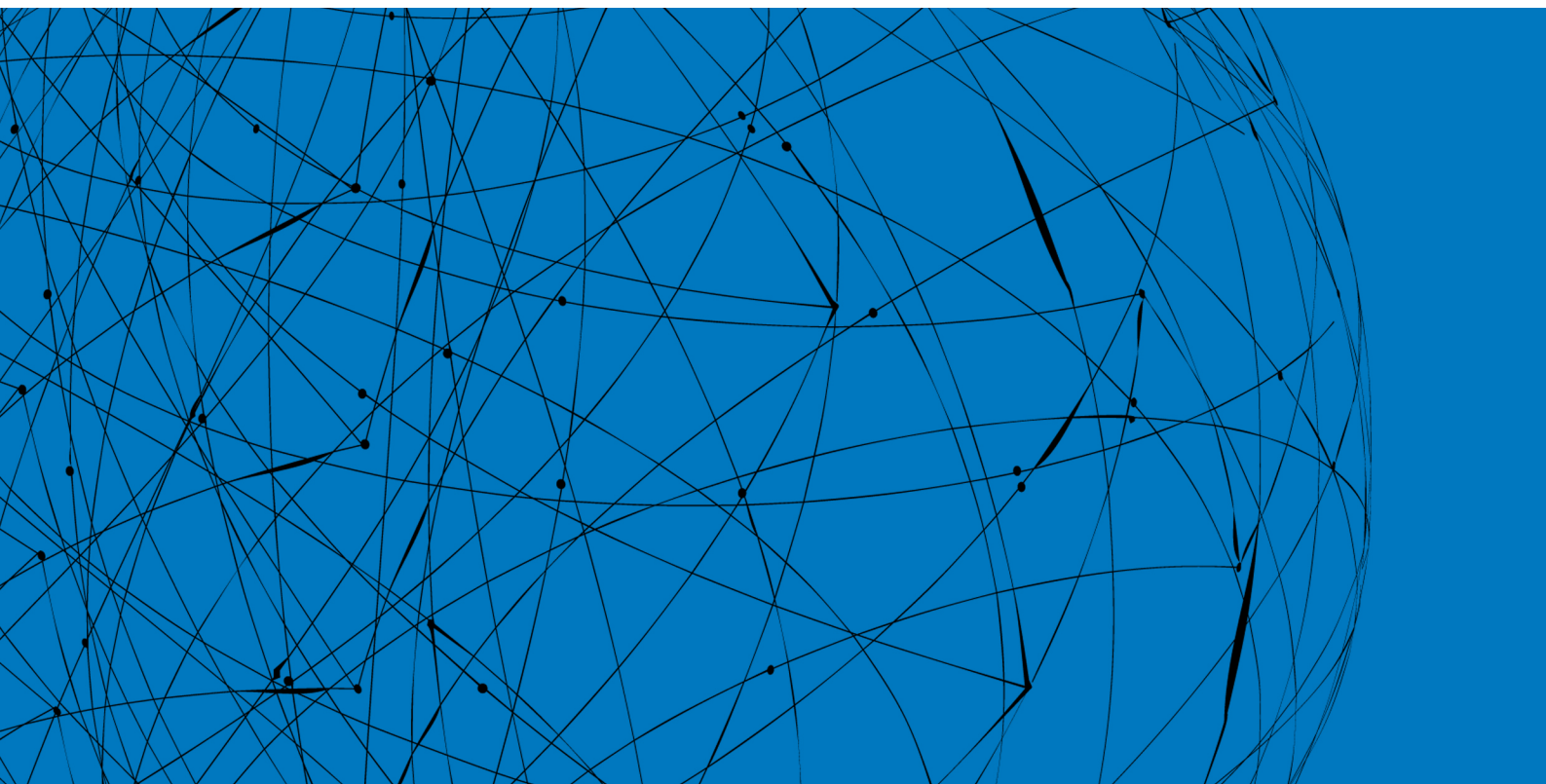

Response to Consultation on Improving the Victims' Code



May 2020

1. Do you think our proposal to restructure the Code into 12 overarching rights is the correct one?

On the whole, the revised Victims' Code 2020 provides clarification on the support victims can access and their entitlements when reporting a crime. However, our chief concern is that this process of simplification has resulted in unintended consequences by reducing the level of entitlements with regard to information about and access to Restorative Justice services.

