

ANNEX A – DETAILED COMMENTS ON THE DRAFT CODE

I understand there will be a more detailed practitioner guide and I look forward to seeing this in due course.

Who is a victim under this Code (page 1)

The definition of victim under this section can, in certain circumstances, exclude victims of persistent anti-social behaviour. This is despite the fact that the cumulative impact on the victim can be quite severe. Some police and crime commissioners treat such victims as victims of crime and offer support, but the cost of this must come from discretionary spend. I would like to see all victims who meet the threshold for the Community Trigger to be recognised as victims under the Code.

I also want to see bereaved victims of homicide abroad included as victims under the Code. My report, *Struggling for Justice* (October 2019) sets out the case for providing the same level of care and support for these victims and those bereaved by homicide in the UK. The paragraph relating to these victims is a welcome addition but does not formally recognise them as victims under the Code.

How you can expect to be treated (page 2).

I welcome the section of the draft as it sets the right tone for the whole document and you might want to consider whether it is placed on page 1.

Who is responsible for meeting the rights? (page 4)

I am disappointed the Tribunal Service has not been listed and can see no reason for the omission. The Parole Board, which is also a body performing a judicial function and has an identical relationship with victims to that of the Tribunal, has been listed as a responsible agency under the Code, without challenge, for the past 15 years, suggesting that having obligations under the Code has not undermined its judicial independence. If we are to encourage the Tribunal to take a more proactive role towards victims, its inclusion into the Code is essential.

Other Service Providers (page 4)

I am disappointed that neither the NHS or the FCO are listed. Both have a duty to support victims, the FCO in respect of bereaved victims of homicide abroad, and the NHS in providing information in respect of victims of restricted and unrestricted patients. Their inclusion would result in greater accountability and would be a step forward in making sure that all victims of serious crime are treated equally.

Summary of Rights (page 5)

This sets out the summary of rights. From a presentational perspective, I suggest this be the covering page, as it summarises the whole of the new Code and therefore, is likely to be the page everyone will want to refer to.

Right 8, to be given information about the trial, needs to be amended to include a commitment to inform "...in a timely way". I am not comfortable with the reference to meeting the prosecutor being qualified with a: "...where possible". Such a qualification is not consistent with a statutory right and in any event, my understanding is that this should happen in every case.

Right 9 should make reference to applications to the Criminal Cases Review Commission and in HMP cases, applications to the High Court for a tariff review. Again, it should make reference to timeliness.

Right 11 refers to victims' rights within the VCS. It highlights the right to be given information about the offender, but there is no reference to the very important right to request licence conditions, the right to submit a VPS to the Parole Board, the right to apply to attend a parole hearing to read the VPS and to request a high-level summary of the reasoning behind the decision. Equally, there is no reference to the rights of victims of Mentally Disordered Offenders, who are also members of the scheme and who can also request conditions be included on a patient's discharge order.

Under Right 12, you mention the Parliamentary and Health Service Ombudsman. Under existing legislation, a victim has no direct access to the PHSO and can only seek a PHSO investigation through their MP. This needs to be made clear in the document.

On page 7, the paragraph headed "Who do the Rights apply to?", it would be helpful to make it clear that these rights apply in equal measure to victims of mentally disordered offenders.

Under the heading "Enhanced Rights" there should also be reference to some victims needing assistance because of innate characteristics and not simply the impact of the crime.

Right 1 – To be able to understand and to be understood (page 7)

Paragraphs 1.3 and 1.4 refer to a "right to request an interpreter". Surely, we all have an innate right to request anything? Should this not be a "right to have an interpreter"?

The wording in these paragraphs only refers to victims who have difficulty speaking English. There is no reference to victims who speak English and whose cases have been considered by other jurisdictions in languages other than English. In line with the recommendations in my report "Struggling for Justice" I believe these entitlements to translation and interpretation services should apply equally to victims of homicide abroad.

Right 2: To have the details of the crime recorded without unjustified delay (page 7)

In paragraph 2.4 and 2.5 you refer to a "right" unless the police decide otherwise. How can this be a right if it is dependent upon the discretion of the police?

In paragraph 2.8, I do not understand how requesting a police officer of the same gender to interview you following a gender based crime might ever be construed as prejudicing the fairness of the proceedings and I suggest this is removed.

Right 3: To be provided with information when reporting the crime (page 8)

Paragraph 3.2 appears to suggest a written confirmation can only be posted. I accept that can be risky for certain groups of victims, for example domestic abuse. Nevertheless, I am concerned by the possibility of victims not receiving a written notification as this might be important at a later stage in the process. I suggest you add something to the effect of giving a written notification in a way that is agreeable to the victim and does not compromise her safety.

Paragraph 3.3 almost makes the point that victims should always be provided with a copy of the Victims' Code but it's vague, It needs to be more specific. For example, it is not clear to me where the police should be pointing people to so that they can access this information. Where do they get further information about the criminal justice process if the police don't give it to them?

Right 4: To be offered a referral to victim support services and have services and support tailored to your needs (page 9)

In paragraph 4.8, the paragraph should include reference to victims of homicide abroad being able to access the National Homicide Service through the FCO.

In paragraph 4.8, if you are the victim of a specific crime, should you not have a right to be offered access to specialist support at all times? The way it is worded suggests that this access is again at the discretion of the police.

What are Special Measures (page 10)

The special measures box needs to make reference to remote evidence centres and that victims will be consulted on what special measures they may need.

