

# **European Commission**

## **Public consultation on Commission adoption of a proposal for a revision of Victims' Rights Directive**

**Response from the  
Commissioner Designate for  
Victims of Crime for Northern  
Ireland**

**September 2023**

## **About the Office of the Commissioner Designate for Victims of Crime**

The Commissioner for Victims of Crime's Office (CVOCO) is an independent body which represents the interests of victims of crime in Northern Ireland. The Commissioner Designate was appointed by the Minister of Justice in March 2022 to be an independent voice for victims of crime. The overarching purpose of the Commissioner Designate is to represent the needs and interests of all victims of crime and help drive systemic improvements across the criminal justice system in Northern Ireland.

This will include helping to identify any areas where victims are not consistently being provided with their entitlements set out within the Victim Charter and ensuring that their issues and experiences are raised in the public arena, with Government, with criminal justice organisations and organisations that support and represent victims, in order to bring forward effective change.

## **About this response**

The Commissioner Designate believes it is important to respond to this consultation as although Northern Ireland is now outside of the European Union, she is hopeful that any improvements to the rights and treatment of victims of crime in EU member states can inform improvements to victims of crime in Northern Ireland.

The Commissioner for Victims of Crime's Office is an associate member of Victim Support Europe and through making this response, is reflecting support for the VSE proposals made their own consultation response.

## **Introduction**

The Victim Charter was placed on a statutory footing in Northern Ireland through the Justice Act (NI) 2015. The Charter brought into effect minimum standards established within the 2012 Victims Directive and demonstrated the Northern Ireland Executive and Assembly's commitment to improving the services and support available to victims. Whilst the enshrinement of these standards in local legislation was no doubt a landmark moment for victims, rights, eight years on from its implementation, the Commissioner Designate still encounters victims who have not heard of the Victim Charter and have not received their entitlements under it.

Of even more concern, was the findings of the Criminal Justice Inspection for Northern Ireland's (CJINI) in their report on the treatment of victims and witnesses in 2020 which noted *“a strong sense of apathy and disconnection by many organisations providing support to victims when asked about the ongoing influence and contribution of the Charters.”*<sup>1</sup>

Concerns regarding the implementation of the Directive across Member States as well as Northern Ireland highlight our collective failure to deliver what is promised to victims and what they should rightly expect. Far too often, the needs of victims are an afterthought, and rather than being seen as an obligation enshrined in law, often fall to the bottom of the list of priorities which may or may not happen. Every victim deserves to be treated with dignity and respect and afforded all the entitlements promised to them.

The treatment of victims should not be hierarchical but instead should be delivered consistently and empathetically, driven by their individually assessed needs. This care is not something limited to criminal justice professionals and the responsibility for this does not rest with the justice system alone. Victims can be affected by their interactions with health and social care professionals, housing, education professionals and those working within civil and family justice and Coroner's services.

The Victim's Rights Directive and its subsequent adoption in Northern Ireland as the Victim Charter, has provided a positive mechanism for improved rights and better supports for victims of crime and has brought about positive change in many areas within the criminal justice system, prior to which many victims had no rights and no voice. However, victims continue to face significant challenges both in Northern Ireland and throughout the European Union as they do not always receive the information they need in a timely manner, or in a way they can understand. Appropriate support services are often unavailable, leaving victims without the help they need. A lack of protection leaves them open to further harm during their interaction with the criminal justice system.

If we are to effectively improve the understanding of member states and ensure consistency in application we must be unambiguous about our intentions and clear in our language regarding what victims should rightly expect. The Commissioner Designate is concerned that exceptions to rights and insufficient guidance on how to implement provisions, may lead to a lack of enforcement by statutory agencies.

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<sup>1</sup> [Victims and Witnesses – The care and treatment of victims and witnesses by the criminal justice system in Northern Ireland \(cjini.org\)](https://www.cjini.org)

Therefore, the Commissioner Designate supports VSE in their call for a revision of the language used in the Directive to strengthen existing rights, establish clearer obligations and establish new rights for victims. Without sufficient clarity in the legislation, victims will continue to face unequal treatment across the EU due to disparities in implementation.

### **Feedback on European Commission proposals for a revised Victims' Rights Directive**

The Commissioner Designate is broadly supportive of the proposed changes to the Victims' Rights Directive including;

- **Establishing victims' helplines (article 3a)** in Member States is a major improvement to maximise victims' access to support, information and referral.
- **Introduction of an article on the reporting of crime (article 5a) in order to** facilitate victims to report crime and tackle underreporting and current barriers to reporting. The Commissioner Designate particularly welcomes the introduction of accessible and safe channels to report crime and submit evidence and the establishment of firewalls to prevent the automatic sharing of victims' personal data with migration authorities. The Commissioner Designate has met with the Police Service for Northern Ireland (PSNI) to discuss the issue of firewalls for transferring personal data in relation to domestic abuse victims of crime and their how their current migration status deters them from reporting crimes committed against them. She welcomes this addition and understands the positive impact this would have in a Northern Ireland context too.
- **Court-based support services (article 10a)** is also an important new right that will ensure victims are provided practical/emotional/informational support during criminal proceedings.
- **Changes to ensure increased participation of victims during proceedings**, in particular with regard to decisions that affect them and their rights: right to review decisions taken during court proceedings (article 10b), and the right to legal remedies (article 26b). If we are true to our commitment to increase the rights and protections afforded to victims of crime, we must ensure that effective pathways for redress are in place. This not only sends out a clear message to victims of crime as to their value in society but will help

ensure that the need to implement and adhere to these standards is more effectively understood.

