RESPONSE TO THE MINISTRY OF JUSTICE
CONSULTATION ON THE CODE OF PRACTICE
FOR VICTIMS OF CRIME

Proposals for Revising the Code

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Open Letter to the Lord Chancellor: Professor Theo Gavrielides, RJ4All Founder and Director

I am writing in response to your Call for consulting on revising the Code of Practice for Victims of Crime (VCOP). Attached is a response that is formally submitted by Restorative Justice for All (RJ4All), which I founded and currently direct. The consultation response has a dual purpose. It aims to inform your next steps in revising the code, while increasing its awareness amongst victims and our constituents. These are victims of crime, users of the justice system, restorative justice beneficiaries and practitioners, educators and organisations working in the justice and human rights field.

We aim to support you in your new steps and hence our keen response in collecting user-led evidence and some key recommendations that we present through this consultation document. Our response brings forth a number of issues that we consider strengths and weaknesses of your approach. The response has been prepared by Mr. Ben Lyon, RJ4All Board member and one of the longest serving restorative justice UK practitioner and Ms. Gabrielle Browne, a victim of violent crime, RJ4All Board member and a campaigner of victims’ rights. RJ4All has worked with them to collect evidence from our work with victims and users of the criminal justice system. We used this evidence to create a narrative around issues impacting on victims.

In this open letter, I want to emphasise the need not only to strengthen the law in protecting victims and bringing this law in line with the Victims’ Directive, but also the importance of working with communities and victims directly. We also believe that the law alone cannot help you deliver your intentions for serving victims better. Speaking with victims, you will also understand that the line between who is a victim and who is an offender are blurred. In the vicious circle of violence, linear definitions must be viewed carefully especially when aiming to serve those who have been harmed (Gavrielides, 2015).

I will conclude with one warning. Over the last few decades, we have seen many well-intended victim strategies, revisions of codes and funding schemes for victims’ organisations. As you move forward with your revision, I want to remind you of the power that continues to be manifested onto the vulnerable. The very concept of victims’ rights was introduced within the human rights framework in the hope that it will bring some balance against the manifestation of this power. Without acknowledging this power, any attempt by your government to implement the victims’ strategy and revisions for improving the code will fail. It is the power structures within our society and our criminal justice system that I want to bring to the forth of this consultation.

We would be happy to share any response that you might have to what we have proposed.

Dr. Theo Gavrielides
Director and Founder
RJ4All, 2019
About Restorative Justice for All

Restorative Justice for All (RJ4All) is charitable NGO with a mission to advance community and social cohesion and redistribute power within society at the local, national and international levels. We do this by using the power of education as well as the practices (mediation, conferencing, circles, dialogue, workshops) and values of restorative justice including power sharing, fairness, equality, dignity and respect.

RJ4All is the leading Europe-wide restorative justice network with members from over 40 countries. We have a publishing house that publishes the peer reviewed Internet Journal of Restorative Justice (IJRJ) and Youth Voice Journal (YVJ).

We achieve our charitable aims by:

- Carrying out educational projects and information campaigns in the interest of children and young people, communities, victims and marginalised groups at the local, national and international levels.
- Providing internships to young people, those at risk of being affected by crime and marginalised groups as well as high quality volunteering opportunities involving social action.
- Bringing harmed parties together (directly or indirectly) through restorative justice to negotiate solutions and restore the harm that they experienced.
- Increasing public awareness of restorative justice, human rights and inter-cultural dialogue.
- Carrying out evaluations and research on restorative justice, criminal justice, human rights and equality programmes.
- Building bridges between communities and the powerful.
- Acting as a learning network between practitioners, researchers, policy makers and users of the justice system.
- Increasing knowledge and pushing the boundaries of restorative justice especially in contested areas of practice (e.g. domestic violence, sexual abuse and hate crimes).
- Making restorative justice more accessible to young people, junior researchers, students, practitioners, policy makers, the public and the media.
- Influencing international, regional and local policy, legislation and practice.
- Providing expert, tailored and independent advice on restorative justice, human rights, equality and criminal justice.
Introduction & Background to our response

Background to the response.

