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Victims and Witnesses in the Criminal Justice System: Good Practice

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This research paper provides information on examples of good practice initiatives in a range of jurisdictions including Northern Ireland in improving the experiences of victims and witnesses in the criminal justice system

Key Points

This research paper has identified examples of good practice in a range of jurisdictions in improving services to victims and witnesses. Some of these good practice models already exist in Northern Ireland. However there are currently some gaps which have been considered but have not been implemented as yet in Northern Ireland.

In England and Wales, there is a statutory code of practice for victims and witnesses of crime. In Northern Ireland, there is a Code of Practice for Victims and Witnesses which currently is not on a statutory footing. The Department of Justice (DoJ) has indicated it plans to place the requirement for a code of practice for victims of crime on a statutory footing, however the detail of the provisions will remain non statutory to ensure flexibility of the code.

In England and Wales, a Victims Commissioner was appointed to promote the interests of victims and witnesses of crime. The creation of a Commissioner for Victims and Witnesses of Crime for NI has been considered by the Criminal Justice Review Team in 2000 and the Criminal Justice Inspection Northern Ireland (CJINI) in 2005 making conditional recommendations that a Victims' Commissioner should be considered if there wasn't sufficient progress. It has been suggested by Victim Support NI that this issue will continue to be debated.

CJINI has suggested that Witness Care Units (WCUs) could address some of the issues related to securing attendance of victims and witnesses at court. WCUs exist in England and Wales and have been viewed as successful in securing higher levels of attendance at court. However some gaps have been identified, particularly for victims whose cases do not get to court or where the perpetrator is not detected. The DoJ has included an action to develop a model for Witness Care Units in its Victims and Witnesses Action Plan 2011/12.

Research suggests victims and witnesses in civil proceedings should be entitled to the same support as victims and witnesses in criminal proceedings. The Northern Ireland Law Commission reported there was some excellent practice in Northern Ireland courts and recommended a statutory scheme of special measures in civil proceedings would enhance this good practice.

Some initiatives are being implemented to improve the experience of victims of domestic violence in NI. These include new listing arrangements in Londonderry Magistrates' Court criminal cases in domestic violence cases and a commitment to appoint Independent Domestic Violence Advisors (IDVA). Special Domestic Violence Courts have been established in England and Wales, and Glasgow. The Northern Ireland Courts and Tribunals Service are leading on a feasibility study on specialist courts in NI.

The Department of Justice's (DOJ) Guide Achieving Best Evidence contains a number of good practice recommendations set out in the NSPCC good practice guidance in relation to dealing with young witnesses from the pre- trial to post trial stages. Research by the QUB/NSPCC in 2011 identifies a number of problems experienced by young witness in relation to the criminal justice system and makes 11 recommendations. These have been accepted by the Department of Justice who indicated will take forward the recommendations in the Victim and Witnesses Action Plan 2011/12.

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1 Introduction

This paper discusses some examples of good practice in terms of provision for victims and witnesses in the criminal justice system. It identifies systems of enhancing the victim's standing in court proceedings, government led initiatives such as policy centres or victims' charters, victim support services, police programmes, inter agency cooperation, victims' champions, witness care units, special measures in civil proceedings, initiatives to deal with the impact of delays in trial, domestic violence initiatives, equality and diversity measures, and measures in dealing with child witnesses.

2 Enhancing Victim's 'Standing' in Court Proceedings

One school of thought in academic literature to enhance victims' standing in the criminal justice process is to adopt a participatory rights approach. It has been suggested that the adversarial system is not conducive to enhancing victims' participatory rights and that much could be learnt from continental inquisitorial systems.¹ For example in Germany, victims of certain serious offences or relatives of murder victims may act as subsidiary prosecutors; however lawyers are often appointed for this purpose.² As subsidiary prosecutors, victims are entitled to certain participatory rights such as the right to be present at all stages of the process; to put additional questions to witnesses; to provide additional evidence or make a statement or present a claim for compensation.³ This process achieves the balance of recognising the special status of the victim whilst acknowledging the role of the state in prosecuting the crime.⁴ It is acknowledged that there has been a low rate of participation in this process, often due to a lack of information about the process and the model is underdeveloped. However, victims who did participate reported that the system had a positive effect.⁵ Another continental model is the *partie civile* procedure which acknowledges the victim's status as a separate party in the trial.⁶ The procedure confers three important rights on the victim: to initiate a prosecution; the right to participate and be heard as a party in a prosecution; and the right to pursue a claim of civil damages in a criminal prosecution.⁷ Research indicates that, despite its advantages, the *partie civile* system is not perfect as many victims do not become aware of their rights or do not choose to go through this process.⁸ Academic research

¹ J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 Journal of Law and Society 2005 . 294, 307: See also J Doak "Victims and the Sentencing Process: Developing Participatory Rights 29 Legal Studies, 651 2009,

² J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 Journal of Law and Society 2005. 294, 315

³ J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 Journal of Law and Society 2005. 294, 308

⁴ J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 Journal of Law and Society 2005. 294, 308.

⁵ J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 Journal of Law and Society 2005. 294, 309.

⁶ J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 Journal of Law and Society 2005. 294, 310.

⁷ J Doak "Victims' Rights in Criminal Trials: Prospects for Participation" 32 Journal of Law and Society 2005. 294, 311.

⁸ I Waller "Crime Victims: Doing Justice To Their Support and Protection" European Institute for Crime Prevention and Control Affiliated with the United Nations, 45

also suggests those who participate in the *partie civile* procedure are no better off than counterparts in the English criminal justice system and concerns have been raised that the procedure could add to costs and create delay.⁹

3 Restorative Justice

Research indicates that restorative justice initiatives mainstreamed into the criminal justice system are examples of good practice. One view is that in order to effectively realise victims' rights, there is a need for a better model of criminal justice and that increasing the use of restorative justice techniques could result in a more inclusionary means of sentencing in cases where the defendant pleads guilty.¹⁰

Research has identified a model in France as an example of good practice. France has been focussing on assistance and mediation since 1986, when other countries were only focusing on assistance for victims. L'Institut National d'Aide Aux Victimes et de Mediation (INAVEM) was established as a national voluntary organisation to co-ordinate and support victim assistance and mediation throughout France.¹¹ In the UK, there are a number of restorative justice schemes located within the criminal justice system which offer redress to victims.¹² Examples include:

- The Crime and Disorder Act 1998 which aims to deal with juvenile offending and contains restorative justice principles such as reparation orders;¹³
- The Youth Justice and Criminal Evidence Act 1999 which contains referral orders as a disposal for first time low level juvenile offenders.¹⁴ These are designed to divert young offenders from 10-17 years from court to a Youth Offender Panel. The Panel offers the young person the opportunity to make restoration to the victim, take responsibility for the consequences of their actions and reintegrate in to the community.¹⁵
- The Justice (Northern Ireland) Act 2002 provides for the vast majority of offences to be dealt with through two types of restorative youth conferences: diversionary and court ordered.¹⁶ It has been highlighted that in the Northern Ireland model, the level of victim participation is high compared to other restorative initiatives.¹⁷

Whilst restorative justice initiatives have been welcomed and acknowledged as a process can be beneficial for victims, restorative justice models are not primarily designed as a victim service. One view is that "the idea that restorative justice has

⁹ J Spencer "The Victim and the Prosecutor" in A Bottoms and JV Roberts "Hearing the Victim: Adversarial justice, crime victims and the State" Willan Publishing, Devon, 154.

