Delivering Justice for Victims

Consultation

Ministry of Justice

Response

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Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

2. This response addresses questions from the Government's consultation paper '*Delivering Justice for Victims*' (the "**Consultation**").[1] As well as providing descriptive information on the current landscape of support services for victims, the response also integrates recommendations from our recent reports, '*Prosecuting Sexual Offences*' (2019),[2] '*Tackling Racial Injustice: Children and the Youth Justice System*' (2021),[3] and '*A Parole System fit for purpose*' (2022).[4]

Question 6 – a) What are the benefits and costs to greater or different use of Community Impact Statements?

3. The Government notes that it intends to "*strengthen the voice of communities, by making explicit provision for community impact statements in the Victims' Law and Code*".[5] As the Consultation notes, there already exists provision for such statements through the Criminal Practice Directions.[6] At present, they are rarely used.

4. JUSTICE recognises that communities can feel the impact of crimes. However, we are concerned that the Government's proposal to increase their usage could incur a number of issues. First, the expansion of such statements may risk treating different defendants unfairly. The number, and quality, of statements could depend heavily on the community in which the crime took place. Sentencing decisions should be made as consistently as possible, and this proposal risks introducing disparities to the process.

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[1] Ministry of Justice, 'Delivering Justice for Victims', (2021).

[2] JUSTICE, 'Prosecuting Sexual Offences', (2019).

[3] JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021).

[4] JUSTICE, 'A Parole System fit for purpose', (2022).

[5] Ministry of Justice, 'Delivering Justice for Victims', (2021), p.3.

[6] Criminal Practice Directions Sentencing (2013), p.79.

5. Second, the Government must consider carefully the risk of exacerbating the already unacceptable levels of racial disparities that exist in the criminal justice system. Ethnic minorities, and especially Black men, are arrested, charged, and imprisoned at much greater rates than their White counterparts. We are concerned that the Government has not fully considered this aspect of the policy, and would invite them to publish research in the area before considering to proceed.

6. Finally, we note that if Community Impact Statements are to be expanded, there must be a material and relevant connection between the defendant and the individual member of the community for such a statement to be admissible. Where a crime is 'victimless', it would not be appropriate for an unrelated member of the community to opine on the individual or their character.

Question 7 – What changes, if any, could we make to allow victims to be more engaged in the parole process?

7. Parole represents a difficult, yet important process for many victims. While the focus must be on the prisoner, and any risk they may present, victims are able to contextualize the harm that they have suffered and provide feedback on potential licence conditions necessary for the incarcerated individual's release into the community. At present, victims have access to a number of different avenues to raise their concerns through the parole system.[7] However, we consider that more can be done to fully engage them and ensure they are well supported for what can be a sensitive, and potentially (re)traumatizing process.

8. The Government rightly notes two key issues. First, the parole process must be **more transparent and accessible for victims.**[8] Second, there needs to be **better facilitation of engagement with the parole process for victims**.[9] JUSTICE agrees, and these concerns align with our own findings. In our report, '*A Parole System fit for purpose*' (2022), we identify that a range of chronic issues impact the pace and efficiency of the parole system, such as case backlogs, hearing delays, and too often a paucity of information for participants.[10] These issues adversely impact both prisoners and victims, who have little

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[7] Victims Personal statement, Victim Contact Scheme, Parole Board Decision Summaries.

[8] Ministry of Justice, Delivering Justice for Victims, (2021), p.17.

[9] *Ibid.*

[10] JUSTICE, 'A Parole System Fit for Purpose', (2022), p.1.

understanding of a process in which they both participate.[11] The consequence of failing to improve the provision of information is understandably a lack of engagement, confidence, and a feeling – for both victims and prisoners – of being 'locked out' of the parole process.[12]

9. JUSTICE refers to two recommendations from our '*A Parole System fit for purpose*' report that would help to increase transparency, accessibility, and better facilitate the engagement of victims. We further raise one concern about the Government's proposal for 'open hearings', that we consider would risk detrimental consequences for victims as well as those in prison.[13]

Improving Access to Information

10. First, victims are failed by the fact that they do not receive clear, accessible, timely information.[14] Many are often left in the dark about their assailant's status and progress, victims are likely to experience anxiety and mistrust in prison processes, and subsequently might wish to disengage from the criminal justice system.[15]

11. JUSTICE therefore recommends that **the Parole Board should have a duty to update victims with relevant information, for example on the progression of an individual's case, potential licence conditions, as well as provide general information about the parole process**. This should take effect early in the sentence and complement the Parole Board's role in reviewing sentences.[16]

12. In addition, the Parole Board should produce clear, accessible, timely and tailored information about the parole process for victims. This should be provided within three to six months of an individual's sentence and be prominently available to victims in-line with the Code of Practice for Victims of Crime in England and Wales (the "**Victims' Code**"). With respect to victims, such information should address:
    i) how the individual's specific sentence operates, how sentence planning maps onto their sentence as well as how parole fits in; and

[11] *Ibid*.

[12] This lack of clarity contrasts with the comprehensive internal database of key parole materials which is accessible to practitioners - A Parole System fit for Purpose, (2022), p.70.

