

## **CAJ's submission no. S379**

### **CAJ's Submission to the consultation on provision of Victim Impact Statements and Victim Impact Reports**

**March 2012**

## ***What is the CAJ?***

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**CAJ's Submission to the Department of Justice consultation on provision of Victim Impact Statements and Victim Impact Reports, March 2012**

**Committee on the Administration of Justice ('CAJ')**

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

The introduction to the consultation notes that whilst both Victim Impact Reports (VIR) and Victim Impact Statements (VIS) have been available to the courts for some time in Northern Ireland, no formal process exists to enable their use (p. 4). The DoJ hope that by increasing awareness of the purpose of the VIS, more victims will be encouraged to make a statement about the impact crime has had on them. The consultation paper also addresses the issue of widening the opportunities for information from VIR and VIS to be used in the justice system, including the potential to share information in VIR and VIS in order to better meet the concerns victims have identified (p. 4). In this submission, CAJ will outline relevant international and regional human rights standards relating to victims, whilst also providing comment on some of the questions posed in the consultation paper.

**Summary:**

- It is disappointing that the provision of VIS and VIR has developed in an ad hoc and patchy manner and that uptake by victims to make such a statement has been low;
- CAJ would urge that regard be given to a number of international and regional human rights standards, that relate both generally to victims and to their participation in criminal proceedings, when considering the provision of VIS and VIR;
- The functions of a VIS appear to be generally appropriate;
- The consultation paper states that there is currently no operational guidance or explanation for the purpose of the VIS or to explain to a victim why they are completing a statement. CAJ believes the development of guidance would be helpful and we would suggest that such guidance should reflect human rights principles and international standards;

- Regardless of whether the entitlement to make a VIS is placed in legislation, enabling measures such as practice directives and guidelines, or both, CAJ believes that issues relating to victims awareness that they can make a VIS and the misunderstanding surrounding when statements can be used must be addressed;
- Whilst the disclosure of information contained within a VIS to other organizations would be in keeping with the need to provide victims with support and assistance, the victim's right to privacy must also be considered;
- In relation to taking into account the views of the victim at a bail hearing, CAJ would have concerns as to how a VIS would be used in such circumstances;
- In relation to proposals for reading VIS in court, CAJ believes that further consideration needs to be given as to how this would operate in practice;
- A single point of contact such as a Witness Care Unit (WCU) may help to better inform victims of their role in proceedings and that they can make a VIS. However, once established, the effectiveness of WCU in doing so will have to be monitored. Until WCU are fully operational it should be clearly prescribed which organizations within the criminal justice system have lead responsibility for informing victims that they can make a VIS at various stages in the process;
- CAJ does not think that it is justified to remove the right to make VIS in certain cases. We think that the option to make a VIS should therefore be retained for all offences, where the victim wishes to do so;
- Whilst the judiciary and PPS appear to be aware of and understand the purpose of a VIR, there may in practice be a misunderstanding regarding whether the prosecution should first request the court to order that a VIR be prepared, or whether the prosecution should only prepare a VIR where the court has asked for one. CAJ suggest that the DoJ explores this.

### **Background:**

The consultation paper describes a VIS as an opportunity for victims to describe to the judge the impact that the crime has had on their lives. A VIS is optional and is prepared with the consent of the victim before their case is heard in court (p. 5). The consultation paper states that if a VIS is not available, the victim will not be disadvantaged, as the absence of a VIS should not adversely affect the outcome of the case (p. 5).

A VIS can either be prepared personally by the victim (having been written by them or written by another on their behalf) or by relatives of a deceased victim. A VIS provides additional information for the court of the victim's account of the impact of the crime upon them (p. 5). A VIS can be made to the police, Public Prosecution Service (PPS) or Victim Support Northern Ireland (VSNI) (p. 6). The PPS include the VIS in the prosecutorial papers and it is presented to the court before sentence but after a finding of guilt. The VIS is also shared with the defence (p. 7).

The VIS is not routinely shared with the support organisations that may be in a position to provide assistance to the victim to meet the needs identified in the statement. The consultation paper outlines that the police, courts and PPS report that the level of uptake by victims to make a VIS is low. It also observes how, unlike some other jurisdictions, Northern Ireland does not have legislative provision for the victim's entitlement to make an impact statement (p. 7).

