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The Commission for Justice in Wales  
**Email:** [JusticeCommission@gov.wales](mailto:JusticeCommission@gov.wales)

21 August 2018

Dear Mr Felton

### **Commission on Justice in Wales: Call for Evidence**

I am grateful for the opportunity to respond to your consultation on the review of the operation of the justice system in Wales. As Victims' Commissioner for both England and Wales, I will await the findings of the review with interest.

2. However, I was disappointed there was not a single reference to victims of crime within your call for evidence. This oversight highlights the theme of my evidence, namely that the criminal justice system needs to recognise the needs and rights of victims and ensure that they are treated with the respect and sensitivity that they deserve. I hope that your final report will not repeat the disappointing omission in your call for evidence.

### **Victims' Commissioner**

3. The role of the Victims' Commissioner is set out in section 49 of the Domestic Violence, Crime and Victims Act 2004, as amended by the Coroners and Justice Act 2009:

*(1) The Commissioner must –*

*(a) promote the interests of victims and witnesses;*

*(b) take such steps as he considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses;*

*(c) keep under review the operation of the code of practice issued under section 32.*

4. In my role as Victims' Commissioner, I have had the opportunity to visit and see for myself the frontline delivery of victim services in Wales. Many of these services have been devolved from the centre to Police and Crime Commissioners, giving scope for local services to respond to local needs.

5. My visits to PCCs in Wales showed me that they have risen to the challenge. For example, in North Wales, all the staff at the Victim Help Centre are bi-lingual in Welsh and English and therefore, they can talk to victims in their preferred language. They recognised that people suffering from trauma default to their first language and in this part of Wales, 30% of the population speaks Welsh as their first language. In Dyfed Powys, the Goleudy service provides an end-to-end service for victims, consistent with my view that victims should be provided with an advocate to guide them through their criminal justice journey. I noticed that there was a specific and welcome focus on victims with mental health problems and that they were looking to recruit a mental health caseworker.

6. Whilst the devolution of services presents challenges, it also opens opportunities for frontline service providers to think innovatively and reflect local needs and priorities. My observation is that providers of victims' services in Wales are rising to this challenge and should be encouraged to continue doing so.

### **Access to Justice**

7. My evidence falls within the workstream "Access to justice and other overarching issues". Specifically, it looks at the access to justice for victims of crime and how it should be improved.

8. There is an ongoing public debate about the role of victims and politicians often tell me about their commitment to place victims at "the heart of our criminal justice system". Yet many victims are still telling me their experience of justice has left them feeling like by-standers in a system which is solely about the Crown and offenders. I hope that this review might present an opportunity to close the gap between political aspiration and the reality for victims in Wales.

9. I should add that I am not advocating that offenders shouldn't have rights. Neither do I accept that giving rights to victims can only be at the expense of offenders. True justice requires both offenders and victims to be given rights and both are treated fairly.

### **What Works**

10. In March 2016, I published a rapid evidence assessment of the best available international evidence on 'What Works in Supporting Victims of

Crime': <https://bit.ly/2nT3x5s>. This report has influenced my thinking on areas of work we need to focus on. It concludes that effective victim support requires four key elements: communication; collaborative working; professional services; and procedural justice:

**Communication** - In any communication it is important that victims are not made to feel as if they are being treated as 'cases' or as a means to an end. They are individuals with unique and changing needs. This means not assuming victims understand things by being told about them once, as well as avoiding the temptation to assess the effectiveness of your communication by considering those things that are easiest to measure. Instead the focus should be on the things which make the most difference to victims.

**Collaborative working** - To the victim, the impression of the criminal justice system is that it is a single machine. Few will know of the existence of all the agencies involved. A key finding in my report was the importance of working together, and not adopting a silo mentality. We need to stop thinking about each component part or agency of the criminal justice system as a separate entity. Most partners, but not all, work well with the 'next part' of the system; but I would like to see a whole system approach to the delivery of victim support.

**Professionalisation** - the findings in my report show that victims attach importance to services delivered by skilled professionals. It gives them confidence that they will be well supported and advised. When you are feeling at your most vulnerable and traumatised, this really does matter.

We have moved a long way from the days when support for victims consisted of a kindly volunteer offering tea and sympathy. We have ISVAs, IDVAs and FLOs who are highly trained and provide support that, in the words of one victim I met only recently, "made a terrible situation just about bearable". But there are still many victims of serious sexual or violent offences who are deeply traumatised, and who do not have an advisor or advocate to support them through the justice process. This must change.

**Procedural justice** - For victims, this means that the victim feels that they have had fair and equitable treatment, in comparison with the offender. It might include police officers acknowledging that wrong has been done. This is important, particularly to those who have suffered sexual abuse but have no physical scars to rely upon. It also means those coming into contact with the victim demonstrating a non-blaming attitude. In broader terms, it means those supporting victims relate to them as a person, demonstrating empathetic listening, as opposed to simply taking them through the process.

