

13 Victims and Witnesses

Introduction

- 13.1** Under our terms of reference we are required to consider “measures to improve the responsiveness and accountability of, and any lay participation in the criminal justice system”. We interpret this as including the need to be responsive and accountable to the victims of crime and to witnesses.
- 13.2** In this report we have already dealt with issues relating to victims and witnesses. For example:
- we have looked at arrangements to improve the services provided by the courts, including the establishment of court user groups, and have shown how these new arrangements will be of benefit to victims and witnesses (see Chapter 8);
 - we have identified the responsibility of the prosecution service for ensuring liaison with victims following the point of charge and we also discussed the position of victims in the context of giving reasons for decisions on whether or not to prosecute (see Chapter 4); and
 - in our proposals for new juvenile justice arrangements we have pointed up the potential benefits to the victim of the restorative mechanisms that they embody (see Chapters 9 and 10).
- 13.3** Also, in looking at the guiding principles which underpin the criminal justice system, we have highlighted the responsibility which the system as a whole and its constituent parts have towards the victims of crime and to those who, like witnesses, are involved in the criminal justice system out of public duty. Both groups will benefit from the greater levels of accountability that we propose and from the new systems of audit and inspection that we will suggest in our consideration of structures.
- 13.4** The purpose of this chapter is to look more closely at victim and witness issues that are not adequately covered elsewhere in our report. It is also to set out the underlying principles on which the recommendations on victims issues in this chapter and elsewhere in our report have been made.

Human Rights Background

- 13.5** In November 1985 the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. In addition to issues of compensation (which have been considered by a team led by Sir Kenneth Bloomfield¹), the Declaration defines what is meant by the term “victim” before going on to deal with issues of access to justice and fair treatment, restitution and assistance. In particular the Declaration underlines the requirement to treat victims with compassion and respect and describes mechanisms for improving the responsiveness of judicial and administrative processes. These include: the provision of information to victims about the progress of cases; allowing the views and concerns of victims to be made known; assistance during the legal process; avoiding delay; and measures to minimise inconvenience, protect privacy and prevent intimidation or retaliation.
- 13.6** There is no explicit reference to victims in the *European Convention on Human Rights*. However judgments of the European Court have drawn attention to the responsibility of a State to take appropriate steps to safeguard the lives of those within its jurisdiction. For example in the case of *Osman v United Kingdom* the Court implied that this went beyond the state’s primary duty to put in place an effective system of criminal law and law enforcement and might, in certain cases, require the state to put in place operational measures to protect an individual whose life was at risk from the criminal acts of another individual. However, the Court recognised that “such an obligation must be interpreted in a way that does not impose an impossible or disproportionate burden on the authorities”.²
- 13.7** Two Council of Europe recommendations deal with the position of victims. The first recommendation was on the position of the victim in the framework of criminal law and procedure.³ It was aimed at ensuring that the needs of victims, including their physical, psychological, social and material needs, are properly catered for at all stages in the criminal justice process, including by means of compensation and restitution. The second was on assistance to victims and the prevention of victimisation.⁴ Taken together, these recommendations are a wide-ranging and comprehensive summary of good practice.
- 13.8** The issue of witnesses is dealt with explicitly in the *European Convention on Human Rights* and the *International Covenant on Civil and Political Rights*. Both, however, focus on the right of the defendant to examine the witnesses against him and to have witnesses on his behalf. Although there is no explicit reference to the particular needs of witnesses, for example, for help or protection, recent judgments have drawn attention to the need to

1 *Report of the Review of Criminal Injuries Compensation in Northern Ireland* (1999) A Report to the Secretary of State for Northern Ireland.

2 *Osman v United Kingdom* 28 October 1998.

3 Recommendation No R (85)11 adopted by the Committee of Ministers on 28 June 1985.

4 Recommendation No R (87) 21 adopted by the Committee of Ministers on 17 September 1987.

balance the defendant's rights to examine witnesses against the rights of witnesses themselves. For example, in recent cases the Court has indicated that at stake may be concerns about their life, liberty and security of person as well as their rights to respect for private and family life: "Contracting states should organise their criminal proceedings in such a way that those interests are not unjustifiably imperilled."⁵

Current Position in Northern Ireland

- 13.9** In Northern Ireland, as elsewhere, there has been an increasing focus on victims' issues. In parallel the view that criminal justice is primarily a matter solely between the state and the offender has lost credibility. There has been a realisation that the operation of the criminal justice system can inadvertently add to the distress and suffering of victims. At the same time there has been growing awareness that an effective criminal justice system depends crucially on the willingness of victims and witnesses to report offences and to give evidence. In Northern Ireland in particular, victims' issues have been highlighted because of the special concerns about the victims of the civil unrest.
- 13.10** The development of thinking in Northern Ireland is consistent with developments in Western Europe, North America, Australia and New Zealand, where the needs of victims and witnesses are becoming better appreciated. There has been an increasing focus on issues such as information, explanation, consultation, support and protection. For example in the Netherlands, policy in respect of victims has developed steadily since 1981 as the result of the work of three government committees and legislative change. Initially the focus was on violent sexual crimes but policy was later extended to all felonies. Key elements of the Dutch approach are: the correct treatment of victims; provision of clear and relevant information (including explicit mechanisms to check what information victims wish to receive and to ensure that it is provided on a personal basis); and restitution.
- 13.11** In recent years in Northern Ireland there have been a number of significant developments in relation to victims and witnesses.

