

scottish justice matters

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SPECIAL ISSUE ON DESISTANCE

Edited by
Fergus McNeill

ALSO

Mike Nellis on
Electronic Monitoring

Andrew Coyle on
early prison reform in Scotland

Bernadette Monaghan on
Children's Hearings

Interview with
HMIP David Strang



DESISTANCE

MOVING ON: DESISTANCE AND REHABILITATION

Scottish Justice Matters is a publication of the Scottish Consortium of Crime and Criminal Justice (SCCCJ). The Consortium is an alliance of organisations and individuals committed to better criminal justice policies. It works to stimulate well informed debate and to promote discussion and analysis of new ideas: it seeks a rational, humane, constructive and rights-based approach to questions of justice and crime in Scotland.

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Victims' rights:

The new 2012 EU Directive and its impact on victims in Scotland

Frida Wheldon

VICTIMS' RIGHTS in Europe have never been stronger, in part because of the leadership of the Vice-President of the EU Commission, Viviane Reding. This article looks at the advancement of European victims' rights and what the new standards, which must be implemented by November 2015, will mean for victims of crime in Scotland.

Background

Despite a number of EU-wide frameworks from 2001 onwards, the role of victims in criminal proceedings and the support offered to them in the aftermath of crime continues to differ considerably between Member States. The EU Commission identified that although all Member States have some level of protection and support to victims of crime, they are not sufficient, don't fulfil legislative standards and vary greatly.

The EU Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU) was adopted to harmonise rights across the EU by establishing minimum standards on the range of rights and services victims can access in the aftermath of crime, irrespective of where the victim lives or where the crime took place. It covers all victims of crime, yet the right to individual assessments ensures that victims are seen as individuals and their individual needs recognised and met on a case by case basis. Compared to previous legislation, the 2012 Directive improves clarity regarding what is expected from each Member State. In addition, it provides enforcement possibilities for individual victims as well as formal infringement proceedings, led by the Commission.

Victims and Witnesses (Scotland) Bill

By November 2015 all EU Member States must transpose the rights contained in the Directive into national legislation. This is essential to the success of the Directive and its ability to deliver stronger rights for victims in practice

In Scotland, the Scottish Government has introduced the Victims and Witnesses (Scotland) Bill as one of the main tools to implement the rights of the Directive. It is a major step forward. For the first time, generic rights for victims of crime are given statutory status: surcharges provide a new way for offenders to contribute to the cost of supporting victims; there are wider opportunities to submit a victim impact statement to court and the categories of victims who will have automatic access to special measures while giving evidence in court are extended. These are positive steps.

There are however some areas of the Bill that could be strengthened to ensure they provide further assistance to victims and witnesses of crime. Below are a few examples where the Victim and Witnesses (Scotland) Bill differs (at the time of writing) from the standards set out in the 2012 Directive:

- ❖ **Definition** There is no definition of who should be seen as a 'victims' or 'family member'.
- ❖ **Right to understand** The Bill should incorporate the right of victims to be understood and that information should be delivered in a manner that the victim can understand.
- ❖ **Review of decision not to prosecute** The Bill does not currently fulfil the Directive's minimum requirement to provide victims with the right to review decision not to prosecute.
- ❖ **Information** The Bill should require agencies to proactively inform victims of the information available and give victims the ability to choose what information they wish to receive.
- ❖ **Protection** The Bill provides limited rights in relation to protection of safety and should be expanded to take account of the wide range of protection rights included in the Directive, such as protection from intimidation, retaliation, secondary victimisation, risk of emotional or psychological harm and protection of privacy and dignity.
- ❖ **Special measures** On the one hand, the Bill extends the categories of victims who should be seen as vulnerable and given automatic access to special measures while giving evidence. On the other, it introduces a right to object to the use of special measures. This possibility will have extremely negative consequences for witnesses by increasing anxieties around attending court and giving evidence. Of all the provisions in the Bill, the introduction of a right to object to special measures is of the greatest concern and should be removed.
- ❖ **Cross-border crime** The Bill does not include specific provisions for victims in cross-border cases and should be expanded to include particular rights relating to cross-border cooperation and protection.



Viviane Reding, Vice-President of the EC at a press conference on the adoption of a package of measures to reinforce the rights of victims in Europe.
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Next steps - looking to the future

The Victims and Witnesses (Scotland) Bill is clearly a step in the right direction. It aims to fulfil European standards and although as we have seen it is questionable whether it meets all requirements, it will initiate debate regarding the treatment and rights of victims. So what's next for victims' rights and services in Scotland?