This is important given the strong evidence of the benefits of Restorative Justice for a victim both in the literature and as set out the Criminal Justice Alliance's (CJA) 'Journey of Learning Growth and Change' report (2019):

- Numerous studies have shown victims who are given the opportunity to engage with Restorative Justice are more satisfied than those who only experience the traditional criminal justice system.
- Why Me?'s 'Valuing Victims' Report in March 2020 found that victims who went through Restorative Justice in 2018/19 reported improved health and wellbeing, being better able to cope with aspects of life, having increased feelings of safety, and feeling better informed and empowered.
- Robust 2007 research commissioned by the Home Office found that 85% of victims participating in Restorative Justice were satisfied with their experience, 20% more than the control group. Almost nine in ten would recommend Restorative Justice to other victims.
- Australian research has found that victims randomly assigned to Restorative Justice were less fearful of a repeat attack. The study showed better long term outcomes, even a decade later.
- A similar study found that on average, the number of victims scared of the person who committed the harm fell by 18.5% following Restorative Justice, while the number of victims angry with the person fell by 37%.
- Home Office research confirmed over half of victims they surveyed found Restorative Justice had helped to reduce the negative effects of the offence and almost two in five victims felt more secure.
- Numerous studies support the findings that Restorative Justice can help alleviate symptoms as severe as post-traumatic stress disorder (PTSD) by 23% compared to a control group.
- A further study found that a victim is almost seven times more likely to receive an apology from the person that caused them harm through Restorative Justice than in court.
- Various studies show a reduction in reoffending of between 14-34% following Restorative Justice, meaning the victim is less likely to be re-victimised and reducing the likelihood of further victims in the future.

The Victims' Strategy itself gives several examples of the benefits of Restorative Justice. One case (**p.33**) highlights that due to a Restorative Justice process, a man who stole two bags from a woman, managed to recover some of the victim's sentimental belongings and wrote the victim a letter in which he explained how and why he had stolen the items. The

case study highlights that the man *'has not re-offended in the year since he first engaged with Restorative Justice, which is the longest period (aside from time spent in custody) that he has not offended in his adult life.'*

Given the evidence of benefits to victims of Restorative Justice, we would like to see greater clarity in the revised Code around the right to information about Restorative Justice and the right to access Restorative Justice services, ideally with a right to be referred to a Restorative Justice service being an entitlement of its own.

We are also concerned about how people in custody who have been victims of crime can effectively access their entitlements and the potentially disproportionate impact on BAME victims if only police have a responsibility to provide information and make referrals to Restorative Justice services.

We detail our concerns and suggestions below.

2. Do you agree that the rights we have identified cover the most important needs of victims?

RIGHT 3: TO BE PROVIDED WITH INFORMATION WHEN REPORTING THE CRIME

We welcome the inclusion of Restorative Justice in the revised Code, however we are concerned about the use of conditional language in relation to this right. By placing too many caveats on the provision of information, this may result in subjective decisions being taken about who should be told about Restorative Justice, further widening the postcode lottery in access to Restorative Justice and reducing opportunities for victims to understand the benefits and make an informed decision.

Under 7.7 of the Victims' Code 2015 it states that victims are *'entitled to receive information on Restorative Justice from the police or other organisation that delivers Restorative Justice services.'* In the revised version, the Code stipulates that victims should be provided with information about the criminal justice process when reporting a crime which *'might include services where you can meet with the suspect or offender known as Restorative Justice (Right 3).'* Furthermore **paragraph 3.4** of the revised Code states *'the police will explain to you, where applicable, how to seek compensation and how to access Restorative Justice services.'*

We are worried that proposed changes remove any obligation on the police, or other relevant agencies, to provide information on Restorative Justice. In 2018/19 only 4.8% of victims recall being offered the opportunity to meet the person who caused them harm. Without an entitlement to receive this information, this figure is likely to fall even further.

The Victims' Strategy itself highlighted this problem (p.29): *'Also, there is evidence that only 4% of victims were aware that Restorative Justice had been offered (where an offender had been identified).'*

We would therefore like to see much clearer language setting out the right for all victims to receive information about Restorative Justice. The revised Code appears only place a responsibility on the Police, whereas it is vital other relevant agencies also have responsibility to provide this information, as is the case in the 2015 Code.

