

Improving the Code of Practice for Victims of Crime

CBA Response to Consultation Paper CP8/2013

Introduction

1. The consultation paper is concerned with improving the 'Code of Practice for Victims of Crime' introduced in 2006. The purpose of that Code is to set out the services to be provided to victims of crime in England and Wales by criminal justice agencies. The Code needs to be updated and re-written so that it is more accessible, flexible and easier to understand.
2. A new draft 'Code of Practice for Victims of Crime' has been produced, written in a very different style with a very different structure, focusing on entitlements and duties. New sections have been added dedicated to those under 18 and concerning Victim Personal Statements, Businesses, Restorative Justice and a new Complaints' Procedure.

Executive Summary

3. Proposals concerning '**Victims' Entitlements'** are designed to increase understanding of their entitlements for victims of crime and to increase flexibility of service, enabling resources to be targeted, with enhanced levels of service for those most in need. Proposal Questions:

a. **Q1.** Do you think that the approach taken to restructure the Code is the right one?

Answer: Yes, it seems sensible to mirror victims' entitlements with the corresponding duties of the relevant organization to make the Code more victim-focused and user-friendly. The flow chart should be redesigned. (*Paragraphs 13 to 15, below*)

b. **Q2.** Do you think that the categories of persons entitled to receive enhanced services under the Code are appropriate?

Answer: Yes, albeit some tension is perceived between the desire to maintain flexibility by leaving discretion to 'service providers' and the requirement for definitive categories into which victims must fall in order to receive those enhanced services. (*Paragraphs 16 to 20, below*)

4. Proposals concerning '**Duties upon Criminal Justice Agencies and Organisations**' aim to increase flexibility by allowing tailored service provision following an initial police needs assessment. Proposal Question:

a. **Q3.** Do you think that the duties imposed on the criminal justice agencies in the revised Code are the right ones? Please provide comments.

Answer: Yes, the duties correctly mirror the appropriate entitlements. (*Paragraph 21, below*)

5. Proposals concerning '**Police and Crime Commissioners**' involve enabling those Commissioners from 2014 to commission local victims' services. Proposal Questions:

a. **Q4 (a).** Do you think that the Police and Crime Commissioners should be included in the revised Code? Please give reasons.

Answer: Yes, principally because of the proposed new duty falling upon them. Should that duty not fall upon them and should they not acquire any further duties under the revised Code then there are arguments for keeping them out of the Code. (*Paragraphs 22 to 26, below*)

b. **Q4 (b)**. If so, what duties should they fulfil and at which stages of the criminal justice process should Police and Crime Commissioners be included?

Answer: They should commission services fit for the purpose of fulfilling the entitlements of victims and be included at the very start of the criminal justice process, with further possible duties arising in relation to victim personal and impact statements and a new complaints' procedure. (*Paragraphs 27 to 29, below*)

6. Proposals concerning '**Victim Personal and Community Impact Statements**' aim to extend the use of Community Impact Statements within local police forces and include a statement of purpose for Victim Personal Statements as well as measures aimed at both increasing the use of such statements and introducing more flexibility to the way that they are taken. Proposal Questions:

a. **Q5**. Do you agree that the Victim Personal Statement should be included within a revised Victims' Code?

Answer: Yes, it would be wrong to leave such an obvious entitlement for victims outside the Code. However, there are concerns that increased flexibility promoted within the Code could discourage these

important statements from being taken by properly trained police officers. (*Paragraphs 30 to 33, below*)

- b. **Q6.** Do you think that police forces should be encouraged to expand their use of Community Impact Statements?

Answer: Yes, for group and prolific offending with the source of the information identified wherever possible. (*Paragraphs 34 to 35, below*)

- c. **Q7 (a)** Do you think community impact statements provide an effective way of capturing the problems confronting communities?

Answer: Yes, but only to a limited extent. (*Paragraphs 36 to 37, below*)

- d. **Q7 (b)** If so, how might the wider roll out of the Community Impact Statement be encouraged?

Answer: Building upon the pilot schemes and utilizing Police and Crime Commissioners. (*Paragraphs 38 to 39, below*)

- e. **Q7 (c)** If not, how might community impact statements be improved?

Answer: Not applicable. (*Paragraph 40, below*)

7. Proposals concerning '**Business Impact Statements**' are designed to provide a business-oriented type of Victim

Personal Statement to all sizes of business on a self-completion basis. Proposal Questions:

- a. **Q8.** Do you agree that all businesses should be entitled to make an impact statement to explain how a crime has affected them?

Answer: Yes, the proposed extension to all businesses is a natural and logical progressive step from the Victim Personal Statement. (*Paragraph 41, below*)

- b. **Q9.** Do you think businesses will benefit from this scheme?

Answer: Yes, as may the wider community.
(*Paragraph 42, below*)

- c. **Q10.** Do you think that this statement should be extended to other organisations, such as charities?

Answer: Yes, as their similarities as victims of crime outweigh any differences, which in any event would appear to be irrelevant. (*Paragraph 43, below*)

8. Proposals concerning '**Restorative Justice**' are designed to improve awareness and availability and ensure that Restorative Justice is victim-led. Proposal Questions:

- a. **Q11.** Do you agree that Restorative Justice should be included in the Victims' Code where the offender is over 18 years of age?

Answer: Yes, as a positive intervention that clearly involves the victim it should be included in the Code.
(Paragraph 44, below)

- b. **Q12.** Do you think that the section on Restorative Justice in the revised Code will help to support wider work to improve victim awareness of Restorative Justice?

