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| Document number      | <b>22/02</b>   |
| Date                 | <b>February 2022</b>   |
| Draft response to    | <b>Victims Consultation: Delivering Justice for Victims</b>  |
| Issued by            | <b>Ministry of Justice</b>   |
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| Link to consultation | <a href="https://publishing.service.gov.uk">Delivering justice for victims (publishing.service.gov.uk)</a>   |

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## **About the Magistrates' Association**

The Magistrates' Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 12,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

### **Do the current procedures around timing and method of communication between the police/CPS and victims about key decisions work for victims? Are there any changes that could be beneficial?**

Our only comment here is that we recognise that delays bringing cases to court can be detrimental to all parties and lead to victims disengaging with the process. Taking every effort to reduce delays is the most important step that can be taken.

### **Should the police and CPS do more to take victims' views into account in the course of their duties, particularly around decisions to proceed with cases?**

Principally, the decision to prosecute should follow the CPS two-stage test, around asking whether there is sufficient evidence and whether prosecution is in the public interest.

With domestic abuse cases, we recognise that there has been a great deal of work to enable prosecutions without victim engagement. There therefore needs to be a balanced approach to prioritising the views of the victim where the responsibility is placed back on the victim. This should apply to cases other than domestic abuse as well.

### **Should there be an explicit requirement for the relevant prosecutor in a case or types of cases to have met with the victim before the charging decision, and before a case proceeds to trial?**

No. It is worth noting that the CPS already do meet the victim in certain types of cases, especially those more serious, e.g., rapes, and we don't see a need to change the current arrangements.

**What are the benefits and costs to greater or different use of Community Impact Statements?**

Community Impact Statements are an important tool to assess harm and determine the seriousness of an offence that in our experience are currently underused. Harm is not only to 'direct' victims of a crime, and especially in offences such as public order or environmental offences, it is community impact that may be the main harm criterion.

Drug dealing, thefts (especially where they create 'prevalence' e.g., effects on tourism), hate crime, and violence create untold effects that mean the wider community is left feeling unsafe, or has an impact on business or property values. Community Impact Statements enable magistrates to fully understand these impacts so that they can sentence at the appropriate level, and we would encourage the collection of such statements and for them to be available to the court.

- **Can you provide an example of where one has been used effectively?**

Community Impact Statements are important for the reasons outlined in our answer to Question 6a, but their use in practice needs further work to maximise their usefulness and ensure they are proportionate.

Our members can recall certain cases where a Community Impact Statement was absent and would have appreciated the perspective it would have brought, as it would have been material to their sentencing.

Barriers to effective use have included deciding who is responsible for putting together the views of the community for the purposes of such a statement, and whether the statement was representative. Questions of prevalence and localised sentencing are difficult to answer as part of writing the statement, and present practical difficulties.

**Should victims of mentally disordered offenders be allowed to make and submit a Victim Personal Statement when the offender's detention is being reviewed by the Mental Health Tribunal? Please explain your answer.**

Yes. The harm caused should still be assessed, as it may be decided that prosecution is applicable or there may still be opportunities for reparation in some other way.

It is the right of all victims to make such a statement, and it is up to the court/tribunal as to what weight to attach to them.

If a Victim Personal Statement is being used by the Mental Health Tribunal to assess detention, it should be included but only with the medical assessment of the offender. If that offender is ill and/or not able to control their actions, then a medical assessment of their risk to the public should be key for the decision to detain.

**What do you consider to be the best ways for ensuring that victims' voices, including those of children and young people, are heard by criminal justice agencies?**

There must be efforts to ensure that Victim Personal Statements and Community Impact Statements are taken. Others may need to make them on behalf of a child or a young person (for example responsible adults for young children who may struggle to explain how they feel.)

There must be support on hand for victims when giving evidence and a careful consideration of special measures.

Staff specially trained in communication skills and dealing with victims, vulnerable people, and CYPs should be available to engage with victims. Staff must also provide victims with access to their Victim Personal Statements on a secure portal so that information can be added at the timescale appropriate to the victim, not to the criminal justice system. This will allow them time to add information about things that may only become apparent later. Further, early engagement to set out the process and timescales so that victims remain engaged in the process is vital.

Transparency and information sharing is also key. Commissioners must continue publishing research into experiences of children and young people so that the evidence is readily available and up to date.

