

# THE COMMISSION FOR VICTIMS AND SURVIVORS

## NORTHERN IRELAND'S RESPONSE TO THE SENTENCING REVIEW

### NORTHERN IRELAND PUBLIC CONSULTATION

#### 1. Background

1.1 The Commission for Victims and Survivors for Northern Ireland (the Commission) was established in June 2008 under the Victims and Survivors (Northern Ireland) Order 2006, as amended by the Commission for Victims and Survivors Act (2008).

1.2 The Commission is a Non-Departmental Public Body of the Executive Office. The principal aim of the Commission is to promote awareness of the interests of victims and survivors of the Northern Ireland conflict. It has a number of statutory duties that include:

- *Promoting an awareness of matters relating to the interests of victims and survivors and of the need to safeguard those interests;*
- *Keeping under review the adequacy and effectiveness of law and practice affecting the interests of victims and survivors;*
- *Keeping under review the adequacy and effectiveness of services provided for the victims and survivors by bodies or persons;*
- *Advising the Secretary of State, the Executive Committee of the Assembly and any Body or person providing services for victims and survivors on matters concerning the interests of victims and survivors;*
- *Ensuring that the views of victims and survivors are sought concerning the exercise of the Commission's functions; and*
- *Making arrangements for a forum for consultation and discussion with victims and survivors.<sup>1</sup>*

1.3 In November 2009, the Office of First and deputy First Minister (now the Executive Office) introduced a ten-year strategy for victims and survivors. This strategy provides a comprehensive approach for taking forward work on a range of issues relating to victims and survivors.<sup>2</sup>

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<sup>1</sup> The functions of the Commission relate to those set out in the Victims and Survivors (Northern Ireland) Order 2006 as amended by the Commission for Victims and Survivors Act (Northern Ireland) 2008.

<sup>2</sup> Following advice from the Commissioner for Victims and Survivors in November 2019, the Strategy was extended to ensure the continuation of service delivery and facilitate the development of a new strategy.

1.4 The Strategy acknowledges the uniqueness of our circumstances and the need for a victim and survivor-centred approach:

- *The pain and suffering which has occurred;*
- *The long-term impact of violence on victims and survivors;*
- *That victims and survivors are individuals and therefore there is no single approach which will suit everyone; and*
- *The need for victims and survivors to be invited to play a part in building a more peaceful future, but that as people who have suffered most they should feel safe, should be treated with dignity and should move at their own pace.*<sup>3</sup>

1.5 The Strategy's aim is to put in place comprehensive arrangements to ensure that the voice of victims and survivors is represented and acted upon at a governmental and policy level and continues to shape the landscape for service delivery.

1.6 Sentencing is a vital element of the justice system in Northern Ireland and is an area of interest to many victims and survivors. The Commission therefore welcomes the opportunity to respond to DoJ's consultation.

## **2. Contextual Understanding**

2.1 The Commission believes that all Government departments need to acknowledge the ongoing impact of the Troubles upon society.

2.2 It is recognised that many years of violence has created a society which requires much work to be done in order to address legacy-related matters. This is no more clearly manifest than in meeting the needs of victims and survivors; those whose lives have been disproportionately affected by conflict-related incidents.

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<sup>3</sup> Office of the First Minister and deputy First Minister (2009) *Victims and Survivors Strategy*, Belfast: The Stationery Office, p.2.

2.3 The impact of the Troubles on Northern Ireland society cannot be underestimated:

- 26% of the Northern Ireland population have been affected or a family member continues to be affected by a conflict-related incident<sup>4</sup>;
- 3,720 conflict-related deaths between 1966 and 2006<sup>5</sup>;
- 40,000 injured<sup>6</sup>; and
- 213,000 experiencing significant mental health problems<sup>7</sup>.

