

Proposals for revising the Code of Practice for Victims of Crime

Response to MOJ consultation

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If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent. This is a joint response made by members of the interdisciplinary academic research team on the Victims' Access to Justice project:

- Prof Pamela Cox, University of Essex, family justice consultant to local authorities.
- Prof Barry Godfrey, University of Liverpool, magistrate since 1998, member of Magistrates Association Adult Courts Committee 2016-18.
- Prof Sandra Walklate, University of Liverpool, editor of the British Journal of Criminology and former of chair of Victim Support witness support schemes, QE2 Crown Court, Liverpool
- Prof Robert Shoemaker, University of Sheffield
- Prof Heather Shore, Manchester Metropolitan University
- Dr Elisa Impara, University of Essex
- Dr Ruth Lamont, University of Manchester
- Dr Lucy Williams, University of Liverpool



Response

Next steps

1. Are there any specific areas/issues that you think we should also focus on in our second consultation?

The response to these question and the ones which follow is based, in part, on our ongoing ESRC funded research concerned to analyse of victims' access to justice in the past and in the present in the context of English criminal trials.

Our historical evidence suggests that:

- i. Historically, victims played a major role in the process of prosecution. Indeed, until the twentieth century, prosecutions were unlikely to proceed without the active participation of the victim. Since WWI victims have been gradually distanced from court processes, until the CPS became the routine prosecution agency in 1985 (Godfrey 2008). The link between victim and final disposal in court is therefore mediated through the police and through the CPS. Effective communication between those agencies and the victim is paramount.
- ii. The rights of victims are protected and represented by the police and the CPS. The clearer and simpler the route to reporting a crime, and seeing the process through to sentencing, the more likely that vulnerable victims (notably socially or economically marginal victims, young victims, and domestic abuse victims) will engage with the criminal justice system. When the police were introduced in 1829 and the CPS in 1985, a bargain was struck whereby the victims would no longer be able to take their case to court if it was not deemed in the public interest or sufficiently evidenced to proceed. In return, the victim was absolved of the costs of prosecution, and the burden of prosecuting defendants in court. In the last ten years or so we have seen significant reductions in policing, forensic facilities and legal aid, as well as the introduction of more demanding standards of evidence. All of this mitigates against victims getting justice. The bargain is under strain, if it is not, in fact, defunct.

We would suggest that further consultations take our evidence into account once it becomes fully available on completion of our project in September 2020. We would also suggest that longitudinal trends in victim-related data routinely collected by the CPS, HMCTS, Victim Support and other (quasi) statutory agencies is factored into the evidence base for further investigations, and made publicly available online.

We also suggest that the next consultation takes a more critical approach to the concept of victim trauma. The harm, upset or distress caused by certain forms of crime does not always equate to trauma. In our research experience, victims of volume crime do not typically experience trauma as a result.

Overall, the current consultation document is oriented towards ways of identifying and meeting the needs of victims of serious or violent offence, and the minority of victims involved in cases that go to trial. Given that, we would encourage future consultations to take an approach more inclusive of the





experiences of victims involved in both more minor and 'guilty-plea' cases, and in out-of-court disposal procedures/decision-making.

A further consultation should consider the negative impact on victims of routine delays and inefficiencies in the criminal justice system and frequent adjournments within court proceedings as detailed in the House of Commons Committee of Public Accounts (2016-17) report, 'Efficiency in the criminal justice system'.

Information and Communication

2. Do you agree with the proposal to have separate guidance alongside the Code aimed at victims and practitioners? Please give reasons for your response.

Yes. This will clarify, and delineate differences in the roles, duties, and responsibilities for each of the agencies.

3. Do you agree with the proposal to change the structure to a smaller number of overarching rights? Please give reasons for your response.

Recognising that the proposed smaller number of over-arching rights are not legal rights *per se*, it should nevertheless be the case that they can be claimed against published standards and regulated by independent agencies. There is strong evidence in support for victims wanting clear and effective communication with and from criminal justice professionals. It is reasonable to expect a requirement of criminal justice actors to demonstrate that they have fully communicated to the victim progress on a case, and reasons for non-progression through to charge etc. This should not rely on any action on the part of the victim themselves, and should be regulated by an independent agency or body.

4. How else could we improve the accessibility of the Code?

Accessibility could be improved via the development of mobile device apps or hard copy summaries to be carried by police officers and others working with victims.

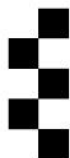
5. Do you agree that there is a particular need to strengthen communication from the point of charge? Please give reasons for your response.

Yes. The problem of poor communication/information to victims from the criminal justice system has been well documented (see inter alia, Shapland, Willmore and Duff, 1985; Goodey 2005, McGarry and Walklate, 2015). Clear communication helps to maintain engagement, avoids anxiety provoked by ongoing uncertainty and increases satisfaction with the criminal justice process. Clear lines of communication need to be embedded from report to charge and charge to sentencing in an unbroken chain. This kind of practice facilitates feelings of participation, reduces any potential stress that might be experienced and ensures justice is seen to be done.

