

Revising the Victims' Code: Equalities Statement 2015

Policy change summary

The statutory Code of Practice for Victims of Crime (“the Code”) sets out how victims should be treated by the criminal justice system. The Ministry of Justice (MOJ) is consulting on amendments to the Victims' Code.

The proposed revisions to the Code will implement relevant parts of the Directive 2012/29/EU of European Parliament and the Council of 25 October 2012 (“the Directive”) which replaced the Council Framework Decision 2001/22/HA. The Directive establishes minimum standards on the rights, support and protection of victims of crime and will come into force on 16 November 2015.

Definition of Victim

We are proposing to widen the definition of victim to comply with the Directive. The current definition in the Code uses the National Crime Recording Standards (NCRS) as its basis. The new definition will cover persons who have suffered harm caused directly by **any** criminal offence, where they report that crime to the police or another competent authority.

The current definition excludes most summary offences (punishable by 6 months or less in custody). While many non-NCRS crimes do not have a victim, some can do, for example careless driving or drink driving. Such victims are not currently covered by the Code.

We think that such victims are few in number. One of the express purposes of the NCRS is to promote a victim-focused approach to crime recording. The intention is that victims are believed and able to benefit from their statutory entitlements under the Code. A crime which has a victim is generally recorded under the NCRS.

We estimate the theoretical increase in crimes eligible for services under the Code to be between 0.8m and 1.3m per year.¹ This estimate includes crimes that are recorded by the police but are not covered by the NCRS (i.e. most summary offences) and some crimes which are reported to the police but are not recorded at all. However, we think that very few of these crimes will actually involve victims because consultation with police representatives and the National Crime Registrar has suggested this to be the case.

Competent Authorities

The Code needs to be revised to cover agencies assessed as competent authorities for the purposes of the Directive. The term “competent authority” is employed throughout the Directive to describe the body (or bodies) that have a duty to provide services to victims of crime. It is down to national law to determine the identity of competent authorities.

We are proposing to extend the Code to place duties on 9 relevant public sector investigative or prosecutorial organisations other than the police and the Crown Prosecution Service. There are a number of relevant public sector investigative or prosecutorial organisations that are not currently covered by the Code which we have assessed to be competent authorities for the purposes of the Directive e.g. the National Crime Agency and Serious Fraud Office.

We have assessed these organisations as competent authorities because they are public sector organisations which perform functions in relation to victims as defined by the Directive with respect to one or more of its Articles.

Written Acknowledgement

¹ This figure is based on the numbers of crimes reported to the Crime Survey for England and Wales and the number of NCRS crimes recorded, each in 2013, and also on an (HMIP) Inspection Report which quantified a shortfall in recorded crime.

Under the amended Code, when victims report a crime to the police or other relevant competent authority they will be entitled to receive a written acknowledgement which states the basic elements of the criminal offence concerned.

Other amendments

We propose to make a number of other, smaller amendments to the Code. We consider that these will have little, or no impact, on organisations required to provide duties under the Code because we think either these things are already happening in practice or that what happens in practice will require minimal adjustment. These amendments are:

- a) Clarification that a victims' needs assessments will identify whether and to what extent the victim may benefit from special measures. (No change in practice as this is already part of the purpose of the needs assessment.)
- b) Give victims a right of review against police decisions not to prosecute, as well as CPS decisions not to prosecute. (No change in practice. Both the police and CPS Victims Right to Review schemes are operative owing to domestic case-law.)
- c) Clarification of how the CPS and police Victims Right to Review scheme works. (No change in practice.)
- d) A more detailed description of the restorative justice services to which victims are entitled in areas where restorative justice is provided. (No change in practice.)
- e) Clarification of the information that victims who do not speak or understand English are entitled to have interpreted or translated. Where a victim is unhappy with a decision not to provide translation or interpretation services they are entitled to make a complaint to the relevant service provider or organisation. (No change in practice.)
- f) Clarification that victims will be entitled where possible to have the same person conduct all the interviews, unless to do so would prejudice the proper handling of the investigation. (No change in practice.)
- g) Medical examinations of the victim will be kept to a minimum and carried out only where strictly necessary for the purposes of criminal proceedings. (No change in practice.)
- h) The Witness Care Unit, which already notifies victims about decisions taken by the court, will provide the victim with a brief summary of the reasons why that decision was taken, where such reasons are available. (Small change in practice, but as the requirement is to do so only where such reasons are available, the resource implications will be small.)
- i) Amendment to clarify that access to services to help victims cope and recover (commissioned by Police and Crime Commissioners) is not dependent on an individual having reported to the police that they are a victim of crime. (No change in practice.)
- j) Clarification of the information victims are to receive at the point of first contact with the police or other relevant organisation about what to expect from the criminal justice system. (No change in practice.)
- k) All victims of sexual violence, gender-based violence or domestic violence will be offered the opportunity to have their interview conducted by a person of the same gender wherever possible, unless doing so is likely to prejudice the criminal investigation. (Small change in practice but, as the requirement is to do so wherever possible, the resource implications will be small.)

With regard to (e) above, victims would be entitled to receive information in alternative formats for the disabled (e.g. Braille, large text).