Answer: Yes, this must follow as a matter of logic.
(Paragraph 45, below)

- c. **Q13 (a).** How much do you think Restorative Justice uptake will increase as a result of the reforms to the Code?

Answer: This is very difficult for the CBA to quantify but there must be potential for considerable uptake in appropriate cases. *(Paragraph 46, below)*

- d. **Q13 (b).** Which specific types of Restorative Justice Intervention do you think will increase?

Answer: The increase is likely to follow a similar pattern to the previous take-up of Restorative Justice by those under 18. It is likely to focus on low-level meetings between victims and offenders aided by a suitably trained facilitator. *(Paragraph 47, below)*

9. Proposals entitled '**If things go wrong**' are aimed at providing a clear and effective means of redress. Proposal

Questions:

- a. **Q14.** Do you think that the complaints system in the revised Code will deliver a better service for victims?

Please give reasons.

Answer: Yes, by placing duties upon the agencies to deal with complaints a better service will be delivered.

A further idea is to use the Police and Crime Commissioners as a conduit for complaints.

(Paragraphs 48 to 50, below)

- b. **Q15.** How do you think compliance and performance by agencies and organisations under the Code can be best monitored? And by whom? Should this be locally or nationally driven?

Answer: By combining self-monitoring with monitoring of the complaints process, possibly utilizing Police and Crime Commissioners. It should be locally driven with national oversight. *(Paragraphs 51 to 56, below)*

- c. **Q16.** In addition to the improvements outlined in the Code, what reforms do you think are needed to improve means of redress for victims?

Answer: potential use of Police and Crime Commissioners in a new complaints' process.
(*Paragraph 57, below*)

10. Proposals concerning **Children and Young People** raise the age of this group from under 17 to under 18 and attempt to make the Code more accessible and understandable to them. Proposal Questions:

a. **Q17.** Do you agree that there should be a dedicated section for children and young people in the Code?

Answer: Yes, they form a distinct group with obvious vulnerabilities, are subject to different processes in the criminal justice system and their comprehension levels are generally below those of the adults for whom the Code was initially designed. It is right to raise the age from under 17 to under 18. (*Paragraphs 58 to 61, below*)

b. **Q18.** Do you agree that the duties on the criminal justice agencies with regards to children and young people are correct? Please give reasons.

Answer: Yes, as the duties are comprehensive and fit the range of appropriate entitlements previously set out in the Code. (*Paragraphs 62 to 63, below*)

c. **Q19.** Do you consider that this section is appropriately user-friendly for children and young people?

Answer: No, although it is accepted that it is almost impossible to produce a single document of this type that will cover the range of children and young people involved in the criminal justice process and be accessible to all of them. The anticipated 'Easy Read' publication may remove these concerns, as may future use of visual aids, websites, flow charts and video recordings. (*Paragraphs 64 to 68, below*)

11. The '**Concluding Remarks**' are concerned with communicating the Code so that victims are aware of what information and support they should receive. Proposal Question:

a. **Q20.** How can we ensure that the Code is communicated effectively?

Answer: Principally by ensuring that the police properly inform victims when they conduct the requisite needs assessment. Copies should be available at public locations, be held by all service providers for viewing and be accessible electronically with ease. Certain categories of victim should be provided with hard copies if they wish. (*Paragraphs 69 to 74, below*)

12. **'Equality and Impact Assessments'**. Proposal

Questions:

- a. **Q21.** Do you think we have correctly identified the range and extent of the effects of these proposals on those with protected characteristics under the Equality Act 2010?

Answer: Yes, the Crime Survey for England and Wales is a reasonable tool to use. (*Paragraph 75, below*)

- b. **Q22.** If not, are you aware of any evidence that we have not considered as part of our equality analysis? Please supply the evidence. What is the effect of this evidence on our proposals?

Answer: Not Applicable. (*Paragraph 76, below*)

- c. **Q23.** Do you have any comments in relation to our impact assessment?

Answer: Yes, there is potential for significant resource requirement in some areas and recognised data limitations make accurate assessment impossible, as recognised within the impact assessment. The most obvious concern is the potential for a very high uptake of Victim Personal Statements. (*Paragraph 77, below*)

d. **Q24.** Could you provide any evidence or sources of information that will help us to understand and assess those impacts further?

Answer: Yes, police forces should be able to assist with rough numbers of victims making evidential statements. The bulk of any increase is likely to come from victims suffering the effects of less serious crime. *(Paragraph 78, below)*

e. **Q25.** How long does it take to record a VPS from a victim of crime?

Answer: One to two hours is a general estimate for statements commonly produced in the Crown Court, with thirty minutes being an estimate for statements arising from less serious offences with straightforward consequences. *(Paragraph 79, below)*

f. **Q26.** What is the additional burden on civil society organisations if they are contracted to take the VPS on behalf of the police?

Answer: The burden is potentially considerable. It is considered that the police should continue to take such statements. *(Paragraph 80, below)*

The Body of the Report

Q1. Do you think that the approach taken to restructure the Code is the right one?

13. Yes. It is quite clear that the new Code is written in a manner directed towards the victim rather than just the organization charged with providing services to the victim.

