



Northern Ireland
Assembly

COMMITTEE FOR JUSTICE

OFFICIAL REPORT (Hansard)

Inquiry into Victims and Witnesses of Crime: Departmental Briefing

10 November 2011

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Colum Eastwood
Mr Seán Lynch
Ms Jennifer McCann
Mr Jim Wells

Witnesses:

Ms Maura Campbell)
Mr Maurice Campbell) Department of Justice
Mr Brendan O'Mahony)

The Chairperson:

I welcome Maura Campbell, who is the deputy director of the criminal justice development division, and Brendan O'Mahony and Maurice Campbell, who are also from that division. This session is being recorded by Hansard. I am sure that members will have questions, but, at this stage, I hand over to you, Maura.

Ms Maura Campbell (Department of Justice):

Thank you very much, Chairman. We very much welcome the Committee's decision to use victims and witnesses of crime as the topic of its first inquiry. We are very grateful to have this opportunity, at such an early stage in the inquiry, to brief you on our thinking around a new strategy for victims and witnesses of crime. We are happy to defer the completion of the draft

strategy, which we intend to put out to consultation, until we have received and considered your report.

As one of your members observed on an earlier occasion, this issue resonates with all members of society. In fact, our most recent crime survey showed that something in the region of 14% of households in Northern Ireland were victims of crime over the previous year. That is why it is very appropriate for the Committee to devote a good bit of its time to the topic. We see that work as helping us to produce a strategy that could command support across the Assembly, which would place us in a very strong position to make the meaningful improvements that we want to make in services for victims and witnesses over the next five years.

Our written brief summarises the work that we had completed up to the point at which the Committee decided to hold its inquiry. It includes feedback that we received from a range of organisations in the statutory and voluntary sectors. We found that feedback to be pretty consistent. We were told that we need to improve how we communicate with victims and witnesses. Although the work that we have been doing since devolution to help people to navigate the justice system has been welcomed, including, for instance, the new victim code of practice that we published earlier this year, the challenge now is to be more responsive to the specific communication needs of individual victims and witnesses. The idea of responding to individual need comes through very strongly as well when we look at support for victims and witnesses, for instance, through special measures. We also see a need to have those individual needs identified as early in the process as possible.

Given that the justice agencies have finite resources, we need to make sure that we target support at those who need it most. Another piece of feedback that we regard as very important is that victims want more of a voice in the justice process. That is particularly the case for those who have suffered the greatest personal harm.

Our overall aim is to provide a more positive experience for victims and witnesses who engage with the justice system. We have set out in the paper some of the outcomes that we want to see under a number of potential themes. We are very open to looking critically at those themes and outcomes and at what they should be. We see your inquiry as being very helpful to us in testing those out. We have been feeding information through to Committee staff so that you are aware of the evidence base from which we have been working. However, as Committee

members, you are uniquely placed to add an extra perspective to that work based on the feedback that you get from the people who walk through the door of your constituency office and perhaps even through some of your personal experiences.

We have not said an awful lot in the paper about specific actions to help us to achieve those outcomes, but it is something we have been thinking about. Our thinking has been heavily influenced by the recommendations that we expect to emerge from a thematic inspection of the care and treatment of victims and witnesses that the Criminal Justice Inspection (CJI) has recently undertaken. We do not want to pre-empt that report, but, by way of an update, the report was submitted to the Minister yesterday and is likely to be published, subject to the Minister's approval, in the next few weeks. It will be another important source of information for this inquiry. I am limited in what I can say about the content of the report ahead of its publication. However, given that the Chief Inspector has referred to this in one of his earlier reports, I can say that one of the main recommendations is that we should establish witness care units for Northern Ireland.

As to our current work, the written brief also mentions that we intend to carry on with implementing the actions set out in our action plan for 2011-12, which we published in June and which we shared with the Committee at that time. We do not want to prejudge the outcome of your inquiry, but we do not want to down tools either, so we would like to press on with those important pieces of work. I thought it might be helpful to set out very quickly where we are with a couple of the main actions.