VICTIM SUPPORT

- 13.12** Victim Support (Northern Ireland) has expanded and developed its work to the point where it now offers a service to victims of crime throughout Northern Ireland. Its volunteers offer emotional support to victims in the immediate aftermath of crime and give practical help by advising on claims for insurance and compensation and providing information about where

5 *Van Mechelen v Netherlands* 1997 HRC D 431 (see also *Doorson v Netherlands* 1996 22 EHRR 330).

to go for assistance with specific problems. The organisation is increasing the range of crimes in respect of which it offers support and these now include assault, robbery, and other forms of violent and sexual crime in addition to property offences such as burglary and criminal damage. Projects have recently been established in two hospital Accident and Emergency Departments to offer support to victims who have suffered personal injury. The development of Victim Support in Northern Ireland has been encouraged and assisted by the Northern Ireland Office which, as principle funder, has increased the annual grant from £370,000 in 1996/97 to £747,000 in 1999/2000.

13.13 Victim Support operates a witness support service in the Crown Court at Belfast and Antrim. The scheme was established in 1996 and in 1998/99 supported 1,188 witnesses. Victim Support has recently formed a partnership with the National Society for Prevention of Cruelty to Children to provide a child witness service for children attending court. Both organisations work closely with the Department of the DPP in seeking to identify cases where such services could best be used.

13.14 Support for victims of particular types of crime is provided by a range of other voluntary organisations, including Women's Aid, NEXUS and Rape Crisis. These also receive help through public funding and work in partnership with statutory agencies. The Domestic Violence Forum is an example of inter-agency co-ordinating machinery involving the statutory and voluntary sectors working to reduce the harm caused by such activity and deal with its consequences.

WE WILL REMEMBER THEM

13.15 In 1997 the Secretary of State commissioned Sir Kenneth Bloomfield to consider ways of recognising and acknowledging the suffering of those who have become victims as a consequence of events in Northern Ireland during the last 30 years. The recommendations in his report, *We Will Remember Them*, are being taken forward by Adam Ingram, the Minister for Victims, and the Victims Liaison Unit within the Northern Ireland Office. They include a number of initiatives designed to provide financial and material support to victims and their families and to facilitate liaison between the Government on the one hand and victims and their representatives on the other. A team led by Sir Kenneth Bloomfield was also asked to take forward a review of the fitness for purpose of the Criminal Injuries Compensation Scheme and the report of this group was published in July 1999.⁶ The Government is currently considering the recommendations it contains.

13.16 Both reports cover a range of issues, many of which go beyond our remit. However, in *We Will Remember Them*, Sir Kenneth Bloomfield considered specifically the position of victims within the formal criminal justice system. He described encountering a wide range of

⁶ *We Will Remember Them*, (1998) Report of the Northern Ireland Victims Commissioner, Sir Kenneth Bloomfield.

opinion that “too often the victim seemed to be ‘out of the loop’ when it came to dealing with the crime from which he or she had suffered”. For example, he reported argument that victims should be alerted to the release of offenders from prison. There were frequent situations where malefactors remained at large in close proximity to their victims because of lack of evidence. There was also unwillingness of witnesses to give evidence and many victims were concerned about their treatment in court, including the robust approach of barristers in our adversarial system. In this context Sir Kenneth Bloomfield drew specific attention to the Northern Ireland Code of Practice for victims of crime and recommended that it be conscientiously observed and critically monitored.

THE STEPHEN LAWRENCE INQUIRY

- 13.17** The inquiry into matters arising from the death of Stephen Lawrence was completed in February 1999.⁷ Although it was concerned with events in another jurisdiction, we considered what impact it might have on our deliberations. Four of the report’s recommendations were about witnesses and victims. It was recommended that: there should be improved guidelines for the handling of victims and witnesses, particularly in the field of racist incidents and crimes; proactive use should be made of contacts within ethnic minority communities to assist with victim support and working with sensitive witnesses; trained victim/witness liaison officers should be available and used in racist incidents and where a sensitive approach to young and vulnerable witnesses and victims was required; and appropriate bail conditions should be used to prevent the intimidation of victims and vulnerable witnesses. These recommendations were accepted by the Home Office, which announced a number of initiatives to develop good practice and drew attention to relevant work already being carried out in relation to vulnerable or intimidated witnesses.