14. The inclusion of a flow chart is sensible, appropriate and user-friendly although responses to the Flow Chart depicted (pages 7 to 8 of the Draft Code) have been mixed with reaction varying from being put off involvement in the entire criminal justice process, to complimenting the visual and relative simplicity of the 'journey through the Criminal Justice System' as portrayed. There is certainly a good argument for breaking it down and simplifying it so that it can be viewed on a single page (or split into free-standing sections which can be independently viewed on different pages).

15. It seems sensible to direct part A of a chapter to the victim's entitlements and then part B of the chapter to the duties of the relevant organization. The two parts

effectively say the same thing but it is certainly more 'user-friendly' for the victim.

Q2. Do you think that the categories of persons entitled to receive enhanced services under the Code are appropriate?

16. Yes. However, the desire to maintain flexibility (paragraph 30 of the Consultation Paper at page 12) does create some tension with the notion of entitlement. Entitlement arises from categorisation following a mandatory 'needs assessment.' Keeping that categorisation flexible to allow for judgement and discretion when assessing needs also makes it more difficult for a victim to argue that he has wrongly been excluded from the benefits of enhanced service provision where the criteria are not clearly defined. Nevertheless, the intention behind categorisation is clear and it is anticipated that the relevant service providers will be looking to assist those in need rather than to exclude them, resources permitting. The overall inclusionary discretion left to service providers is clearly a positive and necessary feature (Draft Code, page 4, paragraph 23).

17. The first category entitled 'victims of the most serious crime' (paragraph 27 of the Consultation Paper at page 11 and the Draft Code, page 4, paragraph 23) sensibly

includes victims under this heading to receive enhanced entitlements. The category is rightly included. As discussed above the obvious question that arises is in relation to how to define the category. Should it be every sexual offence or only serious sexual offences? Should those subject to serious harassment not also be included in this category of victim? Victims of robbery are likely to be included as having been subject to violent crime but what about victims of domestic burglary who often are seriously affected by the crime? Flexibility allows for these questions to be answered by the service provider on an individual basis but does not provide much guidance to the victim potentially anxious at the outset to see if he qualifies and, importantly, if not, why not.

18. The use of wounding or causing grievous bodily harm with intent is also a poor example of a violent crime to use in the Code to exemplify this category. The example is taken from section 18 of the Offences Against the Person Act 1861. There are less serious alternative offences of unlawful wounding and inflicting grievous bodily harm under section 20 of the same Act. The less serious alternative offences do not require the quoted intent upon the part of the offender. However, the injury caused to the

victim is just as serious. As the Code focuses on victims and their entitlements it would be better to exemplify the category by reference to the alternative less serious offences causing equally serious harm to the victim than to focus upon irrelevant considerations concerning an offender's state of mind by quoting the inappropriate section 18 example.

19. The second category entitled 'persistently targeted victims' (paragraph 27 of the Consultation Paper at page 11 and the Draft Code, page 4, paragraph 24) is rightly included. The obvious question that again arises is in relation to how to define the category. Is a victim repeatedly targeted someone who has been the victim of crime just twice, or three times? Does it need to be the same type of crime? Again, flexibility allows for these questions to be answered by the service provider on an individual basis but does not provide much guidance to the victim potentially anxious at the outset to see if he qualifies and, importantly, if not, why not.
20. The third category entitled 'vulnerable or intimidated victims' reflects the current position. These victims are obviously correctly included (paragraphs 27 and 29 of the

Consultation Paper at page 11 and the Draft Code, page 4, paragraph 25).

Q3. Do you think that the duties imposed on the criminal justice agencies in the revised Code are the right ones?

Please provide comments.

21. Yes. That the various entitlements referred to in Chapter 1A and proclaimed as duties in Chapter 1B (with identical mirror structuring of entitlements and arising duties in Chapters 2 and 3) should be provided under a revised Code is unarguable. We do suggest a minor amendment as follows: it would aid clarity and manage expectations if the reference to 'the prosecutor' is deleted in both paragraphs of Section 3 Part A. This would make it consistent with Section 3 Part B and would also remove the practical problems involved in *entitling* the victim to meet prosecution counsel who would be under a duty to discuss the proceedings with them. The victim of course would be able to see the CPS representative where circumstances permitted.

Q4 (a). Do you think that the Police and Crime Commissioners should be included in the revised Code?

Please give reasons.

22. Yes. The relationship between Police and Crime Commissioners and the victims of crime is not simply the obvious one that exists by dint of the Commissioner's current role in making the local police force accountable to the local community, but it is also made explicit following election whereby Commissioners promise to give a voice to the public, especially victims of crime. The proposed extension of their duties from 2014 to one including the commission of local victims' services is a natural extension of their current budgetary responsibility and stated position as voice for those victims (paragraph 39 of the Consultation Paper at page 14). In those circumstances they would seem to be acting as 'service providers' within the meaning of the Code (Draft Code, page 1, paragraphs 5 and 6, and the Glossary at page 58) and therefore should be specifically brought within the Code, their duties being clearly there set out.
23. The view set out above is largely based upon the understanding that the role of Police and Crime Commissioners is a developing one with which the public will become more familiar.

24. It is possible to argue that Commissioners should not be brought within the Code as a Police and Crime Commissioner is an elected individual as opposed to an organisation and it would be unfair to impose the additional burden. However, this argument perceives the Commissioner as an individual whereas the person in office of course has administrative support. The duties are upon the holder of the office and would be allied to that appointment. The argument that the Commissioner is an individual and not an organisation is not a qualitative argument of principle. In any event, within the spirit of the Code, the intention is to provide victims with entitlements and 'service providers' with duties designed to fulfil those entitlements. To exclude the holder of an elected office who has promised to provide a voice for those victims from any duties under the Code is by itself something that may appear odd to public perception.