The consultation paper describes how a VIS should not include comment about the offender or any potential sentence for the crime (p. 5). As noted above, it is presented to the court before sentence, but after a finding of guilt.

The consultation paper describes the functions of a VIS as being:

- To provide information to the sentencing judge about the true harm of the crime and assist the court in reaching decisions on the appropriate penalty;
- To provide a therapeutic aspect, helping victims recover from the harm caused by the crimes committed against them;
- To educate the defendant about the full consequences of the crime, perhaps leading to greater understanding of the harm caused and the acceptance of responsibility;
- To contribute to fairness in sentencing, by ensuring that all relevant parties are heard (p. 5 – 6).

The consultation paper outlines how in contrast, VIR are prepared by professionals such as a psychologist or psychiatrist and provide specialist opinion on the traumatic impact of the crime on the victim and on any consequent needs of the victim. The victim does not provide direct comment for inclusion in a VIR however. VIR are described as being prepared following a request by the court and are sourced by the PPS. The consultation paper describes how VIR are usually prepared for crimes of a more serious nature (p. 7). A VIR is similar to a VIS in that the report does not include any comment about the offender or a potential sentence for the crime. It also is included in the prosecutorial papers and is presented to the court before sentence but after a finding of guilt. The VIR may then be taken into consideration

when passing sentence. The VIR is available to the defence (p. 7). A VIR is not usually shared with the statutory organisations that work with the offender, nor is it routinely shared with organisations that deliver support services to the victim (p. 6). The consultation paper states that provision of VIS and VIR has evolved in an ad hoc and patchy manner (p. 12). It is disappointing that this has developed in such a way and that uptake by victims has been low. The lack of progress in integrating victims into the sentencing process is marked, given the conclusion of the Criminal Justice Review 12 years ago that it was not clear then how fully and explicitly the victim was involved, or whether information about the effect of the offence on the victim was routinely available to the courts.<sup>1</sup>

### **International standards and human rights principles:**

CAJ would urge that regard be given to a number of international and regional human rights standards, that relate both generally to victims and to their participation in criminal proceedings, when considering the provision of VIS and VIR.

The United Nations (UN) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* defines victims as:

...persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power[...]A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.<sup>2</sup>

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<sup>1</sup> *Review of the Criminal Justice System in Northern Ireland*, Criminal Justice Review Group, March 2000, p. 328.

<sup>2</sup> *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, G.A. 40/34, annex, 40 U.N. GAOR Supp (No. 53) at 214, U.N. Doc, A/40/53 (1985) Annex, para.1 and 2. Whilst this declaration is non-binding on member states, it is intended to represent a common commitment to member states to the principles within it. The Declaration states that it is designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime.

The Declaration goes on to state that victims are entitled to access to the mechanisms of justice (para. 4) and that victims should be informed of their rights in seeking redress through such mechanisms (para. 5). Victims have a right to be informed of their role in proceedings (para. 6(a)) and:

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by[...]Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.<sup>3</sup>

The UN *Guidelines on the Role of Prosecutors* refer to the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and provide that in the performance of their duties, prosecutors shall:

...take proper account of the position of the suspect and the victim.<sup>4</sup>

And:

Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.<sup>5</sup>

The Council of Europe (CoE) has also put in place standards in relation to the rights of victims through a number of recommendations of the Committee of Ministers. In particular, the CoE *Recommendation On the Position of the Victim in the Framework of Criminal Law And Procedure* notes that:

...the objectives of the criminal justice system have traditionally been expressed in terms which primarily concern the relationship between the state and the offender... consequently the operation of this system has sometimes tended to add to rather than to diminish the problems of the victim.<sup>6</sup>

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<sup>3</sup> As above, para. 6(b).

<sup>4</sup> *United Nations Guidelines on the Role of Prosecutors*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27<sup>th</sup> August to 7<sup>th</sup> September 1990, U.N. Doc. A/CONF.144/28/Rev.I at 189 (1990) para.13(b). The Guidelines seek to assist member states in securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings and should be respected and taken into account by governments within the framework of their national legislation and practice.

<sup>5</sup> As above, para. 13(d).