¹⁰ J Doak (2008) "Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties". 254

¹¹ I Waller "Crime Victims: Doing Justice To Their Support and Protection" European Institute for Crime Prevention and Control Affiliated with the United Nations, 43

¹² J Doak (2008) "Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties". 257

¹³ J Doak (2008) "Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties". 257

¹⁴ J Doak (2008) "Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties". 257

¹⁵ J Doak (2008) "Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties" 258

¹⁶ J Doak (2008) "Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties" 259

¹⁷ J Doak (2008) "Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties" 259

been designed as a service for victims is highly questionable” as it was introduced with the aim of preventing reoffending.”¹⁸ One factor highlighted is the timing of the offer of restorative justice which depends on the point that the case has reached in the criminal justice process, rather than the point of the victims’ recovery.¹⁹

4 Government policy centres for victims of crime

Some good practice approaches identified in the literature include the development of dedicated government policy centres for victims of crime, government led victims’ programmes and victims’ charters. An example of a government policy centre is the Office for Victims of Crime (OVC) in the Department of Justice in the United States which has been described as “a unique and inspiring example of a national responsibility centre.”²⁰ The OVC was established in 1988 under the Victims of Crime Act of 1984. The OVC is tasked by Congress with administering the Crime Victims’ Fund. The fund is mainly comprised of criminal fines, special assessments and bond forfeitures from convicted federal offenders.²¹ The fund supports a number of programmes including:²²

- State crime victim compensation programme formula grants which supplements state funds for reimbursing victims of violent crimes for out of pocket expenses that result from crime;
- State victim assistance programme formula grants which supports providers who supply services directly to victims;
- OVC discretionary grants and training and technical expertise assistance to enhance expertise of victim service providers programme evaluations, fellowships and victims of federal crimes;
- Victim-witness co-ordinators in US Attorneys’ offices;
- The Federal Victim Notification System which provides a means for notifying victims of federal crimes about release or detention of offenders;
- The Children’s Justice Act which provides funding and grants to improve the investigation and prosecution of child abuse and neglect cases in certain communities.

The OVC works to raise awareness of victims’ issues, promotes compliance with victims’ rights laws, provides training and technical assistance to service providers and

¹⁸ H Reeve and P Dunn “The status of crime victims in the twenty-first century”, in A Bottoms and JV Roberts “Hearing the Victim: adversarial justice, crime victims and the state”, 65

¹⁹ H Reeve and P Dunn “The status of crime victims in the twenty-first century”, in A Bottoms and JV Roberts “Hearing the Victim: adversarial justice, crime victims and the state”, 65

²⁰ I Waller “Crime Victims: Doing Justice To Their Support and Protection” European Institute for Crime Prevention and Control Affiliated with the United Nations, 32.

²¹ Office for the Victims of Crime “Report to the Nation: Fiscal Years 2007-2008” 2009, ix.
<http://www.ojp.usdoj.gov/ovc/welcovc/reporttonation2009/ReporttoNation09Part1.pdf>

²² Office for the Victims of Crime “Report to the Nation: Fiscal Years 2007-2008” 2009, 8.
<http://www.ojp.usdoj.gov/ovc/welcovc/reporttonation2009/ReporttoNation09Part1.pdf>

other professionals and develops new resources such as innovative technological approaches.²³

In Northern Ireland, there is not a government policy centre solely focusing on victims of crime. However, the Justice Development Division within the Department of Justice leads the delivery of cross cutting initiatives to improve services to victims and witnesses as well as initiatives to improve the joined up operation of the justice system, including work to speed up justice, providing electronic information sharing through the Causeway system and enhance public protection, develops policy around sex offenders and recalls to custody offenders who have breached their terms of licence in the community.²⁴ In order to improve services for victims, the Division works through a cross agency Victims and Witness steering group, this also includes representatives from the voluntary sector. The division leads on the co-ordinating efforts to deliver the five year “Bridging the Gap” strategy for victims and witnesses and provides financial support to Victim Support NI.²⁵

The Victim Empowerment Programme (VEP) in South Africa is a key part of the national crime prevention strategy.²⁶ It is an inter-departmental and inter-sectoral programme led by the Department of Social Development.²⁷ There are representatives for the Departments of Health, Safety and Security, Justice and groups from the NGO sector. The Department is responsible for co-ordinating, managing and facilitating the development and implementation of victim empowerment policies, services and programmes.²⁸ The Programme has a number of objectives:²⁹

- Policy and legislation;
- Management in ensuring effective VEP governance and management systems;
- Service Delivery;
- Training and Capacity of VEP service providers;
- Research monitoring and evaluation of VEP projects on victims and the development of VEP projects on victims.

The VEP targets a number of priority groups including:³⁰

- Women and children;
- People with disabilities and older persons;

²³ Office for the Victims of Crime “Report to the Nation: Fiscal Years 2007-2008” 2009, ix.
<http://www.ojp.usdoj.gov/ovc/welcovc/reporttonation2009/ReporttoNation09Part1.pdf>

²⁴ Department of Justice, Justice Policy Directorate “Briefing for the Justice Committee Meeting on 9 June 2011”, 7

²⁵ Department of Justice, Justice Policy Directorate “Briefing for the Justice Committee Meeting on 9 June 2011”, 8

²⁶ I Waller “Crime Victims: Doing Justice To Their Support and Protection” European Institute for Crime Prevention and Control Affiliated with the United Nations, 34

²⁷ I Waller “Crime Victims: Doing Justice To Their Support and Protection” European Institute for Crime Prevention and Control Affiliated with the United Nations, 34

²⁸ Presentation of the Victim Empowerment Programme by Conny Nxumalo, 15 September 2009,
<http://www.pmg.org.za/files/docs/090915overview.ppt>

²⁹ Presentation of the Victim Empowerment Programme by Conny Nxumalo, 15 September 2009,
<http://www.pmg.org.za/files/docs/090915overview.ppt>

³⁰ Presentation of the Victim Empowerment Programme by Conny Nxumalo, 15 September 2009,
<http://www.pmg.org.za/files/docs/090915overview.ppt>

- Youth (teenage girls and boys);
- Men and boys;
- Victims of human trafficking, sexual assault, rape and domestic violence.

Some achievements of the VEP include the establishment of one stop centres for victims of crime and violence, a number of victim empowerment projects run by NGOs, appointment of a number of VEP co-ordinators and increases in the number of shelters for female victims of domestic violence.³¹

5 Victims' Statutes and Codes of Practice

In Northern Ireland, CJINI found that victims and witnesses were expecting to have as a minimum comparable standards as available to citizens elsewhere in the United Kingdom, in particular highlighting the development of the Victims Act.³² The Domestic Violence, Crime and Victims Act 2004 provides for a code of practice as to the services to be provided to victims of crime.³³ The Secretary of State may revise the code but proposed revisions cannot reduce the quality or extent of services.³⁴ The Code of Practice provides victims with statutory rights to information regarding services that victims of crime are entitled to.³⁵ However the organisations listed in the Code of practice are under no obligation to provide services beyond the minimum requirements set out in the code.³⁶ Failure not to comply with the code does not in itself give rise in civil or criminal liability but a court can take the failure into account when determining a question in proceedings.³⁷ Section 35 of the legislation enshrines victims' rights to make representations and receive information in cases where an offender has been convicted of a violent or a sexual offence and has been sentenced to a prison sentence of more than 12 months imprisonment. In such cases the local Probation Board must take all reasonable steps to ascertain whether a victim of the offence wishes to make representations to the Board about matters relating to licence conditions or supervision requirements in the event of release. The Local Probation Board has the same responsibilities in cases involving offenders who have been convicted of violent or sexual offences but the court has given a hospital direction in addition to a prison

³¹ Presentation of the Victim Empowerment Programme by Conny Nxumalo, 15 September 2009, <http://www.pmg.org.za/files/docs/090915overview.ppt>

³¹ Presentation of the Victim Empowerment Programme by Conny Nxumalo, 15 September 2009, <http://www.pmg.org.za/files/docs/090915overview.ppt>

³² Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System" July 2005, 17, <http://www.cjini.org/CJNI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

³³ Section 32 of the Domestic Violence, Crime and Victims Act 2004

³⁴ Section 33 (9) of the Domestic Violence, Crime and Victims Act 2004

³⁵ Helen Reeves and Peter Dunn "The Status of Crime Victims and Witnesses in the 21st Century" in A Bottoms and JV Roberts "Hearing the Victim: Adversarial Justice, Crime Victims and the State" Willan Publishing, Devon, 53.