25. A further argument that Commissioners should not be brought within the Code could arise from the fact that the intention from 2014 is for them to commission services as opposed to they themselves acting as those 'service providers.' However, the responsibility for commissioning local victims' services can itself be seen as part and parcel

of providing that service. Furthermore, if there was a failure to provide services to which a victim is entitled due to a wholesale failure to commission such a service in the first place, or to commission such an obviously defective service that it could never reasonably have been expected to meet the entitlements of victims of crime, then a disappointed victim would expect to be able to turn to the Code and identify the entitlement, the consequent duty arising from that entitlement and upon whom the relevant duty is imposed. Those charged with commissioning the very services that the victims of crime depend upon should therefore be brought within the Code.

26. Similarly, if Police and Crime Commissioners are to directly play a role in a new complaints' procedure then they should be included in the revised Code subject to the relevant duty or duties. See paragraph 50, below, for a discussion in relation to this potential role.

Q4 (b). If so, what duties should they fulfill and at which stages of the criminal justice process should Police and Crime Commissioners be included?

27. Following from the intention to extend the role of Police and Crime Commissioners in 2014 to commission local

victims' services there should be a consequent duty upon them to commission services fit for the purpose of fulfilling the entitlements of victims in the relevant local police area. This duty is a fundamental one arising at the very start of the criminal justice process and providing a basis for the victim's relationship with that process.

28. Arising from their promise to give a voice to the public, especially to the victims of crime, should be a duty to oversee that the entitlements of victims to make the relevant personal and impact statements are properly fulfilled by the local police. Duties could also arise from a role in managing the method of communication of witness' views to the police on a local basis (for instance, dealing with the circumstances in which various methods of communication would be preferable – face to face taking of statements / self-recording of statements / use of a pro-forma / telephone and electronic methods - in so far as such methods would not be in conflict with national guidelines). Again, these would be fundamental duties arising from basic service provision at an early stage of the criminal justice process.

29. Specific duties could also be imposed upon Police and Crime Commissioners in relation to a new complaints' procedure discussed further in paragraph 50, below.

Q5. Do you agree that the Victim Personal Statement should be included within a revised Victims' Code?

30. Yes. Public knowledge and overall effect of the Victim Personal Statement will be improved by inclusion in the Code. Victim Personal Statements provide some level of control or influence for victims in the criminal justice process. They are seen to empower victims. The entitlement to make such a statement is a very important feature for victims of crime. It would be wrong to leave such an obvious entitlement for victims outside the Code.
31. One major concern arises in relation to flexibility in how the Victim Personal Statement will be taken (paragraph 48 of the Consultation Paper at page 16). Flexibility within the system is a good thing and clearly there will be cases, often of the less serious sort, where self-completion and completion online are sensible and appropriate alternatives to the sometimes time-consuming task of an officer taking a Victim Personal Statement in person. However, there is much anecdotal evidence amongst Crown Court

practitioners of Victim Personal Statements in serious cases, often sexual offences, being self-completed and the victim again dealing with the evidential detail of the allegations made against the Defendant. Not only do such situations raise issues of disclosure (as noted in the Consultation Paper at page 14, paragraph 44) but they can provide direct material for cross-examination where a victim describes the evidential events differently. This has arisen in trials affecting several members of the working party preparing this response. The problem is largely avoided where the officer who took the original evidential statement takes the Victim Personal Statement without referring again to evidential detail and focusing correctly on the issues pertinent to the statement in hand. If victims are to draft their own Victim Personal Statements then clear guidance is likely to be needed and such a procedure is perhaps better confined to offences of less seriousness and / or where the relationship between victim and offender has not been close. Cases involving sexual offences, domestic violence, harassment or serious violence, especially where a trial is likely, should always have a Victim Personal Statement taken by the officer in the case. Commissioning other agencies to take these statements without appropriate training is likely to be

fraught with difficulty. Appropriate training is likely to be resource intensive.

32. The Lord Chief Justice, Lord Judge, has recently reviewed the current use of Victim Personal Statements in **R. v. Perkins and others [2013] EWCA Crim 323; [2013] 3 Archbold Review 3**, in a judgment of the Court of Appeal (Criminal Division) given on March 26th 2013. The fact that such a statement comprises evidence in the case and must be in the form of a formal witness statement is emphasised, alongside the fact that it may be used in cross-examination and is subject to disclosure obligations. This simply highlights the fact that Victim Personal Statements need careful consideration and careful, often professional, drafting.
33. So far as the detail of the Draft Code is concerned the right to make a Victim Personal Statement at a later time than the evidential witness statement (Draft Code, page 12, Section 1 (ii) 8) could perhaps be made more clear by placing emphasis on the word "choose" (using bold type as in the paragraphs preceding). Anecdotal evidence suggests that victims have often not been able to appraise the impact of a recent crime on their lives at the time that

the evidential witness statement is taken. Because of the speed of the criminal justice system in relation to some cases it is right to offer the Victim Personal Statement at this early stage but the entitlement to make one at this stage is as important as the right to make one at a later stage and should be subject to equal emphasis in the Code.

Q6. Do you think that police forces should be encouraged to expand their use of Community Impact Statements?

34. Yes, certainly for group and prolific offending. A consistent approach across all forces would assist in highlighting the community concerns to be addressed. The source of the information supporting the statement should be clearly identified to ensure sufficient weight is attached to it if utilised by any court.