This response is based on the experience of a leading restorative justice practitioner, a victims’ campaigner and victim of crime a researcher in victims and human rights and RJ4All collective knowledge. Furthermore, it draws evidence particularly from the following literature:


The previous revision and the strengths of the Victims’ Strategy

In the past, RJ4All welcomed the Victims Strategy intention to strengthen The Code of Practice for Victims of Crime (commonly referred to as the “victim’s code”), which was created by the UK Government in 2006 and revised in 2015 (Ministry of Justice, 2018; 12). The victim’s code is intended to help victims understand their rights and entitlements following crimes being committed against them. However, although the code had been revised, there were still gaps in the policy causing many victims to be unaware of their rights during the criminal justice process. One of this gaps relate to issues that are covered by the Victims’ Directive and are yet to be included at the legislation and policy level in the UK (Gavrielides, 2014).
The Rights of Victims
With the introduction of the Victims Strategy, an emphasis was placed on the rights of victims to make a Victim Personal Statement in the court of law, which gives victims an opportunity to explain how the crime has affected them. Prior to the creation of the Victims Strategy, only around 15% of victims said they were given the opportunity by the police to make a Victim Personal Statement (Ministry of Justice, 2018; 29). Additionally, the victim’s code has little mention of entitlement to pre-trial therapy. The Victims Strategy aims to place priority on this service and make all entitlements clear to victims of crime, who are going through the criminal justice process, by creating easily accessible, explicit information about services offered to victims through the GOV.uk website (Ministry of Justice, 2018; 20). These amendments to the victim’s code allow victims to fully understand how they will be supported throughout their interactions with the criminal justice system in order to reduce confusion and fear while increasing their level of confidence that their needs will be met during a time of vulnerability.

Victim Empowerment
One of the strengths of the Victims Strategy is the concept of victim empowerment. Giving victims a choice in how they communicate with police and whether they want to report the crimes against them or not is central to the Victims Strategy. Many victims can become overwhelmed when communicating with police due to being in contact with multiple individuals, so the strategy emphasises the need for victims to communicate with a single point of contact who can assist them in navigating their case (Ministry of Justice, 2018; 23). Additionally, the strategy offers alternative courses of action outside of court for any victims who do not want to engage in the formal criminal justice process, such as compensation, formal apologies, or restorative justice (Ministry of Justice, 2018; 30). These courses of action help empower victims in making their own decisions about how they’d like their cases handled and while promoting confidence in the criminal justice process.

The Changing Nature of Crime
As the second key strength, the Victims Strategy acknowledges the changing nature of crime and includes new offenses into the policy to protect more victims and bring offenders to justice including revenge porn, coercive or controlling behaviour, and sexual communication with a child (Ministry of Justice, 2018; 11). The strategy also specifically notes how advancements in technology have created new opportunities for victimisation such as “up skirting” and “cyber-stalking” (Ministry of Justice, 2018; 10). The strategy’s emphasis on the evolution of crime is significant due to the fact that just under half of crimes committed in England and Wales fall under the category of cyber-crime (Ministry of Justice, 2018; 16). Ensuring support and entitlements to victims of cyber-crimes cover a large portion of cases of victimisation, thus the strategy is making strides to safeguard all victims of crime regardless of if they are victims of crimes as serious as stalking or crimes where there may be no victim-offender contact such as fraud.
Consultation Questions

1. Are there any specific areas/issues that you think we should also focus on in our second consultation?

Right not Concessions. The main test that we apply is whether the system serves the victim, or does the victim serve the system? Sadly, it seems that the rights and certainties of the Victims Directive have been watered down within current and previous versions of the Code of Practice for Victims of Crime (VCOP), to become reluctantly yielded concessions.

We maintain that any further proposals should be directed towards a comprehensive Victims Law, based upon the original Victims Directive. This measure is long overdue and experience under the current VCOP is proof that only legally enforceable victims’ rights will ensure compliance.

We advocate a change in direction, away from an advisory basis towards the compulsory enforcement of victims’ rights. A crisis has arisen, particularly in relation to violent sexual crimes whereby there is a systemic failure of the Criminal Justice System to properly investigate and prosecute crimes. Victims of crime, especially of violent sexual crime, must have their right to life and privacy reinforced by specific legislation.

