

**Dame Vera Baird QC**

**Victims' Commissioner for England and Wales**

Office of the Victims' Commissioner for England and Wales  
5<sup>th</sup> Floor, 70 Petty France  
London SW1H 9EX

e: [victims.commissioner@victimscommissioner.org.uk](mailto:victims.commissioner@victimscommissioner.org.uk)

2 September 2019

Rt Hon Robert Buckland QC MP  
Lord Chancellor and Secretary of State for Justice  
102 Petty France  
London  
SW1

Dear Secretary of State

### **Proposals for revising the Code of Practice for Victims of Crime**

I am writing in response to your consultation on plans to revise the Code of Practice for Victims of Crime. Your consultation document lists 15 questions and my response responds to each them under the six headings.

#### **Information and Communication:**

- 2. Do you agree with the proposal to have separate guidance alongside the Code aimed at victims and practitioners?**
- 3. Do you agree with the proposal to change the structure to a smaller number of overarching rights?**
- 4. How else could we improve the accessibility of the Code?**
- 5. Do you agree that there is a particular need to strengthen communication from the point of charge?**
- 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?**

There is poor compliance on the part of criminal justice agencies in respect of delivering entitlements within the Victims Code of Practice. For example, my report, published on 7 August, on the requirement to offer all victims the chance to make a victim personal statement showed just 14% of victims recall such an offer being made in 2018/19. This is consistent with data collated over the past four years.

Compliance monitoring in the past has been almost non-existent, and recent research shows 80% of victims have no understanding of what their entitlements are. This means we are unable to hold agencies to account. Any redress is through individual agency complaint processes and victims can struggle to work out what they are entitled to and who is responsible. The Parliamentary Ombudsman tells me that only a handful of victim complaints are referred to him by MPs every year.

As is recognised in your consultation document, there are a number of steps we need to take to address these deficiencies.

The first is that the Code itself is unwieldy for practitioners and impenetrable for many victims. The document is over 100 pages and 39,000 words and the language appears to be targeting a graduate audience. It is only available on line as a pdf document. This is not an accessible format for many groups of victims given that we live in an age when people regularly absorb information through a wide variety of digital media.

I welcome proposals to have separate guidance on the Code, one for victims and one for practitioners. However, the success of this initiative will depend on how the latter is drafted and in what forms it will be made available. As well as traditional means of providing public information, such as leaflets and on-line pdf documents, we ought to explore the use of videos, infographics and apps.

I welcome the proposal to have a smaller set of overarching victim rights. This is something my predecessor, Baroness Newlove has been calling for over the past three years. Ultimately, I would like to see these rights enshrined in primary legislation, but developing them for the Code is a step in the right direction.

A set of overarching rights should have the benefit of being easier to communicate and understand (both for practitioners and victims). They should be designed so that it is possible to monitor compliance effectively.

This proposal takes us in the right direction, but we need to go further.

Once the Code obligations have been finalised, I want to see the new Code being launched with gusto. The launch should indicate the gravity of not complying; that the Government will seek accountability from leadership of all the agencies and should specifically announce and highlight that the Code amendments are a step to legislation and soon these rights will be statutory.

As from April of this year, Police and Crime Commissioners, through their Local Criminal Justice Boards, are responsible for monitoring Code compliance in respect of a handful of key entitlements. Again, I think this is the right way forward and will be seeking feedback from my ex-colleagues on how well this is working.

I believe this needs to be replicated at a national level by the Victims' Commissioner, who should be responsible for preparing an annual report on

Code compliance, looking not just at whether the entitlement has been delivered, but also the quality of the interaction. This report should be laid in Parliament. The benefits of such a move are: the support being given to victims can be given effective political scrutiny; where there are shortcomings, agencies can be publicly held to account; and the public platform provided by Parliament means the existence of victim rights is more likely to receive media coverage.

If it is agreed by the Government that the Victims' Commissioner will have a national oversight role on Code compliance, this, coupled with statutory rights will have a positive effect upon criminal justice agencies making moves towards improving their compliance. If these changes are not accepted I am not convinced that simply streamlining the Code on its own will change the victim experience.

We also need to look at how victims can seek redress when entitlements are not delivered. At present, the victim has to find out which agency is responsible and pursue a complaint through their internal complaints process.

