

Hearing the Relatives of Murder and Manslaughter Victims

*The Government's plans to give
the bereaved relatives of murder and
manslaughter victims a say in criminal
proceedings*

Consultation

September 2005

CRIMINAL JUSTICE SYSTEM



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I Executive Summary

- Victims need a voice
- The Government's vision is of a criminal justice system in which the needs and concerns of victims, and witnesses, are central
- Tackling crime is a clear priority for the Government. We are now seeing results: overall crime is now down by 30 per cent since 1997
- We are working to help victims, including:
 - Victims' Code of Practice, with specific obligations for services to be provided for victims and their families
 - New guidelines¹ to be issued by the Attorney General, underpinned by a pledge, which set down clear responsibilities for prosecutors towards victims
 - A 'New Standard'² is being developed between the CPS and the Bar that will improve communication between the victim and prosecutor at court
 - 'No Witness, No Justice' programme: 160 Witness Care Units offer single point of contact for victims and witnesses attending court
 - New ways for victims and witnesses to give evidence
 - Increased investment in support for victims: up 17 per cent in real terms over the last three years
 - Victims' Advisory Panel so victims can directly discuss victims issues with ministers
- Now we want to go further – by proposing that victims should have a voice in court
- We would apply this in the most serious of crimes – murder and manslaughter
- Relatives would be able to make a personal statement in court before sentence on how they have been affected by crime
- Relatives could address the court themselves, or through a lawyer or suitable representative – a victim's advocate
- Victims' advocates would not participate in the trial, for example in cross-examination
- But victims' advocates would be able to offer help too on court and trial processes
- We propose to pilot the proposal in up to five areas, and are consulting widely
- We believe giving victims a voice will help victims and their families, help the criminal justice system and help fight crime.

¹ Attorney General's guidelines on the acceptance of pleas and the prosecution role in the sentencing exercise and the Prosecutor's pledge

² Likely to be issued later this year

2 Vision

Victims need a voice.

Victims are at the heart of the criminal justice system. Our vision is a criminal justice system in which the needs and concerns of victims, and witnesses, are central.

Since coming into government, we have modernised and rebalanced the criminal justice system in order to place victims and witnesses at its centre.

We have done a lot. There is a great deal more to do.

We have put in place a number of measures to help ensure that victims are at the core of the criminal justice system. We are pressing ahead with more reforms with the same objective.

But now we want to go further. We were re-elected in May with a clear commitment to give victims a voice.

We want victims to be heard properly and fully in court.

Of course, courts currently take victims' views into account. When they make their case on behalf of the Crown, prosecutors have a clear responsibility towards victims. We want to reinforce that approach, to embed that objective fully into the culture of the criminal justice system.

But we want to go further, too. We want to give victims a voice directly in court. We want to end the culture of silence which can envelop victims and their families. We want to tear down that veil of silence – and let the voice of the victim be heard.

Victims make their voices heard now – but usually outside court, on the steps of the court, sometimes in front of the media. They take that opportunity because it is clear that they often feel that is the only choice open to them – the only course of action available.

We want victims to be heard where they should be heard: properly, inside the court – where it's important, where it really matters, where it should be. Part of the process of the court – not outside the process of the court.

We recognise this is a radical reform. We believe this reform has the strong support of many victims themselves. Victims and their families have for too long felt far from fully included in the criminal justice process. We want to make sure they have the option – if they want it – of being fully and formally involved in what the criminal courts are doing.



We are seeking people's views on this commitment. We want to make this innovative idea happen. So we are putting forward in this document proposals for consultation. We want to know what all those concerned think.

But giving victims a voice is vital. Vital for justice, vital for fighting crime – but most of all, vital for the victims themselves. Victims and their families need to be heard. Their case needs to be put. Victims need a voice. We are determined as a Government to make sure that their voice is heard.

A handwritten signature in black ink, consisting of the name 'Charlie' on the top line and 'Falconer' on the bottom line, written in a cursive style.

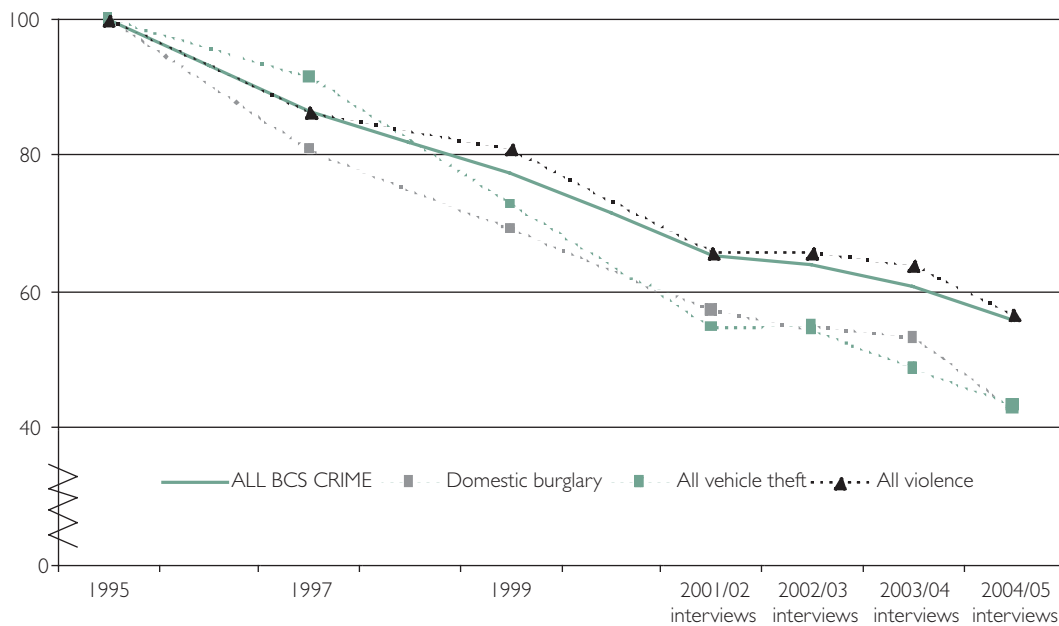
Lord Falconer
Secretary of State for Constitutional Affairs and Lord Chancellor

3 What we have done

Our priorities

1. Tackling crime and bringing offenders to justice is a top priority for the Government. We are modernising the criminal justice system, and investing – at record levels since 1997 – in the fight against crime.
2. We are now seeing the results. Overall crime is down 30 per cent since 1997³. Some 16 per cent more offences are being brought to justice than four years ago,⁴ through reforms we have made to the criminal justice system.