VICTIMS OF CRIME – A CODE OF PRACTICE

- 13.18** *Victims of Crime - a Code of Practice* was published in February 1998.⁸ It was prepared by a steering group comprising representatives of the Director of Public Prosecutions, Northern Ireland Court Service, the Northern Ireland Office (including the Northern Ireland Prison Service), the RUC, the Probation Service and Victim Support. The Code of Practice sets out the level of service, for example in relation to investigation, information, and support, that agencies in the criminal justice sector are committed to delivering to victims. The emphasis is on the right of victims to be treated with respect and sensitivity, to be given emotional and practical support and to have their interests taken into account. The Code also deals with

⁷ *The Stephen Lawrence Inquiry*, Report of an Inquiry by Sir William Macpherson of Cluny, CM 4262.

⁸ *Victims of Crime - a Code of Practice*, Northern Ireland Office, February 1998.

special arrangements in respect of children and ethnic minorities and provides information about other support services. The Code of Practice is supplemented by commitments given to victims in the RUC charter⁹ and to witnesses and victims in the Northern Ireland Court Service charter.¹⁰

VULNERABLE OR INTIMIDATED WITNESSES

13.19 In May 1998 a working group was set up in Northern Ireland to consider the implications for Northern Ireland of the recommendations in *Speaking up for Justice*, the report of the Home Office led inter-departmental working group on vulnerable or intimidated witnesses in the criminal justice system.¹¹ The Northern Ireland working group comprised representatives of the Northern Ireland Office, the Department of the DPP, the Northern Ireland Court Service, the RUC and Victim Support.

13.20 *Speaking up for Justice* arose out of concerns that, although measures were in place to assist child witnesses, many adult victims and witnesses found the criminal justice process daunting and stressful. This was particularly true of those who were vulnerable because of their personal circumstances, for example their relationship with the defendant, or because of the nature of the offence, for example rape. There was also concern that some witnesses, possibly because of age or disability or difficulties they had in communicating, were potentially denied justice as a result of being deemed incapable of giving evidence. And there was an underlying worry that some victims and witnesses feared intimidation and, in consequence, failed to report offences or refuse to give evidence in court. *Speaking up for Justice* contained 78 recommendations. Some of these addressed the need to change or improve inter-agency arrangements and administrative procedures, while others required changes in the law and were incorporated in the Youth Justice and Criminal Evidence Act 1999.

13.21 Although Northern Ireland was represented on the Home Office group by the Northern Ireland Office and the Department of the DPP, it was considered that there were sufficient differences in structures and existing arrangements to require separate consideration. For example, the RUC has a highly developed witness protection scheme as a result of past high levels of paramilitary crime. The Northern Ireland Vulnerable or Intimidated Witnesses Working Group undertook two consultation exercises. The first resulted in an agreement by Northern Ireland Ministers to extend the criminal evidence provisions in the Youth Justice and Criminal Evidence Act 1999 to Northern Ireland by means of an Order in Council (the Criminal Evidence (Northern Ireland) Order 1999). These provisions include physical measures to reduce the stress of giving evidence at trial (such as informal dress, screening of

9 *Royal Ulster Constabulary Charter*, Royal Ulster Constabulary.

10 *Courts' Charter for Northern Ireland*, Northern Ireland Courts Service.

11 *Speaking up for Justice*, (1998) Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System, Home Office.

witnesses from the accused, live link CCTV and the use of pre-recorded interviews); restrictions on the freedom of defendants to cross-examine their alleged victims personally; further restrictions on what evidence about an alleged victim's sexual behaviour can be considered relevant in a trial for a sexual offence; and further restrictions on publishing information that might reveal the identity of a witness. The second consultation exercise focused on changes that did not require legislation but could be achieved administratively within the existing law.

- 13.22** The final report of the working group was published in July 1999¹² during the period of this review. Ministerial agreement for legislative change having been given, it concentrated on administrative changes. In general it endorsed for Northern Ireland the spirit of the recommendations in *Speaking up for Justice*. The report drew special attention to the need for effective training mechanisms and the need to be able to access expert advice and specialist information for dealing with particular types of vulnerability. It also recommended a number of improvements such as the early identification of intimidated witnesses by the police, ensuring proceedings are initiated in respect of intimidation offences, providing courts with information about witness intimidation at bail hearings, providing witnesses with information on action to take if they are intimidated or if they are aware of bail conditions being breached, and holding police interviews in places which suit the witness.