[13] JUSTICE, 'Response to Roots and Branch Review of the Parole System', (2020), paragraph 7.

[14] JUSTICE, 'A Parole System fit for purpose', (2022), p.69.

[15] *Ibid*, p.105.

[16] I*bid*, p.135.

ii) what the parole process involves, how it should be prepared for, and what can be expected at each stage of the process.[17]

Helpline

13. Second, the Victims' Code gives victims the right to be given information about an individual following their conviction.[18] However, despite recent developments such as the introduction of Parole Board Decision Summaries and the Reconsideration Mechanism, awareness of how to enforce these rights remains limited.[19] The 'inadequate provision of information' leads victims to feel let down, confused, and shut out of the parole process – which leads them to disengage altogether.[20]

14. At present there is no official helpline, leaving victims without clear information on the parole process. This creates distance between victims and their rights, which furthers a sense of alienation from the Criminal Justice System.

15. JUSTICE therefore recommends that **the Parole Board establish a dedicated helpline for inquiries from prisoners, victims, and other interested parties. This should be properly funded, staffed, and advertised within prisons and on the Parole Board's website.**[21]

16. A helpline would make the process more transparent by allowing victims to speak directly with officials and ask questions. This simple and effective mechanism would ensure that they felt listened to, and that their concerns and queries were directly addressed. We note the position of the Victims' Commissioner, who told our Working Party that greater insight into the parole process, as well as the ability to receive information relating to the steps that an individual in prison has taken towards rehabilitation, would be beneficial, not least in increasing victims' confidence in the system.[22] Through this, victims would feel greater

[17] *Ibid*, p.77.

[18] Ministry of Justice, 'Code of Practice for Victims of Crime in England and Wales', (2020), Right 11.

[19] Hardwick, Nick, 'The Work of the Parole Board', Lincoln's Inn lecture, (2018).

[20] JUSTICE, 'A Parole System fit for purpose', (2022), p.105, p.130.

[21] *Ibid*, recommendation 11, p.135.

[22] *Ibid*, p.75.

empowerment and confidence, especially in advance of their potential attendance at a parole hearing to deliver their Victim Personal Statement.[23]

Open Hearings

17. Despite reforms that have improved transparency of the parole process for victims in recent years, JUSTICE is concerned about the possibility of 'open hearings' that are being explored by the Root and Branch review.[24] Rather than increasing victim engagement, we believe this could risk leading to their re-traumatisation, increased antagonism and frustration with the process, that could subsequently lead victims to disengage. This is because Parole hearings often take place many years after the index offence, and attending a hearing (sometimes multiple) can undo years of restoration for the victim, with little benefit.

18. Instead, we agree with the Victims' Commissioner that there are more effective ways to secure open justice, whilst at the same time engaging victims in the parole process. The recommendations set out above, and detailed further in our report, would offer reasonable and practical ways of improving the clarity and accessibility of the information currently available shows victims that the system is reactive, transparent, and prioritising their wellbeing and interests. By contrast, open hearings would risk forcing unnecessary, and potentially counterproductive, proximity between victims' and their assailant in a way that might be seen to deprioritise those things for the sake of 'appearing' to care.

Conclusion

19. By increasing victim engagement with the parole process, individuals who have been harmed will feel 'heard' by a system that currently speaks over them. By making information more readily accessible, victims will feel more able to navigate the procedures relevant to their involvement in the parole process, and thus it would aid their confidence in the criminal justice system as a whole.

[23] Where an individual has a Parole Board review, victims or bereaved relatives who opt into the VCS will be informed by the Victim Liaison Officer that they can make a statement to the Parole Board setting out how the crime has affected them (this is known as a Victim Personal Statement). The Victim Personal Statement must be read by the Parole Board and, unless there is good reason not to, the victim or bereaved relative must be permitted to read it out (or have it read out) at the Parole Board review. *See* Ministry of Justice, 'Code of Practice for Victims of Crime in England and Wales', November 2020, Right 11.

[24] JUSTICE, 'A Parole System fit for purpose', (2022), p.74.

b) What do you think would be the advantages and any risks of implementing those changes?

Advantages

20. Victims would feel more engaged in the process as information and support would be easily accessible. The system would be more transparent and easier to navigate, generating a degree of trust in the Criminal Justice System which would also serve to increase engagement. A centralised system which stakeholders can use in order to access relevant information pertaining to cases would also streamline processes and reduce unnecessary bureaucracy, as there would be no confusion or delays pertaining to access of important information.

Risks

21. Any helpline that is established, or information that is distributed, will need to have an appropriate level of funding and resources in order to be fully accessible. Ensuring there are a sufficient number of translators available to support those for whom English is not their first language will be key in this respect. Moreover, ensuring that the information provided can be accessed by those for whom English is not easily read, or understood, is similarly important. Further, the staff operating the helpline will need training to ensure they fully understand the parole system, and are competent to support those who are neurodivergent. In the same vein, the staff tasked with producing the information will need to be made aware of the complex and various needs that must be accounted for - such as digital exclusion.

Question 8 – Should victims of mentally disordered offenders be allowed to make and submit a Victim Personal Statement when the offender's detention is being reviewed by the Mental Health Tribunal? Please explain your answer.