Trends in BCS crime, 1995 to 2004/05⁵



3. Our concern for victims lies at the heart of this investment and reform. We have heightened the priority given to victims by the criminal justice agencies and focused on improving services end to end. We have significantly increased financial investment in support for victims. We have also begun a series of reforms to the criminal justice system to take more account of the needs of victims, and to make the process more modern, efficient and effective.

3 British Crime Survey figures 1997 – 2003/04

4 For the latest performance figures please refer to www.cjsonline.gov.uk

5 This graph is taken from the Home Office Statistical Bulletin 'Crime in England and Wales' 2004/05, published July 2005. See www.homeoffice.gov.uk/rds/crimeew0405.html

4. The Government has made considerable progress in modernising the criminal justice system so that it is more effective and strikes a balance that is fair to defendants and victims. These reforms include a process of modernisation that has seen a steady improvement in the number of offenders brought to justice, a dramatic fall in the number of cases being adjourned and a halving of the number of trials that fail because of absent defendants⁶. But there is still some way to go.

Rebalancing the Criminal Justice System

5. The Criminal Justice Act 2003 is making significant changes to the criminal justice process, which will give more prominence to victims' views and needs. For example:
 - magistrates, judges and juries are able to hear all the relevant evidence – including that of previous bad character
 - the prosecution can appeal against judges' decisions to terminate the trial prematurely
 - changes have been made to allow retrials for serious offences if compelling new evidence comes to light following acquittal
 - where the jury is at risk of being tampered with, trials can be allowed to proceed to trial in front of a judge alone.⁷
6. We are also creating Specialist Prosecutors and Specialist Courts for anti-social behaviour, drugs and domestic violence.⁸ All of these changes are combining to bring about swifter justice and make the system work better, with more offences brought to justice.

Improving services

7. We are supporting victims throughout all the criminal justice agencies. There is a public target to increase the satisfaction of victims and witnesses with the criminal justice system, and we have set a number of key priorities for criminal justice boards and agencies to deliver. We are driving this forward, working directly with local areas.
8. We have developed a Victims' Code of Practice, containing over 50 service obligations that named criminal justice agencies will be required to provide to victims and their families.⁹
9. The Code sets out timescales for delivering particular services and identifies vulnerable victims who should receive a fast track service. Agencies will be expected to deliver these obligations by the end of 2005, and measurement of their performance against the Code will start from April 2006. For the first time victims will have a right of appeal if their rights in the Code are not being met. A Commissioner for Victims is also being established to champion victims' rights.¹⁰
10. In the Crown Prosecution Service (CPS), the Code for Crown Prosecutors sets out prosecutors' responsibilities towards victims.¹¹ For example, it says that whilst Crown Prosecutors act on behalf of the public and not in the interests of any particular individual, they should always take into account the consequences for the victim of whether or not to prosecute, and any views expressed by the victim or the victim's family.¹² Work on this vital dimension to the CPS's work is a top priority and prosecutors are increasingly seeing their role as that of victims' champion.

⁶ For the latest performance figures please refer to www.cjsonline.gov.uk

⁷ See respectively Parts 11, 9, 10 and Section 44 of the Criminal Justice Act 2003

⁸ See Department for Constitutional Affairs 5 year strategy www.dca.gov.uk/dept/objectives.html

⁹ The provision for a Victims' Code of Practice is set out in Section 32 of the Domestic Violence Crime and Victims Act 2004. The content of the Code has recently been consulted on. See www.cjsonline.gov.uk/the_cjs/whats_new/news-3121.html

¹⁰ Commissioner for victims is provided for in Domestic Violence, Crime and Victims Act 2004 Section 48

¹¹ For text of the Code see www.cps.gov.uk/victims_witnesses/code.html

¹² See Section 5.12 of Code

11. In addition to this, a range of work is underway in individual agencies to offer better support and services to victims and their families. Police Quality of Service Standards come into force next year and will ensure a high level of service is given to victims.¹³ There is better support for victims of serious crimes – for example, through the deployment of police Family Liaison Officers, and there is now a statutory duty for the National Probation Service to consult and notify victims of serious crime about release arrangements for offenders.¹⁴
12. We have also legislated to allow the victims of mentally disordered offenders to have the same opportunities to be consulted and informed about plans for release as the victims of other serious offenders.¹⁵
13. There is also a range of work going on to help victims and witnesses through the court process. For example, as part of the 'No Witness, No Justice' scheme, the police and CPS are working together to consolidate a network of 160 Witness Care Units across the country.¹⁶ These offer a single point of contact for victims and witnesses who are attending court, providing them with the help they require – from arranging child minding to keeping them informed of case progress.
14. Owing to increased funding for Victim Support there is now a Witness Service in every court, which helps prepare victims and witnesses for the court experience by explaining what will happen and carrying out court familiarisation visits. We have also piloted a scheme of Domestic Violence 'navigators' to provide victims in these cases with advice, support and information. Evidence suggests that victims are highly satisfied with this service and that they are more prepared to participate in the criminal justice process as a result.¹⁷
15. In addition we are improving services at court to make it easier and less distressing for vulnerable and intimidated victims and witnesses to give evidence.¹⁸ For example, by allowing evidence to be given via live video link or in private, or using screens around the witness box. We have also changed the law to allow the use of intermediaries in courts¹⁹ and are piloting arrangements to take this forward.
16. We have greatly expanded the number of separate waiting rooms for witnesses in court buildings and will continue to introduce these.