DIRECTOR OF PUBLIC PROSECUTIONS

- 13.23** In parallel to these developments, the DPP has undertaken a number of related initiatives. These are within the context that there is already a considerable degree of contact between the investigative and prosecutorial agencies and victims and witnesses in Northern Ireland. The DPP has issued his staff with information and formal instructions designed to ensure the proper organisation of consultations with victims and witnesses and their conduct in a professional manner. He has also introduced a comprehensive training programme designed to equip all staff with the knowledge and skills required to help victims through the criminal justice process. The Home Office report *Speaking up for Justice* endorses the view that there are advantages in having contact between the prosecution and victims and witnesses at an early stage. These include better prospects of evaluating the likely performance of a witness; allowing the witness direct access to the prosecution team; increasing witness confidence in the criminal justice systems; reassuring a victim that all aspects of the case will be fully examined and that their interests will be properly taken into account; and, providing an opportunity for the victim or witness to raise concerns.

12 *Vulnerable or Intimidated Witnesses (NI) Working Group - Final Report*, (1999) Northern Ireland Office.

Research Findings

- 13.24** The work that we commissioned on attitudes to the criminal justice system sought views on victim and witness issues.¹³ In summary, it demonstrated that there was considerable fear about becoming involved as a witness in the criminal justice system. This related not just to the intimidating nature of the court itself, but also to the possibility of being intimidated by parties to the proceedings or their supporters.
- 13.25** There was support for mechanisms to protect witnesses in court, for example screens. There was also agreement about the need for mechanisms to support and protect witnesses more generally. There was little detail but ideas included arrangements for explanations to witnesses and court visits in advance of trial. For many, the biggest fear of being in court related to the public nature of the occasion, the very personal nature of questions that might be asked and possible publicity.
- 13.26** This picture is confirmed by attitudinal surveys. For example the greatest worry of 96% of people who would be willing to appear in court was the fear of intimidation or retaliation; while 62% expressed concern about standing up and talking.¹⁴

Views Expressed During the Consultation Period

- 13.27** Both in written responses and in the consultation seminars there was comparatively little detailed discussion of victim and witness issues. However, this probably reflected the degree of unanimity that existed in relation to some of the issues being raised. There was an enormous amount of sympathy for the position of victims and a genuine desire to ensure that their legitimate concerns were met in a manner that did not result in their being re-victimised. There was recognition, too, of the important role of witnesses and the need to encourage them and protect them. But there were relatively few specific suggestions as to how these important ends might be achieved, and no complete consensus.
- 13.28** Some of the discussion of victims and witnesses was in the abstract. However, the Review Group benefited on several occasions from hearing directly the actual experience of victims and their relatives.

13 Dunn, Morgan and Dawson, Research Report 12.

14 Amelin, Willis and Donnelly, Research Report 3.

VICTIMS

- 13.29** There was general consensus that the criminal justice system did not give victims the level of support and assistance that they required, although only a few respondents considered how this problem might be addressed. There was also a widely held view that sentencing should take into account the requirements of victims, although apart from some positive comments about restorative justice, the practicalities of doing this were only touched on.
- 13.30** One of the messages that came across to us was the belief that there was little recognition by the criminal justice system of the centrality of victims to the criminal justice process. Although victims were intrinsic to the offence and often played a key role in reporting the offence and providing the evidence to prosecute, they felt alienated from the system. The perception was that the state took over the prosecution of “their” offence and was more concerned to secure a conviction (or otherwise dispose of the case) than to establish the truth about what had happened. At times victims felt that they were being re-victimised. When there were delays in dealing with cases, victims were left in a state of uncertainty. When cases came to court, victims sometimes felt as if they, not the offender, were in the dock. If a conviction was secured there was inadequate information about outcomes, including the release date of the offender. Throughout the criminal justice process there was an undercurrent of fear about possible retaliation by the offender and concerns that various aspects of the process, for example the lack of separate waiting areas in courthouses, might result in intimidation. There was an implication that the balance in the system was too much in favour of offenders at the expense of the victim. There was a suggestion that the guiding principles and values of the criminal justice system should ensure that the interests of the victim took precedence over those of the offender.
- 13.31** There was a widely held view that more and better information about their case should be available to victims but no very clear assessment of how it might be achieved. As to victims losing control over “their” offence, there were some suggestions that the victim might initiate prosecution or that someone, possibly the prosecutor, should take on board the role of representing the victim in court. On the other hand Victim Support argued that victims should not be given the burden of having to take decisions on what should happen to offenders; the state could not abrogate its responsibility in this area.¹⁵
- 13.32** There was also a suggestion that victims should have a right to make a statement to the court about the impact of the offence on them. But Victim Support argued for something rather different, the opportunity for the victim to make a statement in their own words to the prosecution or police that could then be deployed by them in court.¹⁶

15 *The Rights of Victims of Crime*, (1995) Victim Support.

16 *op cit*.

WITNESSES

- 13.33** There was a widely held view that witnesses, too, required more support from the criminal justice system, notably in terms of protection and support at court, as well as improved facilities. Indeed, on many occasions during the consultation the needs and concerns of witnesses and victims were seen as virtually interchangeable. Clearly both victims and prosecution witnesses were seen as likely to benefit from protection outside court and from any steps taken inside court to make the process less intimidating.
- 13.34** Some respondents drew specific attention to the needs of defence witnesses. Their presence and their contribution were essential for a fair trial. However, they were equally likely to be intimidated by the criminal justice process and did not have the direct support of any of the statutory agencies.