We advocate for legal representation for victims. They should have a right of address to the court and the same right to representation as the perpetrator of their crime. This has always been refused as being against current law - in which case the law needs to be changed. This is especially relevant when thousands of cases are not even being investigated because the evidence of victims is not considered, because of alleged problems with disclosure. The failure of the Criminal Justice System (CJS) agencies is not the fault of victims. A victim’s evidence must be challenged and its veracity tested. However, when their integrity or their character is challenged then it is a matter of equity that they too should have access to legal representation. A major by-product of this change would be that there would be a swift increase in the compliance with any Victims’ Code, Directive or Law. Restorative Justice principles guide us towards the empowerment of victims in order that their part in the justice process is lead by them and for their benefit. They should not be reduced to being actors in the narrative of some CJS agency.

Information about Restorative Justice provision is rarely provided (whilst VCOP states that it should be), even though research indicates that this is welcomed by those who take part. We believe that access to restorative practice should be made available, at the free and informed choice of the victim.
**Individual assessment of victims**, to identify their needs, especially those relating to special protection has always been part of VCOP, and more importantly as a right and requirement in the Victim Directive (article 22). This measure is the basis for all actions that follow, yet it is rarely undertaken. Therefore, we advocate for measures to enable the **self-assessment by victims** so that they can ensure that CJS agencies can be made aware of their needs and be held accountable.

**Victim Personal Statements** should be treated as the right of the victim, rather than a concession by the CJS. We propose that assistance is provided for victims to **prepare and write their own VPS**, especially as the main agencies so frequently fail to carry out their duty in this respect.

**Data.** The enforced trawling, seizure, withholding and disclosure of victims’ sensitive personal data has become a scandal. Victims of crime, especially of violent sexual crime, must have their right to life and privacy reinforced by specific legislation. They must have equal access to legal representation to protect them from re-victimisation and the systemic failure of the Criminal Justice System to properly investigate and prosecute crimes against them.

The outsourcing of victim related services have become routine and our experience is that this can cause problems. The sharing and transfer of victims’ data are one area of concern and the issue of the blanket use of the “criminal process” exemption needs to be addressed.

**Scrutiny:** Our experience with monitoring services lead us to believe that independent, real-time scrutiny should be routine, in order to ensure the quality of delivery and best value for victims.

**Information and Communication:**

2. Do you agree with the proposal to have separate guidance alongside the Code aimed at victims and practitioners?

The next Code should be a commentary, or guidance on a Victim’s Law. Without this legal basis it has no force and will be ignored. In the meantime it needs to be clear and transparent. Any such document should not need further guidance. The concept should be of open and accessible justice. If we need layer upon layer of guidance then we have failed. The next code – and the related legislation – should have the same form as the Victim Directive. Any guidance should be open and transparent. There is no evidence that any part of that guidance should be discreet or hidden from the public. The concept should be one of open justice.

3. Do you agree with the proposal to change the structure to a smaller number of overarching rights?

The rights of victims, as set out in the Victim Directive, should not be restricted, reduced or minimised. This would lead to bureaucratic and political intervention, which has no place in a justice
We are concerned by the concept of “a smaller number of overarching rights.” Which of the victims’ rights is it proposed to lose or delete? There have been constant reviews and revisions of the Code. In the absence of a firm commitment and timetable for the formation of a Victim’s Law this represents another bureaucratic attempt to kick this issue further down the road.

4. How else could we improve the accessibility of the Code?

The London PCC started to commission an independent IT based “Gateway,” although this has fallen from favour. It has been absorbed into the digital offering of the supplier for the Integrated Victim and Witness service. This creates a natural bias and promotion of their services, rather than providing independent information on which a victim can base the best next steps for them. On balance we are wary of victim services being restricted to monopoly providers, as this can starve out smaller community based, or specialist agencies. We have had some experience and involvement with this proposal and believe that a national system should be easy enough to establish.

5. Do you agree that there is a particular need to strengthen communication from the point of charge?

There should be no need for this question. This is a matter of right. If you create a duty under law then police officers and CPS officials will become jointly and severally liable, i.e. they will become accountable – and the necessary communication will take place.