Investment

17. We are spending more than ever on victims of crime. We have increased spending across the criminal justice system by 17 per cent in real terms over the last 3 years, enabling us to provide more and better support and services for the victims of crime.²⁰
18. Around £170 million is paid a year in direct financial compensation to victims of violent crime.²¹
19. We have almost trebled funding to Victim Support since 1997, which now stands at £30 million.²² This extra funding has, for example, enabled Victim Support to deliver for us the Witness Service in courts.

¹³ The text of the Quality of Service Standards will be published next year when the standards come into force

¹⁴ Domestic Violence, Crime and Victims Act 2004 Section 35

¹⁵ Domestic Violence, Crime and Victims Act 2004 Sections 36-45

¹⁶ More information on No Witness, No Justice and Witness Care Units can be found at www.cjsonline.gov.uk

¹⁷ From evaluation paper 'Specialist Domestic Violence Courts/Fast Track Systems' March 2005

¹⁸ Youth Justice and Criminal Evidence Act 1999 Sections 16-33

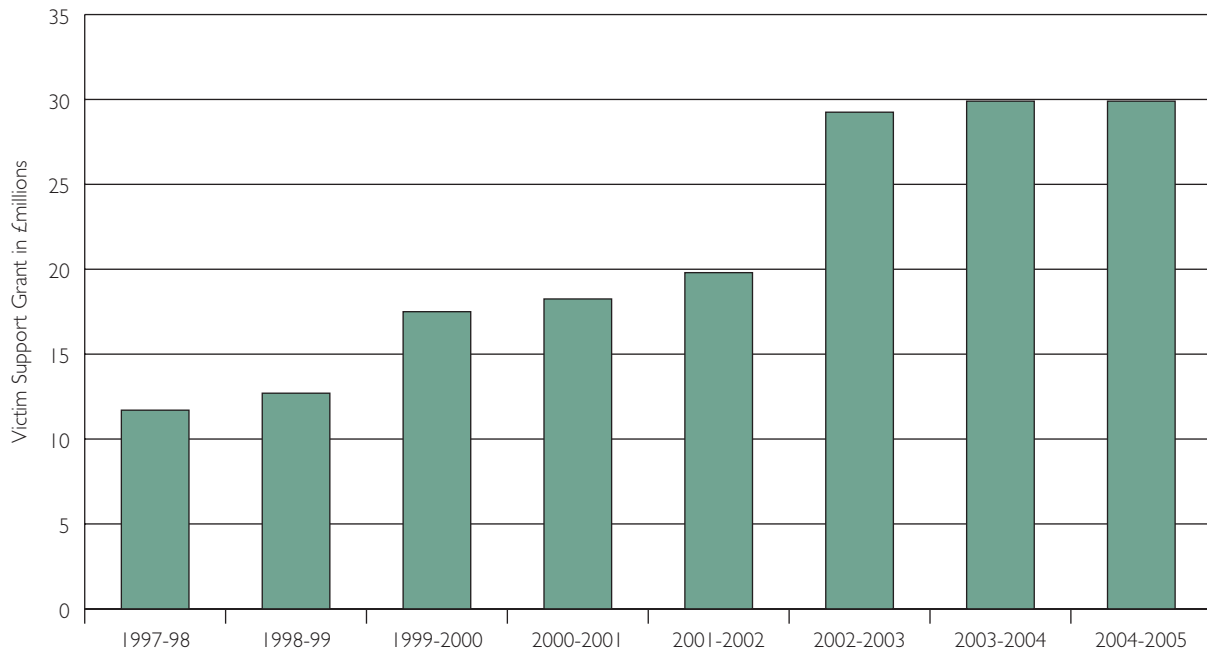
¹⁹ Youth Justice and Criminal Evidence Act 1999 Section 29