<sup>6</sup> *Council of Europe, Committee of Ministers Recommendation No. R (85) 11* of the Committee of Ministers to Member States on the Position of the Victim in the Framework of Criminal Law and

This Recommendation instead outlines how it must be a fundamental function of the criminal justice system to meet the needs and to safeguard the interests of the victim and that it is important to enhance the confidence of the victim in the criminal justice system. The needs of the victim must be taken into account at all stages throughout the criminal justice process.

The Recommendation goes on to state that:

All relevant information concerning the injuries and losses suffered by the victim should be made available to the court in order that it may, when deciding upon the form and the quantum of the sentence, take into account:

- the victim's need for compensation;
- any compensation or restitution made by the offender or any genuine effort to that end;<sup>7</sup>

CAJ is aware that this part of the Recommendation was discussed as part of the Criminal Justice Review and was described as being aimed primarily at ensuring the victim's need for compensation is taken into account when determining sentence.<sup>8</sup> CAJ would argue that it should also be viewed as ensuring that the court does not lose sight of the need to consider the harm suffered by the victim in passing sentence. The court can only do so where it has all the relevant information before it and so ensuring the participation of the victim in the process is vital. It is worth noting that the Criminal Justice Review also described the Recommendation on the whole as being a wide-ranging and comprehensive summary of good practice.<sup>9</sup>

The CoE *Recommendation on the Role of Public Prosecution within the Criminal Justice System* also provides common principles for public prosecutors in relation to victims. It states:

Public prosecutors should take proper account of the views and concerns of victims when their personal interests are affected and take or promote actions to ensure that victims are informed of both their rights and developments in the procedure.<sup>10</sup>

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Procedure (Adopted by the Committee of Ministers on 28 June 1985 at the 387th meeting of the Ministers' Deputies).

<sup>7</sup> As above, para. 12.

<sup>8</sup> As above, p. 323-324.

<sup>9</sup> As above, p. 314.

<sup>10</sup> *Council of Europe, Committee of Ministers Recommendation Rec (2000) 19* of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System (Adopted by the Committee of Ministers on 6<sup>th</sup> October 2000 at the 724th meeting of the Ministers' Deputies).



CAJ would also draw attention to the *Guidelines for the Treatment of Victims of Crime* produced by the Human Rights Unit of the Commonwealth Secretariat.<sup>11</sup>

Whilst these are not specifically international human rights standards, they reflect the principles contained within the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. There are also of particular relevance as they relate to common law jurisdictions, as the Guidelines themselves acknowledge:

The advantage of developing specifically Commonwealth Guidelines lies in the fact that the criminal justice system(s) of almost every Commonwealth member state uses an adversarial system with its rules of criminal procedure and criminal evidence being based on Common Law.<sup>12</sup>

The Guidelines acknowledge that historically, victims of crime have been neglected by the common law system. Whilst the Guidelines have no binding legal effect, they represent a commitment by Commonwealth countries to the principles contained within them and set out a model legal and administrative framework through which countries can address the needs of victims of crime. The Guidelines state that:

The rights of victims of crime should include[...]to offer information and to be heard.<sup>13</sup>

The Guidelines suggest that a duty be imposed on prosecutors to place before the court all relevant information relating to the victim. The Guidelines go on to state that in serious cases, prosecutors must also:

...inform the victim that she/he has a right to make or provide information for the making of a Victim Impact Statement. This statement may include information on the financial, social, psychological, and medical impact of the crime upon the victim and the victim's family.<sup>14</sup>

The Guidelines describe how this gives practical expression to the victim's right to offer information and to be heard. The Guidelines also suggest placing duties on the judiciary in passing sentence to:

...take into account the impact of the crime upon the victim. With the consent of the victim a judicial officer may require a Victim Impact Statement to be obtained where the Prosecutor has failed to provide one.<sup>15</sup>

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<sup>11</sup> *Guidelines for the Treatment of Victims of Crime Best Practice*, Commonwealth Secretariat, Human Rights Unit (2002).

<sup>12</sup> As above, p. 6.

<sup>13</sup> As above, p. 10.

<sup>14</sup> As above, p. 18.

<sup>15</sup> As above, p. 20.