Evaluation and Recommendations

DEFINITION

- 13.35** We accept the definition of “victim” in the UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. Thus a victim is anyone who has suffered harm as a result of violation of criminal laws, regardless of whether a perpetrator has been identified or is being dealt with by the criminal justice system. Moreover “victim” may include, where appropriate, the immediate family or dependants of the direct victim and others who have suffered harm in intervening to help victims or prevent victimisation. We also accept that the provisions for victims should be applicable to all without distinction of any kind, for example on grounds of age, sex, religion, ethnic or social origin, nationality or political opinion. This does not mean that we believe that all victims must be treated identically regardless of circumstances. To the contrary, the definition is a reminder that victimhood can take a variety of forms and that the responses of the criminal justice system must be similarly varied. Moreover, as the Stephen Lawrence Inquiry has reminded us, the appropriate response in any individual case may depend critically on the background of the victim.¹⁷

VICTIMS’ RESPONSIBILITIES

- 13.36** We are aware that victims have a great number of responsibilities within the criminal justice system. These include assisting investigation, making statements and giving evidence.

¹⁷ *The Stephen Lawrence Inquiry* (1999), Report of an Inquiry by Sir William Macpherson of Cluny, London: HMSO, Cm 4262 (The Macpherson Report).

However, we wish to highlight our view that this does not amount to a requirement that victims should have to take decisions about what should happen to offenders or about how cases should be progressed or, in particular, whether there should be a prosecution; nor should it do so in future. For reasons of fairness, consistency and public interest, those decisions are properly taken by the state. We note that we are supported in this view by the organisation JUSTICE, in its report on the role of the victim in criminal justice,¹⁸ and by Victim Support.¹⁹ This was also a conclusion of the Canadian House of Commons Standing Committee on Justice and Human Rights which entitled its report on the role of victims in the criminal justice system *Victims' Rights - A Voice, not a Veto*.²⁰ None of this is to imply that victims should not be consulted about aspects of their case but that such consultation cannot be a mechanism for the state passing on or evading its responsibilities. Nor does it mean that victims cannot, if they freely wish, become involved in restorative conference,s particularly where these are aimed at conciliation and redress for victims.

RESPONSIBILITY FOR VICTIMS ISSUES

- 13.37** The UN Declaration and Council of Europe recommendations remind us that victims have needs at all stages in the criminal justice process including long after conviction and sentence, the point at which the criminal justice system might regard an offence as having been adequately dealt with. And responsibilities in relation to the prevention of victimisation could be seen to exist even before an offence has been committed.
- 13.38** Within the criminal justice system and in developing the criminal justice plan that we recommend in Chapter 3, it will be important to reflect the high priority attached to victims issues. **The interests of victims should feature in the codes of practice and plans of all criminal justice organisations that interface with them, and in the criminal justice plan that we advocate for the system as a whole.** This would be consistent with the work already underway in relation to the existing Northern Ireland Code of Practice for Victims and in the charters of criminal justice organisations. For those organisations subject to formal inspection arrangements (see Chapter 15) and which have responsibilities to victims and witnesses, they should be subject to formal inspection to ensure that the necessary standards are being met. Such inspection should be against the background of more clearly delineated responsibilities for dealing with victims.
- 13.39** We considered whether there should be set up within the criminal justice system a new separate office with specific responsibility for victims. One option was that the person holding this office would maintain a general oversight of the services available to victims,

18 *Victims in Criminal Justice: report of the JUSTICE Committee on the role of the victim in criminal justice* (1998).

19 *The Rights of Victims of Crime*, (1995) Victim Support..

20 *Victims' Rights - A Voice, not a Veto: report of the Standing Committee on Justice and Human Rights*, (1998) Shaughnessy Cohen MP, Chair.

would act as an advocate for victims and would act as the central “one-stop-shop” for handling complaints raised by victims. However, we were concerned that in a relatively small jurisdiction like Northern Ireland this approach might merely serve to diminish the stature and effectiveness of the Criminal Justice Inspectorate while at the same time cutting across the responsibilities of the individual criminal justice organisations.