²⁰ Home Office figures on budgeted spend

²¹ Home Office figures

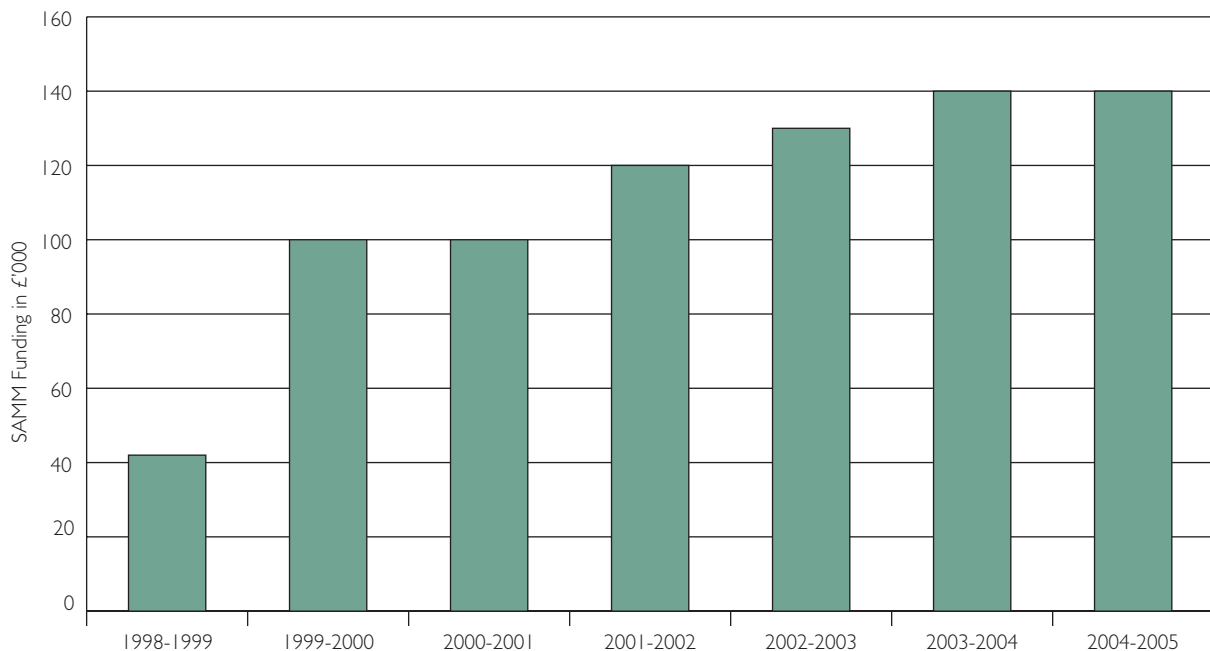
²² Home Office figures

Increased funding on Victim Support since 1997



20. We have also established a Victims' Fund with money taken from proceeds of crime. The Fund will eventually be financed from a surcharge on fixed penalty notices and criminal convictions. This means that money from offenders goes directly to support services for victims. So far we have used £4 million to develop services for victims of sexual crime through grants to 64 organisations, and increased the network of Sexual Assault Referral Centres to support these victims.²³
21. For the first time we are funding other specialist providers – such as Support After Murder and Manslaughter, and pilots²⁴ supporting those bereaved by road death.

Increased funding on Support After Murder and Manslaughter (SAMM)



²³ For more information see www.governmentfunding.org.uk

²⁴ The three Home Office pilots, carried out in Bedfordshire, Merseyside and West Yorkshire, into supporting those bereaved by road death concluded in March 2005. The final report is due in September 2005.

22. We are investing significant sums to support victims of domestic violence and to develop services. For instance, £32 million of capital money is going into refuges over 3 years to create new refuge places and renovate existing ones.²⁵
23. Increased investment is a clear demonstration of our dedication to improving services and support to victims of crime and their families. We have made real improvements. But we know there is a long way to go.

²⁵ Home Office figures, see www.homeoffice.gov.uk for more information on domestic violence initiatives.

4 Listening and communicating

Listening to victims

24. We want to build on the improvements we have been making. So far, the changes we have made are mainly about how the court process should impact on the victim – not how the victim should impact on the process. We know from discussions with victims and representatives that there are some real issues here. It is clear that even with more sensitive and respectful treatment, the criminal justice process remains a frustrating and disempowering experience for some victims and their families.
25. We have sought to address this with measures to involve victims in the process. For instance:
- establishing a Victims' Advisory Panel in 2003, which means that victims can speak directly to criminal justice Ministers and comment on new policies in development²⁶
 - setting up the Witness and Victim Experience (WAVE) survey to ask about victims' and witnesses' experience of the criminal justice system. This provides an opportunity to highlight good and bad practice and will allow us to identify where we need to improve services. The scale of the survey also means that we will be able, for the first time, to analyse data at local level and set targets for areas' performance in supporting victims and witnesses²⁷
 - ensuring that victims' needs are better addressed after sentence. For example, we have made it the law that the National Probation Service must consult victims of serious crime about release arrangements for offenders²⁸
 - rolling out of Witness Care Units on a national basis through the 'No Witness, No Justice' programme to provide a single point of contact for victims and witnesses and so ensure better communication and sharing of information.
26. However, these measures don't involve all victims. And it remains true that the individuals who have suffered most because of a crime are often the very people whose voice is not heard.
27. One reason for this is that, legally, a criminal case is between the prosecutor, acting in the wider public interest, and the accused – not between the victim and the accused. This public nature of our criminal prosecution system recognises the damage crime does to us all and helps ensure a fair system without the need for the victim or the family to act. The Government remains fully committed to the public basis for our prosecution system. However, this does not mean that the victim's voice shouldn't be heard in the process.

²⁶ The Domestic Violence, Crime and Victims Act 2004 Section 55 makes provision for the Victims Advisory Panel

²⁷ The survey began collecting data in April 2005 and will ask opinions from 800 participants every year in each of the 42 Local Criminal Justice Areas

²⁸ Domestic Violence, Crime and Victims Act 2004 Section 35, which replicates Criminal Justice and Courts Service Act 2000 Section 69

28. In October 2001 we introduced the right for victims or others affected by the crime to make a written personal statement, known as a Victim Personal Statement²⁹. This is usually set out in the words of the victim during an early conversation with the police though it can be made at any time during the proceedings. In homicide cases the police should offer the opportunity to the victim's relatives.
29. Victims say as much or as little as they choose – ranging from a simple request to be kept informed of case developments, or their fears about the offender; to other more far-reaching effects of the crime. The basic idea is that the victim explains in his or her own words how they feel about what has happened to them. A Victim Personal Statement is read by everybody who makes decisions about the case as it progresses.
30. A Practice Direction by the Lord Chief Justice³⁰ shows that courts can take such statements into account when deciding on sentence. They can also be referred to at other important stages of the proceedings, for example during a bail application.
31. But evidence shows³¹ that the take-up and understanding of the Victim Personal Statement has been patchy so far. Police forces seem to vary in their readiness to offer this service and towards updating the statements. And even where these problems do not exist, the voice of the victim is still not heard in court, unless they happen to be called as a witness.

Communicating with victims

32. We know that understanding how the criminal justice system works and what is going on during the case can be a major concern for victims. Because, legally, victims or their relatives do not bring or conduct cases they are not automatically involved in everything that is going on. Special steps need to be taken to ensure they are kept in the picture and a lot of work has been done in recent years by the police, the Crown Prosecution Service, Victim Support and other agencies to fill this gap.
33. For instance the CPS already has in place a scheme for direct communication with victims over decisions relating to the discontinuance, withdrawal or downgrading of charges.
34. However, victims are telling us that there can be quite serious gaps in their awareness of decisions about the legal handling of the case. For example, they sometimes feel in the dark about:
 - why one charge and not another has been chosen
 - applications for special measures (such as screens, video links, use of intermediaries and so on)
 - tackling inappropriate cross examination, or attacks on the victim's character
 - why publicity restrictions are or are not in force
 - why general decisions on the management of the case have been taken.
35. The Government believes that victims and their families are entitled to meaningful answers to these questions. It wants to bring about real improvements in the way the system communicates with victims and relatives about their concerns.