Holistic approach

It is important to acknowledge that crime and victimisation does not just impact on one, isolated area of a victim's life. Crime can impact on many different areas, such as health (emotional and physical), employment, education, housing and social activities. Given this multi-faceted impact of crime, it is important that any response to crime also provides a holistic approach and considers the full impact.

This requires action beyond the adoption of legislation; it encompasses the behaviours and attitudes of professionals working with victims. As such, training and awareness raising are vital parts of the future work with people affected by crime. Although fundamental rights have traditionally primarily been used to protect the rights of the accused, they also expand to include victims of crime. As such, any response to victimisation should respect the full impact and needs of victims of crime and not merely focus on individual, legislative rights.

Individual standing for victims

The Justice Secretary, Kenny MacAskill, has on several occasions highlighted the aim of placing victims at the heart of justice in Scotland. What does this mean in practice?

To ensure full involvement and participation, victims should be seen as a vital part of the criminal justice process. Close cooperation, including the court, defence and prosecution,

is required to provide this right in practice but is that sufficient to truly place the victim at the heart of justice? Current discussions regarding European fundamental rights strengthen victims' procedural rights and ability to participate in the criminal justice proceedings. It may be questioned whether providing a role of a witness is sufficient to fulfil the growing case law in relation to European fundamental rights and victims' right to participate. A debate should be held regarding against whom a crime is actually committed; is it against the State or the individual victim? The answer will help shape a suitable criminal justice process, whereby the criminal behaviour is punished, the trauma of victimisation addressed and the concept of justice fulfilled for all parties involved.

Effective referral arrangements

For people affected by crime, early intervention and support can have a substantial impact on their recovery. The 2012 EU Directive gives every victim of crime, and their family members, right to access victim support services in the aftermath of crime. Insufficient referrals, or complete lack thereof, is the biggest barrier to victims' ability to access support.

Victim Support Europe supports a requirement on the Police to, in agreement with accredited victim support services, refer the victim to access such services. The obligation in the Directive to refer victims to support services does not apply only to the Police but also to 'other relevant agencies'. To ensure equal access to support in the aftermath of crime, automatic referral arrangements should be set up to ensure all professionals in contact with victims refer them to access support to limit the impact of crime.

Meeting the new standard

The 2012 EU Directive provides increased requirements on EU Member States to support the establishment of victim support services and the ability for victims to access such services. This also brings increased expectations on victim support services to fulfil a new, wider remit of delivering quality services to all victims of crime. With improved access to support and increasing number of referrals, victim support services must be ready to evidence their value. Victims must be informed about the standards they should expect and procedures for making a complaint.