6. Should the victim’s preferences relating to frequency and preferred method of contact through their criminal justice journey be recorded as part of the initial communication? And if so, should these preferences form part of the referral process between agencies? A victim’s preferences will change through their justice experiences, possibly until the parole stage. Therefore they cannot predict their future needs. A clear statement of rights and services should be served. Data issues, such as GDPR regulations, will add to this complexity. Best practice suggests a “dashboard” approach, within an online facility, thus enabling them to set out (and change) their requests and to make this clear for professionals to respond. The transfer of personal sensitive data provided by the victims is a wider and more problematic issue, which needs considerable attention. Please give reasons for your response.

Victims’ Voice:

7. Do you agree with the proposal to provide agencies with more discretion on when the Victim Personal Statement is offered? Please give reasons for your response.
The Victim Personal Statement is, to quote from current CPS guidance on VPS, “this important victim’s right under the Code of Practice for Victims of Crime.” It follows that this is not a matter of discretion. It currently is offered by Police and CPS as a matter of chance or individual discretion. This must change.

We advocate empowering victims to write and provide their own VPS. There is no legal obstruction to their right of expression and this may shift the balance of power, enhancing the role of the victim.

8. Do you agree that victims should be provided with a copy of their Victim Personal Statement?
   This is an astounding question. It is the Victim’s statement (see above). Do we question the defendant’s right be allowed to see his statement, or his mitigation? Should the judge be allowed to see a copy of their summing up? Or the jury be allowed to review their notes?

9. Are there any additional comments you wish to make on changes to the Victim Personal Statement process?
   As outlined above we will continue to advocate for, and to enable victims to make their own self-assessments (article 22 Victim Directive) and subsequently their own VPS (article 10 Victim Directive). Experience has shown that any such statement is often taken or dictated by police, in order to suit their case handling needs, rather than those of the victim. Sadly even this is a rare occurrence. If victims, even a few, write their own then officials will become accountable and the job will be completed. This will be greatly enhanced when victims have the opportunity to access legal representation. This is the most important measure to ensure equity within the CJS and the Courts.

Mentally Disordered Offenders:

10. Which agency is best placed to support victims of unrestricted patients?
   We do not have enough experience in this field to offer an opinion.

Support:

10. Do you agree that the right to access practical and emotional support for victims should be made clearer in the revised Code, for those victims:
    
    1. a) who do not report incidents to the police?
    We are broadly in agreement. The issue of non-reporting victims is clearly set out in the Victim Directive. A problem may arise with long term “retrospective” victims, with assessing past needs, veracity and proportionality of any service provision
    2. b) who choose to withdraw after reporting an incident to the police?
    There is also a large and growing sub-set of victims, i.e. those whose case the police has refused to,
or failed to prosecute, or those whose case the CPS has not considered worthy of prosecution.

3. c) at the end of their case?

There has to be some cut off period, however there should be no end to any liability in law. Likewise any therapeutic or medical intervention should not be terminated at the end of the legal case (or sentence?), the decision should be related to the needs of the victim rather than the length of the case.

Please give reasons for your response.

Specialist Support:

12. Do you agree with the proposed changes to eligibility categories for access to specialist support? Please give reasons for your response.

The Home Secretary proposes, “to amalgamate the existing ‘victims of the most serious crime and persistently targeted victims’ categories into a single category of ‘victims with the greatest needs’. “ We are extremely concerned that it is proposed to minimise or withdraw support from any group of perceivably “lesser” victims. The problem will be to ascertain who has “the greatest needs.” There are obviously resource implications, but also a political issue as to where the power to make this judgment lies. The Victim Directive is clear that there should be no hierarchy of victims. We suggest adhering to the clear wording of Article 22 of the Victim Directive and its associated guidance.

13. Are there other types of support or information that would benefit those victims who are offered specialist support?

The London model of a single point of contact should be encouraged. But our experiences show that any such outsourced monopoly provision should be subject to on-going independent scrutiny.

14. What changes should be made to the existing needs assessment process?

A needs assessment should be offered and this offer, plus any response, recorded, i.e. signed off by the person responsible. It should be a matter of record — a compulsory field in any crime-reporting software or database. There appears to be a need for attitudinal and procedural training across the whole field of the CJS.

Victims should, “receive a timely and individual assessment, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings.” (article 22 V.D.)