The International Association of Prosecutors (IAP), of which the PPS is a member, has also laid down *Standards of Professional Responsibility* that provide guidance in relation to victims.<sup>16</sup> The standards serve as an international benchmark for the conduct of individual prosecutors and of prosecution services and were adopted by a Resolution of the UN in 2008. The resolution requested that member states take the IAP Standards into consideration when reviewing or developing their own standards.<sup>17</sup> The IAP Standards state that prosecutors shall:

...in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights.<sup>18</sup>

It is clear from these international standards and human rights principles that a broad definition should be applied when considering who is a victim and that victims have a right to be informed of the process and their role in proceedings. It is also clear that the views of the victim should be considered during the proceedings and that victims should have a right to offer information and be heard. Relevant information regarding the concerns of victims should be made available to the court.

### **Hillsborough Agreement**

CAJ welcomes this consultation as an example of a step towards fulfilling the commitment made within the Hillsborough Agreement to give consideration to the interests of victims and witnesses.<sup>19</sup> We would also draw attention to the commitment within the agreement to learn from international best practice in matters of criminal justice, as a necessary action to support policies, such as in relation to victims and witnesses.<sup>20</sup> We would refer to the international standards and human rights principles we have outlined above in this regard.

CAJ will now offer comment on some of the specific issues raised in the consultation paper.

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<sup>16</sup> International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors* (1999).

<sup>17</sup> United Nations Commission on Crime Prevention and Criminal Justice Resolution *Strengthening the rule of law through improved integrity and capacity of prosecution services* Vienna, 14<sup>th</sup> April to 18<sup>th</sup> April 2008, U.N. Doc. E/CN.15/2008/L.10/Rev.2.

<sup>18</sup> As above, para.4.3.

<sup>19</sup> Agreement at Hillsborough Castle, 5<sup>th</sup> February, 2010 Section 1.6.

<sup>20</sup> As above, Section 1.7.

### **Are the functions of a Victim Impact Statement appropriate? Are there any gaps?**

The functions of a VIS, which are outlined above, appear to be generally appropriate. They reflect the principles that victims should have a role in proceedings, that the views of the victim should be considered during the proceedings and that victims should have a right to offer information and be heard.

### **How can we ensure that victims understand what the purpose of a Victim Impact Statement is and how might they be used? Would the development of new guidance be helpful and what should this contain? What other measures would assist their understanding?**

The consultation paper states that there is currently no operational guidance or explanation for the purpose of the VIS or to explain to a victim why they are completing a statement. Other jurisdictions providing a VIS scheme have operational guidance, including the format and content of the statement, for the victim, police, prosecution service, the judiciary and professionals supporting victims. This guidance might include a template for the statement, what it can contain and limitations to it (p. 13).

CAJ notes the recent report of the Criminal Justice Inspection Northern Ireland (CJINI) on the care and treatment of victims and witnesses in the criminal justice system. It found that:

...the understanding and application of a victim impact statement in Northern Ireland was not well understood, and the absence of any guidance meant that various professionals, and the public, took differing views as to how and when, and indeed even if they could be used[...]The lack of guidance and instruction for professionals and the public is feeding the misunderstandings apparent in this area.<sup>21</sup>

The CJINI report goes on to recommend that guidance be established regarding the provision of VIS.<sup>22</sup>

Concerns have also been expressed to CAJ by victims representatives that victims can be uncertain as to whether they can make a VIS and who will provide them with the relevant information they need to do so. Various PPS policies discuss the possibility of providing a VIS but do not specifically outline the process by which such

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<sup>21</sup> *The care and treatment of victims and witnesses in the criminal justice system in Northern Ireland* Criminal Justice Inspection Northern Ireland, December 2011, para. 4.76.

<sup>22</sup> As above, para. 4.77.

a statement can be made and who it can be made too.<sup>23</sup> Arrangements therefore in relation to the provision of VIS still seem ad hoc, as the consultation paper acknowledges.

In this context, CAJ agrees with CJINI that the development of new guidance would be helpful. We would suggest that such guidance should reflect the human rights principles and international standards outlined above. In particular it should be noted that victims have a right to be informed of their role in proceedings and of their right to be heard. Such guidance should clearly prescribe which organization within the criminal justice system has lead responsibility for informing victims that they can make a VIS at various stages in the process. This information should be provided not only in policy documents and leaflets, but also via direct communication with the victim. Similarly, the judiciary should be requested to inform victims that victims can make a VIS where the prosecution has not submitted one. The development of new guidance would allow the practice in relation to the provision of VIS to more closely reflect international standards and human rights principles.