Right 4: TO BE REFERRED TO VICTIM SUPPORT SERVICES AND HAVE SERVICES AND SUPPORT TAILORED TO YOUR NEEDS

In the 2015 Code **s.6.34** states that if the person who committed the crime is under 18, *'the victim is entitled to be offered the opportunity by the Youth Offending Team in your area to participate in Restorative Justice where appropriate and available.'*

In the revised Code, **Paragraph 11.5** says *'the Youth Offending Team may seek your views prior to sentencing and explore whether you want to get involved in any Restorative Justice initiatives, where appropriate and available.'*

In the 2015 Code **Paragraph 7.3** says *'First the police must pass the victim's contact details to the organisation that is to deliver Restorative Justice services for victims to enable the victim to participate in Restorative Justice, unless asked not to do so by the victim.'* **Paragraph 7.4** goes on to say *'Dependent on Restorative Justice being available in the relevant area, the service provider that delivers Restorative Justice services must provide victims with full and impartial information on Restorative Justice and how they can take part.'* However, in the revised Code **Paragraph 3.4** states *'The police will explain to you, where applicable, how to seek compensation (see Right 5) and how to access Restorative Justice services.'*

We are disappointed to see that the watering down of language from 'must' to 'may' and the inclusion of caveats such as 'where applicable'. This conditional language also undermines the stated purpose of the Code to be a 'clearly defined state of rights.'

The Victims' Strategy also highlights the importance of referring to relevant services and a commitment to ensuring this happens (**p.29**) *'Police must offer to refer victims to specialist support to help them engage fully with the criminal justice system. We know that referrals are not always offered and information about all relevant services is not always provided.'*

The automatic referral mechanism to a Restorative Justice service included in the 2015 Victims' Code appears to have been removed in the updated version and it appears only the Police have a responsibility to provide information about Restorative Justice, rather than Restorative Justice providers and other professional bodies, including victim and witness services, who were also responsible in the 2015 Code.

Who gives the information about Restorative Justice to a victim is very important. Referrals to Restorative Justice services help ensure victims receive all the necessary, evidence-based and impartial information and support to decide if Restorative Justice is an option they would like to pursue.

The Victims' Strategy sets out a commitment to increase opportunities for victims to engage in alternative solutions to court including a Restorative Justice process (**p.30**). As the Victims' Code highlights *'Explaining the options and what they mean in a clear and sensitive way is crucial to making this approach work.'* The best way to achieve this is by having a trained Restorative Justice facilitator explain the options.

Restorative practitioners are best placed to explain the process to a victim and answer their questions or concerns, including around safety concerns, so they can make a fully informed decision. By removing this protection, there is a risk that information will not be passed on or the person giving the information will not be able to discuss the options, explain the benefits and answer the victim's questions, as effectively as a trained restorative facilitator could.

We would therefore like to see the right to be referred to a Restorative Justice service to be made an entitlement of its own. The Code should also specify that police, victim services and witness services are all responsible for ensuring these entitlements are met, so that Restorative Justice is something which is made available throughout the victim's journey. If the right is to remain conditional, greater clarity should be given to explain in what circumstances a victim should be referred to a Restorative Justice provider. Although we would like to see all victims being referred to remove the possibility of discrimination, bias or lack of knowledge playing a role in the decision (see below on the equalities impact of the revised Code).

3. Do you agree that these rights cover the key stages of a victim's journey in the criminal justice system?

We are concerned to see the deletion of '*the victim's journey through the criminal justice system*' diagram (**p.8 & 9, 2015 Victims' Code**) which provided a clear illustration of the various points at which Restorative Justice should be offered to victims. We would like to see this useful diagram re-instated.

Although victims appreciate being informed early about the opportunity to engage in Restorative Justice where appropriate, it is also important that they can be reminded of the service at other points in the process, as they may change their mind and wish to pursue it at a later date. Where a victim's consent has been given and details are retained, there should be an ongoing entitlement to be offered Restorative Justice, where appropriate, at different stages. This is why it is important that the Code specifies that police, victim services and witness services are all responsible for ensuring entitlements are met, and Restorative Justice is made available throughout the victim's journey.

In addition to the points referenced in the 2015 diagram, we would like to see the addition of the opportunity to offer Restorative Justice at the time of a parole hearing. A Restorative Justice ambassador and survivor, Lucy, recently spoke at an event held by the CJA about her experience. The impact of the serious assault on her affected Lucy for many years. Lucy met her ex-partner in a restorative meeting which took place in prison and a few weeks before the parole hearing. Reflecting on the meeting, Lucy said: '*After coming out of the prison, it was a relief. It was just letting it all go in one breath. It's like when someone says there's no quick fix but that was it, that was the turning point for me. That was the beginning of the rest of my life.*' Since the meeting, Lucy's life has changed for the better – she's working and is a facilitator for a local support group.