²⁹ The Victim Personal Statement scheme is due to be reviewed by the Office for Criminal Justice Reform during the course of autumn/winter 2005

³⁰ The Practice Direction was issued on 16 October 2001 by Lord Woolf CJ

³¹ Testaments of harm: a qualitative evaluation of the Victim Personal Statements Scheme, by Jenny Graham, Kandy Woodfield, Mike Tibble and Sarah Kitchen, 2004: NatCen, ISBN: 1904599214

36. The CPS and other prosecuting authorities are taking further steps to encourage and facilitate dialogue between prosecutors and victims. For example, the Attorney General will shortly be introducing new guidelines that emphasise the importance of seeking the views of victims in making prosecution decisions. The Guidelines will also urge prosecutors to challenge proactively and robustly derogatory or unfair mitigation, strengthening the current professional codes of practice and underlining the Government's resolve to stamp out unjustified attacks on those unable to speak for themselves.
37. The Attorney General has also recently spoken publicly of the need to develop an agreement or contract covering the responsibilities of prosecutors for victims. As a separate exercise, he will be talking to prosecutors and victims' groups on the detail of this with a view to defining the exact nature and level of the services and advice that victims can expect to receive from prosecutors.
38. The question for this paper is whether a victim's advocate would improve the situation even further for specific categories of case. We pose some detailed questions about this in part six and would be very grateful for comments or suggestions.

5 What we want to do: giving victims a voice

39. The Government believes that more should be done to ensure that victims and their families are listened to in court. We wish to consider a radical proposal to try a new approach, namely that in murder and manslaughter cases relatives should be able to present their views in person to the judge at the sentencing stage of the trial. This should provide a better basis for the judge to take account of the effect of the crime on the bereaved relatives when sentencing.

Victims' voices

40. The Government proposes to take this idea forward in a new proposal for a pilot, applying to murder and manslaughter cases – including corporate manslaughter. These are the most serious crimes and the ones where the victim is unable to speak for him or herself. The proposal could then be extended to other types of cases.
41. It is traumatic enough to endure the sudden and possibly violent death of a loved one. As well as coping with their grief, the relatives of homicide victims endure a police investigation into the death and have to try to make sense of an unfamiliar and often lengthy criminal justice process that may lead to a trial.
42. The trial itself is an adversarial process involving the prosecution and the defence. Unless the relatives are witnesses they play no role in the trial process and do not speak in court. They are expected to be passive observers of a process which involves the re-telling of the events that led to the death, often many months after it occurred. This is difficult enough for anyone to cope with, but they may also hear inappropriate damaging references to the victim's conduct and reputation made by the defence. They may be the only people able to help the prosecution put the record straight.
43. Everyone agrees that when it comes to sentencing the judge should take into account the effect of the crime on the victim's relatives, but he or she does not usually hear from them directly to understand the effect of their loss.
44. Many of those directly affected by the most serious crimes feel passionately that they should have their say in court. At present the best they have is a written statement taken by the police before the court case begins, the Victim Personal Statement, but unfortunately even this does not happen in all cases. Some victims' relatives feel strongly that they should be heard in the court room itself by the judge and not just by the media on the way out of the building.

45. So the Government intends to:
- enable the bereaved relative, if they wish, to make a personal statement in court before sentence on how the death has affected them, either directly themselves, or through a lawyer or suitable representative
 - achieve a step change in the ability of the relative to communicate effectively with prosecution decision-makers at all stages of the criminal justice process.

Victims' advocates

46. Victims' relatives should – if they wish – be able to instruct a publicly funded advocate to help them make their statement in court. This statement would describe the impact of the death upon them. The task of the advocate would be to lead the relative through his or her statement and protect their interests.
47. The Government believes that this job could be carried out by an advocate independent of the prosecution. While some argue that this work could be done by the prosecution team and that this might be the most straightforward option, we believe that our pilot should give the victims a choice of an advocate who will give them a proper voice in court.
48. But it would not be the intention that an independent advocate should detract from the prosecutor's responsibility for the overall management of the case and for presenting it to the judge. In particular it is not proposed that a victim's advocate would participate in the trial as if a party to it, for example he or she would not examine or cross-examine witnesses, or make submissions or speeches which addressed the issue of guilt or innocence.
49. An independent advocate might be expected to be a barrister or a solicitor with appropriate rights of audience. However, the Government believes that it could be for the relative to choose who will best represent their views. They could choose a lawyer, or if they wished, a lay person with experience of the criminal justice system and court procedure. Or they could appear unrepresented. The use of non lawyers in court for these purposes might require legislation.
50. If the relative did not wish to make an oral statement, the prosecutor would continue to have responsibility for ensuring that any written statement by the relative is brought to the court's attention before sentencing.

Communication and engagement with the bereaved

51. The Government believes that victims and relatives should be more engaged with and informed about the progress of the case and the various decisions which have to be taken. All criminal justice agencies are seeking to improve their performance on this. But we are proposing an additional approach where the relatives would have further help. This function could be undertaken by the person appointed to help make the statement in court, but could also be undertaken directly by the prosecutor or indeed by someone who is neither a barrister nor a solicitor.

Choice of relative

52. At present, anyone who is a victim of a crime, including the relatives of a homicide victim, may make a Victim Personal Statement if they wish, setting out how the crime has affected them. There is no set limit on the number of people who can make a Victim Personal Statement. Currently, the police decide who to approach in the light of their knowledge of the case. But this approach could lead to difficulties, especially if only one person were to be given access to a victim's advocate. One alternative could be to provide for an advocate to represent all of the relatives who wished to make an oral statement. However, if we were to restrict the service to certain relatives we would need a transparent application procedure and a fair and independent decision-maker – such as the trial judge. It might even be necessary to provide for legal assistance in making such applications.
53. In some cases the closest relative to the deceased victim may be the same person that is charged with the homicide offence. The person concerned may have been given the opportunity to complete a Victim Personal Statement at the investigation stage but as a defendant that relative will have access to legal representation for the purposes of the trial. Thus it does not seem appropriate or necessary to extend the victim's advocate proposals to defendants.
54. There are various circumstances which may require particular arrangements to be made for the instruction of a victim's advocate. Special provisions might be required, for instance, if the relative was a child, a child in care or fostered, or an adult with learning disabilities. Or where there are multiple victims of homicide, a member of each family might want to be entitled to instruct an advocate, or all the families might be required to nominate one person to instruct a single advocate to act on behalf of them all.
55. If one advocate represents several relatives there is potential for conflict of interest between the relatives, which might make it difficult for the advocate to represent them all effectively.

