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29 June 2005

Dear John Clarke,

Thank you very much for sending to the Committee on the Administration of Justice (CAJ) a copy of the consultation document on The Future of Services for Victims and Survivors and the establishment of a Commissioner for Victims and Survivors. We hope that the following comments will be of some use to you and others as Northern Ireland seeks to find ways to effectively respond to the legacy of the past.

1. We note that the Minister responsible, Angela Smith, had a review of Services in the course of 2004, and we read with interest Annexe A which summarises a number of the findings of that review. It is probably worth noting that eight seminars were specifically held with churches and faith communities and – unsurprisingly – a number of comments and recommendations arising from the Review therefore relate to the specific needs and potential contribution from this sector. Those insights are to be warmly welcomed. However, it is likely that if focus groups had been organised with teachers, or employers, or rural community projects, a wealth of data would have also been forthcoming. Accordingly, CAJ would urge that research continue to be carried out with a range of social actors to determine the needs to be addressed. In our comments below we will indicate some areas of omission that we believe should be addressed in due course.
2. The most important omission in this consultation document, however, relates to the remit of the paper itself. The paper explicitly addresses the “issue of delivery of services to victims and how these might be better coordinated and planned under the general direction of a Commissioner for Victims and Survivors” (para 17). It is clear, however, from Annexe A, that whilst victims and survivors have service delivery needs, they also want to see a wide range of other policy issues addressed. Themes highlighted in the earlier Smith Review such as “recognition and acknowledgement”, “memorials”, “remembering/storytelling”, “truth and justice” “inquiries”, “Truth Commission” etc. all remain unaddressed by this current consultation paper. Nor does the paper clarify how these crucially important topics are to be brought forward, by whom, and when?

Many readers may fear that the focus on delivery of services will undermine, not complement, the wider issues that victims and survivors believe need to be addressed.

3. It would be particularly worrying if this consultation process led to the creation of a major new institution – a Commissioner for Victims and Survivors - when there is no clarity about issues beyond the delivery of services. We will return to this concern later in our comments.
4. CAJ accepts the formulation of the “Reshape, Rebuild, Achieve”(RRA) vision, which refers to the needs of all victims, and wherein there is a rejection of any concept of a hierarchisation of victimhood. We also accept the RRA line that the values of any policy should be victim-centred and “victims should be afforded dignity and respect, treated sensitively and confidentially, with recognition given to individual circumstances “ (para 5). We recognise the problems of terminology explored in the document, and accept that the term “victim”, while acceptable to and embraced by many, is for others a very dis-empowering term. We believe that the formulation of “victims and survivors” is a genuine attempt to meet this dilemma. CAJ has currently no better formulation to offer and there is little in international literature of value to draw upon to our knowledge. The final arbiters of the appropriate language to use should be the victims and survivors themselves and it seems that their feedback currently is that this is the best compromise.
5. Given that the focus of this paper is purely on the delivery of services to victims and survivors, and is therefore very narrowly drawn, we would limit our specific responses as follows –
  - victims groups can, as indicated, provide an extremely important support to victims and survivors. Government should establish ways of delivering services and support via such support networks wherever possible and appropriate.
  - we noted earlier the focus on church and faith groups. In addition, CAJ believes that it would be very helpful to consider in some detail how schools should be addressing the issues facing victims and survivors. Is the learning in the area of anti-racist, anti-homophobic, anti-sectarian, and indeed bullying more generally, being developed in the context of responding to the needs of victims as well as the perpetrators?
  - who is looking at issues such as the problem of youth suicides or domestic violence to see what relationship this has (if any) to a post-conflict situation? If this is seen as peripheral to the delivery of services to victims and survivors, how is the learning from service

delivery to this constituency being transmitted to other policy makers who are working around issues such as juvenile justice?

- the specific needs of carers should be addressed explicitly
  - the one-stop shop idea sounds valuable in principle, but we were somewhat surprised that it is proposed to have one individual in each HSS Board area. All of the studies to date suggest that the conflict has had a very differential impact on different geographical areas – and we would assume that needs might therefore vary across different HSS Boards?
6. CAJ has been active in two campaigns that we believe have a direct relevance for victims and survivors, namely the Single Equality Act and the Bill of Rights for Northern Ireland, yet neither initiative is mentioned in this document. It may be that the problem lies again with the narrow remit of this particular paper – but even a narrow focus on the delivery of services should emphasise the value of having written constitutional guarantees about the rights of victims, survivors and carers of same.
7. With regard to the Equality Statement (pp 34-36), CAJ would make the following comments:
- Para 4: we note earlier the geographical disparities in direct experience of loss. This should be addressed in any equality impact assessment of the proposals. ‘Lost Lives’ and other surveys of conflict-related deaths and injuries also highlight a variety of factors that will have equality implications. For example, the vast majority of the deaths occurred in the early 70s (so there will be many elderly victims amongst those who survived); nearly half of all deaths were of Catholic civilians; over half of the security force deaths were ‘local’ (police and UDR/RIR) rather than British army (which presumably has longer-established mechanisms for dealing with bereavement). No details are given as to the gender of those killed, but we assume that there may be a clearly differential impact on victims on the grounds of gender. At the very least, we imagine that there will be different needs for victims and survivors dependent on their gender. The Victims Unit would be well advised to audit more exactly across the various section 75 categories to determine who will benefit from a more comprehensive policy in this area.
  - Para 5: the terminology here suggests that the Unit misunderstands the very reason for the section 75 equality duty and why equality impact assessments are called for in relation to government policies. It is misleading to say “Any differential impact between the Section 75 categories, or groups within them, is not an equality issue in terms of the Act, the differential impact occurs because the need is greater”. It is precisely *because of* the “equality issue in terms of the Act” that government must respond differentially to different groups and ensure (as

the author here is trying to argue) that the greatest need is addressed. If, for example, it were to be the case that there are more women victims and survivors, it is because of the equality duty – not despite it, as implied in the current formulation – that greater resources would be directed at women.

CAJ is uncertain about how best to respond to the proposals regarding a Commissioner for Victims and Survivors. In principle, we believe that a body not dissimilar to the NI Human Rights Commission and the Equality Commission, with a statutory remit to promote the needs and interests of victims and survivors could be a positive initiative. We would also welcome in principle the terms of reference set out on pages 31-33. However, as noted earlier, the focus of this document is almost entirely on the issue of services, and yet the needs of victims and survivors are much broader than that. A Commissioner only looking at service issues will not respond to the stated needs of those it is meant to help. Accordingly, we will reserve judgement on the general direction being proposed here until it is much clearer how and when the broader debate is being brought forward.

In the hope that the above comments are of some assistance to you, we look forward with great interest to hear how other consultees respond, and how the debate will be broadened and deepened to address the wide variety of concerns that arose in the earlier phases of the consultation.

Yours sincerely,

Maggie Beirne  
Director