**Would placing the entitlement to make an impact statement in legislation make a victim more likely to take up this opportunity? Alternatively, would other enabling measures (such as practice directives and guidelines) be more effective?**

CAJ can see the merit in both of these options, in that they would be in keeping with various international and regional human rights standards. The UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* affirms the necessity of adopting national measures to secure the effective recognition of, and respect for, the rights of victims of crime.<sup>24</sup> The Declaration stresses the need to promote progress by all states in their efforts to that end.<sup>25</sup> The *Guidelines for the Treatment of Victims of Crime* produced by the Human Rights Unit of the Commonwealth Secretariat recommend that countries should include in their national constitution or legislation appropriate measures for the protection of victims of crime.<sup>26</sup> The CoE *Recommendation on the Role of Public Prosecution within*

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<sup>23</sup> Public Prosecution Service for Northern Ireland, *Hate Crime Policy*, December 2010, p. 26. Public Prosecution Service for Northern Ireland, *Policy on Prosecuting Cases of Rape*, December 2010, p. 32. Public Prosecution Service for Northern Ireland, *Victims & Witnesses Policy*, March 2007, p. 14.

<sup>24</sup> As above, para. 1.

<sup>25</sup> As above, para. 2.

<sup>26</sup> As above, p. 10. As noted above, whilst these guidelines are not specifically international human rights standards, they reflect the principles contained within the United Nations *Declaration of Basic*

*the Criminal Justice System* asks that governments of member states base their legislation and practices concerning the role of public prosecution in the criminal justice system on those principles.<sup>27</sup>

However, regardless of whether the entitlement to make a VIS is placed in legislation, or stated in enabling measures such as practice directives and guidelines, or in both forms, CAJ believes that the issues identified above relating to victims awareness that they can make a VIS and the misunderstanding surrounding when statements can be used must be addressed. This must be done in conjunction with any proposed legislation, practice direction or guidelines in order to increase the number of victims using VIS.

**Should measures be in place, with the consent of the victim, to enable disclosure of information in the Victim Impact Statement with other criminal justice organisations with the aim of meeting the victim concerns?**

**Should we allow for restrictions to be placed on how the Statement is used?**

In relation to the first question, the consultation paper outlines how in all jurisdictions that provide opportunities for a VIS, the offender and the defence lawyer see it prior to sentencing but after a finding of guilt. In instances where a victim has prepared a VIS but there has been a finding of not guilty, the statement is included in the prosecution case papers, but not disclosed. The VIS is not shared with any other criminal justice organisation. The consultation paper suggests that sharing this information could have a number of benefits. It would enable those organisations who provide support for victims to offer their services, could help to ensure that victims are ‘signposted’ to the specialist services they might need outside the criminal justice sphere and would also be beneficial for those organisations responsible for managing the offender (p. 14).

In general, the sharing of information in this style would correspond with international human rights principles. The UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* provides that victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.<sup>28</sup> The *Guidelines for the Treatment of Victims of Crime* produced by the Human Rights Unit of the Commonwealth Secretariat recommend that governments ensure adequate co-ordination between criminal justice agencies, social welfare bodies and relevant

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*Principles of Justice for Victims of Crime and Abuse of Power*. There are also of particular relevance as they relate specifically to common law jurisdictions.

<sup>27</sup> As above.

<sup>28</sup> As above, para. 15.

victim support organisations and structures and that the networking and sharing of information among these bodies should be supported and encouraged.<sup>29</sup> The CoE *Recommendation On the Position of the Victim in the Framework of Criminal Law And Procedure* states that the criminal justice system should have more regard to the physical, psychological, material and social harm suffered by the victim, and should consider what steps are desirable to satisfy their needs in these respects.<sup>30</sup>

However, all of these instruments also recognize that victims have a right to privacy. Therefore CAJ agree that any disclosure of information must be with the express consent of the victim.