Appointment of an advocate

56. If the functions of the advocate are to include representing the relatives' views to the CPS on pre-trial matters, then it might be appropriate to appoint an advocate at either the charge stage, when the Magistrates' Court (or Youth Court) sends the case to the Crown Court or at the Plea and Case Management Hearing in the Crown Court.
57. In order to make representations at the sentencing stage, the advocate would require appropriate rights of audience – either a barrister, or a solicitor with a higher court qualification. It is proposed that such advocates could be provided through a panel of appropriately qualified solicitors. Some changes to professional codes of conduct may be necessary.
58. A further option is that the victim's advocate should be a lay role. This may require changes to legislation in order to give such advocates rights of audience in court.
59. At present, Criminal Legal Aid is not means tested although the Criminal Defence Services Bill currently before parliament provides for this. The Government would welcome views on whether the provision of a victim's advocate should be subject to a means test if means testing is subsequently introduced in the Crown Court.

Functions of advocates

60. The Government believes that the following services could be provided by this pilot to the relatives of murder and manslaughter victims:

Independent advice on the proceedings

61. Relatives need information about the process in general and about the progress of their particular case, including details of applications, hearing and trial dates. Advice on the law and court procedure would benefit relatives by making them familiar with the process and would increase their confidence in the trial.

Pre-trial representations

62. There are a number of issues that are considered by the court during the pre-trial preparation stage. Some of these may affect the relatives and they may wish to express their views to the prosecutor so that they can be taken into account. The relatives are also likely to wish to be informed of the outcome of any decisions on issues that affect them.
63. Examples of the subjects on which the relatives may wish to express their views include matters such as bail (including any conditions imposed), withdrawal or downgrading of charge, discontinuance of criminal proceedings, applications for reporting restrictions and trial management matters (e.g. listing).

Cross-examination and notice

64. If a right is introduced for relatives of murder and manslaughter victims to make an oral statement to the judge, the defence might wish advance notice and the right to challenge this statement and to cross-examine the relative where the facts in the statement have a bearing on the sentence and are in dispute. The Government believes that the trial judge would be best placed to decide the rare cases in which this might be necessary to ensure the defendant's right to a fair trial is not compromised. A victim's advocate would also be in a good position to assist the relative to make their statement in a way which would avoid such circumstances arising. But we would welcome views on this point and on the practical implications in terms of advance notice.

Special assistance in making an oral statement

65. Where the relative is a child or a vulnerable or intimidated adult, they may require special help in speaking to the court, just as do vulnerable or intimidated witnesses in the ordinary course of events.³² This could include video-recorded evidence in chief (which may include a video-recorded Victim Personal Statement), giving evidence by live TV link, screens round the witness box, giving evidence in private, removal of wigs and gowns, communication aids and the use of an intermediary. For instance, in some cases it may be appropriate for a relative or friend to assist in giving the statement.
66. Some victims or relatives may choose to make a written statement but not an oral one at the sentencing stage.

³² Part II Youth Justice and Criminal Evidence Act 1999

Sentencing stage

Sentence indication

67. A defendant in the Crown Court may seek an indication from the judge of the sentence he would receive if he were to plead guilty at that point (this is most likely to occur at the Plea and Case Management Hearing). If the judge agrees to give such an indication, which occurs in open court, he will take account of such information as is available to him, which will include any Victim Personal Statement. If the relative is to have the opportunity to make an oral statement, with the assistance of an advocate, at the sentencing stage following conviction, logic suggests that the same opportunity should be available at this point in the process as well. This may be burdensome for the relatives and the indication hearing would be less straightforward as a result.

Pleas in mitigation

68. The prosecution has a duty to challenge any inaccuracies in the defendant's plea in mitigation. Problems arise, particularly in guilty plea cases where the prosecution does not always have sufficient information to carry out this responsibility effectively. An independent advocate might advise the prosecution on behalf of the victim's relatives on inaccuracies in the defendant's plea in mitigation, particularly where these include adverse references to the victim's conduct and reputation and so assist the prosecution in challenging these effectively. However, this might require the victim's relative and the advocate to attend the whole trial and also to be present and accessible in the court room during the sentencing stage of the trial.

Appeals

69. When considering a defendant's appeal against sentence, the Court of Appeal will normally have before it a copy of the Victim Personal Statement. If the relative has also made representations at the sentencing stage of the trial, it would be right for the Court of Appeal also to have a transcript of these representations.

Unduly lenient sentences

70. The Attorney General has power³³ to refer certain unduly lenient sentences, including manslaughter and murder tariff to the Court of Appeal for review. It is open to victims and relatives to write to the CPS or the Attorney General requesting that he exercise his power. This is a procedure on which the advocate might advise and assist the relatives.

Rights to information

71. In order to effectively perform the functions proposed, the advocate will need to be provided with certain information. For example, copies of applications made to the court by the prosecution and defence e.g. for advance sentence indication, reporting restrictions, special measures, details of dates of pre-trial hearings and the proposed trial date.

Training

72. Depending upon the role of the victim's advocate, it is likely that additional training will be necessary for legally qualified advocates to equip them for a wider support role.

³³ Part IV Criminal Justice Act 1988

Coroners' Courts

73. The Government is working on reforms to the coroner and death certification system in England and Wales, with particular reference to the needs of the bereaved in the inquest process. Those bereaved by acts of murder or manslaughter can be caused further distress when there is excessive delay in the release of the body of their loved one for the funeral to take place. This may happen because the defendant asks for more tests to be carried out on the body, or asks for the body to be retained by the coroner in case he or she requires further tests. The Government considers that there may be a role here for a victim's advocate to intervene on behalf of the relatives and to negotiate with the defendant's representatives for the release of the body at an early occasion, without prejudicing the defendant's right to a fair trial.