My report shows that, whichever part of the world they live in, victims need to feel a sense of procedural justice. Indeed, for many victims, the sense of procedural justice was as important as the eventual outcome.

11. These four themes are reflected in my priorities for reforming the support given to victims as set out below. I hope they might influence the review when it considers how best to support victims of crime.

### **Victims' Rights**

12. Offenders have human rights enshrined in the European Convention for Human Rights. Victims, on the other hand, have entitlements set out in a Code that lawyers tactfully describe as “persuasive guidance”. For many victims this re-enforces an impression of their status within a criminal justice hierarchy. If victims are to be recognised as an integral part of the justice process, this must change.

13. I have called for a “Victim Law” to make the rights of victims central to the delivery of justice. I want to see this law guarantee a package of core ‘rights’ to protect victims. These rights should set out the victims’ right: to be heard, to be informed and to challenge.

14. The right to be heard includes the opportunity to meet the prosecutor before a trial, to make a victim personal statement, to request licence conditions or restorative justice. The right to information means not just being told about a decision, but also the reasons behind it. Wherever possible, it means giving victims the right to make decisions for themselves, such as the use of special measures or whether to attend judges’ sentencing. The right to challenge includes the current right to review charging decisions, or victims being made aware of the “unduly lenient scheme” before the deadline has passed. Importantly, it means victims being able to challenge, without having to crowdfund first.

### **Victims' Advocate**

15. Giving rights to victims, whilst important, is only part of the picture. If we are committed to changing the victim experience, we need to review what I call the architecture of victim services. Each agency is responsible under the Victims Code of Practice, for providing victims with specific elements of support. For victims, this can feel like being on a conveyor belt, constantly having to repeat their stories and completing forms.

16. I want to see victims provided with a seamless journey through the criminal justice system, with victims of the worst crimes being provided with a sole point of contact that I describe as an independent victim advocate. This advocate will coordinate the victim journey, liaising with other criminal justice partners, signposting and advising. Importantly, they will represent the victim and not a particular agency.

## **Compliance with Victims' Code**

17. The Victims' Code of Practice sets out the entitlements that victims can expect to receive when in the criminal justice system. Anecdotal evidence suggests that compliance on the part of criminal justice agencies is inconsistent. This was confirmed by my annual review of data collated by the Crime Survey in England and Wales in respect of the Victim Personal Statement: <https://bit.ly/2j9pvIS>.

18. One of the difficulties in monitoring the performance of agencies is the lack of data on Code compliance. This needs to be resolved if we're to establish effective systems to monitor performance.

19. Collating and monitoring compliance data, both locally and nationally, is vital if agencies and service providers are to be called to account and encouraged to improve their performance. Data capture needs to be consistent across the country and those analysing the data need to be able to offer an independent assessment of performance. I believe that this national role should fall to future victims' commissioners, with a requirement that their annual assessment is submitted to Parliament.

## **Inspection of Victim Services**

20. Providing data that shines a light on compliance is only a part of the picture. Data cannot provide a full assessment of the quality of victim services. Independent inspections are staples with other criminal justice agencies. They are taken seriously and a driver for improved delivery.

21. I would like to see an independent inspectorate for victim services, with powers to make recommendations for improvements that agencies must, by law, be required to respond to. A formal inspection of victim services also sends a clear message that the Government intends to inject steel behind victim rights.

## **Victim Contact Scheme**

22. The statutory Victims' Contact scheme (VCS) is open to victims of violent and sexual offences, who are serving sentences of 12 months and over. The scheme is designed to ensure that victims are informed of release and other major stages in the sentence.

23. I know from my own personal experience that victims of serious sexual and violent offences need a significant amount of support after trial. Sadly, most victims are completely unaware of the scale of what awaits them following a conviction.

24. The VCS is a national scheme managed by the National Probation Service (NPS). My meetings with managers within the NPS reassure me that they are committed to delivering a first-class service. However, there needs to be a debate on what the service should be looking to achieve.

25. At present, the VCS is a transactional service, a conduit of information, whose only focus is meeting a series of deadlines. The guidance in support of the scheme makes it clear that it is not a victim support service. Staff are told to make the limitations of the scheme clear to victims from the outset.

26. I view the functions of the VCS to be an integral part of a victim support service, helping victims to cope and recover. I fail to understand how the VCS can detach from victim support. The people it is providing information to are often vulnerable and traumatised. The post-trial part of the criminal justice system forms an important part of the victim journey and they often require more than just information, including emotional and practical support that will help them to re-build their lives. The VCS should play an important role in helping victims to cope and recover, with staff being alive to the sensitivity of the information they provide and its impact upon the recipient. A professional service requires staff who are properly accredited and who receive continuous professional development and supervision.

27. The first time the victim will hear from the VCS is when they receive a letter through the post eight weeks after conviction. This is often a difficult period for victims. There's a sense of why do I want to talk to someone about release when the offender has only just been convicted? They therefore do not respond. We have divided victim services into two distinct parts, pre-trial and post-trial, with many victims disappearing into the gap.