In relation to the second question, the consultation paper outlines that there may be circumstances in which the victim may wish there to be limitations on the disclosure of information, perhaps because there are effects the crime has had on them that they have not wished to share with family or friends. The consultation paper refers to instances when references to the content of a VIS have been published as part of the judge's sentencing remarks. It states that the VIS will continue to have to be shared with the offender and their defence lawyer (p. 15).

CAJ would again draw attention to the need to balance the desirability of sharing information with the right to privacy in these circumstances. The CoE *Recommendation On the Position of the Victim in the Framework of Criminal Law And Procedure* state that:

Information and public relations policies in connection with the investigation and trial of offences should give due consideration to the need to protect the victim from any publicity which will unduly affect his private life or dignity. If the type of offence or the particular status or personal situation and safety of the victim make such special protection necessary, either the trial before the judgment should be held in camera or disclosure or publication of personal information should be restricted to whatever extent is appropriate.<sup>31</sup>

Notwithstanding these concerns, CAJ agrees that the VIS should still be shared with the offender and their legal representative, as it would be unfair not to disclose information to them that will be considered as part of the sentencing process.

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<sup>29</sup> As above, p. 24.

<sup>30</sup> As above.

<sup>31</sup> As above, para. 15.

**In which circumstances would you consider it appropriate for a victim to submit an impact statement? Do you see any practical difficulties with extending the use of such statements in this way?**

The consultation paper outlines how there may be other opportunities (other than at the point of sentencing) for a VIS to be taken into consideration. It provides examples of where a victim may wish to have their concerns about where an accused person is living or their fears of intimidation and re-victimisation to be taken into account at a bail hearing. Another possibility discussed would be prior to the release of a prisoner (p. 15).

In relation to taking into account the views of the victim at a bail hearing, CAJ would have concerns as to how a VIS would be used in such circumstances. At present a VIS is presented following a finding of guilt and prior to sentence, so that it can be considered as part of the sentencing process. The main difference between that scenario and presenting a VIS at a bail hearing is that an accused person enjoys the presumption of innocence at this time. The presumption of innocence is enshrined under both common law and Article 6(2) of the *European Convention of Human Rights* (ECHR), which is given effect domestically by the Human Rights Act 1998. It should also be noted that there is a presumption in favour of bail and that Article

5(1) of the ECHR provides everyone with the right to liberty and security of person. Whilst detention may be justified in relation to persons suspected of criminal offences, suspects are entitled to trial within a reasonable time or release pending trial under Article 5(3).

It is also worth recognizing that bail may at present be legitimately refused on the basis that there are substantial grounds to believe that the accused will interfere with the witnesses or the course of justice, or on the basis that the accused will commit offences if released on bail. In considering whether a refusal of bail is warranted, the court can consider the nature and seriousness of the offence, the character of the accused, any criminal record the accused may have and any objections put forward by the prosecution. The victim should already have the opportunity to put forward their views as part of this process. The PPS *Policy on Victims and Witnesses* states that the views of the victim are an important factor in the prosecution attitude to bail. The policy states that the PPS will bring all relevant matters to the court's attention, such as the risk of interference with a victim or witness.<sup>32</sup> However, as CJINI have noted there are no mechanisms for direct contact with victims in these circumstances and the PPS rely on the police to obtain the views of victims.<sup>33</sup>

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<sup>32</sup> As above, p. 14.

<sup>33</sup> As above, para. 4.60.

CAJ would therefore suggest that rather than seek to extend VIS into bail hearings, consideration should be given to how the mechanisms for contacting victims and obtaining their views prior to any bail hearing can be strengthened and made more effective.

In relation to the suggestion that a VIS be provided prior to the release of a prisoner, CAJ would request further clarity as to this would interact with current schemes, such as the Prisoner Release Victim Information Scheme (PRVIS) operated by the Northern Ireland Prison Service (NIPS). This scheme gives victims the opportunity to make written representations that are taken into consideration when a person applies for temporary release.

**Should others be permitted to read the impact statement in open court with the consent of the victim?**

**Should a victim be given the choice to personally read aloud their written statement in court if they wish to do so, and do you consider victims have a desire for such a measure?**

**Would bereaved relatives benefit from having a choice about whether the statement is read out in court and who reads their impact statement e.g. personally, the Prosecutor, the judge?**

In relation to the first question, CAJ notes that there does not appear to be a consensus in terms of practice internationally in this regard (p. 15 – 16). CAJ believes that further consideration should be given here and in relation to statements prepared by bereaved relatives as to how these proposals would operate in practice. Would the statements be read by the prosecution’s legal representative, by a legal representative for the victim, or by some other advocate on behalf of the victim? Would a victim be eligible for legal aid if they wished for a legal representative to read the statement? Would a separate advocacy service have to be established for this purpose and if so, how would this be funded?