35. Anecdotal evidence suggests that impact on the community is often expressed in the Victim Personal Statement when the offending is against sole trader type businesses e.g. the local shop or sub-post office.

Q7 (a) Do you think community impact statements provide an effective way of capturing the problems confronting communities?

36. Yes, but only to a limited extent. They merely show the impact of a specific type of behaviour or event and so are insufficient to show 'problems confronting communities' in a wider sense. They show the knock-on effect of a crime on the local community, and can be used to illustrate such. Anecdotally, the impact on the offender of hearing of the often far-reaching impact certain crime has on the communities in which they or their family may live has some effect, albeit on an individual basis.

37. Community Impact Statements are limited but effective.

Q7 (b) If so, how might the wider roll out of the Community Impact Statement be encouraged?

38. Building upon the pilot schemes which have been viewed as successful in certain police areas would seem a sensible starting point for rolling out such a scheme across local police forces in England and Wales.

39. Police and Crime Commissioners are in an obvious position to encourage the use of Community Impact Statements within their local police area.

Q7 (c) If not, how might community impact statements be improved?

40. Strictly, a response may not be required to this question due to the response to Question 7 (a) at paragraph 36 above, nevertheless it is felt that the identification of the source material wherever possible and / or examples of specific impact are important to underpin the validity of Community Impact Statements and should be encouraged.

Q8. Do you agree that all businesses should be entitled to make an impact statement to explain how a crime has affected them?

41. Yes. All businesses are entities that should be able to explain the effect of a crime to the court and to the offender. This will help to ensure that the knock-on effect, of what may often mistakenly be perceived as 'victimless crimes', is rightly highlighted within the criminal justice system. The Victim Personal Statement has clearly been successful in providing a voice for victims, including small

businesses, and the proposed extension to all businesses is a natural and logical progressive step.

Q9. Do you think businesses will benefit from this scheme?

42. Yes. The facility to show potentially far-reaching consequences to the court may reduce repeat or further offending and subsequent loss to businesses. The accurate reporting by businesses of the effects of crime upon them in local magistrates and Crown Court centres could have a wider impact in emphasising that the oft-quoted misperception of 'victimless crime' is wrong, not just because the victimised business suffers, but that the local community may suffer the knock-on effects too (e.g. reduced provision of services, higher prices, lower wages).

Q10. Do you think that this statement should be extended to other organisations, such as charities?

43. Yes, using the quoted example, if the activities of the charity are hindered by the offending it would be unfair to exclude the organisation from expressing the impact on their activities based simply on their 'not for profit' status. In the example of a charity there will be a leading figure often asked to provide a Victim Personal Statement setting out the obvious effects of the offending behaviour.

Although that is very often what happens in practice the maker of the statement also often goes beyond personal impact into the more general area of the impact of offending on the charity generally. Extending the Scheme into two parts, one dealing with Personal Statements and one dealing with Impact Statements, the latter intended for businesses and other agencies or organisations affected by crime, would seem to naturally extend the success of the Victim Personal Statement scheme, provide more evidence about the consequences of crime and properly extend the voice of victims.

Q11. Do you agree that Restorative Justice should be included in the Victims' Code where the offender is over 18 years of age?

44. Yes. Restorative Justice clearly involves the victim. It should be referred to in the Victims' Code. It should be considered in appropriate cases for offenders aged over 18. There is no reason in principle not to include adults and every reason to include adults where there is some evidence of Restorative Justice having a positive role to play.

Q12. Do you think that the section on Restorative Justice in the revised Code will help to support wider work to improve victim awareness of Restorative Justice?

45. Yes, such must be the result of including it in the Victims' Code.

Q13 (a). How much do you think Restorative Justice uptake will increase as a result of the reforms to the Code?

46. This is very difficult to quantify without access to any data sets but there must be potential for considerable uptake in appropriate cases. This could have significant impact upon resource provision. One obvious concern is that it is only appropriate cases that are referred for this type of intervention.

Q13 (b). Which specific types of Restorative Justice intervention do you think will increase?

47. The increase is likely to follow a similar pattern to the original take-up of Restorative Justice by those under 18 although the take-up rates are likely to be dictated by intervention provision in the first place. The most likely take-up would presumably be in relation to low-level meetings between victims and offenders aided by a suitably trained facilitator.

Q14. Do you think that the complaints system in the revised Code will deliver a better service for victims? Please give reasons.

48. Yes. The current complaints process (perhaps more accurately, the current series of complaints processes) is difficult for victims to navigate. The proposal to set up a 'central victims' complaints office' is an ideal solution but with an obvious significant cost. The revised Draft Code is certainly an improvement upon the current situation but still does not deal with the basic complication of a plethora of different organizations at different addresses providing different services at different stages of the criminal justice process. Many of the niceties of differentiation between these different 'service providers' will be lost upon the victim wishing to complain. Shifting the responsibility for ensuring the complaint gets to the right agency to the agencies themselves and away from the victims is clearly a step in the right direction but is still some way from removing the bewilderment of an array of organizations offering different complaint processes to victims, many of whom will be new to the criminal justice process.