28. I have called on the Government to pilot the co-location and close collaboration of the VCS and local victim services. That way, the move from victim services to VCS is a seamless transition and facilitates ongoing emotional support for victims when required. I believe that this joined up approach will pay real dividends in enhancing the support given to victims, post-trial.

29. Looking ahead, it maybe that local collaboration by is sufficient, but I want a more strategic view on how we best deliver a seamless end-to-end victim support service. We should explore the advantages and drawbacks of the VCS statutory functions being transferred to PCCs, with a view to enabling the service to become fully integrated into other local victim services, delivering the seamless journey that victims need.

### **Duty to cooperate**

30. As I have previously mentioned, for victims, criminal justice can feel like a conveyor belt, being passed from pillar to post. Many agencies work well together, sharing information and joining forces to deliver seamless support packages. Often cooperation draws upon strong personal relationships between practitioners. However, personal relationships should not form the sole basis for agency co-operation. I do come across agencies whose staff do not always see the bigger picture and are reluctant to link up with external partners.

31. With offenders, there's a legal duty for agencies to cooperate in providing effective supervision. Support needed for vulnerable victims can be every bit as complex. I am therefore calling for a legal duty for agencies to cooperate when devising support packages, particularly for vulnerable victims.

### **Treatment of Victims during trial**

32. I am concerned about the treatment of vulnerable victims before and during the trial. This particularly applies to victims of sex offences, both historic and recent. The reporting rate for such crimes is low and only a small proportion of reported cases result in a successful prosecution.

33. My concerns start from the point at which such victims report the crime. It is essential they feel that their account is believed as it is a fear of being disbelieved that deters so many from coming forward. This belief does not prevent the police from undertaking a rigorous and impartial investigation of complaints. With appropriate training and support, our police forces should have the skill both to support victims and be impartial.

34. There needs to be regular police communication from the point of reporting. When victims go long periods without hearing from the police, they grow anxious. Some decide they no longer wish to pursue the matter. The practice of only contacting the victim following a development is not sufficient.

35. Some judges are not aware of the professional status and role of Independent Sexual Violence Advisors. I am dismayed that some routinely turn down requests to accompany the victim in the witness box or sit with them when giving evidence remotely. One professional has advised me that in cases where ISVAs had been prevented from supporting victims, the victims were so badly traumatised by the trial, they required ongoing support post-trial to help them recover.

36. The conduct of advocates in the adversarial system can sometimes lead to attempts to discredit a victim or diminish their innocence. I want to see judges insisting on practices aimed at minimising and controlling for the aggressive or unfair cross-examination of victims and the use of stereotypes by the defence.

37. My report on registered intermediaries (RIs) showed that victims with communication needs can face a long wait to get access to a registered intermediary to help them give evidence in their Achieving Best Evidence interview with the police and for giving evidence at court: <https://bit.ly/2B94efd>. I have called for a reform of the management of RIs to provide a service that is consistent and speedy and offers appropriate support and development for the professionals who provide the service.

38. I believe that it is essential prosecutors meet with victims before the trial. New CPS guidance 'Speaking to Witnesses at Court' 2016 requires

much more than a brief introduction immediately before trial. It acknowledges that the court process can retraumatise a victim. To minimise this, prosecution counsel should explain the whole trial and make the complainant feel valued and involved. Ideally, there ought to be a pre-arranged meeting ahead of the trial date will give better reassurance to the victims. The quality of these pre-trial meetings needs to be monitored.

39. Victims need to be informed about all the special measures open to them. It's important that they're given a say in how they're applied rather than having justice 'done to them'. Some may prefer to give evidence behind a screen or have their evidence pre-recorded or via live link, some prefer to clear the court and give evidence directly. The important point is that they are given the opportunity to choose.

40. Special measures also need to be applied with the reason behind them in mind. For example, the victim doesn't want to be not seen by the defendant not just when they're speaking but throughout the whole court experience, so need protection around the court building and when approaching the witness box.

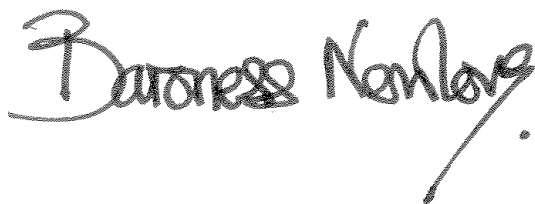
## **Conclusion**

41. My response to your call for evidence offers a small snapshot of issues affecting victims of crime.

42. However, my primary concern is that a strategic review of the criminal justice system in Wales does not exclude the needs and entitlements of victims. The justice system needs to treat them with the dignity and respect that they deserve. It is important that whatever the outcome in their case, the victim feels that they have been treated fairly and have received procedural justice.

43. A justice system that does not recognise the needs of victims cannot deliver justice.

Yours faithfully

A handwritten signature in black ink that reads "Baroness Newlove". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the right.

**The Baroness Newlove of Warrington  
Victims' Commissioner for England and Wales**