

Dame Vera Baird QC
Victims' Commissioner for England and Wales

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

email: victims.commissioner@victimscommissioner.org.uk

22 May 2020

Alex Chalk MP
Parliamentary Under Secretary
Ministry of Justice
Sent by email.

Dear Minister

VICTIMS' CODE CONSULTATION – RESPONSE

The crime was sexual assault and my court experience was as horrific as the attack itself! I know I did the right thing in reporting it but sadly I am not sure my mental health could withstand another court hearing. In court it feels like no-one cares about how you feel, because the pomp of the proceedings have to be adhered to. We (victims) are people who haven't asked for this to happen to them, we didn't consent! We are already broken before we get to court. (Female respondent, 45-54, East of England)

I am writing in response to the Government's consultation on changes to the Victims' Code of Practice. As Victims' Commissioner, an important part of my statutory remit is to "keep under review the operation of the Code".

To assist me in responding to this consultation, my office conducted an on-line survey of victims who had experienced the criminal justice system within the past three years. We received a positive response, with over 400 participants. I attach a copy of the survey (Annex B) and will be referring to its findings throughout my response.

I will quote some of the victims participating in the survey as I am keen the victims' voice should be heard. As the quote above shows, despite our best efforts and good intentions, victims still too often feel unsupported through an alien system, which makes it all the more important that we get the code right, tell victims their rights and weave these fully into the system.

On 23 March, I published my report on victimisation data collated as part of the Crime Survey for England and Wales (CSEW), which analyses data on victim experiences within the justice system. Again, this data provides a useful context when considering changes to the Code.

I am grateful to your officials for sharing with me a copy of the draft Code prior to the launch of the consultation. I made detailed observations on the draft and am pleased to see that many were acted upon.

Nevertheless, I am seeking further amendments to the draft and these are set out in Annex A, attached to this letter. Some of the changes arise from earlier reports published by me and my predecessor.

Victims of Mentally Disordered Offenders

In “Entitlements and Experiences of Victims of Mentally Disordered Offenders” published on 2 August 2018, my predecessor, Baroness Newlove, called for parity of treatment between victims of mentally disordered offenders and victims of offenders who are sentenced to imprisonment. All of the recommendations in this report were subsequently endorsed by Sir Simon Wessley in his report “Modernising the Mental Health Act” published in December 2018.

I was delighted to see the government is committed to providing victim liaison officers for victims of unrestricted patients eligible to join the Victim Contact Scheme. This was a key recommendation in the report and the change will provide much needed assistance to these victims as they seek to navigate their way through the mental health review process.

However, the other recommendations from this report remain outstanding, for example, the right for these victims to submit a Victim Personal Statement and to attend review hearings to present it in person. The current draft of the Code is silent on the disparity of treatment between victims of serving prisoners and victims of mentally disordered offenders. In the interests of clarity and transparency, it needs to set them out.

Whilst I will be writing to you separately to ask for progress in taking this work forward, you will see from Annex A that I am calling for the First Tier Tribunal (Mental Health) to be listed in the Code as having responsibilities under the Code. The Parole Board is already listed and has been from the outset. Given that the Board carries out an identical function to the Tribunal, I can see no reason for treating them differently.

Bereaved Victims of Homicide Abroad

In my report of 23 October 2019, *Struggling for Justice*, I make a number of recommendations on the treatment of bereaved victims of homicide abroad. They include listing the FCO in the list of agencies responsible for delivering victim support and for the first time, setting out their entitlements within the body of the Code. The current draft fails to do either, leaving this group of

bereaved victims outside of the framework of the Code, thereby setting them apart from all other victims of crime. This needs to be addressed.

Victims' Rights

I welcome the introduction of twelve core rights from which entitlements will flow. Baroness Newlove repeatedly made the case for statutory rights for victims and I share her view that this is an essential precursor to changing the status of victims within our criminal justice system. Statutory rights place a legal duty on criminal agencies to comply with them whereas compliance with Code entitlements often appeared to be at their discretion.

I understand the Government's proposed Victims Law will be the vehicle for placing these rights onto a statutory footing.

In response to the earlier draft of the Code, I highlighted several "rights" where the delivery appears to be at the discretion or convenience of the service provider. The point of giving victims "rights" must be that they are unconditional. I am pleased to see several of my examples were amended to reflect this, but there remain some examples which appear to have been drafted to meet the convenience of the agency concerned.