First, we have been developing plans to introduce a witness intermediary scheme, and we will write to you about that in the next few weeks. Briefly, the role of the intermediary will be to help witnesses who have communication difficulties to provide evidence at the investigation and trial stages, and also to help the judge, jury and legal representatives to understand the answers that the witness gives in court. That is part of our drive to improve everyone's access to the justice system.

Another important area of our work relates to victim impact statements and victim impact reports. Although those are already available in this jurisdiction, we see scope to improve how they are used, and we will provide you with a separate written brief on that issue for consideration at your meeting on 17 November. I think that that paper issued from our Minister's office earlier

today.

Related to that is the issue of community impact assessments. You might recall that the Chief Inspector of Criminal Justice recommended that we look at the feasibility of applying those to Northern Ireland. Again, by way of an update, we had produced a draft feasibility study earlier this year. We had done that by June, because that was the target date set for us by Dr Maguire. However, we deferred submitting the paper to the Minister as we were awaiting decisions on the way forward for England and Wales, which, at that time, we had understood were coming through in a couple of months' time. We thought it important to be able to reflect the learning from England and Wales because it is the only jurisdiction that we are aware of where community impact statements have been trialled. Just recently, in the past few days, we have been advised by colleagues in Whitehall that it may be some months yet before decisions on the way ahead for England and Wales are made. So, we now think that it would be better to proceed with finalising and publishing our own report. We hope to do so in the next couple of weeks, and we will, of course, provide the Committee with a copy of it.

We very much welcome the Committee's decision to conduct this inquiry, and we look forward to receiving your report. We will ensure that your conclusions inform the draft strategy when we issue it for consultation, and we stand ready to assist the Committee in any way that we can. We are happy to take your questions.

The Chairperson:

Thank you very much, Maura. Members have questions, and I have a couple of initial questions. You have held some workshops with victims to date, and the issue of late guilty pleas was highlighted. What were the other key issues that came out of those workshops?

Ms Maura Campbell:

They are the sorts of themes that we have covered in the paper, and they are mostly around communication and personalising the service that we give. We are quite good at one-size-fits-all and at producing publications that give general information about the justice system. However, victims are reporting to us, through their representatives, that what they really want are ways of finding out quickly what is happening in their specific case. That is where we need to make most improvement.

Mr Wells:

As I said earlier, I have sat through many a court case in my time for various reasons. With my background, facing a QC or a junior counsel as a witness or a victim is not just as traumatic, but, for an awful lot of ordinary people, it is the most horrendous experience. Nothing in their life has prepared them for what they face. I have seen many cases of a solicitor or barrister basically tearing a witness to pieces — there is no other way to describe it. These guys are very articulate, very cold and cutting and very capable. If it is quite obvious that the witness has had a dreadful run, particularly in a case involving sexual harassment or some form of attack on a young woman, which can almost be a life-changing experience, does anyone give any form of psychiatric help or counselling to that person or are they left entirely on their own?

Ms Maura Campbell:

Victims can receive counselling, but there are issues with what they can disclose in the course of that counselling and the need to ensure that it does not in any way affect the evidence going forward. That is why we have recently produced guidance for practitioners on achieving best evidence and on signposting to other services. However, we need to build on that through the new strategy.

What you are reporting about the effects of hostile cross-examination chimes with what we are hearing through the Northern Ireland victim and witness survey. About half of respondents reported that they found their treatment in court difficult, and that is particularly the case for victims of personal assault, including sexual assault. As you are aware, we are, as a Department, trying to remove the requirement for people to attend preliminary inquiry proceedings and to make the system paper-based. One problem is that people are effectively being cross-examined twice in some cases. We have already started looking at raising awareness of the effect of inappropriate or hostile cross-examination, and we want to carry that through into the new strategy.

