



## **Getting it right for victims and witnesses**

### **Response of the senior judiciary**

The following response is submitted on behalf of the senior judiciary and has been agreed by the Lord Chief Justice of England & Wales as well as other members of the Court of Appeal. Particular thanks go to Mr Justice Calvert-Smith for drafting much of this paper.

Whilst we support the general thrust of the consultation in seeking to improve any service that is provided for victims and witnesses we have grave concerns about the move away from a national service. We believe that the suggestion that Police and Crime Commissioners take a role in commissioning services is misconceived and risks putting current good practice in serious jeopardy.

The present service is provided to all witnesses who come to court throughout England and Wales, whether victims of crime, witnesses for the prosecution or witnesses for the defence. It is even-handed and independent. Such a service is invaluable to the proper administration of justice. It would be a severely retrograde step to concentrate support on victims (or simply witnesses for the prosecution); or to put at risk that independence. The judges have confidence in the witness support service because they know it to be neutral and independent. Placing responsibility for the service in the hands of the PCC would bring to an end that independence and neutrality. The judges would cease to have that confidence. Moreover, (assuming the new service would not be restricted to victims), no support would be offered to witnesses other than for the prosecution. That would be damaging to the system

Although not strictly a matter for us, we wonder too whether the many dedicated volunteers who constitute a very significant part of the service will wish to do so if they are not, and not seen as, independent participants supporting those who come to court to give evidence.

It seems to us that victims and witnesses should be entitled to a similar degree of support wherever they give their evidence. If the level of support depends on the local PCC, then it will vary from one part of the country to another. That would not advance confidence in the criminal justice system.

Our answers to individual questions follow. We do not answer those questions which seem to us to concern Government policy.

Lord Justice Goldring  
Senior Presiding Judge for England & Wales

## Introduction - the case for change

**Q1. Are there groups of victims that should be prioritised that are not covered by the definitions of victims of serious crimes, those who are persistently targeted and the most vulnerable? If so, can you provide evidence of why they should be prioritised and what support needs they would have?**

The decisions on whether to “focus” on particularly vulnerable groups such as those who are the victims of “serious” crime, targeted victims and vulnerable victims are political/financial decisions upon which it would not be appropriate for us to comment.

The judiciary’s focus is, and of course has to be

- on the court process
- on victims and witnesses who have to come to court to give evidence at contested trials or
- on victims who wish the court to know how the crime committed has (and may continue) to affect them and/or to receive compensation for loss or damage suffered.
- generally, to try to ensure that those tried in their courts have fair trials – fair both to defence and prosecution – and that the sometimes intense personal difficulties suffered by those directly involved do not make that difficult or impossible.

Clearly there are many victims who never engage directly with the court system. The response cannot deal with them.

## Part 1 - Supporting victims to cope and recover

**Q2. Should supporting victims to cope with the immediate impacts of crime and recover from the harms experienced be the outcomes that victim support services are assessed against?**

Assessing outcomes is always a difficult problem but particularly so here. Clearly an assessment system that does more than merely count heads is desirable, but as with so many areas in which services, formerly provided by central government, are being contracted out there are huge potential problems. For instance:

1. Asking users of the service, in particular those in the three categories described in the paper whether the service enabled them to “recover” is likely to hinder the recovery and to add significantly to the expense of the service.
2. Measuring objective factors such as conviction rates or attendance at court without the need for a witness summons or warrant would be objectionable for all sorts of reasons. Giving a contractor a stake in the result of a case directly or indirectly would be wrong.
3. The “quality” of the overall service provided would depend to a great extent on other factors and parties, such as the police, CPS, Courts and Probation

**Q3. Are the eight categories of need identified correct? Are there any other categories of need that support services should address?**

On the assumption that the word “eight” in the question should read “right” (since it is hard to find a list of eight anywhere in the paper) this too is not really a question for judges to be too involved with – depending as it does on the availability of funds and on political decisions. The three groups specified clearly cover important categories of victims needing care and attention right through the criminal justice process. The victims of sexual crime frequently need special and longer-lasting support.