Equalities Summary

We have considered the impact of the proposed changes to the Code against the statutory obligations under the Equality Act 2010². Paying ‘due regard’ needs to be considered against the nine “protected characteristics” under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

As part of the consultation exercise, we have included specific equalities questions intended to help us better understand any potential equalities impacts of these proposals.

Direct discrimination

We consider that the proposed amendments are not directly discriminatory within the meaning of the Equality Act as they apply equally to all victims irrespective of whether or not they have a protected characteristic. We do not consider that the proposals would result in people being treated less favourably because of a protected characteristic.

Indirect discrimination

We looked at the distribution of personal crime victimisation within each socio-demographic (e.g. age) and compared this to proportions in the general population (16+) using the Crime Survey for England and Wales (CSEW) 2013/14 (See Table 1)³. For example, 32% of victims of personal crime were aged 16-24 compared to only 14% of the general population being in this age category. When compared to the general population the following groups were found to be over-represented among victims⁴:

- Single (that is, never married and never registered a same-sex civil partnership)
- 16-24 year old age groups
- No religion

We believe that more individuals in the above groups may be affected by proposed changes due to their over-representation as victims (of personal crime) and that these changes would have a positive effect on them and any victims with protected characteristics.

However, even if it were established that in some cases these effects constituted a particular disadvantage, the proposed amendments represent a proportionate response to ensuring justice for victims.

With regard to the guidance issued by the Cabinet Office on applying the Family Test, we do not believe that these changes to the Code will have a significant impact on families. The Victims’ Code already provides rights for families going through the key transition of bereavement as a result of crime. However these changes have little to no impact on that.

While (k) in the list of other amendments will have a positive impact on both genders, we consider that it will have a larger impact on women, as they are more likely to be victims of sexual and domestic violence than men⁵.

Discrimination arising from disability and duty to make reasonable adjustments

² Section 149 of the Equality Act 2010 places a duty on Ministers and the Department, when exercising their functions, to have ‘due regard’ to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
- Foster good relations between different groups (those who share a relevant protected characteristic and those who do not).

³ Personal crime is used as the comparator in preference to all CSEW crime as protected characteristics demographics may not be representative for household crime

⁴ Unpublished analysis of the Crime Survey for England and Wales (CSEW) 2013/14. The characteristics noted were statistically significantly different to the proportions in the general population.

⁵ Focus on Violent Crime and Sexual Offences, 2013/14, Office for National Statistics.

In so far as the proposed amendments extend to disabled victims, we believe that the policy is positive, but it remains important to make reasonable adjustments for disabled victims to ensure appropriate support is given.

Harassment and victimisation

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

Advancing equality of opportunity

Consideration has been given to how these proposals impact on the duty to have due regard to the need to advance equality of opportunity by meeting the needs of victims who share a particular characteristic, where those needs are different from the need of those who do not share that particular characteristic. As explained above, we believe that the proposed amendments are largely positive for victims, whether they share a particular characteristic or not.

Fostering good relations

Consideration has been given to this objective. The proposed amendments (widening the definition of victim for example) should tackle prejudice and help promote understanding between people from different groups.

Table: Characteristics of adults who were victims of CSEW personal crime^{1,2}, 2013/14

England and Wales	Adults aged 16 and over	
	Victims of Personal Crime	General Population ⁵
Age		
16-24	32%	14%
25-34	24%	17%
35-44	16%	17%
45-54	14%	17%
55-64	8%	14%
65-74	4%	12%
75+	2%	9%
Disability/illness status		
No disability/illness	78%	78%
Non-limiting disability/illness	4%	5%
Limiting disability/illness	18%	17%
Marital Status		
Married/civil partnered	29%	50%
Cohabiting	14%	11%
Single	46%	25%
Separated	3%	2%
Divorced/Legally dissolved partnership	6%	6%
Widowed	2%	6%
Ethnicity		
White	84%	88%
Non-white	16%	12%
Mixed	3%	1%
Asian or Asian British	8%	7%
Black or Black British	4%	3%
Chinese or Other	1%	2%
Religion		
No Religion	42%	32%
Christian	50%	60%
Muslim	4%	4%
Hindu	2%	2%
Other ³	2%	2%
Sex		
Male	50%	49%
Female	50%	51%
Unweighted Base ⁶	1,516	35,371
Sexual Orientation⁴		
Heterosexual or straight	93%	97%
Gay or lesbian	3%	2%
Bisexual	3%	1%
Other	1%	1%
Unweighted Base	1,220	21,385

(1) Source: Crime Survey for England and Wales, Office for National Statistics.

(2) For definitions of personal characteristics, see Section 7.3 of the User Guide to Crime Statistics for England and Wales (2014)

(3) CSEW respondents who identify themselves as having a religion other than Christian, Muslim or Hindu

(4) The question on the sexual orientation of respondents is asked in the self-completion module of the questionnaire. This module is only asked of those respondents aged 16-59.

(5) The general population figures are for those aged 16 and over and are based on the CSEW. As such they may provide different estimates of the general population to the comparators used in other national statistics.

(6) Unweighted base refers to the base for 'Age'. Bases for the other characteristics, except sexual orientation will be similar.