

# Victim experience project

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## Report into victim experiences in the magistrates' court



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# 1

## Overview

The MA were given a grant of £8,000 from the Somerset Community Justice Partnership, in order to create a set of training resources that support magistrates in engaging with victims<sup>1</sup> of crime and to encourage a more positive and supportive environment within the magistrates' court. This report looks at what the victim experience is when a case is brought to the magistrates' court, and what can be done by magistrates to improve that experience within the confines of their judicial role. Although not all victims will go through a court case, we have focused in this report on cases where there were criminal charges brought. There are some issues relevant to the family court, which we touch on during the report, which are independent of a criminal process. The report is set out in three sections: firstly, looking at what the current positives and negatives of attending court are, then looking at ways in which this experience can be improved, and finally, honing in on what changes magistrates can put in place to result in a better experiences for victims.

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<sup>1</sup> Within this report, for simplicity we have frequently used the terms "victims" and "defendants". We acknowledge that the term "victim" is not always preferred, but for consistency we have used the term most frequently during the course of the roundtable. Similarly, we use the term defendant to cover those accused of a crime, where there has not been a conviction.

## 2 Methodology

**To gather learning needs and further information for this project, a survey was sent to all four Policy Committees of the MA.<sup>2</sup> The survey asked magistrates to respond to three questions; what the most successful ways to encourage victim participation were; how they felt victim experience could be improved at court; and finally what learning support would be useful for magistrates. Responses were used to shape the agenda for the discussions during the roundtable event.**

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A roundtable with a number of different agencies who work with or support victims was held on the 18th October 2018. There were around 20 different organisations in attendance.<sup>3</sup> The attendee list consisted of different organisations that the MA had previously worked with, as well as organisations sourced through research by the Training and Development Officer. Efforts were made to ensure a balanced spread of organisations between statutory organisations, smaller grass-roots charities and larger charities. While we tried to represent a variety of issues through our choice of organisations, the majority of organisations represented victims of domestic abuse. This was probably due to the fact that the MA has been working on a number of projects involving domestic abuse, which would have influenced our existing contact list of organisations working with victims. This may also be as a result of the fact that there are more organisations with policy or lobbying capacity working on domestic abuse rather than more generic victims' issues. While many experiences that victims have going through the court process are similar, we do acknowledge that there are specific issues that arise in domestic abuse cases that do not in other cases. For example, they may be at greater risk of ongoing threat from the defendant so the need for protective orders to be used may be more prominent in domestic abuse cases. However, most of the issues raised by this report will be valuable as relevant for all victims.

We first asked organisations to consider what they felt the positives and negatives of attending the magistrates' court were for victims. Later, we went on to consider what victims wanted more generally from the justice system. Participants then went on to focus on what practical things magistrates could do to ensure victims were supported to participate fully in a criminal process. The day finished with a summary of what next steps the MA would take to follow up the discussions.

The day was structured around small group discussions, which were then presented and discussed within the wider group. Detailed notes were taken from the feedback presented on the day (available on request). After this, the views expressed were grouped into different themes, which were structured around key areas of concern.

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<sup>2</sup> As well as elected members leading the governance of our charity, we have selected members who sit on our Policy Committees. There are four Policy Committees: three of them are jurisdictional and cover Adult Court, Youth Court and Family Court. The last is the Training Committee which covers all jurisdictions. The Policy Committees work with staff to develop policy positions, as well as act as a useful resource for all projects.

<sup>3</sup> Further details about who attended can be found in Appendix 1.

# 3

## Summary of themes

The first section of this report sets out the general themes that arose from the discussions around what victims' experiences were of the court process. It is important to note that negatives made up the overwhelming majority of the reported experiences of victims in the magistrates' court. When pressed to think of any positives, a couple of initiatives were outlined, such as the new breach guideline from the Sentencing Council, which should lead to more consistency when conditions are breached, and the fact that in some areas, cases involving Domestic Abuse are being listed together to be heard at "specialist" courts. These courts not only list similar cases together, but the different staff involved (including Crown Prosecution Service (CPS) and magistrates) will usually have received specialist training. Additional support can also be provided at the courthouse for victims when these cases are being heard: including ensuring victims are offered the opportunity to visit the court before their hearing (so they feel more comfortable attending), they can enter and leave through separate entrances and support workers are available on the day. However, most of the experiences set out here relate to problems that victims felt needed addressing.

### 3.1 Lack of information provided to victims about the process

One of the key themes that arose out of the roundtable was the fact that victims struggled to get any information about what was happening during a criminal investigation and court process. This related to both general information about what to expect from the process (including what their rights were) and specific details about the case itself.

#### 3.1.1 Lack of information about the process/what to expect

One of the key issues focused on by a number of different organisations was the lack of information that was provided to victims about the court part of the justice system. In particular, organisations felt no one explained to victims what the process of attending court would be like, and what they could expect on the day. Organisations said that often victims were not given details on the court process and did not have anyone they could ask.