6. Should the victim's preferences relating to frequency and preferred method of contact through their criminal justice journey be recorded as part of the initial communication? And if so, should these preferences form part of the referral process between agencies? Please give reasons for your response.

We support the idea that victims' preferences in these respects should be recorded as part of their initial communication. Offering victims a choice is one way of not only treating them as respected participants in the criminal justice process but also afford one way of making them feel as though they have had a voice in what happens to them and how it happens in their case. Research shows that victims' desire for support and contact varies enormously according to the kind of victimisation they





have experienced. There is no 'one size fits all' answer here so offering the opportunity for victims to state the frequency with which they are contacted and the method of contacting from the outset might ensure their ongoing engagement with the process.

7. Do you agree with the proposal to provide agencies with more discretion on when the Victim Personal Statement is offered? Please give reasons for your response.

We support the use of victim personal statements and believe that it should be routine good practice for support services to offer victims the opportunity to describe the impacts of the alleged offence against them. If they are not routinely taken, valuable information can be lost to the criminal justice system. In principle of course such statements may be taken at any juncture in the criminal justice process. In the current system the opportunity is usually provided by the police officer involved in the case. Tapley (2005) found that these were not being offered to victims on a consistent basis with Roberts and Manikis (2011) found only 42% of victims recall being asked if they wanted to do so. Their further work (Roberts and Manikis (2013) concluded that greater participation in this kind of scheme on behalf of victims would improve victim welfare overall. This is a view with which we concur. Enhancing the discretionary use of this scheme would further enhance the significant geographical and crime related variations in its use which already exist. This would only add to the problems associated with such schemes in which they are either dealt with 'civil inattention (Rock, 2010, on the use of victim statements in cases of murder or manslaughter) or are simply 'cooled out' of the process (Booth, 2012).

Of course, one of the initial reasons for the introduction of the VPS was to ensure that the court had access to all information relevant to the incident. They were not – rightly in our view - intended to influence sentencing. Evidence suggests that they can be influential in bail hearings, and mode of trial decision, although less effective at sentencing stage (when justice for the defendant, community, and victim, all need to be balanced). For this reason, VIS are currently used only in a minority of cases dealt with by the courts. In relation to sentencing we would suggest that the impact upon a victim is best expressed in court through the CPS and/or solicitors to avoid the kinds of consequences identified by both Rock (2010) and Booth (2012) referenced above.

8. Do you agree that victims should be provided with a copy of their Victim Personal Statement? Please give reasons for your response.

Yes. We are surprised that victims are not routinely provided with a copy. We feel this is important to ensure that victims feel ownership of this element of the documentation of the incident.

9. Are there any additional comments you wish to make on changes to the Victim Personal Statement process?

No.

Mentally Disordered Offenders

10. Which agency is best placed to support victims of unrestricted patients?

NA for this team.



Support

11. Do you agree that the right to access practical and emotional support for victims should be made clearer in the revised Code, for those victims: a) who do not report incidents to the police? b) who choose to withdraw after reporting an incident to the police? c) at the end of their case? Please give reasons for your response.

In our view, it is not practicable to support all victims who do not make a report of their victimisation. Victims who report, then withdraw (for example, in domestic abuse cases, or intra-community cases), should be offered support by voluntary agencies and by Victim Support, but it is difficult to support victims who do not report their victimisation to the police. Local hubs signposting formal and related victim support services should be advertised locally to assist victims in accessing such services if they so choose, even if they are unwilling or unable to make a formal report of their experience.

Specialist Support

12. Do you agree with the proposed changes to eligibility categories for access to specialist support? Please give reasons for your response.

Specialist support for victims can be offered to different types of victims at different points in the criminal justice process. For example, in the Australian state of Victoria, some consideration has been given to affording victims legal representation in the criminal trial (see inter alia The Royal Commission into Institutional Responses to Child Abuse 2017; and the Royal Commission into Family Violence (2016). In addition the Republic of Ireland allows sexual offence complainants to access state-funded legal counsel to oppose a defendant's application for the introduction of their sexual history evidence in court (s 34 Sex Offenders Act 2001 (IRE) (Illiadis, Fitz-Gibbon and Walklate, forthcoming). However Illiadis (2019: 13) found that whilst this form of independent legal representation offered victims information and a chance for their voice to be heard, her work also revealed that a high volume of defence applications to adduce victims' sexual history were being granted even with this in place. Sir John Gillen's recent review of this provision acknowledged the dangers of granting ILR to a certain class of victims when this is not available to other vulnerable victims in need of support (Gillen Review, 2019, p. 172).