2.4 The interpretation of a “victim and survivor” is set out in the Victims and Survivors (Northern Ireland) Order 2006 as:

*3.—(1) In this Order references to “victim and survivor” are references to an individual appearing to the Commissioner to be any of the following—*  
*(a) someone who is or has been physically or psychologically injured as a result of or in consequence of a conflict-related incident;*  
*(b) someone who provides a substantial amount of care on a regular basis for an individual mentioned in paragraph (a); or*  
*(c) someone who has been bereaved as a result of or in consequence of a conflict-related incident.*

*(2) Without prejudice to the generality of paragraph (1), an individual may be psychologically injured as a result of or in consequence of—*  
*(a) witnessing a conflict-related incident or the consequences of such an incident; or*  
*(b) providing medical or other emergency assistance to an individual in connection with a conflict-related incident.*

2.5 The interpretation of victim and survivor, as detailed in the Order, is applicable to individuals engaged with cases travelling through the criminal justice system.

2.6 The Commission recognises that sentencing is a complex process. Since the last review in 2005, there have been many sentencing changes and a better understanding of the factors influencing offending behaviour. It is recognised that there are more appropriate ways of dealing with offenders than simply

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<sup>4</sup> NISRA (2017) *Commission for Victims and Survivors Module of the September 2017 Northern Ireland Omnibus Survey*, Belfast: NISRA.

<sup>5</sup> McKitterick et al (2007) *Lost Lives*, Edinburgh: Mainstream Publishing.

<sup>6</sup> Smyth et al (1999) *The Cost of the Troubles Study – Final Report*, L/Derry: INCORE, p.37.

<sup>7</sup> CVSNI (2015) *Towards a Better Future: The Trans-generational Impact of the Troubles on Mental Health*, Belfast: CVSNI.

increasing prison sentences. Effective and appropriate sentencing policy can reduce offending levels and directly improve outcomes for victims and the wider community.

### **3. Principles and Purposes of Sentencing**

3.1 It is the Commission's view that clearly defining principles and purposes for sentencing should ensure that victims have a better experience when engaging with criminal justice processes. Clearly setting out minimum standards, rights, support and protection should empower victims and witnesses and provide assurances at a time when they may feel vulnerable.

3.2 In 2016 the Victims and Survivors Forum developed 'Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past':

- Co-design and collaboration;
- Victim-centred and victim-led;
- Inclusive;
- Independent and impartial; and
- Fit for purpose.<sup>8</sup>

3.3 The Forum's principles are used by the Commission when reviewing the adequacy and effectiveness of law, practice and services, and have informed our response to this consultation.

3.4 The Commission believes that the proposed principles and purposes provide the appropriate standards for sentencing.

3.5 The Commission welcomes the intentions to improve awareness, understanding and clarity in how sentencing decisions are reached. By ensuring that there is a clear understanding of the principles and purposes of sentencing, this should allow more clarity, provide greater transparency and support consistency.

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<sup>8</sup> CVSNI (2017) *Key Guiding Principles for Existing and Proposed Organisations and Processes Dealing with the Past*, Belfast: CVSNI.

3.6 The Commission also welcomes that the review suggests having a definition of the principles and purposes of sentencing within the legislation. This would enhance sentencing policy and assist with a greater understanding of sentences imposed by courts.

#### **4. Public Perceptions of Sentencing**

4.1 Having the facility to ensure that the public can access information in a clear and user-friendly manner will help with public perceptions of sentencing, allowing the public to have a better understanding of the processes involved. It also allows victims to make an informed choice regarding whether they wish to read a victim impact statement in court, providing greater autonomy over involvement with the sentencing process, and enable them to make better informed decisions.

4.2 Equally important are community impact statements and their role in respect of incidents that have a significant impact on community confidence. Prepared by community representatives, they explain the effect the offending has had on the community, and can make an important contribution to court considerations. The Commission is aware that uptake has been minimal and efforts should be made to improve the awareness and use of community impact statements.

4.3 The Commission welcomes the acknowledgement that it is important to work closely with the media to promote an understanding of the complexities of the justice system, including the work of the DoJ and other agencies such as the PSNI and PBNI.

