accused person refusing to engage in any screening processes at the time of the police investigation, either without or with legal advice
- Concerns that information such as alcohol or drug habits or consumption may be used in any future proceedings

The role of the police in ascertaining whether an individual has vulnerabilities and, separately, in obtaining evidence in relation to the charge could lead to individuals resisting the disclosure of such issues. It may be perceived by an individual that any issues that are voluntarily disclosed during an assessment into vulnerability could be used against them during any subsequent criminal proceedings.

²⁰ www.slab.org.uk/common/documents/PoliceScotland/3_CJA_2016_xArrest_Processx_Standard_Operating_Procedure.pdf

²¹ Information provided by a participant at the roundtable event on 16 November 2018

All cases are reported by the police to COPFS, as the prosecuting authority in Scotland. COPFS assess whether there is a sufficiency of evidence to establish if a crime has been committed, and to decide whether prosecution is merited in the public interest. As well as outlining the facts and circumstances of the case, the police report should identify and detail the nature of any vulnerabilities, if known, and any support measures which may be required relating to prosecution decisions and support measures required for the individual.

A range of measures such as diversion, direct measures²², written or face to face warnings, fiscal fines, compensation and work orders exist where prosecution is not considered to be appropriate. The COPFS Prosecutorial Code²³ sets out the relevant factors to be considered which include the nature and gravity of the offence and the impact of the offence on the victim or witnesses. Of specific relevance to the context of the roundtable discussion are consideration of the age, background and circumstances of a vulnerable accused person.

If the police report has not identified that the person has a vulnerability, there may be future adverse outcomes for the criminal justice system as decisions are taken without the correct information. These outcomes range from delay to an eventual potential miscarriage of justice. Even where the vulnerability is identified, there may still be a need to obtain additional expert reports from specialists such as psychologists as to the effect of any condition or cognitive ability and how best to manage these during the court processes. Such reports can be instructed by either the Crown or the defence.

The roundtable identified an increasing recognition of the relationship between criminal offending and health. The majority of offenders with lower-level mental health disorders who are not deemed to be a risk to the public may be better treated outside the prison system.

Information on the number of decisions not to prosecute based on vulnerability in Scotland can be hard to obtain. In England and Wales, the Crown Prosecution Service revealed that 1,892 criminal cases were dropped during court proceedings at courts in England and Wales in 2014 due to the “significant ill-health,

²² www.copfs.gov.uk/about-us/what-we-do/10-about-us/297-alternative-to-prosecution

²³ www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Prosecution20Code20_Final20180412_1.pdf

elderliness or youth” of a defendant.²⁴ These factors may become more significant as the age of the Scottish population continues to increase.

The role of the judge in managing cases is important, especially where a vulnerability is suspected but not yet confirmed or if a vulnerable accused person is unrepresented.

A trial judge can put in place a number of supporting measures for vulnerable accused persons to encourage and facilitate their participation in the trial process. This ensures a vulnerable person (witness, victim or accused) provides their best evidence, understands all proceedings and engages fully. The various stages in the trial process should, so far as necessary and where possible, be adapted to meet those ends. The judge has many measures at their disposal through application by the Crown or the defence that include the use of pre-trial proceedings,²⁵ court-based technology, and practical arrangements such as the use of interpreters and the physical court arrangements. For example, reference was made during the roundtable to a German case involving the prosecution of a guard at a concentration camp where the court was only sitting for two hours a day to accommodate the needs of the vulnerable accused person²⁶. Judges ensure that those who appear before the courts are treated with respect and impartiality²⁷.

The Scottish criminal justice system does not currently use intermediaries²⁸ which play a significant role in court proceedings in supporting a vulnerable accused person in England and Wales. Again, the further examination of court practices lay outwith the scope of the roundtable but may be an issue worthy of further investigation.

²⁴ <https://www.mirror.co.uk/news/uk-news/numbers-suspected-criminals-avoiding-prosecution-6600895>

²⁵ The Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill proposes to introduce a legal requirement for a Ground Rules Hearing when a Commissioner has been appointed. It may be a separate hearing or part of another hearing such as preliminary hearing.

²⁶ <https://uk.reuters.com/article/uk-germany-warcrimes-idUKKCN1NI1PO>

²⁷ Equal Treatment Bench Book www.scotlandjudiciary.org.uk/Upload/Documents/EqualTreatmentBenchBookMarch2018.pdf

²⁸ A person who helps a witness or a defendant with communication. An intermediary is a communication specialist, to help a witness or defendant understand the court process and give their best evidence. <https://yjlc.uk/intermediary/>

Chapter 3: Flow of information (data) about a vulnerable accused person through the criminal justice system

Attendees at the roundtable recognised that there was a need to share information about a vulnerable accused person in a more efficient and effective way.

