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Dear Alex,

Thank you for this further opportunity to consult on the updated Victims' Code of Practice. As you will be well aware, I have long called for reform of the Code and lobbied Government for rights to be made legally enforceable in a Victims' Law. I am therefore delighted this is finally being taken forward.

In my role as Victims' Commissioner for London, I led an extensive review into compliance with the Victims' Code in which I heard from over 2,000 victims, and published the findings and recommendations in March 2019. I am pleased that many of the recommendations from this have clearly been taken into view when developing this revised Code.

Consolidation of Rights and their Recipients

I am satisfied that the code will be simplified into these overarching rights, whilst not diluting the original in its full length. I believe that this document provides far greater clarity and accessibility than before, shortening the document from over 100 pages to just 19. This will help all criminal justice agencies to understand their duties and comply with the code, whilst also making it an accessible document for victims of crime, and those who support them.

I suggested in my previous consultation response, and would like to restate here, the importance of the victim's right to privacy, and changes to GDPR which affect whether victims' 'consent' to have their data shared is lawful. This is an increasing area of concern for me, especially how victims in trauma are being pressured to consent to disclose and share personal information during proceedings without fully understanding the process and their rights. A victim's decision to disclose personal and sensitive material must be informed and voluntary. The code should aim to clarify the victim's rights to privacy, especially with regards to sharing personal and sensitive data and issues around informed consent. I acknowledge that the most up to date information is reliant on the long awaited ICO investigation and their

recommendations, but I strongly recommend this area is captured in the reform of the Code and included as a key right in any future Victims' Law.

Page five of the revised code clearly sets out a victim's entitlements in a single page. I would like to see this also become a standalone document, which can be visually improved and made accessible online. This simplified and clear document should be given to victims of crime to inform them of their rights, to criminal justice partners who are responsible for delivering the rights set out in the revised code, and to organisations who support victims to cope and recover. In addition to this, there should be consideration of alternative means of displaying the basic rights in the code, such as through video or infographics. An 'easy-read' version should also be made available.

It is crucial that the Government provides the necessary funding to support organisations in delivering the code, from providing support to services, to producing promotional material for victims of crime. This extends to providing adequate resourcing for monitoring compliance of the code, greater responsibility for which has moved to Police and Crime Commissioners. The additional responsibility for PCCs is not accompanied with new resources or powers to deliver them, and so this must be addressed.

Though I welcome the clarity around victims' rights in the revised code, I do believe there needs to be further clarity around responsibility for those individual rights. The consistent use of the term 'service provider' throughout demonstrates the fragmentation of services, which often creates issues for victims and witnesses receiving the support they are entitled to.

I would also like to see greater detail and expansion on who can receive rights, and the enhanced rights, under the code. There should be further acknowledgement in the code of secondary victims to crimes, who may not have been directly victim to the initial crime, but who may also have suffered trauma as a result. This is particularly pertinent in crimes such as murder or manslaughter, where a 'secondary' victim (i.e. the family member of the deceased) should be the focus of entitlements under the code. I also believe that these rights could be extended to a nominated spokesperson, who is not necessarily a family member, such as a carer when the victim has no family. In all cases, appropriate safeguards must be in place to ensure the victim is not coerced or pressured when nominating a spokesperson, family or otherwise.

Lastly, I believe the definition of vulnerable victims should be expanded beyond that currently referenced. Action Fraud's definition refers to "a person [being] vulnerable if as a result of their situation or circumstances, they are unable to take care of or protect themselves, or others, from harm or exploitation". I believe this broader definition should be considered. The 'most serious crimes', entitling victims to enhanced rights under the code, could also be expanded to include victims of high value and impact fraud, as these can severely impact a victim.

Initial Investigation and Support Offer

I welcome the fundamental right to understand and be understood, and that translation services form a key part of this (1.3 – 1.7), however there should be further detail on whom these rights are afforded to, and what these cover. The lack of reference to families bereaved

by homicide abroad causes me great concern, as it is vitally important that these families have access to translation of key documents such as initial local police reports, death certificates, hospital reports, autopsy reports, and later on if the perpetrator is caught, court submissions etc.