22. The Government states that victims of individuals who are detained as a patient in a psychiatric hospital are not currently able to submit a Victim Personal Statement when an individual applies to be discharged.[25] The Consultation contemplates allowing victims of patients to do so. One of the reasons given is that it could be "*cathartic and empowering*

[25] Ministry of Justice, 'Delivering Justice for Victims', (2021), p.18.

for victims, and allow them to explain to the tribunal the impact of the patient's offending on them".[26]

23. JUSTICE notes two issues with the Government's proposal. First, the description of current practice is inaccurate. While not referred to as a Victim Personal Statement, victims are already entitled to be heard so that the Mental Health Tribunal can consider the extent to which they need protection from the patient, and how should be put into practice best.

24. The Mental Health Tribunal's 2011 Practice Guidance requires panel members to take account of victims' representations concerning conditions, and to notify them of the outcome of the hearing. For example, the Guidance notes:

> "*Where a victim wishes to do so, and having submitted a written request to be advised of the date fixed for any hearing concerning that patient in advance of the hearing, a victim shall have the right to provide to the tribunal any relevant documents, written information or submissions that he or she wishes the tribunal to consider. Documents, information or submissions should only be regarded as relevant if they are capable of amounting to persuasive and cogent evidence, upon which the tribunal would be entitled to rely, relating to the following questions:*
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> - *whether the patient should, in the event of his or her discharge or release from detention, be subject to any conditions and, if so,*
> - *what particular conditions should be imposed.*"[27]

25. The Guidance further notes:

> "*the victim is entitled to know*
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> - *whether the patient is to be discharged and, if so, when the discharge will take effect;*
> - *if a restricted patient is to be discharged, whether the discharge is to be absolute, or subject to conditions;*
> - *if a restricted patient is to be discharged subject to conditions, whether the victim needs to know the detail of any conditions and, if so, what those conditions are;*

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[26] *Ibid.*

[27] Tribunals Judiciary, '*Practice Guidance on Procedures Concerning Handling Representations from Victims in the First-Tier Tribunal (Mental Health)*', (1 July 2011), para 15.

- *if a restricted patient has previously been discharged subject to conditions of which the victim has been notified, of any variation of these conditions by the tribunal; and*
- *if the restriction order is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction order is to cease to have effect.*"[28]

26. In addition, the comparison of the Parole Board on the one hand, and the Mental Health Tribunal, and its statutory test of detention, on the other, is inappropriate. One concerns the release process for an individual after they have been convicted of a crime. The other concerns an individual who has been detained for a number of reasons relating to their mental health and capacity pursuant to the Mental Health Act 1983. It is important that victims' voices are heard, especially where release (and conditions) may have a relevant impact on them. However, the Government should be cautious about the potential re-traumatisation, and unrealistic expectations, that could be invoked by misleading victims to believe that their views would play a part in the Mental Health Tribunal's decision whereas this not possible, or indeed, appropriate.

Question 21 – What more can be done to improve oversight of complaints handling, including where victims are dissatisfied with the outcome of the complaint process

27. We would like to highlight one particular inequality faced by victims who are dissatisfied with the outcome of the complaint process. Should a victim seek further oversight when internal review mechanisms have been exhausted, they can ask the court to judicially review decisions of the public authorities responsible for delivering the services under the Victims Code. This judicial oversight is a constitutional pillar of our democracy and ensures accountability of our public bodies across a multitude of areas of decision-making. However, those seeking judicial review of DPP decision-making have severely restricted appeal rights compared with their counterparts judicially reviewing other public bodies. This is due to a lacuna in the law which persists in old legislation. It was last considered by Parliament[29] before there was any significant recognition of victims' rights of access to justice, which occurred from 2011 onwards, namely the Victims' Right to Review Scheme and the case which prompted it, *R v Killick.*[30]

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[28] *Ibid*, para 27.

[29] The provisions in question, discussed below, were subject to consequential amendments but no substantive consideration in the passing of the Constitutional Reform Act 2005.

[30] [2011] EWCA Crim 1608.

28. The problem rests in appeal rights depending on if your case is deemed to be a "*criminal cause or matter*". If it is, the victim will have no access to the Court of Appeal at all,[31] and the case can only be considered by the Supreme Court if it has been certified by the High Court as raising a point of law of general public importance.[32] This is contrary to all other judicial review cases, which can be appealed to the Court of Appeal, the test being simply if there is a real prospect of success for the appeal, or another compelling reason.[33] Very rarely in our justice system is there no opportunity of appeal at all, yet for judicial reviews which are labelled as a "*criminal cause or matter*" and do not raise a point of law of general public importance, this is the onerous reality.