Magistrates commenting on Youth Court noted that the Youth Court rarely receive Victim Impact Statements. Whilst magistrates may ask for one to be provided, they have often found that the victim has not been asked if they would like to provide one. Victim Impact Statements are underused and could be utilised more effectively to amplify the victim's voice at sentencing.

However, a balance must be struck between the distinct principles which apply to sentencing in the youth court. The principal aim of the youth justice system is to prevent offending by children and young people. The Youth Court therefore adopts a child centred approach. As such, sentencing should be individualistic and focused on the child or young person, as opposed to offence focused, and the welfare of the child or young person must be taken into account. One result of this necessary approach is that many victims may feel their voice has not been heard in Court and sentencing is too defendant centric. It is questionable whether victims know about these overarching principles. Ensuring that victims are aware of the overarching principles and the reasons for them in the Youth Court is therefore an opportunity to help the victim understand the aims of sentencing in the Youth Court. However, it is likely that this approach inevitably leads to many victims feeling their voice has not been heard in Court and that sentencing is too defendant centric.

More generally, as magistrates our focus is predominantly within the court setting so to comment on CPS and other agencies is difficult. Advocates will have their own views on how victim evidence should be presented. Magistrates ought not to interfere in this. However closer relationships with police in respect to feedback of community needs may assist in confidence of the judicial process. Special measures are of course an important "tool" as are witness services. We are sure more can be done for witnesses, particularly children and young people to appreciate the court environment so they can feel comfortable and valued to facilitate the best quality contribution. Within the "embedding victims voice" magistrates could contribute further to relevant advisory panels in the context of victims.

Youth Magistrates are patently aware of the effects offending has on victims but are also mindful of the overarching principles with the latter getting the priority.

### **What challenges exist for victims in accessing integrated support across third sector and health service provisions?**

Currently, scarcity of provision due to lack of funding is the core challenge.

- **What and how could practical measures or referral mechanisms be put in place to address these?**

Instituting a one-stop community referral service within the courts, along the lines of CASSPlus in Cornwall and Highbury Community Service in North London.

Magistrates do not receive formal training on the support available for victims, although the MA through our webinars and branch events does provide background information to our members. Magistrates could be better equipped to signpost victims who might appear in magistrates' courts (as witnesses etc). It is therefore possible that there is an opportunity to incorporate victims' services into formal magistrates training.

### **Do you agree that we should explore increasing the surcharge?**

No. We understand that the Victims Surcharge is currently used by PCCs to fund victim services which need long-term investment instead of bidding for funding on a yearly basis. However, we disagree that it should be increased.

It is excessive in many cases to impose the surcharge and other costs so all that happens frequently is the diversion of money from one budget to another instead of collecting more. Victim surcharges could (and do) "dilute" other disposals that ought to be of greater relevance.

Instead, there needs to be provision for an alternative model to look at distribution and allocation of funding of services that meet local need, so they can have confidence to plan ahead. We argue that it is more effective to order compensation for directly-affected victims. Instead of a generic surcharge, there could be a payment to a 'reparation fund' ordered where community impact is established. The MA believes that there are other ways of funding victim services than via the surcharge.

In the context of the Youth Court the victim surcharge is misdirected and inappropriate. Children are not able to pay the surcharge. The surcharge is therefore paid by a parent, guardian or the local authority. Many families who pay this surcharge are already extremely economically disadvantaged. The victim's surcharge should be abolished for children who commit offences under the age of 18.

- **Should we consider an overall percentage increase (for example, increasing the surcharge rate by 20%)? If so, do you have any views on what the percentage increase should be?**
- **Should we increase the minimum rate (for example, to £100)? If so, do you have any views on what the minimum rate should be?**

We believe the minimum rate to be about right given the low level of Universal Credit. The MA believes that any increase disproportionately impacts those on the lowest level of income and £100 added to costs as the minimum Victim Statement would look disproportionate set against the £85 prosecution costs.

**The surcharge for fines differs to the other surcharge impositions, as it is paid by both individuals and organisations and is calculated as a percentage amount of the fine with minimum and maximum caps. Do you agree that we should review the surcharge paid for fines?**

Yes. Magistrates issue fines following an assessment of defendant means. It follows that the surcharge should also be according to means.