In relation to the second question, rather than ask consultees whether victims and witnesses have a desire for such a measure, CAJ thinks that the DoJ should undertake a survey or analysis on this issue before putting forward any firm proposals.

In relation to the third question, the consultation paper outlines how bereaved victims in Northern Ireland are able to make an impact statement as outlined in ‘*A Guide to Northern Ireland’s criminal justice system for bereaved families and friends following murder or manslaughter*’. The Guide describes how to make a statement, by contacting the PPS, and refers to what the impact statement may contain. It can



be presented to the judge before sentence is passed. This is described as an opportunity to tell the judge how life has changed for the bereaved relative since the death of their loved one (p. 18). CAJ notes that this is in keeping with the definition of a victim provided in the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which includes the immediate family or dependants of the direct victim.

In relation to all these proposals, CAJ believes that the principles currently underlying the provision of VIS should be remembered. Notwithstanding the usefulness of a VIS, CAJ recalls the concerns expressed by the Criminal Justice Review of the potential pitfalls of overreliance on this approach:

...there would be issues of equity if it were perceived that victims who were punitive or victims who were forgiving were having a differential impact on sentences. As we have said previously victims should not be required to take decisions about what should happen to offenders nor be seen to have any form of veto over sentencing.<sup>34</sup>

Therefore the VIS that will be read should be available to the defence and should not include comment about the offender or any potential sentence for the crime. The potential for a VIS being read in court that could deviate from the written version must also be considered.

### **Which organisation should contact a victim with the offer to make an impact statement?**

### **Who should complete the Victim Impact Statement? Should this be the victim themselves or should someone else do this on their behalf, using their words?**

The consultation paper outlines how a contributory factor to the success of a scheme is to designate a single organisation to commission a VIS. It outlines how reasons given from victims for a low participation rate to complete a statement in England and Wales included not being informed of their availability. The consultation paper believes that an identified organisation to routinely seek and provide a statement in Northern Ireland would ensure a victim is aware of the opportunity to make a statement and would contribute to a greater uptake by victims. The consultation paper also seeks to clarify who should write the statement (p. 17).

As CAJ has outlined above, there are concerns in Northern Ireland as to the provision of information regarding VIS. CAJ notes the recent recommendation of the Criminal Justice Inspection Northern Ireland (CJINI) that Witness Care Units (WCU) should be

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<sup>34</sup> As above, p. 328.

established to act as a ‘one stop shop’ for victims and witnesses.<sup>35</sup> We understand that work by the PPS and police has already begun in this regard. A single point of contact such as a WCU may help to better inform victims of their role in proceedings and that they can make a VIS. However, once established, the effectiveness of WCU in doing so will have to be monitored. CAJ would also seek clarification as to whether victims who wish to make a VIS, but do not wish to do so through such formal processes will have their needs catered for. For example, some victims may be reluctant to cooperate with the police, PPS or VSNI in this way, but may be willing to make a VIS through their legal representatives.

Until WCU are fully operational, CAJ would argue, as we have outlined above, that it should be clearly prescribed which organizations within the criminal justice system have lead responsibility for informing victims that they can make a VIS at various stages in the process. This issue should be resolved as the immediate priority, before a system involving a single point of contact for victims is established.

In relation to the preparation of the statement itself, CAJ believes that there is room for both options.

**Experience in other jurisdictions indicates victims are more inclined to submit an impact statement for serious offences. Do you think that Victim Impact Statements should only be used for specific offences? If so, what should these be?**

The consultation paper outlines how in Northern Ireland the DoJ would like to increase the uptake of completion of a VIS. An issue raised however is whether it would be a good use of resources to seek to do this for all types of crime. The consultation paper wishes to ensure that whatever type of scheme is put in place is proportionate. It refers to evaluations of schemes in other jurisdictions, which show that victims do not place a high value on preparing a VIS in less serious offences and tend not to complete VIS in such circumstances. The consultation paper contrasts this with jurisdictions where VIS is limited to serious crimes where uptake is high (p. 18).