Communication was non-existent unless I was persistent. I was exasperated by the whole experience & not taken seriously. I have no faith in the cjs. I have suffered with extreme depression from my experience & have lost respect for the system & process. (Female respondent, 45-54, South West)

As comments like this from my survey make clear, the current Victims' Code, although well intentioned, is not delivering for many victims. This is an opportunity to deliver transformative change. However, whilst the redrafting of the Code and updating of its provisions are important, on their own, they are simply not enough to change the victim experience of the criminal justice system.

There are four key ingredients to turning the Code into an effective piece of legislation:

- increased public awareness;
- effective means of challenge and appeal;
- robust systems for monitoring compliance: and
- a powerful independent Victims' Commissioner to act as a voice for victims.

Unless we deliver on all of these, the revision of the Code will not deliver the improvements we all want to see.

Public Awareness

The criminal justice system is never explained in the whole- there are many things I have discovered (through my own research) which I was

never informed of. Nothing is addressed or treated holistically. (Female respondent, 45-54, West Midlands)

As the quote exemplifies, victims all too often do not understand the system and their rights within it. In my report: "An analysis of victimisation data in the Crime Survey for England and Wales" (CSEW) published on 25 March, which analyses victimisation data within the survey, I highlight the fact that fewer than one in five victims are aware of the existence of the Victims' Code. This means they do not know what support and information they are entitled to receive and when they might be able to challenge decisions. Crucially, it means they cannot hold agencies to account when they fail to deliver.

This is a serious failing and needs to be addressed. Accountability is key to driving up performance in delivering Code entitlements.

As a first step, we need to make the Code more accessible and easy to follow. In its current form, the Code itself is unwieldy for practitioners and impenetrable for many victims. The document is over 100 pages long, 39,000 words and set out in language which 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, particularly given that we live in an age when people regularly absorb information through a wide variety of digital media.

I welcome the proposal to shorten the document and to present it in twelve separate sections, aligned to the statutory rights. I also welcome the plans to have separate guidance on the Code, one for victims and one for practitioners.

These are steps in the right direction, but more needs to be done.

The language in the document is still targeted at graduates. It needs to be set out in plain English and there needs to be an abbreviated "easy read" version.

Children are on average more likely to be victims of crime than adults and it is important they understand what they are entitled to receive in terms of support. There needs to be a version for children and it needs to be available on platforms children are likely to be familiar with.

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 also have concerns about how familiar many criminal justice practitioners are with the provisions of the Code. Some appear to have very narrow awareness, maybe limited to the handful of entitlements which directly impact on their day to day work.

I would like to see MoJ spearhead an internal awareness campaign, providing on-line promotional and training material, encouraging all practitioners to be aware of key entitlements, enabling them to advise and signpost victims.

I also want to see a duty being placed on all criminal justice agencies to draw the Code and its contents to the attention of every victim of crime and, if possible, supply a copy or at least indicate with clarity where one can be found. They have a responsibility to make sure victims understand their entitlements. This is essential if we are to have any hope of changing the silo approach to supporting victims, whereby victims are passed from one agency to another, getting a sense of being on a conveyor belt, waiting to see what happens next:

I was not called as a witness and was not informed of the trial process so have no idea what happened. (Male respondent, 25-34, East Midlands)

In short, I want to see the new Code being launched with gusto, not simply loaded onto gov.uk with a short press release from MoJ. 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.

Challenge

Whilst greater awareness of the Code will offer victims the opportunity to hold criminal justice agencies to account, this accountability will only be meaningful if there are clear and effective complaints systems.

This is a challenge, as victims will come into contact with a range of criminal justice agencies and are often unclear who is responsible for what. To make matters worse, each agency will have its own separate complaints system. This can be bewildering and off-putting, particularly when victims have complaints that cut across several agencies.

Challenging government agencies can be even more difficult if, as a victim of serious sexual or violent crime or bereavement, you are struggling with trauma and injury:

As a male victim of domestic abuse, I did not feel believed and the trauma of which I am still living with now. I was never referred to any victim support that I am aware of and was pushed into not pressing any charges with leading questions during a time that I was clearly in shock. I am really disappointed in my experience and I don't know whether it is just overworked/overstretched staff, but I just don't feel that I was supported and or listened to as a victim. (Male respondent, 25-44, West Midlands)

We need to consider how the multitude of complaints processes in place for victims can be streamlined, for example, having a single complaints process, including a single point of contact for processing all initial victim complaints.

Once internal complaints processes have been exhausted, if the victim is still feeling dissatisfied, they should be able to refer the matter to the Parliamentary Ombudsman (PSHO). At present, they can only take a complaint to the PSHO through their local MP. In practice, the PSHO only receives a handful of complaints each year.

Either MPs are unaware of the fact the PSHO can deal with victim complaints or they are operating a vigorous sift. Whatever the reason, this is not acceptable and I want to see victims having direct access PHSO.