As the Victims' Strategy highlighted (**p.31**) Restorative Justice should be offered in such a way as to give the victim an informed choice 'at the time that is right for them' and be

assured that the process will be led by skilled practitioners who can make the appropriate risk assessments. Therefore the limitation in the revised Code to only giving information at the time of reporting a crime, would risk victims not being informed and reminded of the opportunity at other points in the journey, at a time that is right for them.

Information

4. We have included more practical advice and information in the draft revised Code, do you agree with our proposed approach?

Paragraph 3.4 'What is Restorative Justice?' describes Restorative Justice as follows:

'Restorative Justice can give you the chance to explain to the offender the impact that their crime has had on you. It will only happen if you and the offender, having acknowledged the basic facts of the case, both want to take part and a trained facilitator decides that it's safe and appropriate. You will be provided with full and impartial information on Restorative Justice and how to take part. Restorative Justice is voluntary, you do not have to take part and you can withdraw at any time. You can ask to participate in Restorative Justice at a time that is right for you and you may be asked to take part because the offender has requested Restorative Justice. Even if both you and the offender want to take part, it might not be appropriate, and the trained facilitator will make an assessment of this.'

This description does not sufficiently describe the benefits we know Restorative Justice can have, approaches to ensuring safety and the different types of Restorative Justice that are possible. We therefore recommend alternative wording (based on that suggested by the Restorative Justice Charity Why Me?) which provides this information:

'Restorative Justice gives victims the chance to communicate with the person that caused them harm about the real impact of the crime. It empowers victims by giving them a voice, and for many people it can help them to move forward and recover. For those who committed the offence, the experience can be incredibly challenging as it confronts them with the personal impact of their crime.

'Restorative Justice conferences, where a victim meets the person who caused them harm, are led by a trained facilitator who supports and prepares the people taking part and makes sure that the process is safe. Sometimes, when participants do not want a face to face meeting or it is not safe to do so, the facilitator can arrange for the two parties to communicate via letters, recorded interviews or video.

'Restorative Justice is voluntary, meaning that both parties must be willing to participate for it to go ahead.'

It would also be useful if the box explaining Restorative Justice (**Paragraph 3.4**) in the revised 2020 Code, could include some useful links to further information, such as the Restorative Justice Council's website and address.

RIGHT 12: TO MAKE A COMPLAINT ABOUT RIGHTS NOT BEING MET

The Code is only as good as its ability to enforce it and we have concerns about the enforceability of these rights and the complaints procedure detailed within the Code.

In the revised Code, victims are advised to contact the Parliamentary and Health Service Ombudsman (PHSO) once internal procedures have been exhausted. The PHSO have a remit of over 300 different government departments and public bodies. Therefore we

would prefer to see a specific Victims' Ombudsman established to ensure victims are at the heart of the complaints process and complaint caseworkers are trained specifically in victim issues and in communicating with victims of crime. Clarity of the title would help ensure victims knew where they could go to for help and build trust that their complaint will be looked at by someone with specific expertise in the Victims' Code entitlements. This would help ensure that the Code had sufficient 'teeth' to ensure victims can enforce their rights.

If the use of the PHSO remains, contact details should be provided explicitly within the Code which adequately signposts individuals to clear information. To reduce the burden on victim and facilitate their engagement in the complaints process, a direct link to a dedicated page on the PHSO website providing further information specifically for victims should be included. A postal address and/or telephone number should also be included for those who do not have internet access.

5. Is there any important information that you feel we should also include?

Practical advice and information

While the Code explicitly states that victims are not obliged to speak to the media, there is insufficient guidance on how they should deal with this should they wish to. Victims are advised to contact the Independent Press Standards Organisation to seek further guidance. The link provided within the 2020 Code is to a generic webpage and not one that provides tailored information and advice. We would therefore welcome a dedicated page for victims of crime, particularly as this can compromise a case whilst it is still before the court.

Victims & Witnesses in Custody

Attention must be paid to victims or witnesses of crime who are in custody and their inability to access the rights provided under this Code and services which are intended to support victims including access to Restorative Justice.

As the Victims' Strategy highlights (p.22): *'Many offenders have also been victims of crime. Receiving the right support, at the right time, can help break the cycles of both victimisation and offending.'* Therefore we need to *'better recognise the connections between offenders and victims in our services. Many offenders have been victims of crime (at least 60% of women in prison report being a victim of domestic abuse) and have complex needs which have acted as barriers to getting the support they need.'*

There is a lack of transparency about how prisons decide which crimes to report to the police (whether occurring pre-custody or during the sentence) which can be impede the right to access victim support services. We would therefore like to see reference in the Victims' Code as to how people in custody who are victims of crime can access their entitlements.