In relation to this proposal and international human rights standards, CAJ would refer firstly to the definition of a victim that is provided in the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. Victims here are those who have suffered harm through violations of the criminal law. It is notable that these are not described as having to be serious violations. A victim’s views and concerns are to be heard and considered at appropriate stages of the proceedings. Similarly, the CoE *Recommendation On the Position of the Victim in the Framework of Criminal Law And Procedure* does not restrict the presentation of all relevant

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<sup>35</sup> As above, para. 6.52.

information concerning the injuries and losses suffered by the victim to the court only to those victims of serious crimes.

It should also be noted that not all victims of crime are affected by their experience in the same ways. The most recent CJINI report on this issue noted that victims have very diverse needs and states that it is a common concern of victims that they feel on the periphery of the system.<sup>36</sup> It warns against the danger of professionals becoming process driven and de-sensitised to the needs of victims and witnesses.<sup>37</sup> A blanket policy that VIS would not be available for certain offences has potential to overlook the diverse needs of victims and de-sensitise those within the criminal justice system to them, due to them being the victim of an offence that is not considered to be 'serious'.

CAJ does not think that it is justified to remove the right to make VIS in certain cases. We think that the option to make a VIS should therefore be retained for all offences, where the victim wishes to do so.

**Is there sufficient awareness and understanding of the purpose of a Victim Impact Report? If not, how might we address this?**

**Should protocols and guidance be considered for a Victim Report to be shared with organisations which can offer support to the victim or who have responsibilities for working with the offender? Could they be used to help the justice agencies 'signpost' victims to services they may need outside the justice sector?**

CAJ notes that VIR are described in the consultation paper as being sourced by the PPS at the request of the judge, as being prepared by professionals such as a psychologist or psychiatrist and that they provide specialist opinion on the traumatic impact of the crime on the victim and any consequent needs of the victim. The victim does not provide direct comment for inclusion in a VIR however.

Bearing this in mind, CAJ thinks that this first question requires further clarification. Given that the victim does not appear to be in a position to drive the process relating to a VIR in the same way that they could request to make a VIS, CAJ would query whether the lack of awareness and understanding mentioned here is perceived within the PPS, the judiciary, or both. The use of VIR was recently discussed by Hart J. in the case of *R v Thomas Valliday*<sup>38</sup> where the court comments that the use of VIR came about as a result of judges being:

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<sup>36</sup> As above, p. V.

<sup>37</sup> As above, p. X.

<sup>38</sup> *R v Thomas Valliday* [2010] NICC 14.

...anxious to have as much information as possible from and about victims in serious crimes, so that when passing sentence the court would have a comprehensive picture of the effect on the victim based upon evidence from the victim and suitably qualified professionals. The practice is well - established, and is an essential part of the sentencing process in serious cases.<sup>39</sup>

It is worth noting that Hart J. also comments in this judgment that VIR are prepared at the request of the prosecution.<sup>40</sup> Various PPS policies discuss the use of VIR, but they refer to these being requested by the judge.<sup>41</sup>

These comments suggest that whilst the judiciary and PPS are aware of and understand the purpose of a VIR, there may be in practice a misunderstanding regarding whether the prosecution should first request the court to order that a VIR be prepared, or whether the prosecution should only prepare a VIR where the court has asked for one. CAJ would suggest that the DoJ explore this issue.

In relation to the second question above, CAJ would repeat our comments in relation to the enabling of disclosure of information in the VIS with other criminal justice organisations with the aim of meeting the victim concerns. Issues concerning privacy will have to be considered as well as the potentially confidential nature of the relationship between professionals such as psychologists and psychiatrists and their patients. The interaction of these potential duties with any proposal to share information should be considered.

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March 2012**

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<sup>39</sup> As above, para. 19.

<sup>40</sup> As above, para. 19.

<sup>41</sup> Public Prosecution Service for Northern Ireland, *Hate Crime Policy*, December 2010, p. 24. Public Prosecution Service for Northern Ireland, *Policy on Prosecuting Cases of Rape*, December 2010, p. 32.