4.4 As the media plays a crucial role in providing and directing the public on crime, there needs to be a robust process to ensure that what is within a 'summary' is detailed in a transparent, clear and understanding way. Those who provide the information should present their data in clear way to ensure that it is user-friendly to both those within the media and to the public.

4.5 The Commission agrees with DoJ's view that agencies should continue to foster effective engagement and strong working relationships with the media, to ensure that necessary information about sentencing is shared with the public.

4.6 How the media engage with victims and survivors has long been an area of interest to the Commission, in the context of how victimhood has been, and continues to be, constructed, reproduced and contested in Northern Ireland. In March 2019 the Victims and Dealing with the Past project published a set of media guidelines on how best victims and survivors can most effectively interact with the media – including print, broadcast and social media. These guidelines were produced in association with the Commission and are informed by international best practice and the voice and experience of victims and survivors of the Troubles. Two sets of guidelines – one for victims and survivors on media engagement and one for journalists, editors and educators on how to engage with victims and survivors and report on legacy issues – were produced.<sup>9</sup> The Commission would suggest that DoJ refers to these guidelines as a reference point for work in relation to developing media engagement approaches.

## **5. Hate Crime**

5.1 The impact of hate crime can be long lasting and far reaching, going beyond the victim's own experience and increasing fear in the wider community.

5.2 Twenty-one years after the Belfast/Good Friday Agreement, sectarianism continues to exist in Northern Ireland, despite continuing efforts on the part of Government, community-based organisations and others to deal with its many manifestations. Although often triggered by events, it can erupt at any time, produce adverse consequences, and hinder reconciliation.

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<sup>9</sup> The guidelines can be accessed here: <https://victimsandthepast.org/outputs/media-training-workshops/>

5.3 The legacy of the conflict is evident with continuing paramilitary activity and intimidation. The impact of segregation and sectarianism continues and impacts significantly on those living in areas worst affected during the conflict.

5.4 It is the Commission's view that when a hate crime has been identified during the prosecution process, prosecutors should be under duty to flag this to the court. Recognising offences of hate crime can provide a number of benefits, such as informing rehabilitative work, which has been proven to be a successful in reducing reoffending rates.

5.5 When dealing with a hate crime, it is the Commission's view that courts should be required to record the fact that aggravation due to hostility has been considered in the sentencing decision. This allows for transparency within the sentencing process, and that the process is victim-centred within its approach. By recording that there was aggravation due to hostility shows that the factor of hate crime has been taken seriously; this can then lead to increase in public confidence and may encourage more victims to report incidents.

## **6. Attacks on Frontline Public Services**

6.1 The Commission believes that those delivering front line services need to be protected in order to assist those in need.

6.2 Whilst the Commission agrees with the current specific provision for offences of assault on police officers, fire and rescue service personnel and ambulance workers, there is a need to provide protection for other public servants who put themselves at risk of harm.

6.3 The Commission would welcome the inclusion of all public servants who put themselves in harm's way.

6.4 The Commission would also welcome creating a statutory aggravating factor, for assault offences where the victim is a specified public servant. This would allow for monitoring the impact of legislation and the maintenance of statistics, therefore informing the development of effective policy and practice.

## **7. Conclusions**

7.1 The Commission welcomes the opportunity to submit this response to DoJ's consultation.

7.2 The Commission would take this opportunity to highlight the entitlements contained in the Victims Charter. The Commission has been supportive of efforts to make it easier for victims to understand and access their rights and welcomed the Charter's placing on a statutory footing in 2015. The Commission would emphasise the requirement for all those involved in the criminal justice sector to ensure that efforts continue to inform individuals of their entitlements.

7.3 In our response we have sought to highlight a number of points to ensure that the sentencing recognises the needs of victims, in the context of identification as victims and survivors of the Troubles.

7.4 The Commission hopes that the commentary set out in this response is of assistance and we look forward to working with DoJ regarding the needs of those impacted by conflict-related incidents.

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