Similar opportunities exist in the United States as substantive rights. However, extant constitutional differences suggest that the efficacy of such models need to be treated with caution. In England and Wales Independent Domestic Violence Advisors can provide an opportunity for advocacy in cases of domestic violence and of course advocates already exist at the prior to the point of sentencing of families of murder and manslaughter victims. Nevertheless the tension noted by Gillen remains: who qualifies for specialist support and under what conditions can (re)introduce historical distinctions between those victims recognised as deserving of such support and those not reproducing hierarchies of victimisation (Carrabine et al 2019) with concomitant unfortunate consequences for the delivery of justice in the interests of all victims of crime.

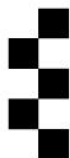
13. Are there other types of support or information which would benefit those victims who are offered specialist support?

NA for this team but see recent Nuffield-funded projects of Jacobsen et al (2018).

14. What changes should be made to the existing needs assessment process?

NA for this team.





Accountability

15. Do you agree with that PCCs should work with their local criminal justice partners to adapt the victim guidance to explain the local offer for victims? Please give reasons for your response.

Yes. It is important that victim's rights to good practice are embedded locally, and that a greater understanding of needs and responsibilities is understood at local level. There is a caveat here though. The lack of consistently available and uniform services commissioned by PCCs, commented on by Simmonds (2019), is creating the space in which victims' experiences of the criminal justice system are being mediated by 'justice by geography' which ultimately will mitigate against adherence to standard 'rights' and levels of satisfaction with the system itself.

END OF SUBMITTED RESPONSE.

References:

Booth, T. (2012) 'Cooling out' victims of crime: Managing victims' participation in the sentencing process in a superior sentencing court', *Australian and New Zealand Journal of Criminology*, 445(2): 214-30.

Carrabine, E. et al (including Cox, P) (2019) *Criminology: A Sociological Introduction*, London: Routledge.

Cox, P. and Godfrey, B. eds (2019) Special Issue of *Societies* on Victims' Access to Justice

Gillen Review. (2019). Report into the law and procedures in serious sexual offences in Northern Ireland. Part 1. Retrieved from <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

Godfrey, B. Cox, D and Farrall, S. (2007) *Criminal Lives: Family, Employment and Offending*, Clarendon Series in Criminology, Oxford University Press, pp.214

Godfrey, B. (2008) 'Changing prosecution practices and their impact on crime figures, 1857-1940', *British Journal of Criminology*, 48, 2, pp.171-190.

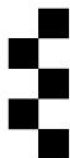
Godfrey, B. (2017) 'Histories of Victims and Victimology', in Walklate, S. (ed) *Handbook of Victims and Victimology*, Taylor and Francis, London.

Goodey, J. (2005) *Victims and Victimology*. London: Longmans.

House of Commons Committee of Public Accounts (2016-17) 'Efficiency in the criminal justice system'. <https://publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/72/72.pdf>

Iliadis, M. (2019). Victim representation for sexual history evidence in Ireland: A step towards or away from meeting victims' procedural justice needs? *Criminology & Criminal Justice*, DOI: <https://doi.org/10.1177/1748895819851848>.





Illiadis, M., Fitz-Gibbon, K and Walklate, S. (forthcoming) Improving Justice Responses for Victims of Intimate Partner Violence: Examining the Merits of the Provision of Independent Legal Representation. *International Journal of Comparative Criminal Justice*

Jacobsen, J. et al (2018) : <http://www.icpr.org.uk/theme/courts-court-users-and-judicial-process>

Rock, P. (2010) ‘Hearing the victim’: the delivery of impact statements as ritual behaviour in four London trials for murder and manslaughter’, in A. Bottoms and J.V. Roberts (eds.) *Hearing the Victim: Adversarial Justice, Crime Victims, and the State*. Cullompton: Willan Publishing. pp. 232-254

Roberts, J.V. and Manikis, M. (2011) ‘Victim personal statements at sentencing: A review of the empirical research’. London: Office of the Commissioner for Victims and Witnesses of England and Wales.

Roberts, J.V. and Manikis, M. (2013) ‘Victim personal statements in England and Wales: Latest and last trends from the Witness and Victim Experience Survey’, *Criminology and Criminal Justice*, 13(3): 245-261.

Royal Commission into Family Violence. (2016). Report and Recommendations: Volume III, Royal Commission into Family Violence, Melbourne.

Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). Final Report Recommendations, Retrieved from https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf.

Shapland, J. Willmore, J. and Duff, P (1985) *Victims in the Criminal Justice Process*. Aldershot: Gower.

Simmonds, L. (2019) The impact of local commissioning on victim services in England and Wales: An empirical study. *International Review of Victimology*, 25(2), 181–199.
<https://doi.org/10.1177/0269758018787938>

Walklate, S. and McGarry, R. (2015) *Victims: trauma, testimony and justice*, Routledge.