29. In 2020, the Supreme Court confirmed the importance of interpreting "criminal cause or matter" narrowly, because:

> *"[…] an overly expansive interpretation of the phrase "a criminal cause or matter" […] would have the effect of reducing to an unacceptable degree parties' access to justice at appellate level, leaving pockets of unchallengeable, potentially erroneous first instance decisions"*.[34]

30. The Supreme Court Justices undertook a review of the interpretative history of the phrase, and ruled that a matter will only be a "criminal cause or matter" if it put someone in jeopardy of criminal punishment as a direct outcome.[35] As a result of the Supreme Court's ruling, access to appeal was improved for the majority, since it meant that several types of claim no longer fell within the definition of "criminal cause or matter": post-conviction judicial reviews of parole,[36] prison decision-making,[37] and police conduct where there is no jeopardy of a charge.[38]

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[31] S. 18 Senior Courts Act 1981

[32] S. 1 Administration of Justice Act 1960

[33] Rule 52.3, Civil Procedure Rules 2016, S.I. 2016/788, pursuant to s.1, Civil Procedure Act 1997

[34] In the matter of an application by Deborah McGuinness for Judicial Review (Northern Ireland) [2020] UKSC 6, [68]

[35] *Amand v Home Secretary* [1943] AC 147

[36] The *McGuiness* case, for example, was the sister of a murder victim, and the judicial review concerned the parole process for her brother's killer. The Supreme Court found this was not "a criminal cause or matter" and directed the matter be appealled to the Court of Appeal.

[37] *McGuinness,* 91-92; Gilbert (Michael) v Secretary of State for the Home Department [2005] EWHC 1991 (Admin) approved; R (McAtee) v Secretary of State for Justice [2018] EWCA Civ 2851; [2019] 1 WLR 3766 disapproved.

[38] McGuinness [93], JR27 [2010] NIQB 12 disapproved, dissenting judgment of Sir Declan Morgan LCJ approved in part.

31. Those High Court matters remaining caught by the provision are "more tightly focused on court proceedings in relation to a specific criminal charge".[39] This therefore continues to impact victims who seek to challenge a decision by the DPP not to prosecute, but few others.

32. This anomaly of appeal access was highlighted in the cases of *R (Monica) v DPP*.[40] Monica's case was a judicial review challenging the decision not to prosecute the police officer who, whilst undercover, lied about his identity whilst engaging in an intimate relationship with her. The Metropolitan Police acknowledged his behaviour and that of other undercover officers was "*abusive, deceitful, manipulative and wrong*".[41] However no prosecutions followed.

33. Monica sought to challenge the decision not to bring charges of rape, indecent assault, procurement of sexual intercourse and/or misconduct in public office. The first instance court dismissed the judicial review and declined to certify that the case featured a point of law of general public importance. That was the abrupt end to Monica's case, regardless of any errors of law which may have been made by the court of first instance. The Court of Appeal cannot look at it, and the Supreme Court cannot consider it without that certificate form the High Court.[42]

34. When it comes to appeal access, it is difficult to see any justification for there being a difference between a judicial review of a DPP decision and a judicial review of a parole board decision. Both are seeking to hold public bodies within the criminal justice system to account. More importantly, neither case is more insulated from legal error than the other. However, through a "tangled" history of interpretation,[43] this inequality has meant that the former claimant is at risk of "*unchallengeable, potentially erroneous first instance decisions*" in their challenge to the DPP, whilst the latter has access to the Court of Appeal.

35. As Davis LJ commented in *Thakrar v Crown Prosecution Service* [2019] EWCA Civ 874, *obiter*, on the disparity in access to appeal, even without contemplating the problem status of complainant litigants:

> *"This whole jurisdictional area has the potential, in some cases, to be very problematic […] Further, whatever may have been the understandable perception of things in Victorian times, it is rather difficult, in my own view, to understand the continuing rationale for the position set out in s.18(1) of the*

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[39] *McGuiness* [93].

[40] [2018] EWHC Admin 3508.

[41] Statement of Assistant Commissioner Martin Hewitt, 20 November 2015.

[42] An application for permission to appeal to the Supreme Court was made. This was refused on the basis that the Supreme Court lacked jurisdiction. The Supreme Court's refusal of permission to appeal is available at: https://www.supremecourt.uk/docs/permission-to-appeal-2020-06.pdf

[43] *R (Guardian News and Media Ltd.) v City of Westminster Magistrates Court* [2011] 1 WLR 3253.

> *1981 Act (which is now itself nearly 40 years old)* [the provision barring access to the Court of Appeal]*. This is particularly so where there has in the intervening period been an ever-expanding growth in judicial review claims generally, quite a number of which have (to put it neutrally) a criminal context".* [50]

36. Whilst the Supreme Court has narrowed the interpretation as much as possible, we consider that there should be a review of the legislative framework in this area. Consideration should be given to whether there should be any differentiation at all in appeal access for judicial reviews, and how that can be achieved.

Question 23 – a) What legislative duties placed on local bodies to improve collaboration where multiple groups are involved (such as those set out above) have worked well, and why? b) What are the risks or potential downsides of such duties?

37. JUSTICE understands the importance of effective interaction between specialist support services and non-criminal justice agencies in meaningful support of victims.[44] However, we are concerned that Part 2 Chapter 1 of the Police, Crime, Sentencing and Courts Bill (the "**PCSC Bill**") vitiates this.