Many victims refer such complaints to my office. The statute setting up my post precludes me from getting involved in investigating individual cases. I am not proposing that my role should change, but holders of my office should be able to refer cases to the PSHO as well. At present, I can only make such referrals by writing to the victim's local MP, which is an absurd situation.

Compliance Systems

The 2006 Victims Code was accompanied by a compliance framework, and yet, since that time, we have never had clear picture of compliance across England and Wales. This has restricted our ability to identify problems and improve the service victims receive.

For example, the Code sets out an entitlement for all victims of crime to make a victim personal statement. Yet my report, published on 7 August 2019, on the requirement to offer all victims the chance to make a victim personal statement showed just 14% of victims recalled such an offer being made in 2018/19. This is consistent with data collated over the past four years. Yet police forces challenge this data, as it contradicts their own local records. It is only by having clear compliance systems and standards that we'll understand what's working well for victims, and what is not working so well:

The police officers were knowledgeable, compassionate (sic) and considerate. Despite it being a traumatic experience to go through, I wasn't rushed and I was believed. If it was guaranteed all victims would have this experience, I guess many more would report. (Female respondent, 55-64, location not specified)

I had to chase for info which added to my stress levels... I felt like I was being paranoid about reporting certain things in my case because it was not deemed to be a "high profile" case. (Female respondent, 45-54, East Midlands)

In April 2018, the National Criminal Justice Board (NCJB) agreed to a cross-government approach aimed at improving data and transparency on whether victims are receiving their entitlements in the Code and whether criminal justice agencies are meeting their obligations under the Code. Police and Crime Commissioners taking responsibility for compiling performance data for their local area would oversee a new monitoring process, measuring criminal justice partners' compliance with key entitlements in the Code.

The new monitoring arrangements commenced in April 2019 but I understand they have been beset with difficulties. These include: limitations in what data can be extracted from agencies' data systems, resulting in PCCs having to rely on data sampling; variable communication with criminal justice agencies on how the new monitoring system will operate; and PCCs being unable to compel other agencies to provide information.

I support the proposition that PCCs are best placed to compile local data and I am keen to see the model set out above work effectively. It is important that the issues around IT systems and data collection will quickly be resolved, with appropriate investment being made into adapting and updating software, to make this possible. I want to see this being made a priority.

It is also vital that all national criminal justice agencies issue clear messages to local managers to comply with PCC requirements for data, if necessary, using the Victims' Law to give PCCs statutory powers to require it.

At present, there are five key indicators as a baseline for monitoring compliance. There are sensible and pragmatic reasons for developing compliance monitoring using a narrow range of indicators, but this should not be the extent of our ambition. I want to see us developing a more sophisticated system for monitoring a much wider range of compliance indicators, providing the widest possible range of data, which is both robust and accurate.

Once these systems are in place, it will form the basis for effective monitoring of performance. However, compliance data on its own is not sufficient.

It is important that practitioners do not see Code compliance as a tick box exercise, with a list of targets to be met. The quality of the interaction is just as important, if not more so.

For example, there is little point in a police officer advising a victim they can make a victim personal statement if the purpose of the statement is not clearly explained, or a Witness Care Unit writing to a victim to advise them of the sentence handed down by the judge, if what the sentence means in practical terms is not understood. As the quote below illustrates, lack of understanding can result in feelings of suspicion, de-personalisation and disempowerment:

I felt that I was mistreated and lied to. It felt like the incident was very much the 'cops case' not something that had happened to me [] I felt like I was stuck on the outside, looking in to a bunch of people who didn't care as it didn't affect them, and there was nothing I could do to help myself. (Female respondent, 35-44. West Midlands)

In a report published by Baroness Newlove in 2016 "What Works When Supporting Victims of Crime" she found that procedural justice mattered more to many victims than the criminal justice outcome. My recent survey underlines this point, with 'being treated fairly and with respect by the police' emerging as a more important factor to victims than the perpetrator being charged with a crime:

I got the outcome I wanted, which was the police to be aware of the incident (domestic violence) in case it escalated. They were excellent, taking me seriously and doing checks on the guy there and then. I felt listened to and believed. (Female respondent, 35-44, South East)

My recent survey also suggests that at trial, more victims placed importance on sensing the judge understood the impact of the crime on the victim than the court reaching a guilty verdict. These findings may come as a shock to those who think the only issue a victim cares about is how severely the offender will be punished. In my experience, whilst victims do expect the offender to serve the punishment handed down by the court, they do not engage with the criminal justice system simply to seek vengeance:

