

The Victims of Crime Bill - House of Lords 19 July 2019
Briefing from the Victims' Commissioner – Dame Vera Baird QC

Introduction

The Victims of Crime Bill, tabled by Baroness Brinton, will be debated on Friday 19 July 2019.

As recently appointed Victims' Commissioner for England and Wales, I welcome the debate and its underlying intention to improve compliance with the Victims' Code of Practice and improve the quality of support available to victims. I believe the long-awaited Victims' Law can be a vehicle for enhancing the rights and entitlements of victims.

Furthermore, such rights should not be viewed as an assault on the rights of defendants and/or convicted offenders. Fair trial for a defendant is key but the criminal justice system has a duty to deliver justice to both defendant and victim.

As Victims' Commissioner, my statutory responsibilities can be found in Section 49 of the Domestic Violence, Crime and Victims Act 2004. I must:

- (a) promote the interests of victims and witnesses;
- (b) take such steps as he considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses;
- (c) keep under review the operation of the Code of Practice issued under section 32.

In addition, I may:

- (a) make proposals to the Secretary of State for amending the Code;
- (b) make a report to the Secretary of State;
- (c) make recommendations to an authority within my remit;
- (d) undertake or arrange for or support (financially or otherwise) the carrying out of research;
- (e) consult any person I think appropriate.

My Predecessor, Baroness Newlove of Warrington, and I have called for these powers to be enhanced so that in future, Victims' Commissioner will have greater authority in holding service providers and policy makers to account. This debate is a good opportunity to explain the powers we are requesting in greater detail.

Victims' Code of Practice (the Code)

I welcome the proposal within Section 2 of the Bill to place key entitlements in the Code onto a statutory footing. Too often, Code entitlements are seen as guidance,

as opposed to a statutory right requiring compliance. This culture must be challenged. Converting key Code entitlements to statutory rights is a legitimate means of doing so.

However, statutory entitlements on their own are not sufficient to deliver an improved victim experience within the criminal justice system. We need to address the underlying causes for poor compliance on the part of criminal justice agencies. These include patchy and inconsistent management data, inadequate monitoring, a lack of victim awareness of entitlements and inadequate systems for allowing victims to challenge poor practice. All of these factors have resulted in real difficulties in holding agencies to account for failure. This must be addressed.

An example of this is the offer of a Victim Personal Statement. These statements are essential as they provide the only opportunity for victims to articulate the impact the crime has had on them. My predecessor collated data, annually for 3 years, from the Crime Survey for England and Wales. It showed that each year around one in six victims recall the offer of a VPS being made. Yet, the majority of those who did exercise their right to make a statement believed it had been a positive experience.

However, there has been no significant change in practice on the part of the police (who are responsible for informing victims) and neither has there been any discernible shift in the CSEW data. This snapshot of just one entitlement in the Code makes a wider point

From April, Police and Crime Commissioners are collating local performance data on key Code entitlements. This is a step in the right direction but we need to go further. The Victims' Commissioner should have a statutory duty to use this local data to prepare an annual national assessment of Code compliance, to be laid before Parliament so that it can be fully scrutinised. This independent assessment would accord with my existing statutory remit to "keep under review the operation of the Victims' Code". It would be a valuable tool in holding agencies and the Government to account and identifying good and bad practice.

Section 2 of the Bill also offers a number of key Code entitlements that might become statutory rights. I broadly welcome them. My predecessor published a rapid evidence assessment in 2016, which used international research to identify the four key pillars for supporting victims of crime. They are good communication, professional services, multi-agency collaboration and procedural justice. Good communication is absolutely critical. Failure to communicate can leave victims feeling excluded and alienated by the justice system.

Communication is more than notification of dates. It must also include information about the process and the sentence.

I am keen to see victims being offered a transcript of the judge's sentencing remarks, so that they can have a better understanding of how the sentence was determined. There is a misconceived perception that victims want more punitive sentences, when all too often, they are simply struggling to understand what a sentence means in practice and how it was calculated. The judge's sentencing remarks, especially when

judges appreciate that they will be read by laypeople, would be the best means of achieving this.

Under Section 2(10) there is reference to court ordered compensation. Again, I would want to see the Bill going further. At present, victims receive court ordered compensation as when the offender is able to make payments. The amounts can be derisory and the arrival of small amounts of money through the post can undermine the victim's attempts to seek closure. Compensation should be paid up front by the court to the victim, with HMCTS seeking recovery from offenders.