The second right is a crucial step in any victim's journey: having the details of the crime being recorded accurately and quickly. I am pleased to see that the police must consider whether a victim would benefit from additional support during interview (2.4). It was recommended in my VCOP Review that the Ministry of Justice should commit to including clear guidelines on 'Achieving Best Evidence' for officers interviewing victims of crime; this should include setting clear and trauma-informed parameters for interviewing, timings of interviews, and support so victims are aware of their entitlement during this process. I believe this updated guidance should be produced alongside the revised Code of Practice and be easily accessible for both practitioners and victims.

Referral to Victim Support Services is another important step in the process, as many victims will continue to engage with these services long after a justice outcome may have been achieved. I welcome the reference to IDVAs and ISVAs as playing a potentially important role in a victim's recovery (4.9), but would also like to see the inclusion of Independent Victim Advocates (IVAs), such as those working as part of London's Integrated Victim and Witness Service and National Stalking Helpline. IVAs, IDVAs, and ISVAs play a crucial role in the lives of many victims and survivors, and the Government must provide sufficient funding for these roles and the wider sector to truly acknowledge their importance.

In the later stages of the system, the revised code sets out one's right to be provided with information about the investigation and prosecution. I welcome the obligation on the police to inform victims of any decision not to investigate within five working days (6.2), however further clarification is needed on whether this contact takes place verbally or in writing. Victims may be left feeling unsatisfied if a case is dropped without a clear opportunity for them to ask further questions.

Going to Court

The right to make a Victim Person Statement (VPS) is crucial in giving victims the opportunity to explain in their own words the impact that a crime has had on them and their family, and can be taken into account by all criminal justice agencies. In the VCOP Review, I recommended that the Ministry of Justice consider the introduction of legal restrictions around sensitive information in VPSs that could place victims at further risk if reported in the media. Though the revised code states that the court will take the victim's views into account when making a decision on the reading of a VPS in court (7.3), there must be further acknowledgement of media intrusion in cases, and Government must ensure that victims are protected from harassment and any further risk of harm, which can often come with the publicising of personal or sensitive information given in the VPS relating to their case. Currently, survivors of sexual violence are given press anonymity from the moment any allegations are made, but victims of domestic abuse are not currently offered the same protection. This same right to anonymity should be extended to other high-risk victims, including those of domestic abuse.

Another recommendation from my review was that the Ministry of Justice consider the feasibility of a trusted advocate or family member providing a Victim Personal Statement on behalf of the victim, when they are too vulnerable or traumatised to provide a statement themselves. While this is detailed for children and vulnerable adults, the revised Code must be clearer on whether this is a possibility for other victims, and how this decision is arrived at. The victim must have control over their VPS, and so further to this, I would like to see victims given a template for producing their VPS. There also needs to be far greater clarity around timelines, and the ability for victims to update their VPS throughout the process, reflecting the evolution of their trauma after the crime.

Critical to the whole system is the victim's right to be given information quickly and clearly about any trial and procedures around these. Though I welcome a timeframe being given within which a victim should be told that their case is going to court (8.1), there is a lack of accountability for the courts in this process. The revised code sets a five-day requirement for a Witness Care Unit (WCU) to inform victims once hearing from the court, however there is no time obligation imposed on the court to report to the WCU. This right should also include occasions where a perpetrator sentenced in a foreign country requests to be transferred to a British prison.

I am pleased that the revised code clarifies the right to visit the court before the trial date to familiarise with the building (8.4), however I cannot see any justification for limiting this right to "bereaved close relatives", rather than opening this opportunity for all victims whom it would benefit. This is a fundamental right that should be available to all that wish to take it up, and would make a difference not only to the victim but also to the eventual justice outcome, with victims feeling less intimidated by their surroundings.