- **Decision on offender compensation (article 16)** and the robust amendments to facilitate victims' ability to receive compensation through the involvement of statutory agencies in order to eliminate administrative burdens and potential re-traumatisation of victims is welcomed by the Commissioner Designate and is an amendment she would welcome in Northern Ireland.

## Outstanding Concerns

**The need for individual assessment of victims to identify specific support and protection needs (article 22):** the Commissioner Designate mirrors VSE's concerns regarding combining protection and support needs assessments implemented only by the police and other statutory agencies.

She also agrees with VSE's assertion that often these statutory agencies do not have sufficient training, resources, knowledge and/or capacity to deliver the necessary support. These limits, and the reliance on law enforcement conducting the identification of support needs, creates a significant risk that victims who need support will not be referred to support services or will not receive appropriately assessed and sufficient advice on the matter.

The Commissioner Designate is concerned that the power imbalance in place when a victim engages with a statutory agency can lead a victim to either downplay or minimise their experience for fear of potential ramifications e.g. a domestic abuse victim may be fearful of sharing the full scale of the abuse with a police officer out of fear of how she may be perceived as a parent and the potential implications for her children. Support organisations, independent from law enforcement are more likely therefore to get a more comprehensive assessment of need and risk factors.

Organisations that specialise in supporting victims should conduct a support needs assessment with a mandatory, opt-out referral mechanism where victims are referred to victim support services by statutory agencies unless they object.

VSE states that is a practice that consistently achieves the best results for victims whilst being the easiest, most efficient, least burdensome and practical solution for police services. At the same time, authorities may carry out a needs assessment relevant to their duties to determine how they may best assist victims within criminal proceedings and based on their own mandate. This assessment would not determine the need for victims to be referred to support services.

The Commissioner Designate would highlight a current recommendation from the CJINI in their report on “The Care & Treatment of Victims and Witnesses by the Criminal Justice System in Northern Ireland”<sup>2</sup> where they made a number of strategic and operational recommendations including the development of a needs assessment service within the Victim and Witness Care Unit which is run by the prosecution and police service. The recommendation specifically stipulated the need for that service to be staffed by the local victim support provider to help ensure the right care and support was built in from the outset as well as helping to achieve greater collaboration and understand of respective roles.

This recommendation is still an outstanding action in Northern Ireland in 2023, however the Commissioner Designate is continuing to work with the relevant statutory agencies in order to ensure this objective will be delivered.

**Balancing rights for all victims whilst addressing individual/specific needs:**

As already mentioned, the Commissioner Designate is very clear that there should be no hierarchy of victims but recognises the need for a criminal justice system which can provide targeted, adapted and specialised services in accordance with victims’ individual and/or specific needs.

Therefore, the Commissioner Designate recognises that action is needed to ensure that a strategic approach is adopted for organising the delivery of victim support at a national level, where national referral protocols are established to avoid current inconsistencies in approach and which will hopefully result in better outcomes for victims. This should also ensure integration and cooperation between generic support and any specialist support service providing support to specific cohorts victims (e.g. victims of domestic abuse or hate crime) and that generic support is not seen as a ‘one size fits all’ approach. Victims of crime are not a homogenous group and therefore should not be treated as such.

**Victims’ access to information with regular communication from statutory agencies:**

The Commissioner Designate also welcomes the changes introduced by the European Commission with regards to the protocols for coordination, which include quality guidelines (e.g. simple and easy to understand, timely and repeated), as well as the use of electronic means of communications to ensure information rights are met.

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<sup>2</sup> [Victims and Witnesses – The care and treatment of victims and witnesses by the criminal justice system in Northern Ireland \(cjini.org\)](https://www.cjini.org)

However, she does not believe that these changes alone will not resolve the failures to implement information rights that have been reported by victims in Member States over the last decade. Victims should not have to opt in to receive information about their case. The provision of information to victims throughout the criminal justice system should be an absolute right, irrespective of their role in any proceedings, unless the victim informs the statutory agency that they do not wish to receive information. In this era of digitalisation and technological advances, relevant information pertaining to a victim's case could be provided via an online portal for victims to view how and when they choose. Technology cannot or should of course replace human calls and face to face interaction but it can certainly assist in meeting some of the needs of victims in this regard. Ideally any case management system (CMS) would include a translation/interpretation mode allowing victims with language barriers to understand the information relating to their case easily and without cost implications.

The Commissioner Designate thanks the European Commission for the opportunity to respond to this important piece of work and wishes them every success in the progress of this vital work.

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