**Q4. Is a mixture of locally-led and national commissioning the best way to commission support services for victims of crime?**

**Q5. Should police and crime commissioners be responsible for commissioning victim support services at a local level? Who else could commission support services?**

**Q6. Who do you think should commission those services at a national level?**

**Q7. Which services do you think should be commissioned at a national level?**

The key components of a national system of justice must be the same throughout the country. Provided there is a national framework setting out what is required in respect of victims and witnesses the question of whether commissioning is local or national is not of the first importance. However

1. The proposal that the service provided to victims and witnesses, at least in so far as it affects their participation in the courts – including the making of statements for the purpose of prosecution etc – should be left to individual Police and Crime Commissioners elected on political platforms is potentially disastrous.
  - a. It will lead to “post code” justice for victims and witnesses.
  - b. The commissioner may or may not know anything about the practicalities of the service he or she is commissioning.
  - c. In general local commissioners will be “outgunned” by tenderers from large organisations whether in the private or voluntary sector.
  - d. Police and Crime Commissioners will have no brief to look after the interests of defence witnesses.
  
2. The judiciary have developed an excellent relationship in most parts of the country with the Witness Service (which currently absorbs a significant part of the Victim Support budget) and greatly value its nationally consistent standards. Its volunteers do an enormous amount to assist in the smooth running of the system. While its principal role consists in helping prosecution witnesses – there are of course many more of them – their ability and willingness to assist defence witnesses is also useful. It would be very detrimental to our perception and that of the public if the only service funded by the taxpayer in respect of witnesses was directed at prosecution witnesses, or even more narrowly, at victims/alleged victims.
  
3. As the paper points out the Probation Service – who will no doubt answer for themselves – have taken on a role in recent years because of their ability to keep track of prisoners serving sentences and of licence conditions before they are decided on and after release. Although there are obvious merits in consolidation where possible the Service most closely concerned with post-release licence will be in the best position to manage victims at this stage.
  
4. As to which ministry should be responsible for commissioning national services it is not for us to comment but it would be hoped that enough has remained of “joined up government” for whichever department is chosen only to perform the function after the fullest consultation with other departments.

5. If there is to be an element of local commissioning it should be by the CJS agencies in consultation with each other. Of course the Police and Crime Commissioner would be able to make his or her views known but the decisions, even if taken locally, should be made by national organisations or, if not, local organisations working to common national standards.

**Q8. Should there be a set of minimum entitlements for victims of serious crimes, those who are persistently targeted and the most vulnerable?**

**Q9. Is there further support that we need to put in place for victims of terrorism, and bereaved family members affected by such incidents, to help them cope and recover?**

From our position within the courts it is hard to comment on these questions. The question of minimum standards always raises the question of enforceability. Clearly those who are the victims of or bereaved by terrorist offences – or indeed any serious crime such as murder or serious sexual or non-sexual assault - may need particular long term help to get over their experience.

## **Part 1 - Supporting victims and witnesses through the criminal justice process**

**Q10. How could the Victims' Code be changed to provide a more effective and flexible approach to helping victims?**

**Q11. What do you think of the proposed principles for the new Code?**

**Q12. Are there additional needs for bereaved relatives which should be reflected in a new Victims' Code?**

The Code does not deserve the scathing criticism it receives at para 75.

Its whole tenor is towards treating victims and witnesses properly, seriously and with respect. At 3.11 it makes clear that even those whose complaints of crime later turn out to be untrue or even malicious should be treated with the same respect as others.

The limitations are the same sorts of limitation suggested in the paper – i.e. that the service must be focused on need and cannot be available to everyone who might come within the definition of victim. It would assist, as is suggested, for those bereaved by homicide to be pointed towards the specialist services which exist – SAMM and the new Homicide Service. The suggestion that victims should be able to demand – as opposed to request – RJ and be granted it subject only to resources and availability ignores the

necessary willing participation of the accused/convicted person. RJ requires great skill and particular (and rare) personal qualities in the “mediator” and risks making things worse rather than better for either or both parties as is accepted at paras 113 etc of the paper. Of course RJ can be a very productive process and the CACD has said as much – see O’Brien 2004 EWCA Crim 2572.