Self assessment should encouraged…. Victims are not subjects to be ordered, or suspects to be automatically doubted. If there is a perceived need for these VPSs to be redacted then the victim, as author, should be informed and have the right to challenge this action.
Accountability

15. Do you agree with that PCCs should work with their local criminal justice partners to adapt the victim guidance to explain the local offer for victims? Please give reasons for your response.

It is obvious that PCCs will have local variations. Nevertheless the Criminal Justice System is a national matter and the ultimate responsibility must lie with central government. We need national legislation so that responsibility cannot be derogated to local PCCs. This highlights the need for a Victim’s Law – and the need for victims to have the ability to challenge for their rights and entitlements.
Additional points

‘The Victim’ Definition
The EU Victims’ Directive sets a clear definition for a victim of crime and it understands victims in a much broader term than the Victims Code. The Directive captures groups who have traditionally been excluded from protection, including migrants, refugees and asylum seekers.

Access to Restorative Justice (RJ)
Although the victims code offers alternative courses of action outside of court for any victims who do not want to engage in the formal criminal justice process through compensation, formal apologies and restorative justice, RJ4All remains concerned that victims are not always being offered their entitlements in accordance to the Victims’ Code. There is evidence to suggest that only 4% of victims were aware that restorative justice can be offered (where an offender had been identified) as an alternative course of action (ONS, 2018).

RJ4All believes that a restorative approach to support victims of crime has benefits for all involved. We further recommend an increased emphasis on the role of voluntary sector, community representatives, and other frontline organisations in providing restorative justice services for victims of crime and their families.

Gavrielides (2017) research demonstrates that the majority of UK victims of crime (73%) have heard of restorative justice, however, over half of the respondents (60%) have not been offered restorative justice. Furthermore, our data suggests that there is a demand for this type of service, as the overall majority of Gavrielides (2017; 2018) respondents (72%) would like the opportunity to participate in RJ processes. This is further enhanced by literature, as research shows clear potential in using restorative justice to address the victim’s needs and wishes, and thus, it can act as a tool for empowerment for the victim (Gavrielides, 2015).

RJ4All has stressed the need to increase the awareness amongst victims, as well as criminal justice agencies and victim support services, of restorative justice through the promotion of public dissemination projects and free training courses. We recommend that alternatives to prosecution for victims, who want them, must be provided and suitable options should be carefully evaluated and discussed with the victim. Furthermore there is a demonstrable need for supervision, monitoring and scrutiny – especially in contracted services. Service delivery could be patchy, as demonstrated by the following quotations from our User Scrutiny Panel, which outline some of the good and bad practices identified from the service delivery:

Domestic Violence
The European Directive on minimum standards on the rights, support and protection of victims of
crime declares that victims must have access to safe and competent restorative justice services. However, in cases of domestic abuse, the use of restorative justice is not evident. Our recent RJ4All publication’s book (Gavrielides and Tsagas 2019) identified best practice examples between increasing mutual understanding and awareness of specific protection needs in Europe. Our research found out that restorative justice can provide an alternative for victims of domestic abuse by empowering victims while enabling offenders to engage in dialogue based solutions to the problems that domestic abuse has caused to them, if conducted in a safe and controlled environment and addressing the wishes and needs of the victim (Gavrielides, 2015). As the readiness and suitability of restorative justice in cases of domestic abuse remains largely unexplored, we recommend that more in depth research is needed.

Hate Crime
As part of the revision, new measures to train police officers and staff to address the needs of hate crime victims and improving their knowledge of the local support available for victims will need to be implemented (Ministry of Justice, 2018; 26). We remain concerned about the lack of community led approaches and the use of social media and other online platforms as a resource to tackle hate crime.

Our evaluation of RJ practices with hate crime cases found out that those involved reported increased levels of victim empathy, community cohesion, decreased feeling of conflict and harm and reduced feeling of isolation. This is aligned with current academic research, which has found that it has so far been a useful tool for dealing with less serious hate crime incidents (Gavrielides, 2012). A selection of case studies, examining how restorative justice can be effective in repairing the harm of hate crime, suggest that the application of RJ with hate crimes is widespread, but inconsistent and piecemeal. Existing practices are diverse and stretch from minor, one-to-one hate incidents to more complex inter-community conflicts. Thus, further research is needed to identify the full potential of RJ within the wide range of contexts within which hate crime occurs (Gavrielides, 2010).