It was clear that even when victims were proactive in trying to find out about the process of attending court, it could still be challenging to get information. Information on the internet was not always reliable, and victims were left with either no or confusing details. Some organisations drew attention to the difficulty of reaching the court by telephone prior to the court date, which meant that even practical questions such as which entrance should they use remained unanswered. Not only did this mean victims' questions were not being answered, but it also left them feeling very stressed and worried about attending court. Research has shown that understanding what to expect can help victims feel calmer about giving evidence, so a lack of information being available would have a very negative impact on victim's experience.

Once victims arrive at court, organisations referenced situations where the different roles involved in the court were often not sufficiently well-explained. Examples were given where no-one had explained to victims who the different people in the courtroom were, and what their different roles and responsibilities were. This led to victims feeling overwhelmed before they even entered the courtroom and confused during the course of the hearing about who was involved and what their remit was.

It was agreed that these negative experiences could accumulate to create a negative view of the process from the victim's perspective. Negative views have been shown to lead to a lack of confidence in the process, as well as the outcome produced. If victims feel lost during the court process, they will not be able to fully participate or have their voice heard and ultimately they may disengage from the process completely.

### 3.1.2 Lack of information about the specific case

Organisations were clear that the lack of information freely given to victims did not just relate to the overall process and what to expect, but also related to the specific details of the case. This covered everything from a lack of regular updates about how a case was progressing to the outcomes of specific decisions around bail, expected pleas or what (if any) assessment had been done about ongoing risk to the victim.

Some of the most worrying examples related to situations where victims were not given prior warning of when defendants had been contacted by police or would be receiving a summons, which left them in a vulnerable position if they were either still in contact with the defendant or knew them. The point at which the defendant was first told of an ongoing investigation, or the fact that they were going to be charged would obviously be a point at which they may blame the victim for contacting the police, particularly in cases of domestic abuse, and therefore a time of increased risk for the victim.

Another important issue that was raised related to victims expectations being managed through having a good understanding of not just what was going to happen during the process, but also what the likely outcomes might be when the case concluded. Some organisations noted that victims might have unrealistic expectations of what punishment was available to the court, or what protective orders could be used following a conviction. Research has shown that understanding likely outcomes improves the confidence that parties have in the process, and increases acceptance of those outcomes.

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## 3.2 Participation

Another important theme that arose from the roundtable was the difficulties victims faced in relation to participating in the criminal process. For many victims, after an initial interview and giving a victim personal statement, they have no further involvement in the process unless they are asked to give evidence at court. This will mean their evidence is being challenged by the defendant, so just the knowledge that you are going to have to give evidence is very stressful and upsetting for victims. However, organisations made it clear that there were additional challenges faced by victims that made their participation unnecessarily challenging.

### 3.2.1 Attending court

There were a number of issues raised that related to victims attending court to give evidence. These included difficulties getting to court, problems with delays on the day and victims not having a safe space in which to wait before giving evidence. Many of these challenges were practical in nature.

The first of these was the practical difficulty of actually attending court in person. This included the fact that victims often had to arrange childcare and take time off work for the day so they were able to attend court. The cost and time linked to travelling to court, especially in more rural areas where public transport was less frequent, was also noted as creating a barrier for victims. Even where victims are able to drive to court, they struggle with the costs involved, as well as practical problems such as where they can park that is near to the court buildings.

Once victims arrive at court, many of the organisations reported that they often experienced issues with delays and adjournments. Organisations reported victims regularly experiencing delays on the day, which left them waiting without understanding why the case was delayed or what time they may be called. In addition to

increasing the stress felt by victims, delays also caused practical problems relating to people having to arrange additional childcare from the court, or explaining to their employer that they would not be back for the afternoon. Even dealing with their parking expiring, and not knowing whether it was acceptable to leave the court buildings in order to move their car can be an unexpected and unnecessary worry. Delays were reported as increasing anxiety about the day, especially if there was uncertainty about whether the case would be heard that day or not.

Situations where delays led to a case being adjourned, and re-listed for another day, exacerbated all the problems above. If it had already been difficult to get to court in the first place then adjournments obviously meant all of the same practical challenges would be replicated. Organisations said that where it was not explained to victims why an adjournment had been necessary – on top of all the practical challenges related to attending court – some victims decided they no longer wanted to give evidence.

Another issue raised by several organisations was the lack of proper provision for a separate waiting room for victims and witnesses. Where some court buildings did not have a separate entrance and space for victims to wait before giving evidence, this was reported as being extremely distressing for victims. For example, victims sometimes had to face coming into contact with the defendant or their supporters, which would obviously be distressing, as well as posing a risk to the victim. Where victims had to wait in the same area as defendants or their supporters, it could sometimes lead to confrontational situations and the victim feeling in danger, which sometimes left them feeling re-traumatised. This was highlighted as being especially stressful and upsetting for victims of domestic abuse. Some organisations felt that courts were being incentivised to use all possible court space for hearing cases, at the cost of ensuring a safe environment for victims.