Mr Wells:

There have been rape trials in Northern Ireland where the intent of the QC was to paint an extremely dark picture of the victim or witness. It struck me when reading some of the reports that there does not seem to be any guidance to magistrates or judges on when they should intervene to try to protect the witness. It seems that witnesses are regarded as fair game. Will

your strategy contain some guidance for those who hear those cases?

Ms Maura Campbell:

Ultimately, it will be for the judge to determine how proceedings are conducted in court, but it is certainly an issue that we have been highlighting due to the feedback that we are getting from victims. There is a feeling that more could be done. Joyce Plotnikoff has looked at the experience of young witnesses and has made some recommendations that the local judiciary is aware of.

Mr Maurice Campbell (Department of Justice):

In the last Northern Ireland victim and witness survey, a low proportion of respondents who had been cross-examined thought that the barristers for the other side had been courteous towards them. As Maura said, it was only 15%. So, there is a problem, in that people feel that they are being harassed by the opposing barristers.

Mr Wells:

Courteous barristers are like Italian war heroes — they do not exist. They are not paid to be courteous in court. Their role is to be adversarial and to undermine the witness, not to be complimentary.

Ms Maura Campbell:

Unfortunately, there will always be an adversarial aspect to the justice system because of the way it is set up constitutionally. However, we want to try to minimise the impact of that hostile cross-examination. You are right: there is perhaps scope for better guidance on what is and is not appropriate. I do not think that the requirement to robustly challenge evidence will ever be completely removed, so there will have to be some probing and questioning of witnesses. However, we have flagged that issue with the judiciary through the criminal justice issues group, and we intend to explore it over the next period.

The Chairperson:

Your work does not include surveying the experiences of victims of serious crime; is that right? Who are you getting the statistics about the victims from? What level of crime is it?

Mr Maurice Campbell:

We omit sexual offences and children's cases but any other cases are generally included in the Northern Ireland victim and witness survey.

Ms Maura Campbell:

The point is that we are not going to rely solely on the findings of the Northern Ireland victim and witness survey in developing the new strategy. We will look at other sources as well. For instance, we commissioned some research from Queen's and the National Society for the Prevention of Cruelty to Children (NSPCC) on young victims and witnesses, because that is an area that is not covered in NIVAWS. We are looking across to the work that is being done through the sexual violence and domestic violence strategies. We have also been talking to such organisations as the Nexus Institute and the Rape Crisis and Sexual Abuse Centre to get direct feedback.

Mr Wells:

Is there any particular reason why those types of offences were not included in the research?

Ms Maura Campbell:

It is simply to do with the fact that the methodology was not appropriate for approaching those individuals. The survey was done by telephone, and it was not thought appropriate to ask people to recount their experiences in that type of survey over the phone. It was out of deference to the potential impact on the witnesses.

Mr Wells:

I suspect that if you had some way of gauging reaction from those witnesses and victims, your figures would have been rather different, because I would say that the majority of people come out of those hearings feeling far from happy about the way in which they were treated.

I witnessed a very serious car accident many years ago; in fact, I was the only witness. I remember going to court and, as it turned out, my evidence was the difference between a verdict of guilty or innocent, because I was the only witness to the event. After the hearing, I remember thinking that that was that. There was no comeback. I walked in, I gave my evidence and I walked out. I have never heard a thing since. The accident that I witnessed was quite serious,

and the gentleman was very seriously injured; in fact, he lost his two legs and one arm. It was not particularly easy for me to recount what I saw, but, following the court case, I merely walked away. In all the years since that, nothing has happened. Is that still the case? Would I still be in that position?

The Chairperson:

Are you asking whether you would be told of the outcome now?

Mr Wells:

I found out the outcome only because I read it in the press a few days later. Equally, the fact is that it was not a very pleasant thing to do, but no one ever thanked me for it. I walked away, and that was that. Is that still the case?