Right 5: To be provided with information about compensation (page 10)

Under this section, it would be helpful to insert two shaded boxes explaining court ordered compensation and the criminal injuries compensation scheme so that victims can have a basic understanding of how the schemes differ and their purpose. This might include an expectation that court ordered compensation is often paid in instalments, according to the offender's means. The amounts are invariably less than might be received through CICA. The box might also offer clarity on whether CICA awards affect means tested benefits. This is an issue frequently raised by victims and our understanding is that they do not affect a victim's benefits entitlement.

Right 6: To be provided with information about the investigation and the prosecution (page 11)

Paragraph 6.3 and 6.4 refer to the police but in 6.5 they are referred to as service providers. In 6.6 you refer to police, CPS or Youth offending team. There needs to

be consistency. This is confusing. You might replace service provider with police in paragraph 6.5? It might also be useful to include a shaded box explaining how the three services work together?

In 6.5, I'm not sure why a service provider should be unable to provide regular updates, given that all they have to say and probably all they will say in many cases is that nothing has changed. I don't understand why this right, which is a very key one and one that is rarely complied with, should be conditional in that way

Paragraph 6.7 is another right to be given if the CPS the police or the YOT feel like it. This must be changed. Also, 6.7 needs to make clear it is the agency considering the out-of-court disposal who has the obligation to ask the victim, otherwise there is the risk they will all assume someone else is responsible.

Paragraph 6.8 raises the question whether victims should have the right to be told reasons for deciding an OOC is appropriate, regardless of the fact the victim has objected to it.

In paragraph 6.10 it refers to the Victims' Right of Review (VRR). The Code should reflect the recent case of R(FNM) v DPP (2020) EWHC870 (Admin) which ruled that, on a VRR, there is an opportunity for the complainants to make representations about why the prosecutions should go ahead and that the CPS must take them into account, and address them in the decision letter. This paragraph should also state the police and CPS must tell the victim that they have the opportunity (it is not a right) to make representations so that the existence of this opportunity is made clear.

In paragraph 6.11, victims have the right to express a view on bail conditions where they believe they need to be protected. Such conditions might include no contact or an exclusion zone. This should be set out in this paragraph.

Paragraph 6.14 states that if there is a big change to a charge, "...the CPS will contact you". This is in line with CPS guidance, but the CPS tell us that the usual practice is for the CPS to contact the police officer leading on the case and that the police officer will explain the change to the victim. I have requested that the practice follows the published guidance, but if this is not going to happen, then the advice in the Code ought to reflect common practice.

In paragraph 6.15, it cannot be called a "right" to meet with the CPS if the CPS has the discretion to decide not to. I would like to see the discretion removed.

Right 7: To make a victim personal statement (page 12)

The right to make a VPS, as drafted, omits the important right to make a VPS to the Parole Board (it is mentioned only in passing under the responsibilities of a VLO on page 17, but it is not flagged up as a right). This needs to be clearly spelt out.

Paragraph 7.3 must make it clear that the "judge" (instead of the court) will make these decisions.

Right 8: to be given information about the trial, trial process and your role as a witness (page 14)

In paragraph 8.3, you refer to a meeting with the prosecutor before trial “where possible”. There should be an expectation this happens in all cases.

In paragraph 8.5 the last sentence appears to stop in mid-flow.

It is disappointing that in paragraph 8.6 on page 14, the document refers to “where possible” you can use a separate entrance, but I accept this is inevitable. How do you propose that victim and defendant wait in separate areas, if there are no separate waiting rooms to make this possible? It also needs the addition of the phrase “while you are waiting or at court after your case has been heard”

Right 9: To be given information about the outcome of the case and any appeals

Paragraph 9.1 gives the right to be told the outcome of the case and an explanation of the sentence by the Witness Care Unit but in the current version of the Code, at 4.3 at page 27 it also says: “you are entitled to be referred to the CPS who will answer any questions you may have about the sentence which the Witness Care Unit is not able to answer”. This seems to have disappeared and it should be re-inserted.

Paragraph 9.3, third bullet, refers to a meeting with the CPS, but states this will not happen if the police believe it is inappropriate. It is not clear why the police have the discretion to decide it is not appropriate and suggests the “right” is at the discretion of a service provider. This needs to be clarified.

From a presentational point of view, should paragraphs 9.4 and 9.5 be in a shaded box, as they simply explain how the unduly lenient scheme operates?

Paragraphs 9.8-9.12 set out the rights of the victim in respect the case being referred to the Court of Appeal and the Supreme Court. However, there is no reference to tariff reviews in HMP cases, which are undertaken by the High Court at the request of the prisoner. Victims have the right to be notified, attend the hearing when the decision is handed down and submit a VPS. This needs to be included.

There is no paragraph 9.10.

Paragraph 9.3 (third bullet point) the offer of a meeting should be within a few weeks at the most.

In paragraph 9.11, the victim is notified within 5 days of an appeal to the Court of Appeal being notified to the Witness Care Unit. Is there a deadline by which the Court of Appeal must advise the Unit?

In paragraph 9.13, there appears to be a missing sentence?

In paragraph 9.16, I am uncomfortable with the discretion conferred on CCRC staff to decide what is in the best interests of the victim and feels this needs some further discussion.

In paragraph 9.17, it states the CCRC will “try” to contact the victim. This is not consistent with a “right” and should be replaced with “will”.

Right 11: to be given information about the offender following a conviction

In paragraph 11.1, there is no reference to “discretionary victim status” within the VCS. This includes some victims where there has been no conviction. The list of categories of victims eligible for discretionary status is lengthy and should be included or at least referred to.

The paragraph is silent on the more limited set of rights for victims whose offender is a patient under the Mental Health Act. For the sake of clarity, it needs to be explained.

Right 12: To make a complaint about rights not being met

Paragraph 12.3 makes reference to appeals to the PHSO. At present, all such appeals can only be submitted by MPs and not by members of the public.