Even if there were separate waiting rooms available, organisations reported that simple adaptations were not often made to the process, such as ensuring that when victims left the courtroom it was safe for them to go into the corridor, which could decrease the likelihood of parties meeting and potential conflict.

### 3.2.2 Being heard

Waiting to go into court was emphasised as a particularly stressful time for victims -but conditions within the courtroom itself more directly impacted on a victim's opportunity to participate in the process. It was clear that two key aspects to participation for victims were being heard, and being able to influence the process and outcome. These could be either through Victim Personal Statements, or victims giving evidence at a trial.

Victim Personal Statements (VPSs) were acknowledged as a key way for victims to have a voice in the process and to feel heard. A VPS is given by victims of crime and details the ways in which the crime has affected them. It will be taken into account if the defendant is found guilty and sentenced. A VPS can be presented to the court verbally or in writing depending on the victim's preference. There were several issues identified with the process by which victims were able to give a VPS.

One of the first issues highlighted was that not all victims were aware of the fact that they had the opportunity to give a VPS.<sup>4</sup> Even where they were told they could provide a VPS, organisations said victims were not always informed of the purpose of a VPS and how it may be used during the court process. If it is not explained to a victim that a VPS is one way they can be heard – and that if they are not asked to give evidence, this would be the best opportunity to ensure the court understood the impact of the crime – they may not choose to give one.

Another key issue raised was the point at which victims were offered the opportunity to give a VPS. Victims said that it was usually easier to give a VPS soon after the crime occurred, as everything was fresh in their minds, but this was not always the process followed. And even if victims had had the opportunity to make a VPS early on, this

<sup>4</sup> The Victims' Commissioner, in her review of VPSs 2013-18, found that victims were given the opportunity by Police to make a VPS in approximately every 1 in 6 (or 16%) incidents. See here: <https://bit.ly/2Yz5Izm>

sometimes meant that they were unable to update it later, to reflect any changes in relation to what they were feeling. The impact of a crime may not be fully understood straight after it occurred, so organisations said it was important for victims to be able to check and change their VPS if appropriate. In addition, if a VPS was given on the understanding that a victim would also be giving evidence at a trial, but then it turned out they were not giving evidence, the importance of the VPS as the only opportunity to influence the court changed and the victim should be able to review what they had said accordingly.

Another concern raised in relation to VPSs was that it was not always clear to victims whether or not it had been properly taken into account in relation to sentencing decisions. Guidance states the VPS should be read out in court in part, even if the full statement is not read out. Even where a VPS has been read out in court, if victims are not present, they may not be told this has occurred. If not read out in court, it is important victims can be confident that sentencers have seen the VPS, and taken it into account. The VPS is an important opportunity for victims' to be heard, and therefore influence the outcome of a court case. The court must therefore ensure the VPS is acknowledged, and make it clear how it has affected any decisions. Where the victim is not in court, there should be a process by which they are provided with sentencing pronouncements, if they want.

Finally, if there was not one available in the case papers during the trial this should be checked to ensure that if there is one it is read out. Some organisations highlighted concerns that in the interests of speedy justice, VPS were not always being read out. Others were worried that VPS might not be included as part of the case file, and therefore, unless they were being read out in court, people could not know that they were being seen by the sentencers.

Where a trial goes ahead, victims may be required to give evidence, which will normally mean the defence is challenging at least one aspect of their statement. This means that where victims were being required to give evidence, it was not just an opportunity to be heard, but on the understanding that they would be challenged. So giving evidence was reported as being extremely stressful for victims, and often the most distressing part of the process.

The fact victims were not necessarily in court by choice, but there because they were required to give evidence was reported as being disempowering for victims. In addition, being asked to describe the traumatic event in a room full of strangers would always be challenging, even before victims had to face being cross-examined and their recollection of events being scrutinised.

Cross-examination was raised as a real concern for victims, especially in relation to cases involving sexual offences. Some organisations raised concerns that defence lawyers were sometimes still allowed to ask inappropriate questions during cross-examination, including asking about the sexual history of victims. Although it was agreed that cross-examination of a victim was an important part of the adversarial system, it was clear that victims were sometimes experiencing unnecessarily unpleasant questioning.

One of the most distressing aspects for victims having to give evidence was the fact that it may have to be in front of the defendant, which exacerbated the fear felt by victims. Special measures are available in criminal court to help vulnerable or intimidated witnesses give their best evidence. Special measures in the magistrates' court might include an intermediary<sup>5</sup> sitting alongside the victim while they are giving evidence, the victim being able to sit behind a screen so they cannot be seen by those in court or victims being able to sit outside the courtroom in a special suite and giving evidence via Video Link. Special measures to assist victims giving evidence were highlighted by a number of groups as being highly valued by victims, but problems were identified with them not always being accessible.

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<sup>5</sup> An intermediary can assist vulnerable witnesses give evidence, by helping them understand any questions put to them, as well as providing advice to the court about any special measures or actions that should be taken to help the witness. This can include simple steps such as taking regular breaks.