38. The Bill at clause 7(1) to (2) would create a new 'serious violence duty' requiring "*specified authorities*" - a range of public bodies, including, inter alia, local government, the NHS, schools, prisons, the probation services, youth offending teams, and the police[45] - to "collaborate with each other to prevent and reduce serious violence" in their respective areas.[46] JUSTICE is concerned that this duty will amount to a disproportionate invasion of the right to privacy, and a counterproductive erosion of cultures of trust. The application of the duty is set out in the draft guidance.[47]

39. We are concerned that the duty, if unqualified, will negatively impact the relationship between victims and non-criminal justice agencies. This is because the Bill defines "*becoming involved in serious violence*" to include "becoming a victim". This conflates the

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[44] Ministry of Justice, 'Delivering Justice for Victims', (2021), p.53.

[45] For a full list of the specified authorities, see schedule 1 of the Bill

[46] JUSTICE, 'Second briefing on PCSC Bill', (2021), p.6. OR Home Office, 'Serious Violence Duty: draft guidance for responsible authorities', (2021).

[47] Home Office, 'Serious Violence Duty: draft guidance for responsible authorities', (2021).

position of victims and those who commit crimes.[48] As a result, victims - especially those from marginalised and migrant communities - will place less trust in support systems, with the sharing of individualised information acting as an erosion of the very protection this duty seeks to implement – namely the safety and security of communities and their children.

40. This would hinder effective interaction between support services by creating a 'culture of mistrust' that would contradict the aims of the Victims' Code.[49] Existing policies that take an enforcement led approach have had a detrimental effect on vulnerable victims. For example, research shows that the Home Office's wide ranging administrative and legislative measures, often referred to as the "*hostile environment*,"[50] have made vulnerable individuals afraid to access healthcare.[51] In the educational context, the Children's Society has noted that the serious violence duty inserts a 'securitised view' into the classroom, which makes children feel anxious and unsafe, eroding trust by creating a situation in which children lack confidence in the organisations and individuals they should reach out to for support.[52]

41. This is because the relationship between victims and many public bodies is built on trust, which would be eroded if these services were to participate in the sharing of private information without requiring express consent. Moreover, in eroding relationships of trust, the serious violence duty in turn risks making it more difficult to identify survivors and victims of violence, with a disproportionate impact on minoritized and migrant survivors of domestic abuse. As noted in our joint briefing,

> "*it is already the case that even where abuse tragically escalates to domestic homicides, minoritised survivors are less likely to have been known to agencies and receiving formal support than 'white victims'. One significant reason for this is data-sharing between public services, immigration enforcement, and the police, which*

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[48] *Ibid*, p.9.

[49] 'Code of practice for victims of crime' , (2021), see 'How can I expect to be treated'.

[50] These policies, known commonly as the "hostile environment", aimed at making the lives of those residing in the UK as challenging as possible for individuals without leave to remain, with the intention that those challenges would cause them to leave voluntarily. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039431/delivering-justice-fo-victims-consultation.pdf p.3 and p.13.

[51] JUSTICE and others, 'Joint Briefing for the House of Lords ahead of report stage of the PCSC Bill', p.3.

[52] ibid, p.10; The Children's Society, 'Committee stage briefing on the PCSC Bill', (2021).

deters survivors from reporting abuse for legitimate fear of being themselves arrested, detained, and deported'.[53]

42. Therefore, whilst we appreciate the rationale behind the 'Serious Violence Duty', if it becomes law, we would like to see the Government, through guidance and practice, ensure that it does not operate to the detriment of victims, especially those from marginalised communities who might already harbour mistrust of support services. Rationalising the PCSC Bill's 'Serious Violence Duty, and any potential measures in the new Victims' Bill, must be a priority.

Question 24 – What works in terms of the current commissioning landscape, both nationally and locally, for support services for victims of:

b) Sexual violence (including child sexual abuse)

43. Victims of sexual violence often require specialist advice, the feeling of safety, and access to expert advocacy in order to feel supported, especially when they report horrific and traumatising events. But currently, as the Government identifies, the landscape for this is fragmented, with victims having to 'piece together' various services in order to access the support they might need, and which it is the responsibility of the state to provide. This results in fewer services being accessed by victims, and a lack of awareness regarding what services are available.[54]

44. JUSTICE's report, *Prosecuting Sexual Offences* (2019) found that Sexual Assault Referral Centre ("**SARCs**") and Rape and Serious Sexual Offence ("**RASSO**") units were effective methods of supporting victims of sexual violence, providing centralised, specialised services that catered to multiple, specific needs. However, we are concerned that their provision is not widespread, consistent, or stable.[55] This limits their scope to the detriment of victims. JUSTICE therefore recommends that the Government better standardise these services, and work to further embed them into local communities. SARCs and RASSO

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[53] ibid, p.5. OR JUSTICE and others, 'Joint Briefing for the House of Lords ahead of report stage of the PCSC Bill' p.5.

[54] Ministry of Justice, 'Delivering Justice for Victims', (2021), p.40.

[55] JUSTICE, Prosecuting Sexual Offences, (2019), p.78.

units should be rolled out and made available across the country, so that they can be accessed by victims everywhere. [56]

SARCs

45. It is difficult to overstate the importance of accessibility in provision of support services for victims of sexual violence. SARCs, which are usually run in collaboration with the NHS, have trained doctors, nurses and support workers to provide assistance, as well as Independent Sexual Violence Advocates ("**ISVAs**").[57] SARCs provide a 'one-stop shop' for medical, emotional and practical support to victims of sexual offences.[58] This includes provision for forensic medical examinations (should the victim consent) and trained psychological services. In this way, they function as a centralised space that caters to the differentiated needs of victims of sexual violence, without the victim having to seek out these services individually.