³⁶ Criminal Justice System "The Code of Practice for Victims of Crime" 3, <http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/victims-code-of-practice2835.pdf?view=Binary>

³⁷ Section 34 of the Domestic Violence, Crime and Victims Act 2004

sentence.³⁸ The legislation provides for a complaints mechanism which enables the Parliamentary Commissioner for Administration to investigate and report on complaints that a duty under the code of practice has been breached or that a person has failed to comply with a duty under the code.³⁹

The legislation also provides for the appointment of a Victim's Commissioner by the Secretary of State in consultation with the Attorney General and Lord Chancellor.⁴⁰ In addition to the appointment of a Victims' Commissioner, the Secretary of State is required to appoint a Victims' Advisory Panel which can be consulted on matters relating to victims of crime and anti-social behaviour.⁴¹ Aspects of these developments have not been without criticism. The Victims' Commissioner for England and Wales suggests that whilst the creation of the statutory code has been a significant development, its impact has been limited as the rights and entitlements are not enforceable.⁴² It is reported that there is no enforcement available for failure to comply with the code and it is rarely measured whether agencies meet the standards. It is reported if the public had greater awareness of the Code of Practice, perhaps victims would be more demanding of entitlements.⁴³ Another area of concern is the complaints system which requires persons wishing to make complaints to apply to the Parliamentary Commissioner.⁴⁴ The Victims' Commissioner draws attention to the process where applications have to be made through the person's Member of Parliament. It suggested that since 2006, 58 complaints have been dealt with, only 2 complaints have been investigated as the others fell outside the remit of the Commissioner and only 1 complaint has been upheld.⁴⁵ It has been argued that the system makes it difficult for victims to complain.⁴⁶

Despite the fact the legislation provides for a code of practice in England and Wales, a recent report by Victim Support suggests that there has been a failure to meet the

³⁸ Section 39 of the Domestic, Violence, Crime and Victims Act 2004

³⁹ Section 47 of the Domestic Violence, Crime and Victims Act 2004. See explanatory notes to the Domestic Violence, Crime and Victims Act 2004, para 135 <http://www.legislation.gov.uk/ukpga/2004/28/notes/division/4/3/8/6>

⁴⁰ Section 48 of the Domestic Violence, Crime and Victims Act 2004

⁴¹ Section 55 of the Domestic Violence, Crime and Victims Act 2004.

⁴² Commissioner for Victims and Witnesses "The Poor Relations- Victims in the criminal justice system", July 2010, 8, <http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/about/docs/victims-in-justice-system.pdf>

⁴³ Commissioner for Victims and Witnesses "The Poor Relations- Victims in the criminal justice system", July 2010, 8 <http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/about/docs/victims-in-justice-system.pdf>

⁴⁴ See section 47 of the Domestic Violence, Crime and Victims Act 2004

⁴⁵ Commissioner for Victims and Witnesses "The Poor Relations- Victims in the criminal justice system", July 2010, 10 <http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/about/docs/victims-in-justice-system.pdf>

⁴⁶ Commissioner for Victims and Witnesses "The Poor Relations- Victims in the criminal justice system", July 2010, 8 <http://webarchive.nationalarchives.gov.uk/20110322191207/http://www.justice.gov.uk/about/docs/victims-in-justice-system.pdf>

requirements set out in the Code of Practice to keep victims informed. The report found that:⁴⁷

- Victims are only kept updated about what is happening in their case to a satisfactory level in around half of all reported incidents;
- In around a third of reported incidents, the victim hears nothing from the authorities after the first contact with the police after they report the crime. This equate to millions of victims being left in the dark every year.

Victim Support in England and Wales suggest that victims' right to information needs to be given greater legal force and that action needs to be taken to make the Code more robust and credible and that the fact that the UK has opted into the EU directive on establishing minimum standards for the rights, support and protection for Victims of Crime is a step in the right direction.⁴⁸

The Department of Justice in Northern Ireland has indicated in its summary of responses to the consultation on the Code of Practice for Victims of Crime that it plans to place the requirement for a code of practice for victims of crime on a statutory footing, however the detail of the provisions will remain non statutory to ensure flexibility of the code.⁴⁹ Victim Support NI notes that the provisions of the code are not on a statutory footing and has called for "clearer commitments so that organisations can be held to account in the provision of information and support to victims as well as more recourse when organisations feel let down."⁵⁰

6 Victim Support Services

The provision of support services by voluntary organisations to victims of has been identified as good practice, with particular mention given of Victim Support in England and Wales and in Northern Ireland.⁵¹ Victim Support Northern Ireland (VSNI) provides a free and confidential service to victims of crime and assists almost 30,000 people each year.⁵² Services offered include:⁵³

- A Criminal Injuries Compensation Service;

⁴⁷ Victim Support "Left in the Dark: Why Victims of Crime need to be kept informed", 3
http://www.victimsupport.com/About%20us/News/2011/09/~/_media/Files/Publications/ResearchReports/LeftintheDark-V2-FINAL

⁴⁸ Victim Support "Left in the Dark: Why Victims of Crime need to be kept informed", 5
http://www.victimsupport.com/About%20us/News/2011/09/~/_media/Files/Publications/ResearchReports/LeftintheDark-V2-FINAL

⁴⁹ Department of Justice "Summary of Responses to Consultation on a Code of Practice for Victims of Crime",
http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary_of_responses_to_the_public_consultation_on_a_code_of_practice_for_victims_of_crime.pdf

⁵⁰ Victim Support Northern Ireland "Briefing for Political Manifestos" 2011

⁵¹ I Waller "Crime Victims: Doing Justice to Their Support and Protection" European Institute for Crime Prevention and Control Affiliated with the United Nations, 35.

⁵² <http://www.victimsupportni.co.uk/what-we-do>

⁵³ <http://www.victimsupportni.co.uk/what-we-do>

- Community Service which offers information on police procedure, liaison with other organisations; and advice and information on compensation and insurance matters; and
- Witness Service to provide emotional support and practical information to witnesses, victims and their family.