Reference to webpages for further guidance, without alternate contact information renders elements of these rights inaccessible for people in custody who do not have internet access. Therefore a postal address and telephone number should be included where possible. Prison officers and individual key workers situated within prisons are well placed

to support those seeking victim services whilst in custody, and should be made aware of the Victims' Code in their training as well as copies of the Code made available in prison libraries and on any in-cell technology or wing-based kiosks, where it is available. Use should also be made of Inside Time newspaper and National Prison Radio to ensure people in custody are aware of their rights and entitlements if they have been a victim of crime.

Impact Assessment and Equalities Statement

6. Are you aware of any evidence or sources of information that would help us to understand and assess equality and economic impacts in greater detail? Please supply.

We note that the Equalities Statement 2020 says '*We do not consider that they [the changes to the Victims' Code] result in people being treated less favourably because of a protected characteristic.*' (p.3)

In summer 2019 the CJA carried out a workshop in partnership with the Ministry of Justice Race Disparity Team on the topic of BAME victims of crime. The notes can be found on our website.

The revised Victims' Code does not make any specific mention of the distinct needs of BAME victims or that specific services may be available.

We are concerned that due to the well documented historical and current day mistrust between many BAME communities and the police, that removing the right to be referred to a Restorative Justice service, could disproportionately impact BAME victims. If access to information about Restorative Justice is only the responsibility for the Police, there is a risk that due to discrimination, unconscious bias or a lack of cultural competence, this information may not be passed on or it may be treated with suspicion by the victim.

Feedback from our roundtable of services working with BAME victims, highlighted some of these concerns:

'The first response people – there are various – their assumptions and stereotypes of what domestic violence is in those communities is scary. The tone and the language and the stereotypes they are using, it's almost like 'well in your communities this is normal, this is normal, your faith allows it to happen.'

'More and more people [police officers] are coming from outside London to do these jobs and they've never worked in diverse communities and they have no first-hand knowledge.'

'[We have a] specific service for Asian women in terms of rape and sexual abuse and there's no question they do reach a demography that our other victims' services find it very difficult to reach.'

The Victims' Strategy itself refers to this issue (**p. 22**): '*In Nottinghamshire, consultations with victims with protected characteristics revealed that they typically didn't report crime to the police, or access mainstream support services, and instead sought support from trusted community organisations.'*

The Impact Assessment also states: 'Some ethnic groups have consistently lower confidence in the police. For example, from 2013/14 to 2017/18 a lower percentage of Black Caribbean people said they had confidence in their local police compared with White British people.'

This lack of trust and confidence in the police means BAME victims may be less likely to report a crime or to trust information and advice given to them by the police, including information about Restorative Justice. Therefore a right to a referral to a Restorative Justice service would mean all victims, irrespective of ethnicity or other protected characteristics, would receive the same information from a Restorative Justice expert, rather than a police officer.

The strategy also commits to improving outcomes for hate crime and so-called honour-based violence (p.25). The importance of Restorative Justice services for BAME communities in response to hate crime was highlighted by the Victims' Strategy (p.28):

'West Mercia and Warwickshire victims' services restorative justice staff met with the local Muslim Welfare Association to discuss Restorative Justice as a means to deal with local hate crime incidents and attended the mosque to offer introductory Restorative Justice training to them. [...] The service has recruited and trained a young-adult Muslim volunteer to help facilitate Restorative Justice. This has begun to achieve positive results for victims. In addition, police Equality and Diversity Advisors in both policing areas have been trained to deliver Restorative Justice and use restorative approaches when working with different communities.'

Therefore we are concerned that unless there is a right to be referred to a Restorative Justice service, and unless the responsibility for providing information is widened to include victim and witness services, as well as the police, then BAME people may be disproportionately impacted in terms of their ability to access beneficial Restorative Justice services.

The Impact Assessment for the revised Code found that *'If effective the changes will make it more likely that victims with protected characteristics receive their rights under the Code which may result in increasing their confidence in the criminal justice system.'* Unfortunately, we cannot agree with that whilst the police are the sole agency responsible for providing information about Restorative Justice services and referrals are not automatic.

We would also like to see versions of the Code that are specifically produced with neurodiversity in mind, to ensure people with learning difficulties and disabilities are able to access the information. A young people's guide to the Victims' Code would also be useful.