The Process at Court

Once a victim or witness is aware they are going to court, they may require special measures to be taken, taking into account the fact they may be vulnerable or intimidated. Whilst the right to have a needs assessment is welcome (4.13) I would like to see this wording strengthened to ensure that these measures are an automatic right for anyone considered vulnerable. Though the code does not contain a comprehensive list of special measures available, I feel victims would benefit from greater clarity around the measures available, and which organisation is responsible for deciding their use.

Throughout this process, it is important that any measures are discussed with the victim, and that they are able to choose the elements which they feel most comfortable with. One vital measure which is essential for many victims is the use of arriving at separate entrances into a court building than the defendant; whilst I am pleased to see reference made to separate entrances for victims (8.6), I am aware of the failure in the current system to put this into practice. Where separate entrances are not a possibility, the court should implement staggered timings for the victim's and defendant's arrival.

Keeping the Victim Informed

Throughout a victim's entire journey, they should be made aware of decisions that are being made and actions taking place which relate to their case. This becomes particularly pertinent with regards to trial outcomes, sentencing, and appeals. While I welcome the right for the Witness Care Unit (WCU) to inform victims within one working day (9.1), I believe the role of the courts is neglected in the revised code, with no time restraints placed on the court to inform the WCU.

Further to this, I am concerned over what form this contact will take and who will make it. Trial outcomes are a defining moment in a victim's journey, and so I believe they should have the right to have decisions explained to them in person and in a way which is accessible, helping them to understand the real implications of sentencing. This contact also needs to take place in sufficient time for them to consider the Unduly Lenient Sentence scheme if applicable. Though there is reference to unduly lenient sentences in the code (9.4) I believe more clarity should be provided on this, and the Ministry of Justice must reconsider the strict nature of the 28-day timeframe in which this can be considered. An offender, when appealing their sentence, has the right to request an extension to their 28-day timeframe, and this same right must be afforded to the victim.

A victim may want to meet with the Crown Prosecution Service to discuss sentencing or other concerns, however the revised code only clarifies this right for bereaved close relatives (9.3). I believe this right needs to be extended to all victims who are eligible for the Victim Contact Scheme.

I have long called for victims to be automatically referred to the Victim Contact Scheme (VCS), and was very pleased to see this included as a core part of the revised code (11.1). I also welcome the stipulation that the referral must be made within 20 working days, given issues that have taken place in past cases, whereby offenders have been released prior to the VCS making contact with the victim.

Unfortunately, the VCS is offered not on the basis of need but on the basis of sentencing decisions, with victims only having access when the offender receives a sentence of 12 months or more and the offender was convicted of a specified violent or sexual offence set out in the Domestic Violence, Crime and Victims Act 2004. In my view this is not the appropriate basis on which to decide eligibility for the scheme, and while I welcome the addition of new offences, including controlling or coercive behaviour in an intimate or family relationship (11.3), I am disappointed that many victims of serious crimes, such as stalking or hate crime, who could be at risk when the offender is released, will not routinely be offered this scheme. I ask the Ministry of Justice to reconsider the eligibility criteria before publishing the final revised code.

Lastly on this point, I would like to draw attention to a recent HMIP Inspection on Serious Further Offences (SFO), which raises questions over the clarity of wording in the Victims' Code. Though I welcome the rights as set out in 11.17-11.18, it concerns me there is no responsibility for any organisation to inform the victim or their families of their right to an SFO in the first instance. This review highlighted that London NPS has taken a proactive approach to ensuring

victims and family members who have opted into the VCS are aware of this entitlement; whilst this is encouraging, it is important that the Victims' Code makes clear who owns this responsibility to inform the victim across the country, including those who may not be eligible under the VCS.

Post-Court – Appeals, Complaints, and Compensation

For cases which may result in a complaint, one of the key recommendations in my review was for Government to remove the requirement for a victim to involve their Member of Parliament before escalating a complaint of a breach of the Code to the Parliamentary and Health Service Ombudsman. I am pleased to see mention of the 'MP filter' removed in the revised code as, provided this is changed in primary legislation, it makes it easier for victims to hold organisations to account.