Ms Maura Campbell:

One of the questions asked in NIVAWS was whether witnesses or victims were told about the outcome of the case. About 20% of respondents said that they had not heard the outcome of the case. That is too high. We should be making every effort to ensure that, if people have gone to the trouble of coming forward and bringing forward evidence, they should, as a courtesy, be advised of the outcome.

Mr Maurice Campbell:

Some 81% were aware of the outcome. It has more or less stayed the same over the past three years. This time, it was the people who did not stay until the end of the case who missed out on the outcome and had not been notified.

Mr Wells:

I was aware of the outcome; I found out from the front page of the 'Belfast Telegraph', I think it was. However, I thought that someone would have rung me and explained the outcome and said that they were very grateful that I had come forward. What happened would not encourage me to come forward again. I would, of course, but an average person would say that they would not bother, if that is how they are treated.

Ms Maura Campbell:

We are hoping that the recommendation around witness care units could assist with that and a number of other issues, because the establishment of witness care units for Northern Ireland would help with achieving a more seamless service for victims and witnesses from the time that they enter the justice system until the conclusion of the case. At the moment, the duty to keep in contact with victims and witnesses passes from one agency to another. Having one point of contact would help with driving up performance in sharing communication.

Mr Wells:

I never got my bus fare to the court either. *[Laughter.]*

Ms Maura Campbell:

We will follow that up for you, if you like.

Mr McCartney:

That is because two counsel were involved.

The Chairperson:

You should have got senior counsel.

Mr McCartney:

Thank you for the presentation. I am struck by the victim aspect. It seems that we deal with this only when people are right in the system. I am asking this because we have to set the terms of our inquiry. We ask such questions as: What is the process around the victim impact assessment? What should it be? What is the best practice? Last week or the week before, assaults on the elderly became very topical. Absent from the process was someone coming in and spelling out the precise position. Is there a role for the Department, rather than seeing working with victims and witnesses as something that we begin to do as they are in the system?

People make claims on radio programmes and elsewhere about what sentences were in place and what sentences were available, yet no clarity comes out of that. If I were a witness to a crime where someone was assaulted, I might think that, based on what I heard on the radio last week, there is no point in coming forward because the assailant would get only a smack on the wrist. I would wonder whether it would be worth all the harassment that I would get. We may speak about that when we lay out the terms of our inquiry.

It is obvious from the Department's documentation that unreported crime is still a big issue. That is down to a number of factors, and we can examine those. One factor is that people do not wish to go into a system that they believe can end up swallowing them up. Jim Wells outlined the experience of many people who have been witnesses. He said that they are brought in and cross-examined. That is not a great experience, and no one ever thanks them or has a chat with them, a month later, to see whether that person has had a traumatic experience that still impacts on their life. They might not need to be witnesses ever again, but they might take the view that they never want to do it again because of their experience. It is about trying to get some sort of system to deal with that.

The inquiry will have to explore the community impact. A trial judge may not have a sense of the impact of a particular crime. It may be understandable that he has to deal with the specific case, but if it is not brought to his attention that a particular crime, for example attacks on elderly people, has a big impact on the victims' confidence, the judge may see it only as assault and deal with it by the statute. The assault may not be serious, based on the physical injury caused, but, based on victim and community impact, it may have caused a lot of concern among elderly people.

Ms Maura Campbell:

You are right to say that the focus of the strategy is primarily from the point where the victim comes forward and reports the crime to the disposal of the case. It is very likely that the Committee, in the course of its inquiry, will hear about issues concerning underreporting. One of the ways in which you encourage people to come forward is by showing that those who come forward can be treated with dignity and respect. If you improve the performance in that area, it should help with that.

If specific issues come through in your inquiry, the Department will need to respond to them in some way, either through its strategy or other work, such as the community safety strategy. Across the Department, quite a bit of work is under way on encouraging higher levels of reporting of sexual crime, where we know that there is massive underreporting. That also applies to domestic violence and hate crime. However, if, from your consultations, there is a feeling that more needs to be done on other types of crime, the Department will need to respond to that.