49. On the positive side therefore, the proposed revisions to the Code are all designed to alleviate the difficulties noted above and to some extent will do so. Ensuring that all service providers have a clearly identified complaints' process is a necessary improvement, as are the duties to provide victims with information on their complaints' process on request and contact details of the person dealing with their complaint. Placing responsibility on the agencies to ensure that all complaints receive a satisfactory response, whichever part of the criminal justice system the complaint relates to, is a further positive measure designed specifically to deal with the potentially confusing array of 'service providers' faced by the victim. Imposed duties concerning acknowledgements and responses are again positive and helpful suggested additions to the Code. Therefore, there is much merit in the proposed revisions and including a section on the duties of the service providers in relation to complaints is helpful.
50. One suggested way of dealing with complaints short of creating an expensive 'central victims' complaints office' but tackling directly the problem of the victim facing a bewildering choice of where to start with a complaint would

be to use the Police and Crime Commissioners. As discussed in paragraph 22 above the Commissioners promise upon election to give a voice to the public, especially victims of crime. The whole process could be simplified from the victim's point of view by providing a single avenue of complaint to that 'voice,' the Police and Crime Commissioner. From the Commissioner's office the complaint would be forwarded to the appropriate agency on notice to the victim, that appropriate agency thereafter dealing directly with the victim and the complaint according to its own complaints' process, under similar conditions in relation to acknowledgement and responses as have been set out in the proposed draft Code. Once the complaint has been finally dealt with so far as the agency is concerned it would be incumbent upon that agency to inform the Commissioner's office that the complaint has been dealt with, and how. The victim making the complaint could also be encouraged, possibly by electronic questionnaire, to inform the Commissioner's office about the level of satisfaction or otherwise felt in relation to how the complaint has been dealt with. Given that the Impact Assessment dealing with this area of the Consultation Paper (Impact Assessment, page 18) identifies under 'Data Limitations' that there are no figures for complaints by

victims under the Code or for the cost of processing those complaints then having all complaints commencing at the Commissioner's office with the end results also communicated there will also create a single point from which to build a statistical base for any future development of the complaints' process. Clearly, there will be an administrative burden upon the Police and Crime Commissioner but one that is in keeping with that role as voice of the victim. Making a complaint to the Police and Crime Commissioner is also in keeping with the perception of many victims that the criminal justice process for them begins with the police.

Q15. How do you think compliance and performance by agencies and organisations under the Code can be best monitored? And by whom? Should this be locally or nationally driven?

51. All of the agencies with duties imposed can be expected to self-monitor to the extent that they can be expected to keep working records of a simple nature setting out that the requisite duties have been completed. Indeed, it is very difficult for many of the duties to be completed without such a working record. A prime example is contact between an agency and a victim under a duty imposed by

the Code to inform the victim about a particular stage of the process. The relevant agency will need some form of record to ensure that someone completes that task in the first place. The administrative burden in ensuring that these records are available if and when required is not a great one.

52. As well as self-monitoring there is discussion at paragraph 50, above, about using Police and Crime Commissioners in a new complaints' process. Were that or a similar model to be taken up then a centralised complaints' record would be achievable that could measure compliance and performance at least from the complaints (arguably non-compliance / poor performance) end of the process.
53. Internal self-monitoring of the agencies is likely to be the cheapest form of monitoring but is open to criticisms that it may be less effective, lacks external impetus, and could be perceived to be chiefly concerned with the relevant agency's desire to maintain it's own performance levels by attaining a statistical bare minimum, rather than performing to a level that leaves victims truly satisfied.

54. If Police and Crime Commissioners are used within a new complaints' process, as discussed at paragraph 50, above, then a further logical step in the same direction could impose a duty of monitoring performance and compliance onto those elected Commissioners, whose role in any event includes providing a voice for the victims. Whereas monitoring the performance and compliance of the local police force is perhaps the most natural monitoring role for the Commissioners there is a case for extending their monitoring to all agencies, so long as it is a purely monitoring function. This arises from two factors. First, the fact that they are elected by the public to serve the public and support victims of crime. Secondly, if their role were also to be extended within a new complaints' process, as discussed at paragraph 50, above, then they would already be dealing with complaints within the system both by directing the original complaint and by keeping records of the final responses. Using this material alongside a more general monitoring role would be a natural extension from this, complemented by the records they would be expected to have to hand. Furthermore, having the Commissioners involved throughout the criminal justice process in working with all of the relevant agencies to achieve performance and compliance that satisfies the

victims of crime accords with the stated role of the Commissioners and strengthens joint working across the criminal justice system.

55. A combination of self-monitoring and utilisation of Police and Crime Commissioners with joint agency local area meetings discussing performance and compliance could provide sufficient effective monitoring. Ultimately, oversight at national level by the Ministry of Justice / Parliamentary Ombudsman is required but the driving mechanisms for performance and compliance should be located at local level through joint agency co-operation and self-monitoring with the self-monitoring results and complaint statistics being openly discussed at meetings involving all of the relevant agencies and the Police and Crime Commissioners.

56. Setting up a separate office for monitoring is unlikely to be cost-effective and may well burden victims further with unnecessary and / or unwanted requests for further information.

Q16. In addition to the improvements outlined in the Code, what reforms do you think are needed to improve means of redress for victims?

57. One reform proposed is the use of Police and Crime Commissioners in a new complaints process, as set out at paragraph 50, above.

Q17. Do you agree that there should be a dedicated section for children and young people in the Code?

58. Yes. A separate section directed at children and young people is necessary for reasons of accessibility and clarity to be provided to this specific group for whom the process of police investigation and attending court is particularly daunting given the formality of the process and having to engage with unknown professions and situations.