The Department of Justice is VSNIs principal funder, providing core funding of £2.2m in 2010/11.⁵⁴ VSNI has received core funding of £2.0m per annum between 2006 and 2009 and £2.2m per year between 2009 and 2011.⁵⁵ During the period 2009/10 VSNI received 26,453 victim referrals, assisted 2,107 claimants for criminal injuries compensation and provided support for 7,109 victims and witnesses at court.⁵⁶

Other models of good practice identified include collaborative approaches between judiciary and NGOs for example in Venezuela the Red Cross and Supreme Court have collaborated to develop a hotline and services for victims of crime.⁵⁷ Good practice models also include the development of victim support to meet the needs of specific groups such as women and children. Examples including the Crime Victim Assistance Centre in Argentina which provides services to victims of rape and family violence and the Child Witness Project in Canada.⁵⁸

7 Police Programmes

Police agencies in some jurisdictions have developed good practice models to meet the needs of victims of crime. Often the police are the first point of contact in the criminal justice system for victims of crime. The Victim Assistance Strategy and Unit in Canada is described as “an inspiring model for police agencies”.⁵⁹ A police officer is required to provide the victim with a card that contains information on key contacts including local distress centres, locksmiths, criminal injuries compensation, crime prevention unit and other services. This programme also involves an outreach service and involves more than 100 victim advocates who can provide assistance to victims who have suffered severe trauma as a result of the offence.⁶⁰

Other examples of good practice have been identified in other jurisdictions’ police programmes. The Police Support Programmes for Crime Victims in Japan which is responsible for the protection of crime victims and providing assistance which has a number of responsibilities including the protection of crime victims, providing assistance where a crime occurs, preventing re-occurrence of a crime and raising

⁵⁴ Information obtained from the Department of Justice via email 07/09/2011

⁵⁵ Information obtained from the Department of Justice via email 07/09/2011

⁵⁶ Department of Justice “Digest of Information on the Northern Ireland Criminal Justice System” Spring 2011, Vol 2, 28.

⁵⁷ I Waller (2003) “Crime Victims: Doing Justice to Their Support and Protection” European Institute for Crime Prevention and Control Affiliated with the United Nations, 36.

⁵⁸ I Waller (2003) “Crime Victims: Doing Justice to Their Support and Protection” European Institute for Crime Prevention and Control Affiliated with the United Nations, 37

⁵⁹ I Waller (2003) “Crime Victims: Doing Justice to Their Support and Protection” European Institute for Crime Prevention and Control Affiliated with the United Nations, 40

⁶⁰ I Waller (2003) “Crime Victims: Doing Justice to Their Support and Protection” European Institute for Crime Prevention and Control Affiliated with the United Nations, 41

public awareness with regards to victims issues.⁶¹ The Family Consultant Service in Ontario, Canada provides mental health crisis intervention teams in domestic violence cases. It is suggested that this is a cost effective way of reducing police time in dealing with repeat calls and provides a lasting service to victims.⁶² This programme has been described as unique as it can link with other agencies to provide support to victims on a long term basis. All female police stations have been established in Brazil to provide assistance to female victims of gender related crimes. These police stations have the power to receive complaints of and investigate crimes against women and children. They provide victimised women with appropriate supports services and utilise all female patrol cars when investigating incidents.⁶³

8 Interagency Co-operation and the use of Protocols

Research has indicated that inter-agency co-operation and the use of protocols are examples of good practice in dealing with victims and witnesses. Specific examples highlighted in Northern Ireland include:⁶⁴

- The Foyle District Partnership Protocol to tackle homophobic attacks, hate crime, fear of attacks, suicide and self-harm and domestic violence;
- The Victim Support, Court Witness Service, NSPCC and NI Court Service Protocol to support vulnerable victims and intimidated witnesses.

Good practice has also been identified in links between the justice agencies and groups in the voluntary and community sector dealing with domestic violence issues. One such partnership is the Multi-Agency Risk Assessment Conference (MARAC). This conference is a monthly meeting led by the police and includes partners such as Women's Aid, Northern Ireland Housing Executive and the Probation Board Northern Ireland. The aim of the model is to share information about high risk victims, develop safety plans and provide support.⁶⁵ The model has been highlighted as beneficial as inter-agency relationships have improved due to greater information sharing, and a greater understanding of the roles and responsibilities of each of the agencies in tackling domestic violence.⁶⁶

⁶¹ I Waller (2003) "Crime Victims: Doing Justice to Their Support and Protection" European Institute for Crime Prevention and Control Affiliated with the United Nations, 41-42.

⁶² I Waller (2003) "Crime Victims: Doing Justice to Their Support and Protection" European Institute for Crime Prevention and Control Affiliated with the United Nations, 41

⁶³ I Waller (2003) "Crime Victims: Doing Justice to Their Support and Protection" European Institute for Crime Prevention and Control Affiliated with the United Nations, 42

⁶⁴ Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System" July 2005,60, <http://www.cjini.org/CJNI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

⁶⁵ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland" ,19. <http://www.cjini.org/CJNI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

⁶⁶ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland" ,20. <http://www.cjini.org/CJNI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

In Scotland the Joint Protocol between the Association of Chief Police Officers in Scotland (ACPOS) and the Crown Office and Procurator Fiscal Service (COPFS) on domestic abuse has been identified as good practice.⁶⁷ The Protocol provides clear instruction on the investigation, practices and processes to be deployed by both agencies.⁶⁸

9 Victims' Champion for Victims and Witnesses

The Victims' Champion Sara Payne in England and Wales reported that victims need a champion or someone to advocate on behalf of the victim who would act as a single point of contact. This champion or advocate is someone that victims can easily reach and that can bring many of the criminal justice agencies involved in meeting the needs of victims together as part of an "end to end process".⁶⁹ It was suggested that Victim Support are often unable to obtain information on behalf of victims as they have no statutory right of access to information or to challenge agencies on behalf of victims.⁷⁰ Furthermore Witness Care Units (WCUs) only support witnesses who are going to court and it was highlighted that a vast number of cases do not get this far in the process.⁷¹

In England and Wales, a Commissioner for Victims and Witnesses was appointed as a result of the Domestic Violence, Crimes and Victims Act 2004. The functions of the Commissioner include: promoting the interests of victims and witnesses; encourage good practice; keep under review the code of practice.⁷² In performing these functions, the Victims' Commissioner may: make proposals to the Secretary of State for amending the Code; make recommendations to an authority within their remit; commission research; and consult with persons they think appropriate.⁷³ The Victims' Commissioner for England and Wales, Louise Casey, has recently resigned and at this time it is not clear if another appointment will be made.⁷⁴

It should be noted that the appointment of an advocate for victims of crime in Northern Ireland has been considered in Northern Ireland. The Criminal Justice Review Team suggested in 2000 that the appointment of a victims' advocate should be considered if new arrangements on behalf of victims were not seen to be working adequately.⁷⁵ The

⁶⁷ Note that the COPFS is responsible for the prosecution of crime in Scotland. See Inspectorate of Prosecution in Scotland and HM Constabulary for Scotland Joint Report "Victims in the Criminal Justice System" October 2010, 39.

⁶⁸ Note that the COPFS is responsible for the prosecution of crime in Scotland. See Inspectorate of Prosecution in Scotland and HM Constabulary for Scotland Joint Report "Victims in the Criminal Justice System" October 2010, 39.

⁶⁹ Sara Payne "Redefining Justice: Addressing the individual needs of victims and witnesses" November 2009, 13, 14

⁷⁰ Sara Payne "Redefining Justice: Addressing the individual needs of victims and witnesses" November 2009, 13

⁷¹ Sara Payne "Redefining Justice: Addressing the individual needs of victims and witnesses" November 2009, 13, 14

⁷² Section 49 (1) (a)-(c) of the Domestic Violence, Crime and Victims Act 2004

⁷³ Section 49 (2) (a)-(e) of the Domestic Violence, Crime and Victims Act 2004.