46. Dr Catherine White, the Clinical Director of St Mary's Sexual Assault Centre, in her evidence to JUSTICE, stated that these spaces should not just focus on sexual violence, but look at "*the person's whole needs and situation so as to help them recover and reduce future vulnerability*".[59] This approach would consider the needs of victims that stretch beyond the moment of sexual violence, both before in terms of the events that facilitated it, and after in terms of the conditions needed to ensure it does not recur. This includes the consideration of the following issues: (i) housing (ii) finance (iii) alcohol and/or drug issues (iv) domestic violence.[60]

47. SARCs therefore provide an excellent model for victim support, and an effective solution to the problem of fragmented services outlined above. Properly run SARCs are a huge benefit not only to victims but also to the efficiency of the criminal justice system. We welcome the development of a quality standard for SARCs that is being carried out by the

[56] "This means that in many cases, there is no coherent strategy across a local area to co-ordinate service provision. We have heard from the sector that some challenges are structural, including a lack of effective partnership working and a lack of clear roles and responsibilities between different providers." - page 41 of the consultation.

[57] ISVAs are trained to look after the needs of a complainant, understand and explain how the criminal justice system works and provide the complainant with independent information. Victims can either self-refer or will be referred by the police.

[58] JUSTICE, 'Prosecuting Sexual Offences', (2019), p.77.

[59] *Ibid*, p.79.

[60] *Ibid.*

Forensic Science Regulator,[61] but we consider this inadequate without increased funding, resources and planning.

RASSOs

48. Providing evidence, testimonies and statements can be re-traumatising and dehumanising experiences, and can leave victims of sexual assault feeling invisible within the criminal justice system. Combined with the complexity of legal processes, victims can feel less inclined to engage without relevant, accessible, packages of support.

49. RASSO units provide specialist legal support to ensure victims understand relevant criminal procedures and what is required of them.[62] Through this, RASSO units involve victims as a 'participant' in their case, rather than merely a 'subject' of it. This helps victims to feel more in control of their situation, and that the system is working to help them, rather than forcing them out by alienating them. RASSOs are staffed by specially trained lawyers and paralegals who offer expert legal advice to guide victims through the complexities of legal process. RASSO unit staff develop a genuine specialism in matters of sexual assault, resulting in both increased efficiency for processing such cases and increased satisfaction for victims who feel understood, looked after, and supported.

50. Furthermore, RASSO units benefit from effective multi-agency governance structures which allow for its processes and outcomes to be reviewed, with lessons learned shared with the police. This helps to ensure that RASSO units undergo constant improvement.[63] This in turn creates a system of support for victims that is responsive, dynamic, and consistently correcting for the issues that it might create.

51. However, the role of RASSO units is undermined by two issues. First, the 2016 Thematic Review found a lack of consistency across CPS areas, with each area developing its own models for practice.[64] This inconsistency led to discrepancies in the quality of care experienced by victims – for instance rape cases were dealt with by a specialist in only 62.4% of cases.[65]

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[61] *Ibid,* p.78.

[62] Crown Prosecution Service, 'Rape and Serious Sexual Offences (RASSO)', (2005).

[63] JUSTICE, 'Prosecuting Sexual Offences', (2019), p.70.

[64] JUSTICE, 'Prosecuting Sexual Offences', (2019), pp.70-71.

[65] JUSTICE, 'Prosecuting Sexual Offences' (2019), p.71.

52. Second, a chronic lack of funding has led to staff burnout, with prosecutors working a huge number of unpaid hours, which subsequently compromises the quality of care for victims.[66] Not only has this impacted victims' perception of RASSO units as effective support services, which makes them less likely to engage meaningfully with their case, but it has disincentivised potential recruits due to the perceived pressures faced by the units.[67] Cumulatively, the effectiveness of RASSO units is weakened, which remain an essential service for victims navigating a complex, dense and often traumatising criminal justice system. Without well-functioning RASSO units, victims are likely to disengage, seeing the criminal justice system as alienating and faceless, rather than an instrument with which to access justice.

53. We therefore consider that both SARCs and RASSO units should be rolled out widely, with sufficient funding so as to ensure they are working as effectively and consistently as possible for the benefit of victims and their efforts to seek justice.

c) Other serious violence

54. It is common for victims of serious violence to struggle to come to terms with their assailant being released. This can result in re-traumatisation for the victim and hinder the process of healing, especially if the victim feels at risk, threatened, or that their concerns are ignored by the criminal justice system. In addition, victims may not wish to see the person who committed the offence necessarily imprisoned or forced into a system they do not fully understand or trust. Instead, they may wish to resolve matters out of court, but with the guidance of trained practitioners.

55. Restorative justice is a form of victim support that addresses the issues laid out above. It provides an opportunity for reconciliation, which can aid in the victim's psychological rehabilitation. Furthermore, it places the victim at the centre of their healing process, both giving them agency to choose how to move on and providing a non-legal intervention that can feel more controlled, focussed and gentle.