Summary

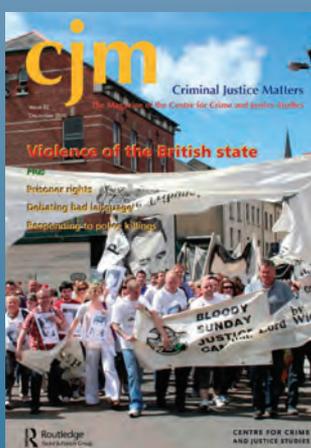
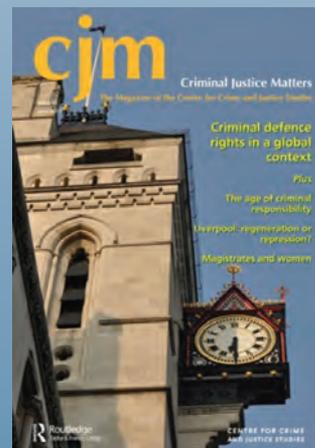
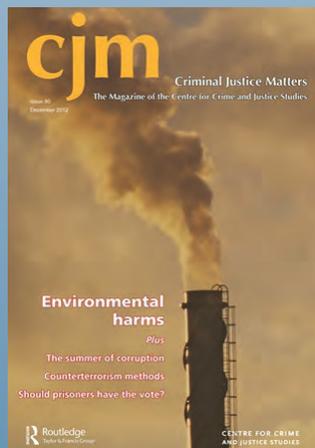
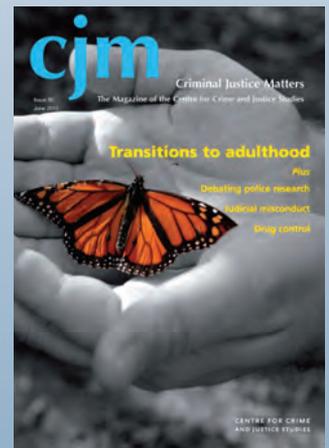
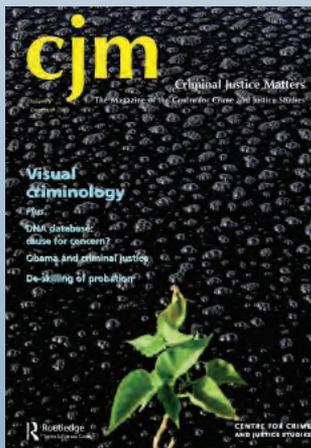
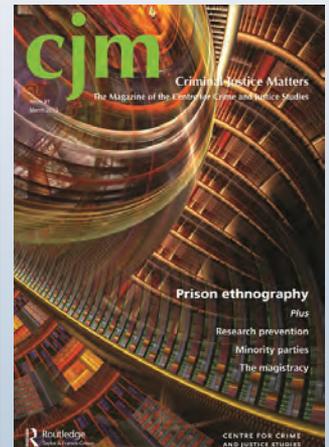
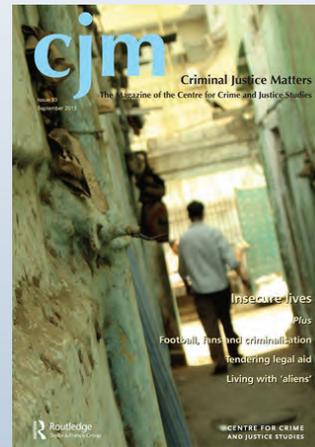
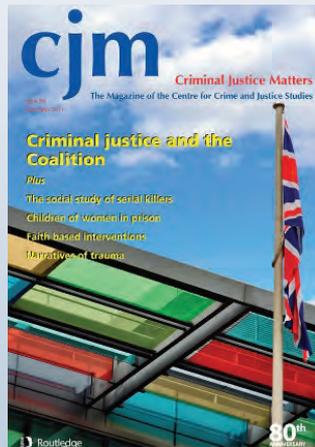
A year after the adoption of the 2012 Directive, many EU Member States have already started drafting new legislation to transpose its rights into their national law. In Scotland, the Victims and Witnesses (Scotland) Bill marks a new era, whereby rights for victims of crime are given statutory status. Although there are still areas where the Bill fails to live up to the standards set out in the Directive, it provides a significant step forward in clarifying the services and rights offered to people affected by crime in Scotland. It provides a vital stepping stone we can continue to build on for years to come.

(2012/29/EU) EU Directive establishing minimum standards on the rights, support and protection of victims of crime

Victim Support Europe <http://victimsupporteurope.eu/>

Frida Wheldon is the Head of Policy for Victim Support Europe and the Senior Research and Policy Officer for Victim Support Scotland.

'If **cjm** did not exist, someone would have to invent it'
 Professor Tim Newburn, London School of Economics.



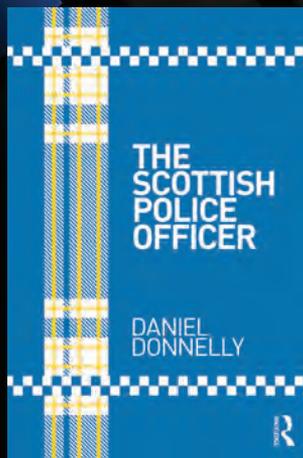
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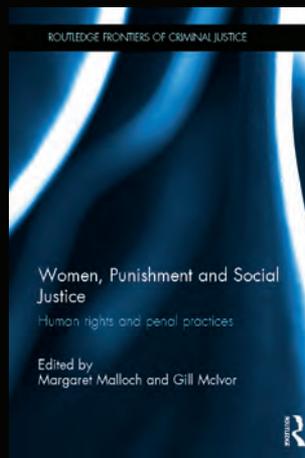
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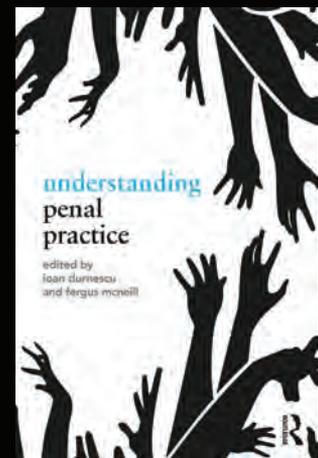
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