I still believe the Government's system for court-awarded compensation (5.1) to be wholly inadequate, and can often lead to additional trauma for victims of crime for many years after the crime. Since 2014 I have been calling on the Ministry of Justice to pay court awarded compensation upfront to the victim in a single one-off payment, shortly after sentencing, and HMCTS recover the funds from the offender, as takes places in the Netherlands.

Paying the victim upfront would avoid the unnecessary ongoing relationship between the victim and offender. Victims continue to suffer from the impact of the crime as HMCTS fail to retrieve payments from compensation orders in a timely and effective way. The Victims Strategy is all about improving victims' experience and helping them to recover, however court compensation orders are preventing this due to irregular payments that span decades and serve as an ongoing reminder of the offender and the crime for the victim. This is particularly dangerous in cases of stalking, coercive control and domestic abuse where the perpetrator is able to continue to exert control over the victim by withholding payments and paying erratically.

With regards to the Criminal Injuries Compensation Authority (CICA), we are concerned that we have not yet seen the outcome of the review into CICA, and must also ensure that the recommendations made by the National Victims' Commissioner in her January 2019 report 'Struggling for Justice: Entitlements and Experiences of Bereaved Families following Homicide' are reflected in this revised code. One such recommendation highlights that families bereaved by homicide abroad cannot currently claim compensation from CICA, despite the fact that many victims are unable to claim compensation from foreign authorities, and so are burdened with the cost themselves. I believe that bereaved victims of homicide abroad should be eligible to claim Criminal Injuries Compensation.

Further to this, I believe there needs to be greater detail on the right to be paid expenses (10.1), and for this to be extended to the families of those murdered abroad. The costs incurred by these families can be vast, with only repatriation covered by insurance policy. The allocation of 'discretionary' financial support should be open and transparent, and families should know what they are entitled to.

Accountability

Accountability must underpin the entire Code of Practice for Victims of Crime, which is why I welcome the future introduction of a Victims' Law which will provide enforcement powers. This being said, for any law to be effective in enforcing the code, it is important for the code itself to hold relevant agencies to account. I believe that families bereaved by homicide abroad are overlooked in the code through the omission of the Foreign and Commonwealth Office (FCO) from the list of organisations required to take action. Whilst I understand that investigations and court proceedings may take place in a foreign jurisdiction, the victims and their families who are British citizens should maintain the right to be treated by the FCO Murder and Manslaughter Team (MMT) in the way that other agency partners must treat victims under the code. Victims should have a right to support, compensation, and information regardless of where the crime happens. The FCO should be responsible in fulfilling their duties to victims, and I ask the Ministry of Justice to consider their inclusion in the final document.

Further to this, there are other organisations and agencies who play a vital role in a victim's journey but are free of responsibility under the code, namely the National Health Service and Coroners' Officers. I also echo the call from hundredfamilies.org, who are represented on my Victims' Reference Group, in calling for the First Tier Tribunal (Mental Health) and Mental Health Trusts to be accountable under the code, ensuring that victims of mentally disordered offenders have their rights expressly referenced in the Code of Practice.

While this revised code is a step in the right direction, it is important that the voices of victims and survivors are heard as part of this consultation and their experiences are seriously considered. It is crucial that the Government introduce a Victims' Law as swiftly as possible, so we can see a culture shift towards victims, ensuring their rights are no longer optional but are legally enforceable. This will improve victims' confidence to report to the police and that they are well supported through the criminal justice system and beyond, which will improve justice and recovery outcomes.

I understand that the COVID-19 pandemic has caused delays to much of this process, and that this will have a knock-on effect to the development of the Victims' Law, however I would like to seek assurances that this will remain a priority as the country recovers. COVID-19 has created a range of new pressures in the criminal justice system, and so the importance of victims understanding their rights and entitlements is more important than ever.

Yours sincerely,



Claire Waxman

Independent Victims' Commissioner for London