Pilots

74. The Government seeks views on these proposals. We believe that the best way to take the proposals forward is to establish pilots to examine them in practice. Such pilots will also enable the Government to assess the costs and legislative implications of implementing such a scheme more widely.
75. We propose to pilot this scheme in up to five pilot sites in England and Wales from April 2006. We will work with the judiciary, local criminal justice agencies and the Legal Services Commission to identify suitable sites and determine the length of the pilots.

6 Questions

76. Views on all aspects of the policies canvassed in this Paper are welcome. However, there are certain central issues, set out in Part Five, where the Government would particularly welcome views. Other supplementary questions on more technical matters follow on from these.

Victims' voices

(Paragraphs 40-45)

- Q1. Do you agree that we should pilot arrangements for victims' advocates in murder and manslaughter cases?
- Q2. Do you agree with the basic aims?

Victims' advocates

(Paragraphs 46-50)

- Q3. For the purposes of helping the relative make a personal statement in court, should relatives have a choice from:
 - a) an independent legally trained advocate with appropriate rights of audience
 - b) an enhanced Crown Prosecution Service role
 - c) a lay advocate
 - d) unrepresented appearance?

Communication and engagement with the bereaved

(Paragraph 51)

- Q4. Under the proposal, who do you think would be best placed to keep the victim's family better engaged in the criminal justice process:
 - a) an independent legally trained advocate
 - b) the police (e.g. a family liaison officer)
 - c) an enhanced Crown Prosecution Service role
 - d) the Witness Care Unit³⁴ (which would thus remain the key central point of contact and co-ordination)

³⁴ See paragraph 13

- e) an outside agency such as a voluntary organisation
- f) some combination of a) – e)
- g) other (please make suggestions)?

Choice of relative

(Paragraphs 52-55)

- Q5. Should a single advocate be made available in each case (including “serial” and multiple offences), able to assist as many of the relatives who wished to make an oral statement?
- Q6. Or should the ability to instruct an advocate be limited to certain persons? If so, who should decide and on what criteria – a judge in court, the police family liaison officer or the prosecutor?
- Q7. Should bereaved be encouraged to nominate one relative to instruct the advocate?
- Q8. Do you agree that the defendant should be excluded?
- Q9. Would any special provisions be required if the relative was a child, a child in care or fostered, or an adult with learning disabilities?
- Q10. If there were any conflicts of interest among relatives how might they be resolved?

Appointment of an advocate

(Paragraph 56-59)

- Q11. At what stage in the criminal process would it be most appropriate to appoint an advocate?
- Q12. Do you consider that victims' advocates should be appointed by a panel of the kind canvassed in paragraph 57?
- Q13. Do you consider that the option of a lay victim's advocate as canvassed in paragraph 58 should be investigated?
- Q14. Should there be a means test before a victim's advocate is provided?

Functions of advocates

(Paragraphs 60-66)

Independent advice on the proceedings

- Q15. What sort of information and independent advice would relatives of murder and manslaughter victims find it helpful to receive?
- Q16. How might these best be delivered e.g. leaflets, telephone contact, face to face advice or all of these?

Pre-trial representations

- Q17. On what pre-trial matters should the relatives of homicide victims be able to make representations to the prosecution?

Cross-examination and notice

- Q18. In the event that cross-examination were to be allowed by the trial judge, what sort of advice, support and preparation should the relative receive to assist them make the oral statement?
- Q19. Should the advocate have this preparation role?
- Q20. Should the advocate be required to give advance notice to the court that the relative wishes to make an oral statement? If so, how much notice would be appropriate?
- Q21. Do you consider that the relative should be required to give advance notice in writing of the contents of their oral statement?
- Q22. Do elements of the function mentioned in paragraph 64 require a legal qualification or could it be performed by others such as Victim Support or a Witness Care Unit?

Special assistance in making an oral statement

- Q23. Do you consider that special measures should be available to assist relatives who are children or vulnerable or intimidated adults?
- Q24. Should the procedure enable only an oral statement to be made?

Sentencing stage

(Paragraphs 67-68)

Sentence indication

- Q25. Do you consider that relatives should be able to make an oral statement before the judge gives an advance indication of sentence?

Pleas in mitigation

- Q26. Do you consider that an independent advocate should have a role in assisting the prosecution on behalf of the relative at the plea in mitigation stage of the sentencing process?
- Q27. If so, what action might be taken to facilitate access for the relative? For example, would it be practical for the defence to be required to give advance notice of pleas in mitigation, even where the plea contains nothing that is derogatory about the victim?
- Q28. Should the victim's relative be able to choose to liaise directly with the prosecution at court at this stage without using an advocate?

Appeals

(Paragraph 69)

- Q29. Do you agree that provided that the Court of Appeal has a copy of the transcript of the relative's oral representations at the sentencing stage of the proceedings, it is not necessary for the advocate to appear at the Court of Appeal?

Unduly lenient sentences

(Paragraph 70)

Q30. Do you consider that the advocate should be able to advise and assist the bereaved on approaching the CPS/Attorney General about the exercise of his powers to refer unduly lenient sentences to the Court of Appeal?

Rights to information

(Paragraph 71)

Q31. What information do you consider that the advocate would need in order to perform effectively?

Q32. In addition to the provision of information, how should the advocate be kept informed of the progress of the case more generally? For example should this be a responsibility of the police family liaison officer, CPS, or the court?

Training

(Paragraph 72)

Q33. What type of training might be needed and who is best placed to advise on and oversee training, for example Victim Support, Legal Services Commission?

Coroners' Courts

(Paragraph 73)

Q34. Do you consider that the role of the victim's advocate could include intervening, wherever possible, to ensure that the body of the victim is released as quickly as possible to the next of kin, to enable a funeral to take place?