- 13.40** Nevertheless, we consider that the position of victims within the criminal justice system requires particular and continuing scrutiny. **We recommend that a sub-group of the Criminal Justice Issues Group should maintain a specific focus on victims issues, should monitor and evaluate the new arrangements and should report regularly** (see Chapter 15). **It should include both statutory and voluntary agencies that are concerned with the provision of criminal justice services to victims. The possibility of a victims’ advocate should be considered again in the future if new arrangements on behalf of victims are seen not to be working effectively.**
- 13.41** Given the variety of criminal justice organisations with which victims may have dealings, there is a real danger of an inconsistent approach in the support given to victims by different agencies or, worse, that there might be gaps in coverage. To counter this, **we recommend that the agency which has lead responsibility for working with victims at particular points in the criminal justice process should be clearly delineated.**
- 13.42** **We recommend that the lead role in ensuring the provision of information and explanation to victims and seeking their views be taken by the police until such time as the case is passed to the prosecutor, that is until a suspect is charged or a summons issued (although as a matter of practicality it is recognised that the police will have a significant role until the file is received in the prosecutor’s office). The lead role (including notifying the victim of the outcome of the case in the courts) would subsequently be taken by the prosecutor until the case is finished in the courts. The prosecutor would also lead on any issues arising out of an appeal. Where a custodial sentence was imposed, the Prison Service would then take the lead. Where a non-custodial sentence was imposed, and the victim had an interest in being kept informed, the Probation Service would take the lead. In the case of a diversionary measure which involves victims, the agency or body responsible for implementation would have responsibility for informing victims about the progress and, where contact between victim and offender is envisaged, for taking steps to ensure the safety of victims. Each lead agency should have a clearly advertised point of contact. None of this is to suggest that the lead agency should have sole responsibility at any point. Who should take action must depend on the precise service or support needed. Instead the lead agency should be the first contact point for queries, requests and complaints: victims should not themselves be required to navigate the bureaucracy in order to gain the help they require.**

We are conscious that significant resources may need to be deployed to facilitate these arrangements and that the mechanisms may need to be phased in over time. This process should be aided by improved information sharing between criminal justice organisations.

INFORMATION, EXPLANATION AND CONSULTATION

- 13.43** An important theme during our consultation was whether victims had sufficient access to information and explanations and whether they were adequately consulted about the decisions being taken in their case. Concerns expressed were consistent with earlier research findings that there was a strong feeling on the part of victims of crime that they were not well enough informed about their case, that they were not given enough details about court procedures before and at court and that the part they played in the court process was not acknowledged and consequently not appreciated enough.²¹ We consider it essential to distinguish between the issues of information and explanation on the one hand, and consultation on the other. The provision of information and explanations should be relatively straightforward. Information, for example about trial dates, should be factual and explanations, although they will often require considerable sensitivity, should be similarly factually based. In contrast, consultation is explicitly a two-way process in which the views of victims are sought and may (in some cases should) be acted upon.
- 13.44** The criminal justice agencies in Northern Ireland already have commitments, set out in the Code of Practice for victims, in which they undertake to provide information at various stages in the criminal justice process. There is a lacuna, however, in the fact that the commitment of the police is limited to the provision of information in “serious” cases, although this restriction is, we understand, applied sensitively.
- 13.45** On the basis of the evidence we have seen, the comments we have been given and our own knowledge of the criminal justice system, we are very conscious of the importance of information to victims both as a means of building confidence in the system as a whole and as a means of securing accountability. **We recommend that the criminal justice agencies in Northern Ireland should build on their existing commitments in the Code of Practice for victims, in which they undertake to provide information at various stages in the criminal justice process (although not if it is against the wishes of the victim). The provision of information should not be limited to cases that the criminal justice system might classify as “serious”.** What might appear to be a relatively minor offence could have a disproportionate impact on the victim and would need to be handled accordingly. On the other hand, proportionality requires that there cannot be a blanket requirement to provide identical information in all cases. **We recommend that it should be for the lead agency to ensure the necessary information is made available, although it may be**

21 See Jackson, Kilpatrick and Harvey, *Called to Court: A Public Review of Criminal Justice in Northern Ireland* (1991), Belfast, SLS.

appropriate for the information to be passed through or provided by a third party. We would stress the point that information must be in a form which is accessible to victims and given sensitively. Frequently it will be appropriate for information to be given in person.

13.46 Issues surrounding consultation are more problematic. Broadly there are a number of concerns. One is that it might result in victims being required to take decisions that are properly for the authorities. (We have already indicated above that victims generally should not be placed in the position of having to take key decisions about the handling of their case or the treatment of the offender.) Alternatively there is the danger that consultation might lead to unrealistic expectations on the part of the victim with the potential to increase the sense of frustration and dissatisfaction if the victim's views cannot be met. There is also a danger, depending on the form it takes, that consultation with a victim who is to be called as a witness might prejudice (or be said to prejudice) the legal process.

13.47 Despite these problems, account must be taken of the need to recognise the position of victims and the dependence of the criminal justice system on them. **We recommend that wherever possible victims should be informed and consulted about the development of their cases. But when and how to consult them, particularly those who are witnesses, must be a matter for the professional judgement of the prosecutor.** Set out below are a number of areas where we consider that better consultation and more explicit information are required.