59. It is sensible to include all those under 18 in the dedicated section. The required information is different for those under 18 in terms of court processes and the availability of special measures such as Achieving Best Evidence video-recorded testimony and it is clearly appropriate that they have a specific section in the Code relevant to them. There is an obvious risk for younger people to be put off

and daunted by reference to the full Code without any such dedicated section.

60. In reality there may not be many differences between child and adult witnesses in terms of nervousness and a requirement for information on an overall level, but the court processes can be very different and so for that reason as well as ease of reference it is right that there is a separate section concerning children and young people.

61. It is also beneficial to have a dedicated section so that the language in it can be tailored to suit them.

Q18. Do you agree that the duties on the criminal justice agencies with regards to children and young people are correct? Please give reasons.

62. Yes. The duties on the criminal justice agencies with regard to children and young people are comprehensive and fit the range of entitlements previously set out in the revised Code.

63. In the section dealing with trial there is no need for the words "where possible" in paragraph 18 (Draft Code, page 50). This is a mirror image of the duty imposed in relation

to adults (Draft Code, page 31, paragraph 2). There must be a duty always upon the CPS prosecutor or CPS representative in court to introduce themselves to young victims of crime and answer questions about the court process and likely waiting times. It is very difficult to conceive of circumstances where this introduction would not be possible in a case concerning a child victim.

Q19. Do you consider that this section is appropriately user-friendly for children and young people?

64. No. The stated intention of the Consultation Paper is to make the first part “easy and accessible for children and young people, parents and guardians to understand” (paragraph 73 of the Consultation Paper at page 23). If one considers an average child or young person then the Code does not fulfill that intention. Overall, the section cannot be described as being user-friendly for children and young people if the target audience is genuinely intended to encompass ‘children’ within the criminal justice system. It is difficult to comprehend many of the children with which the criminal justice system deals picking up this Code, reading it and taking from it what it is desired to communicate.

65. Having set out a largely negative response above to the precise question asked it is correct to point out that no single document dealing with the complexities of the criminal justice process is ever likely to achieve the almost impossible task of user-friendly accessibility across the range of children and young people involved with the criminal justice system. Much will depend upon the separate guide to the code that is to be written for this group. It is this other document (the Easy Read publication) or further website links which have not yet been developed that need to be truly user-friendly.
66. It is clear that Chapter 2 of the Code focusing on Children and Young People is easier to read than Chapter 1, dealing with Victims' Entitlements generally. The language in Chapter 2 is more appropriate for older children and young people. Very young children are not likely to understand the concepts involved, but then it is accepted that their parents / guardians would receive the information on their behalf in any event. For children old enough to understand the concepts but who would have difficulty reading the actual Code it would be better to have a shorter summary supplemented with visual aids or maybe a video containing

the salient points of the information spoken by a young person.

67. It should also be made clear that the Introduction to the Code at pages 1 to 5 is general and also applies to Children and Young People, and that they should read that part of the Code also, or have it explained to them.

68. Following on from the observation in the paragraph above about the general nature of the Introduction there should also be direction in the section concerning Children and Young People to a flow chart, or a simplified flow chart created for this section of the Code. It is clear that information pertaining to children and young persons is contained in both the Introduction (pages 1 to 5 of the Draft Code) and the Flow Chart (pages 7 to 8 of the Draft Code) some of which is not explained in the dedicated section at Chapter 2. As a concept the flow chart is a very useful tool for illustrating matters to a young person and many children will be used to such charts from school. Responses to the Draft Code have been mixed in so far as the particular Flow Chart depicted is concerned with reaction varying from being put off involvement in the entire criminal justice process, to complimenting the visual

and relative simplicity of the 'journey through the Criminal Justice System' as portrayed. A simplified flow chart would greatly benefit the start of Chapter 2 for Children and Young People, as would a simplified general Introduction.

Q20. How can we ensure that the Code is communicated effectively?

69. By ensuring that the police properly inform victims at the same time that they conduct the requisite needs assessment.

70. "The police have a duty under the revised Code to conduct a 'needs assessment' with all victims of crime to establish what support or information they need to help them cope and recover" (paragraph 36 of the Consultation Paper at page 13). Consequently, one of the principal duties under the proposed Draft Code is to "assess whether victims fall into one of the three priority categories" (Draft Code, page 27, section 1 (i) 1, 2nd bullet point). The 'needs assessment' will be carried out in every case and is an underpinning feature of the proposed changes. It is a fundamental and compulsory communication between victim and police after which the victim may opt for very little or no further assistance. It therefore provides the

ideal time at which to make the victim fully aware of the Code with minimal resource implications. Indeed, a further bullet point in the same section of the Draft Code states “that the police must:.....provide all victims either with the ‘information for victims of crime’ leaflet or refer the victim to a website which contains the same information as soon as possible and not later than 5 working days of the victim making an allegation of criminal conduct” (Draft Code, page 27, section 1 (i) 1, 8th bullet point). A separate bullet point within the same section could impose a duty upon the police to ensure that victims are made aware of the Code at the time of the ‘needs assessment.’

71. The detail of website links to the Code should be made available as a matter of course. The availability of hard copies of the Code for viewing at relevant sites (e.g. police stations, courts, public libraries) should be provided, explained to victims and set out in leaflet format. All victims attending at police stations and courts should be informed that a hard copy of the Code is present should they wish to look at it. All service providers should also have hard copies available for victims to consult as and when necessary. All officers conducting a ‘needs

assessment' should have a copy of the Code to be shown to the victim when informing the victim about the Code.