Mr Lynch:

Some of my points have been covered already by my colleague. One of the big difficulties around the criminal justice system is the existence of a hierarchy, from which victims can feel very isolated. There is a judge, prosecution, defence and then the victims. How do you propose to level that out?

Ms Maura Campbell:

We often get feedback that victims feel that they are on the periphery of the system. Part of the way that you level that out is to give them more of a voice in the proceedings themselves, which is why we are looking at issues such as victim impact statements and victim impact reports. We are also looking at anything that we can do to help them to understand the process, what is happening and what is going on.

It will always be the case that the role of the victim is something different. It is not on a par with the rights and entitlements of a defendant under the law. That does not mean that we should not try to make people feel that their contribution is valued. The chief inspector has been drawing out that theme in his investigations. I do not want to quote from the report because it is not yet published, but he has examined that in some depth.

Mr McCartney:

Would a victim of a crime who is involved in a court case be told what the sentencing possibilities are in that case?

Ms Maura Campbell:

You would normally expect that they would have some sort of indication of —

Mr Maurice Campbell:

They should be told all the way through the system.

Ms Maura Campbell:

— what the likely outcome might be.

Mr McCartney:

Not the likely outcome, but if a victim of an assault were to appear in court tomorrow, could they be told, for example, that the trial judge has the power to suspend the sentence for a maximum of 12 years? I ask that because under the ‘Desired Outcomes’ heading on page 16 of your submission, it states that:

“Victims can tell the court exactly how the crime has impacted on them personally.”

You can understand that if you have been physically assaulted, etc. However, there should be provision for a victim to be able to say that they do not think the law dealt with them adequately. The last bullet point states that:

“The criminal justice system responds appropriately to the voice of the victim.”

Then they might get an understanding how sentences are imposed. Sometimes, the victims do not feel best served.

Ms Maura Campbell:

We could look at how much information the victim receives in respect of the likely outcome. It is partly about trying to avoid gaps in expectation, because, if people are expecting something to happen and something very different occurs at the end — and we have seen that with some high-profile cases — it can lead to the victim feeling as though they have been very much marginalised. However, with victim impact statements, the focus is very much on the impact on the victim, and it is left to the judge to decide how to take account of that when arriving at a disposal. In those sorts of statements, we do not invite victims to indicate what they think the punishment should be. However, we want to look at better guidance for victims on what those statements are for and how they can be used.

Mr S Anderson:

Thank you for your presentation. Jim talked about not being told of the outcome of a case that he was involved in. In my experience, for the people who are willing to come forward as witnesses and for the victims, the problem is the length of time that it takes to get the case to court. That weighs very heavily on those people in the sense that it causes anxiety. If they are the victim, it never goes away, but the investigation continues, the police keep coming back to them and they can never relax. It could take 12 months or longer for the case to come to court, and, throughout

that whole time, it causes great trauma to those people. It is probably difficult to speed the case up and get it to court, but that has been my experience, and it has caused great trauma to those people. Therefore, we have to work to ensure that people are willing to come forward and that they are assisted in some way to get those cases to court if the evidence is there.

Ms Maura Campbell:

I agree with that, not just because you hear phrases such as, “I felt that my life was on hold while the case was going forward”, but also because, when the time comes for the victim or witness to give evidence, it can be very difficult for them to recall something that happened maybe two years previously. Therefore, it is certainly an issue that needs to be tackled.

Mr S Anderson:

It is difficult for anyone to recall every detail of something that happened, but if they have gone through a bad time, it would be even more difficult to recall every detail. The time lag is a difficulty.

The Chairperson:

Thank you for coming along today. We will have our inquiry, and I am sure that it will be reflected in the consultation document when it comes out. Hopefully, we will see you again a fair amount over the next number of months. I look forward to it. Thank you very much.