The requirements of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 are always present when considering the transfer of information about vulnerable persons. This has implications for all organisations storing and sharing personal data, especially sensitive personal data.

Data is at the heart of the criminal justice system. Information is captured at different points by a variety of agencies who use it to help make important and informed decisions. As the data is held in large, disparate systems owned by different agencies, such as Police Scotland, COPFS, Scottish Courts and Tribunals Service and Scottish Prison Service, effective data sharing is challenging and access to the relevant information may not always be to hand. Such systems are expensive to maintain, hard to upgrade and the information recorded is only as accurate as what is provided.

Prior to the roundtable, organisations representing vulnerable accused persons were contacted to find out the extent of this issue of data-transfer in order to facilitate discussion.

One practical solution discussed during the roundtable was the production of a “passport” for a vulnerable accused person. It would contain relevant information, possibly taken from existing police records and prison records, and identify measures that could be used (or had been used) to assist their journey through the criminal justice system. It was highlighted that this approach would be limited to individuals with vulnerabilities that have already been identified and would not assist individuals who are entering the criminal justice system for the first time. It would also not assist in identifying changing or new vulnerabilities or when there was an increased or reduced need for support. There may also be challenges around data retention under GDPR as it may be argued that the only reasonable ground to retain the data would be the assumption that the person would interface with the criminal justice system again.

Further detailed consideration of this issue lay outwith the scope of the roundtable, but we recommend further review and collaboration. There is scope in exploring the use of technology to ascertain the most appropriate, effective and cost-efficient way of sharing information about a vulnerable accused person as they progress through the criminal justice system. For instance, in England and Wales, we are aware of electronic information sharing platforms to organise medical assistance for suspects detained in custody and to ensure sufficient information to provide effective intervention. The digital landscape is being

considered by the criminal justice system through, for example, the Criminal Evidence and Procedure Review²⁹ and moves towards a digital evidence vault.

²⁹ <https://scotcourts.gov.uk/evidence-and-procedure-review>

Conclusion

The Scottish criminal justice system is complex and involves a range of interactions between vulnerable accused persons and the organisations with whom they come into contact. The issues faced by Scotland in securing access to justice and a fair system are not unique. The representatives of the Law Society of England and Wales and the Law Society of Ireland outlined their experiences which were substantially similar and of interest from a comparative perspective.

Every organisation at the roundtable had the opportunity to consider their own role and interests within the criminal justice system. By identifying some of the areas where processes, procedures and information could be improved, it is hoped that this report will assist by raising awareness of the issues, promoting discussion and facilitating consideration of improvements that could be made in support of vulnerable accused persons.

Solutions or improved processes need not necessarily require legislative initiative but can be achieved by developing frameworks or memoranda of understanding. Third sector organisations representing vulnerable accused persons have a role to inform and help underpin the development of improvements through the faster identification of vulnerable accused persons, provision of training³⁰ of those involved to enable them to identify vulnerable accused persons and provide and ensure ongoing support to vulnerable accused persons as they progress through the criminal justice system.

Achieving a balance between addressing the identification and needs of a vulnerable accused person who has the benefit of the presumption of innocence and to the objectives of law enforcement is challenging. There is a benefit in exploring what alternative supportive measures can be made available for vulnerable accused persons that do not hinder the effective administration of justice.

One size does not fit all. Each vulnerable accused person needs to be treated as an individual. Best practice involves the concept of universal design which is non-discriminatory as it does not require identification of particular characteristics and avoids allowing people to slip through the net. There should be consultation with those affected to ascertain what reasonable adjustments are required. The effect of reasonable adjustments also requires to be considered in the wider criminal justice context.

³⁰ Article 13.2 of the UN Convention on the Rights of the Persons with Disabilities Article-13. 2

www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-13-access-to-justice.html sets out the promotion of the training obligations for all those engaged in the administration of justice to secure the effective effective access to justice for persons with disabilities on an equal basis with others. The police and prison officers are specifically mentioned.

Events such as the roundtable should assist in the raising of awareness and assist in highlighting the issues.

Successful changes and improvements cannot be achieved immediately. The challenge from the roundtable is to ensure that momentum is not lost and that organisations continue to discuss these issues and consider how best to remedy them, both individually and collectively. This will form part of wider societal policy considerations for the criminal justice organisations.

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