If this is unsatisfactory, they have to write to their MP in the hope they might refer the matter to the Parliamentary Ombudsman. Only a handful of cases are referred to the Ombudsman every year.

Greater awareness of the Code must go hand in hand with effective accountability. We need to review this process of seeking redress to see how it might be streamlined, for example having a single point of contact for processing all initial victim complaints, giving victims direct access to the Ombudsman once these have been exhausted and also giving the Victims' Commissioner the right to refer cases directly to the Ombudsman.

I agree we need to look at communications between victims and police following charge. With cases taking longer to progress through the system, the feedback I receive is that victims can go weeks and months without hearing anything. For many victims, this can diminish their confidence in the criminal justice process, but for vulnerable victims and in particular, those who have reported sexual crimes against them, this can have devastating consequences on their mental wellbeing. We are seeing increasing numbers of victims of sexual crime withdrawing from the criminal justice process as a result.

A single point of contact is a step forward in addressing this, but for vulnerable victims we need to go further. We need to develop a protocol of proactive communication, designed to check on the victims' wellbeing, advising, even when there may be little to report and setting clear expectations of when the victim can expect to be contacted again in the future.

In all cases, there should be a conversation with victims about ongoing contact, frequency of contact and means of contact, so that the victim can have some control of the process going forward.

This is important as, for all victims of crime, there will be a sense of disempowerment. One of the aims of the criminal justice process should be to

address this by giving victims the sense of being an engaged participant and not merely a by-stander.

### **Victims' Voice:**

**7. Do you agree with the proposal to provide agencies with more discretion on when the Victim Personal Statement is offered?**

**8. Do you agree that victims should be provided with a copy of their Victim Personal Statement?**

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

My recent research, published on 7 August, showed only one in seven victims are offered the opportunity to make a Victim Personal Statement (VPS). Just 46% of victims who did make a VPS felt it was taken into account compared to 68% a year ago. These are worrying statistics and clearly show that this key victim entitlement is not being delivered effectively.

This is despite a VPS being one of the key entitlements available to victims under the Victims' Code. The statement offers victims the opportunity to express how the crime affected their lives physically, emotionally, financially or in any other way. Importantly, the account is articulated in the victim's own words.

It is clear to me the police need to do more to raise awareness among victims of crime of their right to make a personal statement. This will ensure the voices and experiences of those most affected by crimes are heard by the courts.

I agree with proposals in the consultation document to explore providing greater flexibility about when a VPS offer is made but I would like to see us go further.

I am seeking a meeting with representatives of the National Police Chiefs Council to discuss how we take this work forward. I am particularly keen to discuss how raising the awareness of the VPS might become a multi-agency responsibility, so that awareness can be highlighted at every key stage of the criminal justice process.

We also need to explore why there was a sharp drop in the proportion of victims who felt their statement had been taken into account by the criminal justice system. With just 46% of those who did make a statement believing it was taken into account, this is the lowest recorded score in the past five years.

I agree that victims should be given a copy of their VPS so they can update it when appropriate. This might in turn have a positive impact on victims feeling their views have been taken into account. I also welcome plans for HMCTS to record whether and how the VPS is used during sentencing.

This information will enable us to have a better understanding of the impact of the VPS and in turn can help us to refine the process of securing the victim's voice.

I also welcome plans for police officers to record the impact of the crime on the victim when a witness statement is made.

Finally, it must be remembered that a VPS is how the criminal justice system offers the opportunity to victims of crime to express how they have been affected by what has happened to them. This can be cathartic, to know that the court and wider society has heard what they have suffered. In particular, the VPS can help people suffering bereavement to feel that they have done their best, in this regard, for their lost loved one. This is the point of a VPS.

With this in mind, it is important that judges are zealous in protecting the right of victims to express in their own words the impact of the crime. For example, it should never be appropriate for the defendant to be able to edit out the bits he or she does not want to hear. Victims must be entitled to say what they have suffered without interference.

### **Mentally Disordered Offenders:**

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

The report published by my predecessor, Baroness Newlove, in August 2018 on the support given to victims of mentally disordered offenders called for this group of victims to be given equal entitlements to those available for all other victims of crime. I support this position.