They [the Police] came to my home, were detailed, understanding, explained to me about charges [] didn't want a perm record and then to lose their job...I wanted intervention and it to be explained to them their behaviour did constitute a crime. This happened and had no trouble now for years. (Female respondent, 45-54, London)

Being a victim of crime is a disempowering experience. All too often, it undermines their sense of wellbeing and their trust in others:

I know I cannot start the healing process. Till the police finish their investigation. And justice can be served [].I have been on the sick physically and mentaly (sic) for 12 months. I need some kind of closure (Female respondent, 45-54, North West)

In an ideal world, the criminal justice system will always deliver an outcome, but in the process, it will restore the victims' faith in humanity by acknowledging they have been wronged, treating them with respect and where possible, giving them the opportunity to choose how they might engage with the authorities.

Compliance data, although absolutely necessary, cannot by itself capture the extent to which we are delivering a positive experience for victims.

Victims' Commissioner

Writing on behalf of my mother - she was a victim of DV. She is partially sighted. Series of errors in the criminal justice process in her case included: Perp (sic) released without notifying mum. No bail conditions attached. Having to walk past perp in court waiting area. No screens available despite being requested. This was changed on the day but at great emotional expense. Witness Care Unit ran out of time reading her statement to her prior to her giving evidence in court. As a former police officer she experienced additional barriers/shaming by defence solicitors that challenged why she didn't report earlier/playing the system. (Female relative of victim, 35-44, East Midlands).

Worst experience of my life. The system is not set up for victims and needs to be completely overhauled. (Female respondent, 45-54, North West).

I wasn't referred to any support services but have learned about them since and wish I'd had support at the time, this would have made a difference. (Male respondent, 25-34, South West)

Like many rape victims, I did not trust the police and courts to handle my case with respect. I had read of women being convicted and imprisoned for lying because their accused rapists were found not guilty. I knew conviction rates were very very low so didn't want to risk that happening to me. (Female respondent, 35-44, Yorkshire and Humber).

As these quotes show, there is a pressing need to ensure that victims are receiving their entitlements under the Code not only to improve their experiences within the system, but to help restore public confidence.

Whilst it should fall to the Ministry of Justice and Police and Crime Commissioners to put in place systems to monitor compliance and provide robust data, I believe it should fall to the holders of my office to monitor the quality and effectiveness of this compliance. This is consistent with the current statutory provisions which require the Victims' Commissioner to "review the operation" of the Code.

It is no coincidence the statutory provisions creating the role of the Victims' Commissioner are in the same Act of Parliament as those creating the Victims' Code. Whilst the Code gives victims entitlements, the Commissioner is there to give them a voice and to police the operation of the Code on their behalf. In short, the Code and the Commissioner are the two sides of the same coin, intended to make sure all victims are treated with decency and respect.

At present, it is impossible for the holders of this post effectively to keep the operation of the Code under review as they do not have the power to hold criminal justice agencies to account and require their cooperation. Neither do they have the resource to review all elements of the Code.

An effective Code requires an effective Commissioner. This is why I am calling on the government to use the proposed Victims' Law to extend the statutory powers of the Victims' Commissioner. These should include:

- agencies listed under the Code having a statutory duty to cooperate with the Commissioner. This would include giving the Commissioner the power for the Commissioner to request data and information. Most agencies already cooperate, to varying degrees, but this needs to be formalised so that it is a statutory duty and not a favour. This would be in line with the powers of other commissioners and inspectorates.
- a statutory requirement for agencies to consider and respond to recommendations contained within Victims' Commissioner reports within a reasonable timeframe set down by the Commissioner.
- VC reports and reviews (including the annual report) to be laid in Parliament. It is important the Commissioner has direct reach to Parliament, so Parliamentarians are aware of what she is saying and Parliament is able to call her to account.

I would like to see us go one step further. If local Police and Crime Commissioners, who are independent of government, are responsible for local compliance with the Code, the logical conclusion is that this role should fall to the Victims' Commissioner at a national level.

I have therefore argued that holder of this role should be required to submit to Parliament an annual report on compliance with the Victims' Code. the report should go beyond simply reporting local compliance data, but should monitor the quality of interaction with victims and victim satisfaction, as well identify good and poor practice and make recommendations for change.

By using the Victims' Commissioner to undertake this function, it would enable her to fulfil her statutory duty to review the operation of the Code and it would offer opportunity to make a real difference to the victim experience. Importantly, it would demonstrate the importance this government attaches to the Code and a commitment to place victims at the heart of the criminal justice system.

In line with my usual practice, a copy of this letter and attachments will be placed on my website.

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