⁷⁴ BBC News "Victims' Commissioner Louise Casey quits for new role" 12 October 2011, <http://www.bbc.co.uk/news/uk-politics-15278161>

⁷⁵ Criminal Justice Review Group (2000) "A Review of the Criminal Justice System in Northern Ireland", 324 http://www.nio.gov.uk/review_of_the_criminal_justice_system_in_northern_ireland.pdf

CJINI indicated in its thematic report on victims and witnesses in 2005 that insufficient progress had been made in improving services to victims and witnesses and considered that it was appropriate to recommend the creation of a victims' commissioner. However this was a conditional recommendation to give the agencies more time to develop services.⁷⁶ The follow up inspection report in 2008 reported that the recommendation had been achieved in relation to action planning as the Vulnerable Victims and Intimidated Witnesses Steering Group had developed an action plan. However concerns were raised regarding the timeliness of the progress and the capacity of the VVIW to deliver change.⁷⁷ Victim Support NI's Strategic Plan 2008/11 highlights that one of the critical assumptions for the future is that the issue of an advocate for victims of crime will continue to be debated.⁷⁸

10 Witness Care Units

CJINI in its thematic inspection in 2005 recommended that the Criminal Justice Board (CJB) should set up a jointly owned victims and witnesses information unit which would act as a single point of contact to the criminal justice system to assist victims and witnesses with information on progress of cases and referrals to bodies for specialised support.⁷⁹ CJINI drew attention to similar models known as Witness Care Units (WCUs) that exist in England and Wales and it will be useful to consider this model to ascertain any possible lessons to be learnt. WCUs are jointly run by the police and the Crown Prosecution Service (CPS) in England and Wales and 165 units have been established.⁸⁰ Witnesses are allocated a Witness Care Officer to provide them with information and assistance.⁸¹ They are also updated on any developments in the case.⁸² WCUs identify practical needs of witnesses at early stages such as childcare whilst attending court and arranging with employers time off work to attend court. Vulnerable or intimidated witnesses can be identified at an early stage to put special measure in place to assist them to give evidence in court.⁸³ WCUs have been viewed as successful, particularly by the government. It was reported to the House of Commons in 2006 by the Home Office Minister that the number of trials that did not go ahead due to non-attendance by witnesses declined from 908 in September 2004 to

⁷⁶ Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System" July 2005, 20. <http://www.cjini.org/CJINI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

⁷⁷ Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland; A Follow up review of the July 2005 Inspection Recommendations", 6. <http://www.cjini.org/CJINI/files/b9/b91c68e8-fb98-4e7d-aaab-3d0745ed5735.pdf>

⁷⁸ Victim Support NI Strategic Plan 2008-11 "Seeing the Future Through the Victims' Eyes" [http://www.victimsupportni.co.uk/userFiles/File/VS%20-%20Strategic%20Plan%202008-11%20Final\(1\).pdf](http://www.victimsupportni.co.uk/userFiles/File/VS%20-%20Strategic%20Plan%202008-11%20Final(1).pdf), 8.

⁷⁹ Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System" July 2005, 19 <http://www.cjini.org/CJINI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

⁸⁰ Helen Reeves and Peter Dunn "The status of crime victims and witnesses in the twenty-first century" in A Bottom and JV Roberts "Hearing the Victim: Adversarial justice, crime victims and the State" (2010) Willan Publishing, Devon, 56.

⁸¹ Helen Reeves and Peter Dunn "The status of crime victims and witnesses in the twenty-first century" in A Bottom and JV Roberts "Hearing the Victim: Adversarial justice, crime victims and the State" (2010) Willan Publishing, Devon, 55.

⁸² Helen Reeves and Peter Dunn "The status of crime victims and witnesses in the twenty-first century" in A Bottom and JV Roberts "Hearing the Victim: Adversarial justice, crime victims and the State" (2010) Willan Publishing, Devon, 56

⁸³ Helen Reeves and Peter Dunn "The status of crime victims and witnesses in the twenty-first century" in A Bottom and JV Roberts "Hearing the Victim: Adversarial justice, crime victims and the State" (2010) Willan Publishing, Devon, 56

727 in August 2005. However two concerns have been highlighted. First the resources required to prepare vulnerable witnesses is significant but no further funding has been provided. The second concern is that the units deal with victims and witnesses after an offender has been charged but only 3% of crimes reach the courts.⁸⁴ It has been suggested a gap exists as there are no similar provisions for victims in cases where the offender has not been detected, or where the investigation is at an early stage and these victims should also have a single point of contact for provision of better information.⁸⁵ It has recently been suggested by CJINI that WCUs similar to the England and Wales model could address some of the issues related to securing attendance of victims and witnesses at court and this will be explored further in its forthcoming thematic inspection report.⁸⁶ CJINI states that the data does not allow identification of when victims and witnesses do not appear at court however indicate that 43% of adjournments in adult cases are due to prosecution difficulties. CJINI suggest that this covers a number of reasons including absence of a victim, witnesses or a police officer.⁸⁷ It is also estimated by the PPS that the percentage of contested cases adjourned by the prosecution due to witness difficulties is 8%.⁸⁸ The Department of Justice in Northern Ireland contained an action to develop a model for witness care units and agree a way forward by March 2012 in its annual action plan for 2011-2012.⁸⁹

11 Extending Special Measures to Civil Proceedings

It has been suggested that research on special measures has been mainly focused on the criminal justice system, "but there is no reason to suppose that the experience of testifying in a civil court would be any less stressful for vulnerable witnesses."⁹⁰ The Criminal Evidence (Northern Ireland) Order 1999 is a statutory scheme which enables vulnerable victims and witnesses to avail of special measures in criminal proceedings. This scheme was outlined in the previous paper on victims and witnesses. However The Northern Ireland Law Commission (NILC) has recently considered the issue of the use special measures in civil proceedings.⁹¹ The report suggests that the current law

⁸⁴ Helen Reeves and Peter Dunn "The status of crime victims and witnesses in the twenty-first century" in A Bottom and JV Roberts "Hearing the Victim: Adversarial justice, crime victims and the State" (2010) Willan Publishing, Devon, 57. This was a point also made by Sara Payne who highlighted that not all cases get to court and suggested the need for a victims champion or advocate as a single point of contact, see Sara Payne "Redefining Justice: Addressing the individual needs of victims and witnesses" November 2009, 13, 14.

⁸⁵ Helen Reeves and Peter Dunn "The status of crime victims and witnesses in the twenty-first century" in A Bottom and JV Roberts "Hearing the Victim: Adversarial justice, crime victims and the State" (2010) Willan Publishing, Devon, 57

⁸⁶ Criminal Justice Inspection Northern Ireland "Securing Attendance at Court" May 2011, vii
<http://www.cjini.org/CJINI/files/32/32538c06-054e-4371-918e-e9ff15f5e76b.PDF>

⁸⁷ Criminal Justice Inspection Northern Ireland "Securing Attendance at Court" May 2011, 10

⁸⁸ Criminal Justice Inspection Northern Ireland "Securing Attendance at Court" May 2011, 10

⁸⁹ Department of Justice Northern Ireland "Victims and Witness Annual Action Plan 2011-2012"
http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/victim_and_witness_annual_action_plan_2011-12.pdf

⁹⁰ J Doak "One Size Fits All: The Case For Special Measures in Criminal Proceedings." 58 N.I.R. Legal Q 459 2007, 488.