DECISIONS WHETHER TO PROSECUTE

13.48 The Director of Public Prosecutions in Northern Ireland already undertakes to inform victims where there is a decision not to prosecute and is considering doing so in writing in cases involving death, serious violence, sexual abuse, domestic violence, road traffic accidents where serious injury was occasioned, or where it is considered that “the reported facts are likely to have had a significant adverse impact upon the victim”.²²

13.49 As discussed above in our consideration of prosecution issues (Chapter 4) there may be considerable sensitivities about giving reasons for not prosecuting a particular case. In particular, there is the danger that reasons might be given in such a way that inferences will be drawn about the guilt of someone, without that person having had the opportunity to defend themselves in the courts. However, we do believe that it is of great importance for public confidence that victims should understand what is happening in the processing of “their case”. We therefore wish, in this part of our report, to draw attention to our recommendation in Chapter 4, that prosecutors should be prepared to provide victims and their families with as full an explanation of a decision not to prosecute as is possible without prejudicing the interests of justice or the public interest.

22 *Victims, Witnesses and the Prosecution*, The Department of the Director of Public Prosecutions for Northern Ireland.

DECISIONS ON WHETHER TO VARY CHARGES

- 13.50** The Director of Public Prosecutions already undertakes to “consider the proper interests of victims and witnesses in deciding whether or not the public interest requires prosecution”.²³ We understand that the consultation(s) which prosecutors have with the victim are an important source of this information. In addition we note that the DPP will, if requested, explain why a charge is being reduced or a plea taken to a lesser offence and listen to anything the victim may have to say.
- 13.51** The question arises whether the prosecutor should be required to consult about such changes. On the one hand it would be consistent with the general undertaking to take the victim’s proper interests into account. On the other hand there might be a risk that the case would be prejudiced through involving a victim in this way. **On balance and subject to our overriding recommendation that when and how to consult must be a matter for the professional judgement of the prosecutor, we recommend that the general rule, building on the Director of Public Prosecutions’ current practice, should be for victims to be consulted about important changes in the way that “their” case is being handled. We also recommend that information about such changes should be actively offered rather than the victim having to request it, although we accept that it might not be possible to consult victims in certain circumstances, for example, if they are not at court when decisions have to be taken.** It would of course be open to the victim to decline the information (or the consultation) or to opt out of the process more generally.

VICTIM EFFECT STATEMENTS

- 13.52** We are aware that there is a growing expectation that the effects of a crime on the victim should be known to the court, particularly to help with sentencing. However, thoughts on how this should be achieved vary considerably. For example Victim Support argues that victims “who have information that they wish to convey, but which does not form part of the formal evidence, should have the opportunity to give a statement in their own words directly to the police and the prosecution service”.²⁴ It suggests that this statement could have a number of uses in relation to the prosecution process, including in relation to sentencing. In contrast, in Canada, where victim impact statements have been authorised since 1988 and required to be considered by judges since 1995, the Government has agreed to amend the Canadian Criminal Code to clarify that judges may allow the oral presentation of a previously written statement.²⁵ It is also worth noting that the Council of Europe recommends that: “all relevant information concerning the injuries and losses suffered by the victim should be made

23 *op cit*.

24 *The Rights of Victims of Crime*, (1995) Victim Support.

25 *Response to the Fourteenth Report of the Standing Committee on Justice and Human Rights* (1998), Government of Canada.

available to the court²⁶. However, this recommendation seems to be aimed primarily at ensuring that the victim's need for compensation is taken into account when determining sentence.

13.53 We note within Northern Ireland that courts, when sentencing, already take into account any information that is available about the seriousness of the offence. It is the responsibility of the prosecution to ensure that all relevant information is available to the judge. However, it is not clear how fully and explicitly the victim is involved in this process, or that information about the effects of the offence on the victim is routinely available to the sentencer in all courts, including youth courts.

13.54 There are potentially a number of risks if victims become more involved in the provision of information about the impact of crime. Not least is the fact that a statement, like any other matters considered at sentence, will form part of the evidence and so the victim may be questioned about it in court. Moreover, 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.

13.55 However, there is a good case for encouraging the victim of a crime to give factual information about that crime's effects. Not only is it consistent with what we have suggested earlier in relation to consultation, and necessary to ensure that the victim's legitimate interests are safeguarded (for example where the victim has continuing concerns about safety which the authorities, including the court, should take into account) but it may also, in itself, be helpful in allowing the victim to come to terms with the offence. In many cases knowledge of the crime's effects, not only on its immediate victim, but also upon the victim's family, is an important factor in enabling sentencers to assess the level of seriousness of defendants' wrongdoing. This is especially important where death has resulted or where violence has caused injury, including psychiatric damage. In this context the distress, often lingering, caused to families by domestic burglaries should not be forgotten. We acknowledge that considerable information on the effect of crime is already made available in Crown Court cases. **We recommend that practice be reviewed to ensure that the prosecutor, who will be responsible for a wider range of cases than hitherto, considers the effect of the crime on the victim and makes certain that those acting on behalf of the prosecution, including independent practitioners, bring all relevant information to the attention of the court and up-date it regularly. This would include not only information from the victim but also information from others, for example medical professionals, who would be able to advise on the effect on the victim or on similar cases. We consider it important that the responsibilities of the prosecutor in this regard be given due prominence in relevant publications of principles and codes of practice.**