7 Summary

77. Tackling crime and bringing offenders to justice is vital. Placing victims, and witnesses, at the heart of the criminal justice system is essential.
78. We have done a great deal to reform and modernise the criminal justice system – including improving support for victims of crime and investment in services to help victims.
79. But there is more to do. As a significant step towards that, we are committed to giving victims a voice by providing for victims' advocates – in the most serious crimes of murder and manslaughter – at key stages in the process of a trial.
80. We want to hear from people on this proposal. But we believe this is a radical reform which will help victims and their families, help the criminal justice system and help fight crime.

Annex A

About this Consultation Paper

Please note that any information provided in responses may be passed to colleagues within the Office for Criminal Justice Reform or elsewhere, and may be published in the summary of responses. We will assume that you are content for us to do this, and that, if you are replying by e-mail, your content overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary. **If you wish your response or name to be kept confidential please ensure this is clearly marked on your response.** Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

Submissions from respondents may also be subject to release under the Freedom of Information Act 2000. If you have instructed us accordingly, we will ensure that your views are not attributed should they be released in this way.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The consultation criteria are set out in Annex B.

In line with the criteria, a summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on our website.

Please send your comments, by **30 November 2005**, to:

Julian Schon
Trial Policy and Procedure Unit
Office for Criminal Justice Reform
Ground Floor, Fry Building
2 Marsham Street
London
SW1P 4DF

Hearingthevictim@cjs.gsi.gov.uk

Further copies of this consultation paper can be obtained from this address or by telephoning Nigel Holden on 020 7035 4973.

It is also available on-line at www.cjsonline.gov.uk and www.dca.gov.uk

If you require this document in another format e.g. large print, Braille or audio taped, please contact us at the above address.

Annex B

Consultation criteria³⁵

This consultation follows the Code of Practice on Consultation. The criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timetable for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:

www.cabinet-office.gov.uk/regulation/Consultation/introduction.html

Consultation Co-ordinator

If you have any complaints or comments about the consultation process, you should contact the Home Office consultation co-ordinator, Pio Smith

by email at:

Pio.smith31@homeoffice.gsi.gov.uk

or by writing to:

Pio Smith

Consultation Co-ordinator

Performance and Delivery Unit

Home Office

3rd Floor Seacole

2 Marsham Street

London SW1P 4DF

³⁵ 'Code of Practice on Written Consultation', Cabinet Office (November 2000)

Annex C

Consultees

- The Lord Chief Justice of England and Wales
- Her Majesty's Council of Circuit Judges
- Justices' Clerks' Society
- Magistrates' Association
- Criminal Procedure Rules Committee
- The Bar Council
- The Law Society
- Legal Aid Practitioners Group
- Legal Services Commission
- Legal Action Group
- London Criminal Courts Solicitors' Association
- Justice
- Liberty
- Law Centres Federation
- Victim Support
- Home Office Victims' Advisory Panel
- National Society for the Prevention of Cruelty to Children (NSPCC)
- Victims' Voice
- Support After Murder and Manslaughter (SAMM)
- Mothers Against Murder and Aggression
- Victims of Crime Trust
- National Citizens Advice Bureau
- Mothers Against Guns
- North of England Victims' Association
- The Zito Trust
- SCARD
- Aftermath Support
- Road Victims Trust
- Road Peace
- Brake
- The Survivors Trust
- Rape Crisis Coordination Group
- Women's Aid
- Refuge
- Network for Surviving Stalking
- Youth Justice Board
- The Probation Service
- Criminal Cases Review Commission
- Association of Chief Police Officers
- Association of Police Authorities (APA)
- Police Federation
- Police Superintendents' Association
- Academics
- Coroners Advisory Group
- Stonewall
- Legal Action for Women

Annex D

Useful links and further reading

Government Departments and Agencies

General information on the Criminal Justice System can be found at Criminal Justice System online: www.cjs.gov.uk

Home Office: www.homeoffice.gov.uk

Crown Prosecution Service: www.cps.gov.uk

Department for Constitutional Affairs: www.dca.gov.uk

Her Majesty's Court Service: www.hmcourts-service.gov.uk

Voluntary Organisations

Victim Support – a national voluntary organisation providing emotional support and practical information to victims and witnesses of crime: www.victimsupport.org.uk

Support After Murder and Manslaughter (SAMM) – an organisation whose members provide mutual support to those bereaved through homicide: www.samm.org

Mothers Against Murder and Aggression – a charity which supports and campaigns on behalf of families and friends of murder victims: www.mamaa.org

Justice – an all party, law reform and human rights organisation working to improve the legal system and the quality of justice: www.justice.org.uk

Liberty – an organisation that campaigns for human rights and civil liberties: www.liberty-human-rights.org.uk

Government Papers and Studies

Information on Victim Personal Statements can be found at: www.homeoffice.gov.uk/justice/victims/personal/index.html

Information on the Victim & Witness Delivery Plan can be found at (this is a secure section – accessible to CJS agency representatives with a password to the site): www.cjsonline.org/secure/localboards/guidance.html

The recent consultation document on the Victim's Code of Practice can be found at: www.cjsonline.gov.uk/the_cjs/whats_new/news-3121.html (please note that the consultation closed on 30th May 2005)

No Witness, No Justice – The 'No Witness, No Justice' project is introducing dedicated Witness Care Units across England and Wales, bringing police and the Crown Prosecution Service together to jointly meet the individual needs of victims and witnesses in criminal court cases. A paper setting out the programme can be found on the Cabinet Office website at:
www.cabinetoffice.gov.uk/opsr/local_service_projects/criminal_justice/index.asp

Justice for All – The White Paper, Justice for All, sets out a long term strategy to modernise the criminal justice system from end to end. The paper can be found at:
www.homeoffice.gov.uk/docs3/justiceforall_whitepaper.html

Other Reading

In their own words – In December 2004, the NSPCC produced a report entitled 'In their own words' examining the experiences of 50 child witnesses in the criminal justice system. A summary of the report can be found at:
www.nspcc.org.uk/inform/Research/Summaries/InTheirOwnWords.asp



Criminal Justice System: working together for the public