56. Studies have shown restorative justice to reduce reoffending rates, and to have high levels of victim satisfaction.[68] Furthermore, its inclusion in the Victims Code demonstrates its

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[66] *Ibid.*

[67] *Ibid.*

[68] PSO 2.25; See: J. Shapland & ors, Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes, Ministry of Justice, (2008), available at

value within a victim-centred framework - the most important aim of restorative justice as stated by the CPS is 'to reduce the fear of the victim and ensure they feel 'paid back' for the harm that has been done to them'.[69] Restorative justice approaches that are risk-led and carried out by specially trained facilitators are considered capable of achieving positive outcomes for the victim and offender, if properly implemented.

57. Moreover, in the context of children and young adults, it has been shown that restorative justice is an effective tool for children to 'repair' their actions. Rather than forcing young victims to enter a gruelling and often traumatising legal process – where giving evidence, testimonies, statements in court can leave lasting impacts – restorative practices offer an out of court solution that is more suited to younger participants. We consider, therefore, that if used as an educative tool, restorative justice has the potential to complement the current provision of sex education in the national curriculum by providing young people who have unthinkingly committed image-based sexual offences with a deeper understanding of the consequences of their actions. Following this approach may also reduce the risk of re-victimisation and trauma for the complainant.

58. JUSTICE recognises that the benefits of restorative justice depend heavily on the wishes of the victim, the crime, and the specific circumstances of the case. Sexual offences in particular can affect victims very differently. Current Ministry of Justice guidance does not preclude the use of restorative justice for sexual offences but does rightly suggest that it should be carried out by suitably experienced and skilled facilitators.[70] Our proposal would limit its use to sexual offences that are unlikely to result in prosecution, where an educative response is considered appropriate. Image-based sexual offences committed by young

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https://restorativejustice.org.uk/sites/default/files/resources/files/Does%20restorative%20justice%20affect%20reconviction.pdf which suggests restorative justice can reduce offending by 14%; and Ministry of Justice, 'Green Paper Evidence Report – Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders', 2010, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/185947/green-paper-evidence-a.pdf which showed 85% victim satisfaction ; Jeff Bouffard, Maisha Cooper, Kathleen Bergseth, 'The Effectiveness of Various Restorative Justice Interventions on Recidivism Outcomes Among Juvenile Offenders', Youth Violence and Juvenile Justice 2017, Vol 15(4) pp.465-480 which showed positive outcomes for children undergoing restorative justice compared with those who went through the youth court or had no intervention at all; and Jeff Latimer, Craig Dowden, Danielle Muise, 'The Effectiveness of Restorative Justice Practices: A Meta-Analysis', The Prison Journal, Vol 85 No. 2 (June 2005), pp.127-144 which showed positive outcomes for restorative justice in a meta-analysis of 35 individual programmes.

[69] Crown Prosecution Service, 'Restorative Justice', (2019).

[70] Ministry of Justice, 'Pre-sentence restorative justice (RJ)', (2014), para 2.2.

people in the absence of appropriate education and that are committed without particular malice may benefit.

Question 41: How can we ensure that all non-criminal justice agencies (such as schools, doctors, emergency services) are victim aware, and what support do these agencies need in order to interact effectively with IDVAs, ISVAs or other support services?

59. Advocates, such as Independent Domestic Abuse Advisors and ISVAs, provide an important form of support to victims, explaining how the system works, and providing them with independent information and relevant signposting. Victims can either self-refer or be referred through another public body such as the police. Yet, those public bodies that lie outside of the criminal justice system often fail to effectively signpost to their services. The Government considers that the lack of engagement could result from the fact that agencies "*are currently under no obligation to engage with advocates*".[71] This issue is compounded by the fact that victims, especially those who are already vulnerable or marginalised, often feel misunderstood, and/or subsequently mistrustful of public bodies generally. This means that a large number of victims who would benefit from IDVAs or ISVAs are never referred, since they are reluctant to engage with public bodies in the first place. There are many reasons for this, including racial disparities in criminal or health outcomes, a lack of considered engagement for particular communities, and insufficient training.

60. In this context, the PCSC Bill's proposed 'Serious Violence Duty' (as explained above) risks compounding pre-existing issues of mistrust, especially among vulnerable and already marginalised groups. This is because it would allow public bodies to share data to an even greater extent, with the police taking on a coordinating function. A police-led approach combined with extensive, unchecked, data sharing measures, and poor training for victim support services will only compound mistrust in institutional structures.

Training for Victim Support

61. To ensure that non-criminal justice agencies are 'victim aware', JUSTICE recommends that those working in non-criminal justice agencies undergo relevant training programmes for victim support. Our report 'Prosecuting Sexual Offences' details training provided by the National Crime Agency ("**NCA**") to front-line professionals dealing with vulnerable

[71] Ministry of Justice, 'Delivering Justice for Victims', (2021), p.53.

children.[72] This training stresses the importance of establishing safeguards to protect children who are victims of abuse or exploitation – whether or not this has been disclosed – and thus guides front-line professionals in handling overt and subtle signs that a child is a victim of abuse, exploitation or violence.[73] The NCA's training also teaches participants to avoid victim-blaming language, and to challenge it when they hear it. This is especially important in the context of children, where use of tone and language can substantially shape a child's feeling of safety.