Victims of unrestricted patients are at present left without the support of a Victim Liaison Officer and are required to liaise directly with hospital authorities. The evidence of those who support this group of victims is that they have been let down by hospital authorities. They have struggled to receive the information they are entitled to expect. They have not been kept informed when patients are transferred. Some hospital staff refuse to have any contact with victims on grounds of patient confidentiality. Others are reported as being unaware of their statutory responsibilities for victim liaison, and receive no training, or resources to fulfil their obligations in this role.

Where patients are transferred to other psychiatric facilities there is no continuity of information or support.

I am concerned that any proposal requiring the existing arrangement to continue will merely perpetuate this wholly inadequate situation. By default, it offers this group of victims an inferior level of support compared to other victims.

Since the report was published 12 months ago, the Victim Contact Scheme has given an undertaking to train a cadre of VLOs to become specialists in MDO cases. This is a welcome development and I would like to see victims

on unrestricted patients having access to this special support, with the VLO being the point of contact with hospital staff.

**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?**

It is vital that all victims receive the emotional, practical, therapeutic and clinical support services that they need to aid in the coping and recovery from the immediate trauma and long-term effects of crime. This should be the case regardless of whether they report the crime to the police, whether they later withdraw their support for the prosecution or indeed if the criminal justice system does not follow up when victims report a crime.

For example, recent HMICFRS figures show that only 11% of rape cases recorded by the police are referred to the CPS for prosecution. The 89% who have reported rape to the police and whose cases are not taken any further forward for whatever reason, are still just as likely to have suffered the trauma and long term physical and emotional effects associated with this abhorrent crime and deserve to have access to support services to help them with the aftermath.

Victims should not only be made aware of the support services available to them, but also those support services should be sufficiently available and appropriate to provide the types of support most effective in supporting them. I have heard from victims and practitioners about victims facing long waiting lists for counselling and clinical services. Early psychological intervention and provision of trauma informed practice is important to prevent longer term symptoms such as PTSD which are more difficult and more expensive to treat further down the line.

Some people who suffer because of a crime are not currently covered by the Victims' Code. In my predecessor's review into Anti-Social Behaviour she called for recognition of the impact on victims of persistent ASB, by revising the Victims' Code of Practice, to afford them the same entitlement to support as all other crime victims, when they reach the 'three complaints' threshold needed to activate the Community Trigger.

Others who are not classed as victims under the Code are children who suffer from domestic abuse within their household. These children and young people are a victim of circumstance, living in a household of abuse. Research on the effects of Adverse Childhood Experiences (ACEs) suggests that children in such households can experience long term effects from adverse physical and mental health impacts, poorer educational outcomes and poorer long-term employability. These children are as much victims and those whom the perpetrator targets directly within the household. Including such children as victims in the Victims' Code should mean they too are entitled to victim support services and the other key entitlements under the Victims' Code.

I agree with the proposal to enable victims to continue to access support services after their case has closed and they are told of the outcome of their case. Victim support services should be victim led, with the victim at the centre of the approach. It should be their choice to engage with support services as and when they need them. Each victim is an individual person with their own needs and they should be able to access support services at any stage of their journey through the criminal justice system and beyond according to their needs.

### **Specialist Support:**

**12. Do you agree with the proposed changes to eligibility categories for access to specialist support?**

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

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

A victim centred approach is vital in ensuring that victims are offered an enhanced service according to their own needs rather than predefined societal expectations. My predecessor's review into ASB found that what the authorities might consider to be 'low level' can in fact have devastating effects for some victims. I welcome the shift therefore to refer victims with the greatest needs to specialist services.

I consistently hear from victims about the re-traumatisation involved in continually having to repeat details of what happened to them to numerous contacts within the criminal justice system. Victims become further traumatised, but also confused. To many victims the job titles of all the different professionals assessing their needs is confusing. They are all the face of the authorities and victims often don't quite understand why they are having to repeat their story to yet another official. My predecessor, Baroness Newlove, in her review into what works in supporting victims of crime, recommended that an independent victims' advocate (IVA) would be helpful in supporting those victims most in need. I agree that an IVA could help the most vulnerable victims by coordinating support across agencies and charities, preventing victims from being retraumatised by constantly repeating their details. I would like to see the provision of IVAs for the most vulnerable of victims within the Victims' Code.

### **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?**

I welcome any initiative that will see agencies working together at a local level to present a joined-up package of support for victims.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V Baird', written in a cursive style.

**Dame Vera Baird QC**  
**Victims' Commissioner for England and Wales**

**Cc: Edward Argar MP**