72. More resource heavy methods include providing copies, or the option of a copy, to all victims falling within a certain category, such as all those who achieve enhanced status, if they wish to have a copy. Hard copies of the Code could be provided to those victims who are particularly vulnerable, who lack mobility and / or for whom electronic access is impossible, perhaps simply due to age, again if they wish to have a copy.
73. Clearly, the Code should be made available through the websites of all the relevant organizations.
74. Future proposals to develop interactive and even more user-friendly supporting guidance including publications for victims under 18 and those with disabilities or communication difficulties will assist with future communication.

Q21. Do you think we have correctly identified the range and extent of the effects of these proposals on those with protected characteristics under the Equality Act 2010?

75. Yes. The Crime Survey for England and Wales is a reasonable tool to use as a guide to identifying who the victims of crime are, based as it is upon entirely random sampling of household addresses from the Royal Mail's list of addresses. The fact that the Crime Survey currently does not include businesses should not be a factor of significance in relation to the Equality Act for the purposes of this consultation because it would be fair to assume that a representative sample of those concerned with businesses affected by crime would be contained within the household address referencing sample in any event.

Q22. If not, are you aware of any evidence that we have not considered as part of our equality analysis? Please supply the evidence. What is the effect of this evidence on our proposals?

76. Not applicable due to the response to Question 21 above.

Q23. Do you have any comments in relation to our impact assessment?

77. The impact assessment is comprehensive and thorough. Nevertheless, there is potential for significant requirement of resources in some areas and the recognised data limitations make a current accurate assessment impossible

in those areas, as recognised within the impact assessment. The most obvious concern is the potential for a very high uptake of Victim Personal Statements by those victims making evidential witness statements, with a time-consuming burden falling upon the police. It is very difficult to gauge the increased take-up of Restorative Justice or its resource implications.

Q24. Could you provide any evidence or sources of information that will help us to understand and assess those impacts further?

78. The number of victims making evidential witness statements should be capable of estimate from police sources. A rough guide would comprise the number of cases referred for a charging decision in which there was an identifiable victim. The unknown quantity is of course the number who will wish to make such a statement above and beyond the number who would have made one in any event. The proportion of victims currently making Victim Personal Statements in relation to offences appearing before the Crown Court for sentence is considered to be relatively high from anecdotal evidence in relation to relatively serious offences where there is an obvious victim who will have suffered some measure of harm. This

category is therefore unlikely to have any significant impact upon resources, as these victims generally provide Victim Personal Statements already if they wish to. They also comprise the group from whom the taking of a Victim Personal Statement is likely to be more time-consuming on an individual basis, simply because the offences are more serious, and often therefore the consequences. This group however will only represent a small proportion of the victims making evidential witness statements. It can be anticipated that any increase in the bulk of Victim Personal Statements made by victims making evidential witness statements will come from victims suffering the effects of less serious crime with, in many cases, less serious consequences. The increased resource provision for those victims can therefore be expected to fall towards the lower end of such provision on an individual basis. However, it is the cumulative effect that may place a significant, and as yet unmeasured, burden upon resources.

Q25. How long does it take to record a VPS from a victim of crime?

79. From consideration of the length of Victim Personal Statements with which the authors are familiar as part of their professional lives as well as anecdotal evidence from

police officers commonly charged with taking such statements one to two hours is a general estimate for the type of statement that is commonly produced in the Crown Court. It is quite possible for relatively simple statements dealing with less serious offences the impact of which may be more straightforward to be taken within a thirty-minute time frame.

Q26. What is the additional burden on civil society organisations if they are contracted to take the VPS on behalf of the police?

80. There is an obvious burden in relation to time and consequent resource implications. This burden may be considerable. There is room within the Victim Personal Statement scheme for on-line submission of statements and some victims writing their own statements if they so wish. However, such informal and relatively low cost methods of making a Victim Personal Statement should be restricted to less serious types of offence where a trial is unlikely and perhaps to cases where there is no background association between the victim and the offender. The statements are evidential and can have a direct impact upon trial proceedings, including being used in cross-examination, and including potential for the

person who took the witness statement to give evidence in court. Generally speaking, the taking of a witness statement is a matter for a professionally trained police officer. Specific concerns in this regard have been set out in paragraphs 31 and 32, above. Commissioning other agencies to take these statements without appropriate training is likely to be fraught with difficulty. Appropriate training is likely to be resource intensive.

Final Comment

81. The Introduction to the Draft Code (Draft Code, page 3, paragraph 18) sets out rights to an interpreter if the victim does not speak English but perhaps ought also to include a right to an intermediary or signer *etc* if the victim's language or communication skills are impaired.

Summary

82. In the main this Consultation Paper contains laudable goals and revises the Code in a way that is practical and positive. Principal aims to make the Code more victim-focused and user-friendly are likely to be achieved. The addition of new sections dedicated to those under 18 and concerning Victim Personal Statements, Businesses, Restorative Justice and a new Complaints' Procedure are all positive. Looking to

define appropriate roles for Police and Crime Commissioners is also a positive step.

83. Principal criticisms concern the fact that truly user-friendly guides for children are not yet in existence and Victim Personal Statements which are extremely important to the criminal justice process should not be dealt with by non-police officers except in the simplest of cases. There is a notable tension between the aim to introduce flexibility into categorisation of enhanced victim status through exercise of discretion and the lack of clarity such 'woolly' categorisation brings with it.

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