⁹¹ The Northern Ireland Law Commission "Report on Vulnerable Witnesses in Civil Proceedings" NILC10 (2011), available at http://www.nilawcommission.gov.uk/report_vw_july_2011.pdf

and practice gives limited protection to witnesses who may have difficulties in giving evidence in civil proceedings.⁹² The report also indicated that the current protections have not “evolved as a coherent and considered plan to address the difficulties of witnesses and many depend upon the discretion of the court.”⁹³ The NILC noted that there was some excellent practice in Northern Ireland courts amongst the judiciary and legal representatives, however it was suggested a statutory scheme would enhance this good practice.⁹⁴ The NILC therefore recommended that a scheme of special measures is put in place on a statutory basis in relation to civil proceedings in Northern Ireland.⁹⁵ The Commission recommends that child witnesses under the age of 18 should be eligible for special measures and that the entitlement is automatic.⁹⁶ The Commission also recommends that people who are suffering from mental illness, learning disability, personality disorder or physical disability should be eligible for special measures if the quality of their evidence is likely to be diminished because of that illness, disability or disorder.⁹⁷ The Commission also recommends that special measures should be available to persons where evidence may be diminished because a person is suffering from fear or distress as a result of testifying.⁹⁸ The Commission recommend a number of factors a court must take into account when satisfying itself that the quality of evidence given by a witness may be diminished by fear or distress of testifying in proceedings. These factors include:⁹⁹

- The nature and circumstances of the matter to which the proceedings relate;
- The nature of the evidence which the witness is likely to give;
- The age of the witness;
- The relationship between the witness and any party to the proceedings;
- Race, domestic and employment circumstance of the witness, religious belief or political opinion and sexual orientation;
- Any behaviour towards the witness by any party to the proceedings; members of the family or associates; or any other person who is likely to be party to the proceedings.

The special measures recommended by the NILC in civil proceedings include:¹⁰⁰

- the use of screens;
- removal of gowns and wigs in civil proceedings;

⁹² The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 6.

⁹³ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 7.

⁹⁴ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 7.

⁹⁵ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 9, 79.

⁹⁶ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 19, 20, 21.

⁹⁷ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 31, 33.

⁹⁸ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 80.

⁹⁹ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 80.

¹⁰⁰ The Northern Ireland Law Commission “Report on Vulnerable Witnesses in Civil Proceedings” NILC10 (2011), 81.

- Video-recording of a witnesses evidence –in-chief should be allowed in limited circumstances in relation to private and public law proceedings taken under the Children (Northern Ireland) Order 1995;
- The use of live television link;
- The use of intermediaries;
- The use of communication aids;
- That witnesses who give evidence by way of a live television link can avail of the services of a suitably trained supporter in the live television link room.

12 Initiatives to deal with the impact of delays in the system

One of the issues highlighted in literature facing victims in the criminal justice system is the impact of delays. The Victims' Champion in England and Wales, Sara Payne has used the analogy of a dentist's waiting room stating that "it is simply not acceptable to expect witnesses who have seen something traumatic to put their lives on hold and then come to court only to be dismissed until a later date."¹⁰¹ However she identified good practice examples in listing of court cases to deal with the impact of delays Initiatives include a trial of the use of pagers and mobile phones in North Somerset Magistrates' Court which would enable witnesses to leave and then be contacted shortly before being called.¹⁰² Research commissioned by the Northern Ireland Office on the views of victims and witnesses on their treatment in the criminal justice system indicated that 64% of those interviewed expressed a view that the introduction of mobiles and pagers would make them feel happier about giving evidence.¹⁰³ This research suggested that the use of mobiles or pagers was one of the developments either under consideration or due to be introduced into the criminal justice system in Northern Ireland.¹⁰⁴ CJINI in its thematic inspection on victims and witnesses in 2005 found no mobile phone or paging systems in place to allow victims and witnesses to have less waiting time in the court venue. It was recommended that the Court Witness Service and Youth Witness Service should co-ordinate with agencies in contested cases "to facilitate witness phasing" through the use of mobile phones or pagers.¹⁰⁵ However the 2008 follow up review noted that this recommendation had not been implemented and inspectors were advised that this issue needed to be considered within the wider policy context and would be proceeded with as part of the strategy.¹⁰⁶

¹⁰¹ Sara Payne "Redefining Justice: Addressing the individual needs of victims and witnesses" November 2009, 23..

¹⁰² Sara Payne "Redefining Justice: Addressing the individual needs of victims and witnesses" November 2009, 23.

¹⁰³ NIO (2004) "Victims' and Witnesses Views on their Treatment in the Criminal Justice System", NIO Research and Statistical Series: Report No 10, 64.

¹⁰⁴ NIO (2004) "Victims' and Witnesses Views on their Treatment in the Criminal Justice System", NIO Research and Statistical Series: Report No 10,64.

¹⁰⁵ Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System" July 2005,37, <http://www.cjini.org/CJINI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

¹⁰⁶ Criminal Justice inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System in Northern Ireland; A Follow up review of the July 2005 Inspection Recommendations", 20.

Good practice was identified in trying to reduce waiting time for victims and witnesses. It was reported that a number of courts which start at the end of the day do not call witnesses until the next day which enables “the administrative business to be addressed without inconveniencing witnesses.”¹⁰⁷ In Norfolk, it was reported that where two trials are arranged for the same magistrates’ court room, one at 10am and the other 12 noon, witnesses in the second trial are asked not to arrive until 12 in order to minimise their waiting time.¹⁰⁸ In Northern Ireland, the DOJ Victims and Witnesses Strategic Action Plan 2010-2011 contains an action to initiate a pilot to reduce waiting times at court for victims and witnesses.¹⁰⁹ CJINI report that work on the pilot was due to commence between January and March 2011 and that one aspect of the work is to trial a system where witnesses within 30 minutes of the court would receive a call to attend rather than waiting at court for the case to be heard.¹¹⁰

In response to a request to the DOJ on an update of the pilot to reduce waiting times at court and whether the recommendation of CJINI to introduce witness phasing has been introduced, correspondence from the department has identified a number of initiatives that have been introduced to alleviate the impact of delays on victims and witnesses in Northern Ireland. NICTS Case Progression Officers support the judiciary in managing cases and priority is given to cases depending on a number of factors including whether special measures are required to enable vulnerable witnesses or young persons to give evidence by video link. Contested hearings at a number of Magistrates’ Courts are given specific start times where possible. In some District Courts, Judges carry out a call over of cases at the beginning of court sittings. In the call over of cases, an assessment is made of those cases that are likely to run and the estimated length of time required. Witnesses may be permitted to leave the court building and return at a specified time if the court and prosecution agree. Witnesses must leave their mobile number so that they can be contacted. At some courts, police or expert witnesses remain on call so that they are able to continue with their desk duties until they are needed to give evidence. Options are also being explored to allow forensic science officers to give evidence by video link at an allocated time. Other initiatives to reduce waiting times include:

- Witness monitoring exercises where the non- police witnesses are asked about their experience and waiting times;
- The establishment of a Criminal Courts Committee by the Lord Chief Justice to improve case management;

¹⁰⁷ Sara Payne “Redefining Justice: Addressing the individual needs of victims and witnesses” November 2009, 23

¹⁰⁸ HM Inspectorate of Court Administration “Valuing victims and witnesses: an overview of inspections undertaken during 2005” March 2006, 29.