There were a number of issues raised in relation to victims accessing special measures. Firstly, special measures were often not sufficiently well-explained to victims in a timely manner before they would be attending court, which meant they were not able to consider whether they wanted to use them. Examples were given of victims not understanding what options were available to them until they arrived at court to give evidence. This then meant that it was not always possible for special measures to be put in place – especially if they involved requesting an intermediary to attend or setting up a Video Link.

Secondly, organisations said it was generally very difficult for special measures to be put in place, or changes to be made with special measures already in place, once the initial decision or application had been made. Victims often reported that there was very little flexibility in allowing victims to change their mind about using a screen or not, for example. Obviously there would be challenges if a victim initially wanted to use Video Link, which necessitates them giving evidence from a police station or Video Link suite, and then decided on the day that they would prefer to give evidence in person, as it may not be possible. However, organisations felt it was very difficult for them to be able to advise or support victims on this issue as there were inconsistencies in relation to how courts dealt with late applications for special measures. It was agreed that it should not be impossible for victims to be able to ask for a screen, for example, once they arrived in court, if they decided it would make it easier for them to give evidence.

Thirdly, there were specific concerns raised in relation to the use of Video Link, as organisations reported there were often problems with the technology working correctly. This led to delays, as well as increasing the stress for victims.

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### 3.3 Lack of support

One of the main concerns raised by organisations related to the lack of support available for victims; both in terms of overall support and the specific support needed during the court process. The issue raised above in relation to a lack of information was linked to lack of support, as organisations felt that if there were better support networks available for victims before the case came to court, it would include providing sufficient information about the process. A particular concern was that where support was available, front line staff did not necessarily have detailed understanding about the court process, so could not help victims in terms of letting them know what to expect.

This led to a discussion about the lack of communication between different support services: for example, where the court's Witness Service did not necessarily liaise with other support workers who may already be working with victims. This left victims feeling very confused about who to go to for information, or who to contact if they have questions in relation to the case and attending court.

In some areas it was noted that there were a number of support services available to victims, and how they access those services might depend on what the offence was or whether they were involved in health services before going to the police. It was pointed out that this could result in victims having different support workers in relation to different aspects of their experience – such as a support worker assisting them accessing health services, and another helping them in relation to the criminal process. This could clearly be confusing for victims if they did not have a single point of contact for information and advice. One example given was where a victim might have a Police Liaison Officer for one part of the process, an Independent Domestic Violence Advocate (IDVA) for another and support from the Witness Service in relation to them giving evidence. Whilst it was agreed that it was great that such varied support could be offered in some cases, it could also be very difficult for the victim having to keep track of all the different roles, especially where they may be feeling especially vulnerable anyway. There were some great examples of good practice where one support advisor took the lead and co-ordinated with everyone else on behalf of the victim.

Another issue raised was the availability of support once victims arrived in court. The importance of victims being treated professionally and with respect by all staff was noted by all organisations, but it was not something all victims reported. Again, a problem with lack of communication between services was highlighted – with court staff not always liaising with the Witness Service about any particular needs that a victim may have.

Although not directly related to the court process, many organisations felt that there was a lack of additional wrap-around support provided for victims after the court process had concluded. This was thought to be especially important where a victim was re-traumatised through aggressive cross-examination, which might exacerbate any existing symptoms of stress or mental health problems such as Post Traumatic Stress Disorder (PTSD).

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## 3.4 Protection

One of the ongoing concerns that victims raised related to feeling unsafe, and the need to be protected from the defendant. The criminal justice system was seen as the primary way that victims could be provided with ongoing protection, through court orders that required a defendant to stay away from the victim.<sup>6</sup> The two stages at which criminal courts can put in place protective orders is during an investigation (through bail decisions) or once the case has concluded (through sentencing decisions or ordering civil injunctions).

### 3.4.1 Investigation

The importance of bail decisions in putting in place protection for victims while an investigation is progressing was highlighted. Courts will only make bail decisions once an individual has been charged, but police can impose pre-charge bail with conditions for a set amount of time while an investigation is ongoing. These conditions can include elements put in place to protect victims, such as prohibition on contacting them, or staying away from where they live. Once an individual has been charged with an offence, bail decisions are made by the court. They can either order bail with conditions or remand the defendant in custody. In April 2017, changes to bail came into force which mean that police are no longer able to use pre-charge bail for an indefinite period without applying to court for extensions. The purpose of this was to discourage suspects being left for months or even years on police bail before a decision was made on whether charges would be taken forward. However, an unintended consequence has been that police appear to be using police bail less, and instead, releasing suspects under investigation. Although not extensively discussed at the roundtable, concerns have been expressed about this process, as when bail is used, conditions can be added to prevent the suspect contacting the victim (therefore offering some protection to the victim) but this is not possible when a suspect is released under investigation.