- 13.56** Unfounded allegations against victims of crime made by defending advocates in mitigation speeches can cause great distress, especially when reported in the media. **We draw attention to the importance of maintaining the duty of prosecuting advocates to challenge allegations about victims made by the defence in the absence of supporting evidence.**

INFORMATION ON THE RELEASE OF PRISONERS

- 13.57** In Northern Ireland, with the exception of arrangements in relation to prisoners released under the Sentences (Northern Ireland) Act 1998, there is no legal requirement for the Northern Ireland Prison Service to inform victims when an offender is to be released from prison. Despite the lack of legislation, there is a protocol under which child victims of sex offenders will be told about release (the limitations of which are among the issues being considered as part of the Government's consultation on the control and supervision of sex offenders) and we understand that the Prison Service currently deals sympathetically with requests for information. Moreover, although there is no formal mechanism for victim involvement, the Prison Service will take into account concerns about victims' safety when deciding on whether to allow temporary release and on the conditions that should be attached. However, providing information about release dates can be problematic, for example if there are concerns about the safety of the prisoner, and the Prison Service may be vulnerable, particularly in circumstances where there is no legal requirement for passing on information. For victims there may be difficulty knowing who to approach for information.
- 13.58** There are a number of issues related to the fact that prisoners may be released earlier than the victim had anticipated. Victims may not be aware that the time to be served will be reduced by any time in prison awaiting trial and may not know that most prisoners, because of remission, will serve in prison only half the sentence as pronounced. In the case of life sentence prisoners, victims may not be aware that prisoners do not necessarily serve a minimum period recommended by the judge. They may also be unaware that prisoners may be given temporary release, either for compassionate reasons or to assist with the transition from prison and that such temporary release may happen well before expiry of the sentence. Victims may not know that their concerns about safety can be taken into account by the prison authorities.
- 13.59** **We recommend three changes in practice relating to the giving of information about the release, or likely release date, of prisoners:**
- **Where an offender is sentenced to custody and where the victim wishes, the Prison Service should be responsible for explaining the impact of the sentence including**

the likely release date and the likely arrangements for temporary release. It should be the responsibility of the prosecutor to check whether the victim wishes to use this service and if so to put the victim in touch with the Prison Service.

- Where information about release is requested by the victim, the Prison Service should be required to give it, provided the prisoner is not put at risk.
- The Prison Service should put in place formal mechanisms to deal with concerns expressed by victims about safety, particularly in relation to temporary release.

31.60 These recommendations would be in addition to any special arrangements in respect of particular classes of prisoner such as sex offenders. They might require permissive legislation. However, the precise administrative arrangements should be determined by the Prison Service, who should consult those involved with the support of victims. In particular, it would need to consider how the victims of prisoners currently serving their sentence would be brought into the scheme.

SUPPORT FOR WITNESSES

13.61 The criminal justice authorities are already taking a number of steps to improve the services available to witnesses, particularly those who are vulnerable or intimidated. They include the important legislative changes in the Criminal Evidence (Northern Ireland) Order 1999 and the various administrative measures we have cited. However, we would like to draw special attention to certain measures that may require a special focus.

13.62 We are aware that Victim Support, with funding from the Northern Ireland Office, already operates a witness support scheme for prosecution witnesses in Belfast Crown Court (which is currently located in both Belfast and Antrim). Those operating the scheme provide essential help and support to witnesses in what can be a strange and challenging environment. We are also aware of the child witness scheme that is being piloted in Belfast Crown Court as a joint venture by Victim Support and the National Society for the Prevention of Cruelty to Children. In principle, and subject in the case of child witnesses to the evaluation of the pilot, we consider that such schemes should be more widely available, including in magistrates' courts. Based on the assumption that 180 to 200 additional volunteers would be required this could cost £245,000 to £300,000. **We recommend that publicly funded witness support schemes should be made available at all Crown Court and magistrates' courts venues. Children should be included in such arrangements on a basis determined in the light of the outcome of evaluation of the current pilot scheme.**

13.63 Defence witnesses, too, may be uncertain and fearful of the experience of going to court and giving evidence. Nevertheless, we accept that within our adversarial system there would be difficulties in providing a common service to both prosecution and defence witnesses. In the

first instance it should be for defence solicitors to provide information about courts and their procedures. However we consider that Court Service staff should be available to facilitate defence witnesses in the same way that they are available to facilitate other members of the public who have to come to court. Support for defence witnesses is an issue which the Criminal Justice Issues Group may wish to consider in the future.