Enforcement

I welcome the provisions in Section 3 which would allow members of the public to make a complaint about a failure to comply with the Code directly to the Parliamentary Ombudsman, without having to route the complaint through their Member of Parliament. I also welcome the proposed engagement between the Ombudsman and the Victims' Commissioner, which would enable Commissioners to reflect upon the Ombudsman's findings and use this information to influence future research and reviews.

The provisions could go one step further and give the Commissioner the power to refer complaints directly to the Ombudsman in the same way that an MP can. The statutory provisions creating my post preclude me from taking up individual cases and yet I receive hundreds of letters of complaint. The Ombudsman has the resources to undertake this work and is best placed to do so.

Area Victim Plans

Section 4 of the Bill refers to Area Victim Plans. I have concerns, as a former Police and Crime Commissioner, as to the viability of these plans as set out in the draft Bill. However, I do agree there should be more transparency about the provision of local victim services. All PCCs are required by existing statute to provide a 5 year Police and Crime Plan and these should be used to incorporate a defined element about future planning for victims. As these plans are produced in 5 year cycles, progress updates would be required in PCC annual reports.

Duties of the Victims' Commissioner

Section 5 sets out Duties of the Victims' Commissioner. This includes assessing Area Victim Plans and publishing Quality Standards.

I am not convinced it should fall to the Victims' Commissioner to provide quality standards. Local victim services are funded by MoJ and there must be a direct correlation between funding and quality. The holders of the purse strings should set out the standard of service they expect. The Victims' Commissioner would be left with the impossible position of wanting to set the highest standards and make strong recommendations, without the financial power to make them a reality.

However, in setting quality standard, I would expect Ministers to consult the Victims' Commissioner.

I would like to see the inclusion of more powers for the Victims' Commissioner. I would welcome the imposition of a duty on public agencies to co-operate with the VC and share data when requested. Most do so already, albeit some have to be encouraged. The victim arena is complex, with most criminal justice agencies holding responsibility for a range of victim entitlements. A duty to cooperate would enhance the engagement between the Commissioner and these agencies.

A further change I would like to see is that agencies are given a statutory duty to respond to recommendations arising from Victims' Commissioner's reviews and reports within a deadline. This is an important power as all too often in the past, Commissioner's recommendations did not receive a formal response.

Victims' Right to Review Decisions not to Prosecute (VRR)

I would welcome the proposal to place a victim's right to review onto a statutory footing.

I would also support the recommendations in the recent APPG on CSA (published earlier this month) that the right to see a VRR be made clear to victims at the start of the criminal justice process and that they have the right to be independently supported in making the case for making the request for review.

I would also like to see a statutory power to extend police bail to cover the period during which the VRR is being considered. Otherwise there is a disincentive to pursue the right, if a consequence is that the complainant is unprotected for its duration by bail conditions

Homicide Reviews

I welcome the requirement to establish a Homicide review in the event that it appears someone aged 16 and over has died as a result of homicide.

Training

I welcome the proposal that those involved in sexual violence and domestic violence cases be required to participate in specialist training. This will need to be resourced to ensure it is effective.

Ground Rules Hearings

I welcome the requirement to hold a Ground Rules Hearing in the circumstances set out in Section 9.

Duty to Notify

I welcome the duty to notify requirement set out in Section 10.

An additional important current issue concerns Victims of Sexual Violence

There are other provisions I would like to see incorporated into a final Victims' Law.

In recent weeks there has been a debate, covered widely in the press, about disproportionate requirements placed upon victims of sexual violence to give access to their personal data. Such requirements constitute an invasion of their personal privacy and as such, in contravention of their Article 8 Rights. There is evidence to suggest that when faced such a rigorous intrusion into their privacy, many complainants decide against pursuing their complaint further. It also erodes their confidence in the criminal justice system.

Legislation can be used to address some of these serious concerns. For example, complainants can often feel disempowered, particularly when put into the position where they risk discontinuance of the case if they don't agree to extensive disclosure at the outset of the inquiry

I would like to see victims have access to free legal advice when asked to agree to disclosure of their personal data. There is a Home Office funded pilot of legal advice for complainants in Northumbria which has been welcomed by the police and which has worked well with the CPS, perhaps helping to adapt their approach to one more responsive to complainants' concerns. It offers a challenge mechanism, whereby relevance of material can be clarified. On one occasion so far, a case has been put before a judge with complainant representation in attendance, winning a helpful compromise. That is very salient since, in such circumstances it is often the case that the CPS will drop a case if there isn't immediate agreement to what they see as necessary disclosure, whereas representation for the complainants Article 8 rights require that the decision-maker should not be frontline practitioners but the judiciary.