It was clear that organisations felt the limitations of bail conditions were not fully understood, or explained to victims. For example, where a defendant was ordered to stay away for a victim and not contact them, the only enforcement attached to such an order relates to punishing the individual if they breached the conditions. Organisations reported this was not properly explained to victims, especially if the defendant was tagged with an electronic monitoring device – which could suggest to the victim that there would be an immediate police response if breach occurred. Of course, it was agreed that putting in place strict conditions, with serious implications if breach occurred, could sometimes be sufficient to ensure the defendant remained away from the victim. Some organisations felt very strongly that victims could only be guaranteed protection if the defendant was remanded in custody while the case was coming to court.

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<sup>6</sup> Protection can also be offered through court orders produced in the civil or family jurisdiction, but this report is focusing on the criminal court.

### 3.4.2 On conclusion of a criminal case

Some court powers are only available once a defendant has been convicted; often as part of a sentence. These can include ordering an offender to attend programmes to support them to change their behaviour or to address underlying needs that were linked to offending behaviour. For example, programme requirements could include domestic violence defendant programmes like Building Better Relationships, or defendants might be put on Mental Health Treatment Requirements, Alcohol Treatment Requirements or Drug Rehabilitation Requirements to support them to address underlying problems. Some of these orders require the offender to agree to engage with the programme, and show an understanding that their behaviour needs to change. For example a Mental Health Treatment Requirement cannot be ordered unless the offender agrees. Similarly, some programmes have been shown to only be effective where the individual is willing to change, especially domestic violence programmes.

Organisations agreed that supporting rehabilitation was often incredibly important for victims. It could give them confidence that no one else would suffer as they did, which could also help them feel that going through the court process was worth it. And in relation to those cases where the victim wanted to continue in a personal relationship with the offender, changing their behaviour was vital.

Some organisations said that it was common for victims to have ongoing concerns about their safety once the court process had concluded especially in relation to domestic violence cases. It was felt that courts were not always using existing powers to protect victims. Although a failure to use full sentencing powers, especially in relation to imposing custody, was mentioned, there was also a feeling that courts did not use protective measures (including Restraining Orders) sufficiently, if the offender was not imprisoned. Again the issue of victims not fully understanding the protection offered was raised, where it was not properly explained that if an offender breached conditions of a sentence, there could be consequent punishment imposed but there would not necessarily be an immediate response by police. For example, an offender may be imprisoned if they breach protective conditions (such as contacting the victim when they have been told not to do this), however there was a set process to be followed once a breach is reported which includes probation bringing the case to court. (There is a different process if offenders are released from prison on license, where breach might lead to more immediate recall to prison). Even where victims fully understood that breach proceedings were the only sanction to be used, organisations said they reported non-compliance by offenders not always being taken seriously, and resulting in breach proceedings coming to court. There were also concerns that courts did not have sufficient powers to respond to breaches, as often their options were just to add on more conditions for the defendant to follow. Again, custody for the offender was seen by some organisations as the only way victims could be guaranteed protection (and even that did not prevent family and friends of the offender harassing victims).

It was also noted by some organisations that some civil protection orders, such as Sexual Offence Prevention Orders and S.12 Restraining Orders, could be put in place either during the investigation or once the case had concluded. Again, these orders could prohibit the defendant from contacting the victim or undertaking other behaviour that might pose a risk to the victim. There were concerns that these orders were not sufficiently understood by courts, and therefore under-used. Others noted that there could be confusions where different jurisdictions were involved in a case (for example, where a criminal case was running alongside family court proceedings), and different orders were used that might conflict with one another. For example, a criminal court might put in place bail conditions that prevent a defendant contacting the victim, but family court might then allow the defendant to contact their children, which would require them to contact the victim. Or the converse situation, where each jurisdiction believed the other would be responsible for putting protective orders in place – so a family court may not use a Restraining Order if they knew a bail decision had already been taken, because they would presume that bail conditions would be imposed if necessary.

### **3.5 Lack of communication or liaison between different agencies and jurisdictions**

Another concern raised by organisations was that victims often had to deal with varied different processes at the same time, which meant dealing with different agencies or court jurisdictions. For example, following domestic abuse, a victim may have to work with their local housing association to find safe accommodation, access health services (including therapeutic interventions), work with police for a criminal investigation and make applications to family court to prevent their partner from seeing their children. In such a situation, organisations reported a lack of communication or liaison between the different statutory agencies involved. This could mean victims had to keep repeating their story to different people, and different agencies or courts might make different decisions on the basis of the same information. So, for example, a decision by a criminal court that special measures were needed to assist the victim to give evidence did not necessarily translate to the same measures being available for family court proceedings. This was reported as not only being very upsetting for victims, but could also lead to them disengaging from some of the processes.