62. The meaning of 'victim aware' also requires awareness of the differentiated needs of different *types* of victim, such as children, ethnic minorities, those with disabilities. Victims from such backgrounds too often will not feel comfortable using public services where they consider services do not take account of, or tailor themselves to, their cultural background, sensitivities or needs. Child victims will require a distinct approach in order to feel supported by front-line professionals. Public bodies must take into account such requirements if they hope to provide the best possible service in aiding victims to engage with the criminal justice system.

Question 45 - Please comment on the training required to support advocates for children and young people. How do these differ to adult advocate training and are there barriers that exist to accessing this?

63. The law rightly recognises that the criminal justice system must take a distinct approach to children and young adults due to their inherent vulnerability.[74] As laid out in our report '*Tackling Racial Injustice: Children and the Youth Justice System*', a 'child centred approach'[75] is required because children are vulnerable, easily exploited and are less responsible agents.[76] Furthermore, childhood experiences can represent the 'start of a life-

[72] *Ibid.*

[73] *Ibid.*

[7474] ECHR in Neulinger v Switzerland (endorsed by Baroness Hale in ZH Tanzania): ECHR cannot be interpreted in a vacuum but must be interpreted in harmony with general principles of international law applicable to the relations between parties;s11 Children Act 2004;s44 Children and Young Person Act 1993;Youth Justice Board for England and Wales, 'Annual report and accounts', (2020), see p.9 'child first principle'.

[75] JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System', (2021), p.7.

[76] *Ibid*, p.33, p.78.

long series of negative interactions',[77] and as such young adults have distinct needs which require distinct interventions.[78] To address the specific needs of children and young adults, the Government reflects on the number of advocate roles that have been created, such as Young People's Violence Advisors and Independent Trafficking Guardians.[79] However, the Government should also consider the vital role that lawyers play in representing and advising some of the most vulnerable children. This is especially so when recognising he fact that many child defendants are, in fact, victims themselves. This dual status must be appreciated when addressing their needs so as not to exclude those who are in need of assistance.

64. We consider that these needs are better met through a focus on protection, safeguarding, and welfare, and consequently public bodies who work with children and young adults must be more interventionist in their approach. This is especially true for those children who enter the youth justice system as defendants, as many in fact may well have been victims and subjects of abuse themselves as a part of the cycle of criminalisation. JUSTICE therefore considers that there is a greater need to improve the provision of training for all professionals who work with children, including lawyers and those who provide legal advice or representation, to ensure that information provided is accessible and child-friendly. This would help to equip such professionals with the tools they need to understand the diversity of users that depend on their services.

65. The current training requirements for lawyers who work in the youth justice system are, at present, inconsistent and patchy.[80] We note that there have been some welcome developments to address this issue. For example, the Bar Standards Board requires that barristers and pupils working in the Youth Court register with them and declare that they have the necessary skills, knowledge and attributes for working with children and young adults.[81] Nevertheless, more can be done, especially given indications that its implementation is thin on the ground.[82] Consequently, we recommend that **the Bar Standards' Board's Youth proceedings competency requirement should be extended to all pupils and barristers representing and prosecuting children in the**

[77] *Ibid*, p.10.

[78] *Ibid*, p.13.

[79] Ministry of Justice, 'Delivering Justice for Victims', (2021), p.54.

[80] *Ibid*, p.78.

[81] Bar Standards Board, 'Youth Proceedings competences', (2017).

[82] JUSTICE, 'Tackling Racial Disparity: Children and the Youth Justice System', (2021), p.78.

Crown Court. This requirement should also extend to solicitors who represent children and young adults. As such, **the Solicitors Regulation Authority should make foundation training (including ongoing child-specific continuing professional development training) mandatory for all solicitors who provide representation for children and young adults.[83] The Government should work with and encourage both bodies to improve their training in light of the findings of JUSTICE's report and its recommendations.[84]**

66. In addition, we further support the use of diversity training initiatives in the provision of support to child and young adult victims. Often, a lack of cultural competency can alienate and frighten young victims, leading them to perceive the criminal justice system, and support services provided by a range of public bodies, as a threat. This is especially the case with children for whom English is not their first language, and who often come from migrant communities who may have been historically marginalised, and thus harbour a history of institutional mistrust.[85] Therefore, a lack of sensitivity to and understanding of cultural frictions and difference is vital to counter animosity towards institutional support, advocacy, and policing. JUSTICE therefore recommends that the Ministry of Justice provision a **comprehensive diversity training programme that is cognisant of the issues victims face. To be truly fit for purpose, such training must be properly funded and consist of written guidance, cultural competency, and bias training.**[86]

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[83] *Ibid*, p.104.

[84] In respect of both barristers and solicitors, the Legal Aid Agency must better remunerate such work to reflect the specialist expertise required for competent practice.

[85] JUSTICE, 'Tackling Racial Injustice: Children in the Youth Justice System', (2021), pp.14-17.

[86] JUSTICE, 'Tackling Racial Injustice: Children in the Youth Justice System', (2021), p.57.