¹⁰⁹ Department of Justice “Strategic Action Plan for Victims and Witnesses 2010-2011” http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/victims_and_witness_strategy.pdf.pdf

¹¹⁰ CJINI “Securing Attendance at Court”, May 2011, 24, <http://www.cjini.org/CJINI/files/32/32538c06-054e-4371-918e-e9ff15f5e76b.PDF>

- A journey mapping exercise with Women's Aid and new listing arrangements in Magistrates' Court criminal cases in Londonderry to minimise the amount of time victims of domestic violence have to wait at court for their case to be heard. This initiative is supported by Victim Support NI and Foyle Women's Aid.¹¹¹

The Department states that recognised examples of good practice will be promoted as part of a package to reduce witness and victim waiting times in 2012.¹¹²

13 Dealing with Domestic Abuse Victims

CJINI in a report on the treatment of victims of domestic violence by the criminal justice system in 2010 have identified a number of good practice models that should be considered to improve services to victims of domestic violence.¹¹³

It was noted that call handlers did not have an aide-memoir in domestic violence incidents. CJINI recommended that the PSNI should develop a call taker checklist based on the model provided in the Association of Chief Police Officers (ACPO) Guidance on Investigating Domestic Abuse 2008 which would enable call handlers to support victims and gather evidence. CJINI also considered legislation which was introduced in England and Wales, the Crime and Security Act 2010 which enables the police to issue Domestic Violence Protection Orders (DVPOs). These orders last up to 14 days and prevent a suspected perpetrator from entering an address or contacting the victim. This enables the victims to have time to engage with appropriate support services and consider future options.¹¹⁴ It was suggested that consideration should be given to introducing legislation in Northern Ireland which would enable the PSNI to issue DVPOs.¹¹⁵ Other good examples highlighted in Northern Ireland include:¹¹⁶

- Creation of Domestic Abuse Officers in each district of the PSNI who focus on repeat offenders and more serious crimes. Responsibilities include undertaking risk assessments, provide support and advice to victims, making referrals and advising investigating officers;¹¹⁷

¹¹¹ Information received on 13 September via email from the Department of Justice

¹¹² Information received on 13 September via email from the Department of Justice

¹¹³ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹¹⁴ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 16, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹¹⁵ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 16, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹¹⁶ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 39, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹¹⁷ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 9, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

- One-stop surgeries in some areas where domestic abuse victims could seek advice from a range of agencies including Domestic Abuse Officers from the PSNI, Women's Aid, legal professionals and representatives from the housing sector;¹¹⁸
- The police and the Northern Ireland Housing Executive have also worked in partnership to provide a sanctuary room in two Housing Executive properties which provides the victim of domestic violence with a safe room to escape from a perpetrator of domestic violence.¹¹⁹

Other good practice models have been identified in England which could be considered in the Northern Ireland context such as the use of special courts for domestic violence cases (SDVCs) and Independent Domestic Violence Advisors (IDVAs).¹²⁰ The principles of the domestic violence courts include: access to lay advocates known as Independent Domestic Violence Advisors (IDVAs) who act as a liaison between the victim and the court; co-ordination of partner agencies; providing a victim and child friendly court and providing specialist personnel trained in domestic violence awareness and procedures.¹²¹ Some of the benefits highlighted in relation to SDVCs include:¹²²

- A specialist court focusing on domestic violence as an issue;
- Cases treated seriously with commensurate sentences;
- A Specialist Court used as a model for training other agencies.

IDVAs are central to the MARAC process in England and Wales and are trained specialists whose main responsibilities include risk assessment, crisis intervention and safety planning, supporting victims, multi-agency working and institutional advocacy.¹²³ Research has highlighted that the contribution of IDVAs to multi-agency partnership "cannot be overstated".¹²⁴ CJINI also recommended that plans for properly resourced Independent Domestic Violence Advisor to provide support to victims of domestic violence should be developed by the Department of Justice as a matter of urgency to

¹¹⁸ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 39, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹¹⁹ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 39, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹²⁰ Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 35, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹²¹ Helen Reeves and Peter Dunn "The Status of crime victims and witnesses in the twenty-first century" in A Bottoms and J Roberts (eds) "Hearing the Victim: Adversarial Justice, Crime Victims and the State" 58, Willan Publishing, Devon,

¹²² Criminal Justice Inspection Northern Ireland "Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland", December 2010, 35, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹²³ A.L Robinson "Independent Domestic Violence Advisors: A Process Evaluation" Final Evaluation Cardiff University 14-15, http://www.caada.org.uk/research/Robinson_IDVAs_process_evaluation_2009.pdf

¹²⁴ A.L Robinson "Independent Domestic Violence Advisors: A Process Evaluation" Final Evaluation Cardiff University 33, http://www.caada.org.uk/research/Robinson_IDVAs_process_evaluation_2009.pdf

complement the roll out of the MARAC process.¹²⁵ In June 2011 the Justice Minister issued a statement acknowledging that the MARAC process could be enhanced by the appointment of IDVAs and made a commitment to appoint these advisors who will relay information between the victim and various agencies.¹²⁶ There has not been an announcement made as yet on these appointments.

In Scotland there is one Special Domestic Violence Court in Glasgow established after a pilot in 2004. The special court has a number of features including: a dedicated court room; the cases are managed by two specialist sheriffs;¹²⁷ a dedicated Crown of Procurator Fiscal Service (COPFS) team; and a specialist victim support service ASSIST which provides continuity of support to victims and their children.¹²⁸

A report to the Scottish Government highlighted a number of benefits of the court. These included:¹²⁹

- The court was successful in hearing most cases within target times;
- There were higher rates of guilty pleas in the domestic abuse court than other summary courts in Glasgow (81% compared to 73%);
- There were higher rates of conviction (86% compared to 77%) and a lower rate of attrition (10% compared to 18%). This was explained that the special court has a zero tolerance policy and domestic abuse is taken seriously that there is special court;
- There were high levels of satisfaction among victims whose cases were heard in the pilot court.

CJINI recommended that “the Protection and Justice sub-group of the Tackling Violence at Home Regional Steering group should evaluate the feasibility of developing a specialist domestic violence court for inclusion, if appropriate, in the forthcoming action plan.”¹³⁰ This recommendation has been included in the Tackling Violence at Home Action Plan which contains a performance indicator to produce a feasibility study and a decision agreed on Domestic Violence Specialist Courts with a target date of March 2012.¹³¹ The Northern Ireland Courts and Tribunals Service (NICTS) is the lead department on this action.

¹²⁵ Criminal Justice Inspection Northern Ireland “Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland”, December 2010, 40, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹²⁶ Department of Justice “Ford Reaffirms Commitment to Tackle Domestic Violence” http://www.dojni.gov.uk/ford_reaffirms_commitment_to_tackling_domestic_violence

¹²⁷ The main role of sheriffs are to sit as trial judges, see <http://www.scotland-judiciary.org.uk/36/0/Sheriffs>

¹²⁸ Glasgow Domestic Violence Abuse Court Feasibility Group “Report to the Scottish Government” April 2008, 9-10

¹²⁹ Glasgow Domestic Violence Abuse Court Feasibility Group “Report to the Scottish Government” April 2008, 12.