# 4

## What do victims want from the justice system?

**There were three key themes highlighted which explored what victims wanted from the justice system. These were: to feel safe, to feel heard and to have the opportunity to influence the outcome and finally to be kept informed. While we have grouped these separately, there will of course be a lot of crossover between them – for example, there are obvious links between having enough information about the process and feeling safe.**

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### 4.1 To be kept informed

Victims need to be kept well-informed and given enough information about the court process so they can understand what is happening. It is crucial that victims know what to expect at each point in the process, so being given basic information about the justice system and processes is important. They also need to be informed about their own particular case; if they are not kept up to date, it can impact significantly on their desire and ability to participate in the process.

#### 4.1.1 Knowledge about the process

In relation to the first of these issues, victims would obviously want any support given to include clear information about the court process. As highlighted in previous sections, information about the court will help them to feel better supported, as well as knowing who to contact if they have queries before the court day. Information about the actual court experience is essential as otherwise the process can be bewildering. Victims must be given good quality information about the process of being cross-examined, and what special measures can make it easier for them. Victims will often be very worried and upset about what is going to happen, so keeping victims informed about all of the different choices and options available to them (for example, the option to present a VPS, options around special measures) will help them to feel more supported and help aid their participation in the court process.

#### 4.1.2 Specific case details

Victims must also be given regular updates about what is happening with their case. Every victim will be different, so it is important that what they would prefer in terms of how much information they are given, how often and in what format. Some victims may prefer to forget about the case until the court hearing, whereas others will want to know details about what is happening. Similarly, some victims will prefer to be given information via letter or email, and others would prefer to hear it in person. Regardless, there is some information all victims should receive, and that relates to at what point the defendant is being informed of the investigation, as well as when they are charged. These can be points at which the risk to the victim is heightened – especially in cases of domestic abuse, if the victim and defendant are still living together.

Victims should also be given important information such as any changes of plea, or important court dates, even if the victim is not needed to attend (victims may wish to observe hearings such as bail or sentencing hearings, even if they are not giving evidence). Regardless of whether victims attend court or not, they should be informed about court decisions, especially any sentence given. Victims should also be kept informed about what happens after the court process has concluded. This might relate to any breaches of community orders, or when the offender is being considered for release on license. If an offender is given a custodial sentence, then ensuring the victim is given accurate and timely updates on the when the offender is going to be released is obviously critical.

## 4.2 To feel safe

As indicated in the previous section, one of the biggest areas of concern highlighted by organisations was that victims did not feel safe, and the fact that these feelings were sometimes exacerbated by engaging with the criminal justice process. Victims may of course feel unsafe for a variety of reasons; anxiety and stress is a common response because of the trauma they have experienced. They may also be fear due to ongoing risk from the defendant. The focus of this section is what courts can do to help victims feel safe; both in relation to supporting their participation in the court process and what protective orders can be put in place to reduce the ongoing risk to victims.

### 4.2.1 Attending court

There are practical things that can be put in place to support victims travelling to court and help them to feel safe. As mentioned above, it is often challenging for victims to travel to court. Support with arranging transport, childcare and time off work would make a significant difference to their experience. This is especially important in more rural areas where there might be fewer public transport options. This sometimes means that if the victim and defendant live in the same village or town, there may be limited options in relation to getting to court, and therefore they may end up travelling on the same train or bus. This could have a real impact on victim safety before the court day has even begun.

### 4.2.2 At court

In relation to the victim experience once they arrive at court, it is important for the court environment to be as safe a space as possible. Having separate entrances and exits for victims to use as well as separate spaces for them to use as a waiting room should be the minimum criteria for each courthouse. This reduces the chances that a victim would come into contact with the defendant or their friends or family. Other simple measures that can be taken by the court following a hearing including staggering the time that defendants are allowed to leave the courtroom, so victims are able to leave first and be safely away for the courthouse before the defendant leaves.

### 4.2.3 Giving evidence

It is important that the bench understand what support is available for victims to make them feel safer giving evidence, including the processes that should be followed when they are being cross-examined. Holding a Ground Rules Hearing can be very useful before a victim has to give evidence, so that all parties can agree how questions should be put to the victim. This can include making sure questions are clear and straightforward, the victim is given plenty of opportunities to take a break and the tone of questions is not aggressive. It can also be confirmed where certain questions (for example about a victim's sexual history) are not permitted. It was agreed that magistrates had a key role to play in ensuring victims were not questioned aggressively or asked inappropriate questions while giving evidence.

Another key part of feeling safe is being treated with dignity and respect throughout the court process, as the process can be extremely traumatising for victims. In relation to supporting victims in giving evidence, the bench should always be mindful and considerate that victims of crime may experience and respond to trauma in different ways. They should also ensure that appropriate language is used at all times, and if the victim becomes distressed, they are offered an opportunity to take a break.