Whatever changes are made to the Code it will need to contain the respective obligations of the different services at the different stages of the process.

The current Code is silent on the obtaining, and the status when obtained, of statements made by victims/parents of victims etc describing the impact of a crime on themselves or their families. A revised code should contain text on this and make sure that the victim has the right to decide whether such a statement be considered, referred to in detail, or not considered or referred to by the sentencer. The victim should also be informed that although they may want to make their statement in person the judge will decide if it is appropriate in any given case.

**Q13. How could services and support for witnesses, throughout the criminal justice system, work together better?**

**Q14. How could the Witness Charter be improved to ensure that it provides for the types of services and support witnesses need?**

As set out earlier. The tone of the paper is focused on victims not witnesses and away from defence witnesses. The key concern of the judiciary is that there is little in the paper to inspire confidence that the existing service for witnesses will be maintained, let alone improved.

**Q15. How can the processes which allow victims and witnesses to make complaints to CJS agencies be improved to make accessing redress easier?**

Encouraging complaints is a strange way to go about streamlining/focusing a service. There is no information in the paper as to the level of complaints, their nature and the way in which they have been dealt with. It might be possible for feedback to be asked for on a voluntary basis which would give those dissatisfied with the service the chance to complain but this runs the risk of further distressing the victim. In the end a complaint would have to be dealt with by the agency responsible for the failing which caused it. If the solution is to create a complaints handling service which would then identify which service or services needed to respond that will add another layer of bureaucracy and expense although making the process easier for the complainant. Many complaints in our experience are concerned with the result of the case – for which the magistrates, jury or sentencers rather than

the agencies responsible for their care - are responsible.

**Q16. How could our existing processes be changed so that Victim Personal Statements are taken into account in sentencing and at other stages of a case, as appropriate?**

The role of the victim's views on sentencing has been clearly set out in decisions of the courts over the years. See Perks 2001 1 Cr App R (S) 19, Dzokamshure 2009 1 CAR (S) 112 A-G's Ref No 99 of 2009 2009 EWCA Crim 181 Fazli 2009 EWCA Crim 939 Odedara 2009 EWCA Crim 2828 Cooksley 2004 1 Cr App R (S) 1 A-G's Ref Nos 24 & 25 of 1994 1995 16 Cr App R (S) 583 – and in particular Nunn 1996 2 Cr App R (S) 136. **This case like some of the others makes the point – a cardinal point repeatedly made by Dame Helen Reeves who founded Victim Support – that knowledge that the victim's views may/will affect sentence will encourage pressure from the criminal or his/her associates to persuade the victim to ask for leniency, or provoke revenge if it becomes known that the victim's views had in fact increased the sentence. See also R v O'Brien 2001 1 Cr App R (S) 22, A-G's Ref No 77 of 2002 2003 1 Cr App R (S) 564, Dredge 1998 1 Cr App R (S) 285.**

**Q17. What process could be put in place so businesses can explain the impact of crime on individual members of staff and the business as a whole?**

It should not be impossible for the current system to expand to include businesses within it.

**Q18. What could be done to improve the experience of witnesses giving evidence in court?**

Everything should continue to be done by the parties and the court to ensure that waiting is kept to a minimum and that witnesses are not brought to court unnecessarily. However the fact that the system is a human system in which some of the participants are often people with unstructured lives and, in the Crown Court, cases are tried by jurors who may encounter unforeseen difficulties in their personal lives making delays inevitable, means that it will always be a question of reducing or minimising rather than eliminating the inevitable disruption and anxiety which being a witness entails.

## Part 1 - Restoration and reparation

**Q19. What measures could be put in place to ensure the safety of the victim when undertaking restorative justice?**

We have already highlighted the judiciary's concern, shared by those who rightly campaigned for the rights of victims so many years ago, over bringing the victim too far into the criminal justice process. This is public justice and the victim's role must necessarily be limited in order to maintain it and to safeguard victims and witnesses themselves. If the balance shifts so that the victim effectively becomes a party to the proceedings the consequences will be very serious indeed.