¹³⁰ Criminal Justice Inspection Northern Ireland “Domestic Violence and Abuse: A Thematic Inspection of the Handling of Domestic Violence Cases by the Criminal Justice System in Northern Ireland”, December 2010, 36, <http://www.cjini.org/CJINI/files/1b/1b651b43-657b-471b-b320-101fca7c6930.PDF>

¹³¹ DOJ and DHSSPSNI “Tackling Violence at Home” Action Plan October 2010 to March 2012, 10. <http://www.dhsspsni.gov.uk/dv-actionplan2010.pdf>

14 Equality and Diversity

Good practice examples have been identified in the treatment of ethnic minority victims in the criminal justice system. CJINI reported that Dungannon District Command Unit (DCU) had developed their own policy in relation to the treatment of vulnerable victims and witnesses such as migrant workers.¹³² The Community Safety Sergeant and Minority Liaison Officer has identified its most vulnerable people and tailored services to meet their needs. It was reported that the DCU was using translation services and using language line telephony services as well as developing a working relationship with STEP, a local organisation working with ethnic minorities in the area. The DCU also shares its experiences with other Minority Liaison Officers throughout the service. The DCU along with its other partners provide advice in a surgery the local Citizens' Advice Bureau for two hours, two days a week.¹³³

Research findings from the HM Inspectorate of Court Administration in 2006 identified areas of good practice in recognising diversity of victims and witnesses in oath taking. In Norfolk, the former Magistrates' Court Committee (MCC) produced a file on oath-taking entitled *Diverse Culture & Religions-Getting it Right, Treating People with Respect*. The guide covered dealing with the needs of people of different religions and none. The guide was supported by customer training and it has been suggested that this has resulted in excellent practice by court ushers in administering oaths and affirmations in the magistrates' courts.¹³⁴

15 Dealing with Child Victims and Witnesses

Good practice has been identified in relation to dealing with children and young witnesses. In Humber, the Young Witness Service has developed a system to indicate when a child or young person needs to take a break when giving evidence by video-link. The volunteer from the Young Witness Service uses a card system to indicate when a child needs a break or is becoming distressed which is recognised by the judge who can take appropriate action.¹³⁵ Another example of good practice was identified in the child witness waiting room in Grimsby Crown Court in England. The HM Inspectorate of Court Administration found that the room was suitably decorated and well equipped. The room included a wooden model of the court room and wooden dolls which served to educate young children about the court process.¹³⁶

¹³² Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System" July 2005,30, <http://www.cjini.org/CJINI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

¹³³ Criminal Justice Inspection Northern Ireland "Improving the Provision of Care for Victims and Witnesses within the Criminal Justice System" July 2005,30, <http://www.cjini.org/CJINI/files/ce/ceda45b5-8b15-4f7b-a2a4-9dfe1902eca4.pdf>

¹³⁴ HM Inspectorate of Court Administration "Valuing victims and witnesses: an overview of inspections undertaken during 2005" March 2006, 14.

¹³⁵ HM Inspectorate of Court Administration "Valuing victims and witnesses: an overview of inspections undertaken during 2005" March 2006, 16.

¹³⁶ HM Inspectorate of Court Administration "Valuing victims and witnesses: an overview of inspections undertaken during 2005" March 2006, 17.

The National Society for the Prevention of Cruelty to Children (NSPCC) has produced good practice guidance in relation to dealing with young witnesses.¹³⁷ The guidance makes suggestions on dealing with young witnesses at the pre-trial stage to the post trial stage. It should be noted that the Department of Justice's (DOJ) Guide Achieving Best Evidence contains a number of good practice recommendations set out in the NSPCC paper. The DOJ guidance contains advice on how to deal with investigative interviews with children and the range of special measures available to vulnerable witnesses including children.¹³⁸

Queens University Belfast and the NSPCC have recently published research for DoJ on the experiences of young witnesses in criminal proceedings. The report identifies a number of problems experienced by young witnesses in criminal proceedings including and makes 11 recommendations which are as follows:¹³⁹

- The timing of referral from the criminal justice system agencies to the Youth Witness Service (YWS) should be kept under review to ensure that vulnerable witnesses are appropriately assessed and supported;
- Future roll out of the YWS to all Courts across Northern Ireland should be based on the identified level of support required by witnesses in the lower Courts and developed accordingly;
- Pre-Trial contact and information sharing between parents and the criminal justice system needs to be improved and awareness needs to be raised about the availability of current resources amongst young witnesses and their families;
- More opportunities need to be created for young witnesses to practice speaking on the TV link prior to giving evidence;
- The findings from this study further support the need to address avoidable delay as a means for improving young witnesses experiences of, and confidence in, the criminal justice system in Northern Ireland;
- The findings of this study suggest that prioritisation of young witness cases is still problematic and consideration should be given to re-issuing recommendations made by the Lord Chief Justice in 2009;
- Routine maintenance of TV link equipment and checks are needed to ensure it is in working order and that the camera does not enable the defendant to be seen;
- Practical arrangements for entering and waiting in court buildings need to be further developed to reduce the stresses placed on young witnesses;
- The proposed introduction of intermediaries will be beneficial to young witnesses and victims and should be brought forward as soon as possible;

¹³⁷ NSPCC (2009) "Good practice guidance in managing young witness cases and questioning children"

¹³⁸ Department of Justice "Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, the use of special measures and the provision of pre-trial therapy"
http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/achieving_best_evidence_-_practitioner_guidance_may_2011_-2.pdf

¹³⁹ QUB and NSPCC "The Experiences of Young Witnesses in Criminal Proceedings in NI: A report for the Department of Justice" May 2011, 71.

- In line with developments in England and Wales, consideration should be given to developing guidance in relation to the questioning and cross examination of young witnesses and victims;
- Gaps in the availability of therapeutic services in different parts of NI need to be addressed if effective support is to be provided both pre and post -trial.

The recommendations have been accepted by the DoJ who indicate will take these forward in the Victim and Witnesses Action Plan in 2012.¹⁴⁰

16 Conclusion

This briefing paper has identified a number of models of good practice in dealing with victims and witnesses in a range of jurisdictions. These include:

- Models in France and Germany that provide enhanced victims' standing in criminal proceedings;
- Government led initiatives including dedicated policy centres, government led multi agency-partnerships and strategies to deal with victims;
- Non-governmental organisations providing support to victims of crime;
- Police programmes including dedicated units including mental health crisis intervention teams and all female police stations to deal with victims;
- Inter-agency co-operation and the use of protocols between various organisations;
- Possibly extending Special measures in civil proceedings to vulnerable victims as recommended by the NILC;
- Initiatives to reduce waiting times in court listings or the use of mobiles or pagers to enable victims and witnesses to have flexibility to leave the courthouse in England. Initiatives have also been developed in Northern Ireland to deal with the impact of waiting times;
- Measures to deal with victims of domestic violence such as legislation enabling police to issue orders to prevent a suspected perpetrator from entering an address or contacting the victim, special domestic violence courts, independent domestic violence advisors, and in NI, Domestic Abuse Officers, one stop surgeries for victims and multi-agency partnerships such as MARAC;
- Measures to deal with ethnic minority victims such as the development of specific policies by the police in Dungannon including specially trained police officers, translation services and developing partnerships with local organisations; another example is the recognition of diversity in oath taking in England;
- Measures in some courts in England to deal with Child witnesses including good practice guidance specifically for child witnesses and practical initiatives including the use of a card system to giving evidence to indicate when a child witness needs a

¹⁴⁰ Letter from the Department of Justice to the Committee Clerk of the Justice Committee on 11 August 2011.

break and suitably equipped child witness waiting rooms. The NSPCC has produced guidance on dealing with children and young people in the pre-trial to post trial stage and a number of recommendations in the guidance are reflected in the DoJ Achieving Best Evidence Guidance. The NSPCC and QUB reported on the experiences of children and young people in the criminal justice system and the DoJ has accepted the report's recommendations.

- The Department of Justice has committed to developing a model for Witness Care Units in NI. In England and Wales such models have been developed however some of the literature suggests that although there are benefits, there is a gap in provision for victims whose cases do not get to court, where the offender is not detected or where investigations are at early stages. It was suggested that victims could benefit from a victims champion or advocate to act as a single point of contact which would help ensure their needs are met.