It is clear that having a considerate member of the judiciary presiding over the case can have a significant impact, as this quote from a victim attests:

'I can't emphasise enough how much of a difference it made – simply feeling that my comfort was important'.<sup>7</sup>

<sup>7</sup> MAGISTRATE magazine, Oct/Nov 2017 issue

#### 4.2.4 Protection

Levels of protection are a key concern for victim safety. These begin with bail conditions that can be put in place while the police investigation is ongoing, and continue while the court case is progressing. Then at the conclusion of the case, protective orders or conditions as part of a sentence can be used to reduce the risk posed to the victim by the defendant. Any conditions imposed should be clearly explained to the victim so they are aware of exactly what they mean, and what the likely response would be if the conditions were breached. If victims do not understand them, it can leave them feeling confused or unsafe, even though protections have been put in place. It is also important that victims' expectations are managed in relation to how quickly the police may respond if conditions are breached. For an immediate response, it may be necessary for something in addition to court orders (such as an alarm button or panic room) to be put in place to make police aware of a dangerous situation.

Even if there is not going to be an immediate reaction to breach of protective orders, victims still have to be confident that non-compliance will be dealt with robustly. The main way restrictive conditions on a defendant can protect a victim is understanding by all parties that any breach of those conditions will lead to punitive sanctions. So it is important that both victims and defendants have the implications of breach clearly explained. Courts must then respond appropriately, if situations of breach are brought to them.

There are also concerns about levels of protection changing as the case progresses – especially once the case has concluded. If protection is offered through conditions attached to bail, or the defendant being remanded in custody until the trial, but once the case has concluded that protection is lost, then victims are left feeling unsafe. If victims still need protecting once the case has concluded, even if the defendant has not been convicted, then protective orders should be put in place.

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### 4.3 To feel heard

It is essential that victims are given able to participate effectively in the process. This includes being able to have their voice heard and to be able to influence both the process and outcome.

#### 4.3.1 Victim Personal Statements

The VPS has a critical part to play in ensuring that victims are heard in the process. A number of important factors were raised in relation to ensuring victims were able to give a VPS, and it was heard by the court. Firstly, there should be consistency in victims being offered the opportunity to give a VPS. This is one of the basic entitlements under the Victims' Code, but it is clear that some victims are not given the opportunity, or able to change their mind about making one at a later stage. It may be that the process by which a VPS is explained to a victim is not sufficient: for example, if they are told about it immediately after the offence, they may be too distressed to understand or follow what is being said. Or it may be that they do not understand the importance of the VPS, or that they may not have another chance to give one. Another issue raised was where the defendant changes their plea at a late stage in the process: which would mean the victim had expected to give evidence, but then was not required to do so. The VPS might then take on new relevance in terms of ensuring the victim's views and experiences were heard.

Secondly, once a VPS has been made, it is important that it is taken into account by the court, thereby allowing the victim to influence the process and outcome. It was generally agreed that it was important for there to be transparency in relation to the VPS, with it being read out in court, so all parties knew not just what it said, but also could be confident that it had been heard by the bench. In order to ensure victims feel part of the process, they

should be offered the opportunity to read it out in court, if they wish to. This can be empowering to the victim, as well as allowing them to feel listened to. If the victim does not wish to read the VPS out themselves, then the presiding justice should ensure that it is read out in court. There were some concerns that even where a victim had given a VPS, they did not always get heard. So if there is not a VPS as part of the court files, the bench should ensure that they check whether the victim has made a VPS. If they have, they can briefly adjourn for the file to be made available. If a VPS has not been made, the court may wish to check that the victim is not present, and does not want to say anything before sentencing decisions are made. However, magistrates should bear in mind that not all victims will want to make a VPS or representations to the court.

### 4.3.2 Giving evidence

Additional support through granting special measures is an essential way to ensure that victims are able to participate fully in the process. These special measures might include assistance with communication (through an interpreter, provision of communication aids or the support of an intermediary), allowing a victim to sit behind a screen or even give evidence via Video Link. Ensuring that both the court building and the courtrooms are fully accessible is also essential for ensuring that everyone is able to participate in proceedings, and access justice.

Victims should be offered special measures when being told that they may be needed to give evidence; all the different possibilities should be carefully explained and victims should be given time to decide which would be appropriate to them. It may be that use of a screen or Video Link help a victim feel less anxious about giving evidence, as they mean they would not have to face the defendant in court. Some organisations report victims preferring to use Video Link to give evidence, but research has shown that many victims do not want to give evidence remotely but prefer to be in the courtroom. It is important that victims understand any implications of deciding to give evidence via Video Link – including the fact that they may not be able to see the whole courtroom (and therefore the public gallery) and they may find it more difficult to follow the proceedings.

Although it should be encouraged that victims are given information about what support is available as early as possible in the process, it should be acknowledged that victims may change their mind about how they give evidence. So there must be some flexibility in allowing this, as long as it can be done without causing undue delays.

More specialist support might be useful to help encourage the voice of the victim to be heard. Where an intermediary is not necessary, the court does have discretion to allow a support worker to assist a victim while giving evidence. Organisations felt this role could be taken up by a victim advocate. This is similar to a model suggested earlier in this report for IDVAs/ISVAs, where one person would take the lead in relation to the victim's journey. It is clear that victims appreciate the support they receive from IDVAs and ISVAs, although sometimes this support does not fully cover other jurisdictions (especially family).

