

CBA Response to Consultation on Improving Victims' Code

Date 27.5.2020

Introduction

1. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.
2. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.
3. The CBA is the largest specialist Bar association, with over 3,500 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

Responses to Consultation

4. *Q1- Do you think our proposal to restructure the Code into 12 overarching rights is the correct one?*

We welcome overall the revisions to the Victim's Code. In particular, the restructuring into 12 overarching rights. This enhances clarity and ensures greater accessibility to the Code and understanding and protection of a Victim's needs.

Backlog of current Crown Court cases and impact on efficacy of Right 2

5. A real concern stems from the current backlog of cases within the Criminal Justice System and its impact on the way the rights afforded under the Code will work in practice. Even prior to Covid-19, the catastrophe facing the criminal justice system has been present for many months.
6. For example, Right 8 of the Code details that a victim has the 'Right to be told the time, date and location of any hearing and the outcome of those hearings.' It is clearly expressed in Right 2, that a Victim has the right to 'have the details of the crime recorded without unjustified delay.' However, the resulting delays to trial listings which have ensued from the current underfunding of the criminal justice system impact upon the efficacy of Right 8.
7. Ultimately such delays as our membership have found in the current system and backlog of cases is such that the Right expressed in Right 2 would be rendered worthless. An example is where an individual householder reports an aggravated burglary that takes place to them whilst their child is in the property at the time. Delays as a result of lack of court availability and trials being taken out of lists at the last minute have led to such a trial being awaited over 18 months after the index allegation. And this is prior to the current pandemic.
8. At the start of this year, there was a backlog of 37,434 Crown Court cases, which was 13 per cent higher than in the previous year. At present, the figure is now 40,000. In fact, there were more trials listed to proceed last year that did not go ahead than did so.
9. *Q2- Do you agree that the rights we have identified cover the most important needs of victims? Please give reasons for your response*

In our view, the Code ought to reflect the critical need for Victims for resolution and completion of trials without significant delay, particularly without the kind that are currently faced in the Criminal Justice System.

In addition, despite the Code expressing the right to be given information about the trial process, the efficacy in practice of this is hindered by the warned list system in place at present. For being told as a Victim of a crime, that a case may be heard in a two-week slot goes against the ethos and credibility of Right 8 in practice.

10. Q3. *Do you agree that these rights cover the key stages of a victim's journey in the criminal justice system? Please give reasons for your response?*

The critical stage which has been missed out relates to the initial identification of who is considered to be a victim.

In particular, we are concerned that individuals who commit offences directly as a result of forced criminality or domestic abuse would not receive protection of any kind under the Code.

11. Q4 –*We have included more practical advice and information in the draft revised Code, do you agree with our proposed approach? Please give reasons for your response – Yes.* It would be of further assistance to include contact details or signpost relevant organisations (an example where this has been done is at 12.4 in terms of the Ombudsman, but is not replicated for other organisations).

12. Q5 - *Is there any important information that you feel we should also include? As above.*

13. We do not seek to add further in relation to Q6 and Q6a.

Q6- *Are you aware of any evidence or sources of information that would help us to understand and assess equality and economic impacts in greater detail? Please supply.*

Q6a. *If you are aware, what do you believe would be the effect of this evidential information on our proposals?*

14. Q7. Do you have any further comments about the draft revised Code?

At page 1 of the Victim's Code, the definition of a victim is set out, and includes 'a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence.' A criminal offence is defined in footnote 3 as an offence that is committed, or subject to criminal proceedings in England and Wales.

Of acute concern though is what rights an individual would have if the Police do not decide to treat an individual as a victim, or if a consideration is made not to prosecute.

15. In addition, it is unclear (Q7 response) if Victims of Modern Slavery who are prosecuted for actions derived from forced criminality would receive protection under the Victims Code, and if they would be entitled to protections whilst they are also considered as suspects.

One particular example is that of young people subjected to forced exploitation in terms of County Lines. Even if recognised as Victims of Trafficking by the Single Competent Authority, many of these young people are still prosecuted. And whilst those prosecutions are ongoing, are such victims of modern slavery to be afforded the protective rights of the Victims Code in relation to their exploiters.

16. It is unclear what protective mechanisms are in place if the police do not pursue a criminal matter that is reported to them, or alternatively deem incorrectly the person to be a suspect, rather than a victim.

17. In summary, it remains unclear in the Current revised Code if Victims who are also suspects of crimes will obtain protection, even if they are individuals who ought to obtain 'enhanced' protection under the code. Under the heading 'who do the rights apply to' it states 'which rights apply to you under this Code will depend on whether the crime is reported to the police, if the case goes to court, as well as your personal needs and circumstances.'

18. In relation to right 12, 'to make a complaint about rights not being met,' it is unclear if individuals not treated as victims and thus excluded from the Code rights have a right of recourse to the complaints procedure set out.