### 4.3.3 Influencing the outcome

Victims must feel that not only have they been heard, but what they said was taken into account. This means benches must make sure it is clear how victims' views and experience have influenced their decisions, especially in relation to sentencing and any additional orders that have been made. It is therefore important that magistrates make sure they make reference to the VPS or the impact on the victim as part of their sentencing remarks, in particular, by demonstrating how harm to the victim has been used to set an appropriate sentencing level. It is also important that the views of the victim are taken into account when deciding what ancillary orders are needed – including compensation as well as protective orders. Magistrates should be aware that victims may not want compensation, especially if it is going to be made in instalments, as this can serve as a reminder of what they suffered, when they might prefer to put it behind them. Listening to the views of the victim on this issue is therefore vitally important.



## 4.4 Better training for magistrates

Training for magistrates was noted as a critical way that support for victims could be improved. Many felt that victims should be part of the early training (e.g. induction) to ensure that they are a priority. Any training should ensure that common victim-related myths are addressed and there should also be information about bias included in training.

Knowledge about specific domestic abuse related issues was emphasised by several groups, particularly newer offences such as coercive and controlling behaviour. It was felt by some that magistrates who had not yet completed domestic abuse training should not be allowed to preside over cases where domestic abuse had played a part.

# 5

## Next steps

**The final section of this reports sets out what can be put into practice to make positive improvements to the experiences of victims during the court process.**

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A number of organisations emphasised that more training and information for magistrates would be useful. This had two strands:

- a) Understanding what the victim experience is before their appearance in court, including what information they have received about the process;
  - b) Understanding what steps can be taken to support victims give evidence in court, as well as ensuring that if victims are attending court to observe proceedings, the process and decisions are explained clearly.
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### Recommendations

- 1. In order to raise awareness of the victim journey and ensure that assumptions are not made as to what victims want as they are all different, victims' voices should be included in induction training and videos should be produced and promoted to magistrates showing victims' stories.**
  - 2. In order to ensure flexibility in the court process for victims, the needs of victims should be considered through (for example) explaining in case management hearings what the different types of special measures were, being flexible on the day about changing special measures and ensuring simple practical steps were taken to improve the safety of victims (e.g. staggering lunch breaks).**
  - 3. The court must always check whether a VPS is available, and if not, whether the victim has been offered an opportunity to complete one. It should then be checked whether the victim is in court, and if so, whether they wish to read the VPS out to the court**
  - 4. Protective orders should put in place where appropriate and that continuity of conditions from bail to sentence is considered to provide ongoing protection, if necessary**
  - 5. The decision-making process of the case should be fully explained: especially through sentencing remarks including reference to victims evidence/experience and how this affected the final decision**
  - 6. There should be soft skills training for magistrates, including sensitivity training looking at the behaviour, attitude and language of magistrates to ensure that victims feel respected and heard.**
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### Creating a special issue of the MAGISTRATE magazine

One way that we have endeavoured to raise awareness among our members of the issues raised in the report was to create a dedicated issue of the MA's own magazine (the MAGISTRATE) covering various issues relating to the victims' experiences of the criminal justice system. MAGISTRATE is a bi-monthly publication produced by the

Magistrates Association. Hard copies are sent to over 14,000 members. It contains articles on relevant issues and training information, as well as important policy and legislative updates.

The dedicated victims' issue of the magazine focused on the court process and the practical ways that magistrates can increase their confidence in supporting victims. In guidance, we have given practical tips on – for example – ensuring the process has been explained to victims throughout the progress of the case, communicating sensitively with victims, and proactively finding out what support is available in their own courts.

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## Other work

We have also sought to use the conclusions we have drawn from the roundtable in order to inform all relevant work going forward.

An example of this is a recent project to update a training workbook and create e-learning for magistrates who are thinking about becoming presiding justices. We are ensuring that practical information about how to support victims and witnesses on the court day is included in both products, especially around communicating respectfully and sensitively.

We are also seeking to improve knowledge of the whole process of coming to court by providing a resource list on our website that magistrates can use to learn more about different part of the process.

Some of the resources produced as a result of the roundtable will be provided to our branches, so they can be made available in retiring rooms as well as electronically.

# Appendix 1

## List of organisations attending the roundtable

Organisations represented at the roundtable were as follows:

- Refuge
- Solace Women's Aid
- Her Majesty's Courts and Tribunals Service (HMCTS)
- Why Me?
- Rape Crisis
- Crown Prosecution Service (CPS)
- Ministry of Justice (MoJ)
- Galop
- Victim Support
- College of Policing
- CAB Witness Service
- Office of the Victim's Commissioner
- Women's Aid
- RoadPeace
- Hestia
- Metropolitan Police
- Human Trafficking Foundation
- Safe Lives
- Justice
- Association of Police & Crime Commissioners (APCC)

## About us

The Magistrates Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

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