

## DECISION MAKING MEETING

**01 September 2020, 10:00 - TEAMS**

### **Attendees**

David Gibson (Deputy Commissioner)  
Chris Brace (Chief Executive)  
Amie Birkhamshaw (Director of Strategy)  
Ian Rooney (CFO)  
Nigel Atkins (Senior Communications Officer)

### **Apologies**

David Lloyd (Commissioner)  
Gavin Miles (Deputy Chief Executive)

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## **AGENDA**

1. Minutes of Meeting of 19 August 2020
2. Criminal Justice Innovation Bids 2020/21
3. Review of Integrated Offender Management  
Terms of Reference for the IOM review
4. Use of the terms Victim and Complainant and impact on Criminal Justice culture and behaviour

## DECISION MAKING MEETING

**19<sup>th</sup> August 2020, 15.30 - TEAMS**

### **Attendees**

David Lloyd (Commissioner)  
Amie Birkhamshaw (Director of Strategy)  
Ian Rooney (CFO)  
Nigel Atkins (Senior Communications Officer)  
Bethan McPhee (Executive Assistant - minutes)

### **Apologies**

David Gibson (Deputy Commissioner)  
Chris Brace (Chief Executive)  
Gavin Miles (Deputy Chief Executive)

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## MINUTES

1. Minutes of meeting of 6<sup>th</sup> August – **Approved**

2. **Action Fund 2020/21**

5 out of 13 organisations that applied to the Action Fund in July 2020 were new applicants to the fund.

**The following bids were approved from those recommended by HCF:**

**East Herts Community Safety Partnership - East Herts Halloween Diversionsary  
£4,979 – Approved.**

Application demonstrated strong partnership working around positive diversionsary activity.

**Mid Herts Raynet - Maintenance of Mobile Communications Vehicle £1,690–  
Approved.**

Feedback to the applicant regarding the need to ensure financial sustainability over the longer-term.

**Welwyn Hatfield Borough Council – Business Safety- Community Reassurance, £5,000, Approved.**

Application builds on the success of previous initiatives to work with businesses around crime prevention.

**Welwyn Hatfield Community Safety Partnership, £5,000 – Approved.**

Feedback to the applicant around the need to diversify engagement options to include those that are virtual with the public over the coming year.

**Unseen UK – £5,000- Approved.**

**Decision deferred pending further information**

**Mediation Hertfordshire – Conflict Resolution on the Community Frontline, £5,000**

Decision deferred until the three local councils have been asked for a contribution.

**Safer Places £5,000** – Decision deferred until we have full commitment from all 10 of the districts to support this initiative.

**Josie Dear, £3,400** – Decision deferred as insufficient detail in the application to assess adequately.

**Bids not recommended:**

**Hitchin BID, £5,000** – Not approved.

**Tall Ships Youth Trust, £3,000** – Not approved.

**Herts Schools Outreach Ltd. £5,000** – Not approved.

**Herts Young Homeless, £4,993** – Not approved.

**Bishop’s Stortford Lawn Tennis Club, £5,000** –Not approved.

3. Any other Business

<b>MEETING</b>	<b>Decision Making Meeting</b>	
<b>DATE</b>	01 September 2020	
<b>TITLE OF REPORT</b>	Criminal Justice Innovation Fund - 2020/21	
<b>SUBMITTED BY</b>	Karl Stonebank, Grants and Funds Officer Sara Miles – CJ Policy & Research Manager	
<b>PURPOSE OF REPORT</b>	To consider recommendations in relation to bids received	
<b>DECISION(S) REQUIRED</b>	To agree allocation of the funds	
<b>FINANCIAL IMPLICATIONS</b>	<b>CSG 2020-21 Annual Budget</b>	<b>£157,700</b>
	<i>Budget committed from previous years</i>	
	<ul style="list-style-type: none"> <li>• <i>Change Project</i></li> <li>• <i>OCD hardship fund</i></li> </ul>	-£20,000
	<b>Remaining funding for 2020-21</b>	<b>£137,700</b>
<b>LEGAL IMPLICATIONS</b>	None identified	
<b>EQUALITIES IMPACTS</b>	If all bids recommended are approved there should be a positive impact on all protected characteristic groups.	
<b>FREEDOM OF INFORMATION EXEMPTION SECTION IF APPLICABLE</b>	Appendix A list of recommended / not recommended bids should not be published because it may prejudice organisations and/or their projects. Details of ratified bids will be published on the PCC website.	

## INTRODUCTION

- i. This year, a total of 7 bids were submitted. Additionally 2 bids were submitted to the CS fund and felt more relevant to CJ so were transferred across for consideration. In total there were 9 bids to consider.
- ii. The 9 bids were assessed against a scoring matrix based on the Hertfordshire Community Safety & Criminal Justice Plan and then further scrutinised by relevant criminal justice partner organisations.
- iii. In total, £343,264 was requested against the available budget of £137,700.
- iv. The table below shows a summary of the bids

Project name	Applicant	Amount requested	Strategic priority addressed <sup>1</sup>
The No More Service drugs, alcohol and offending service	Stevenage JAG	£62,836	Reducing crime, Early intervention & prevention, Rehabilitation of Offenders in the Community
Jobs Pathway	CDA for HERTS	£36,000	Reducing crime, Rehabilitation of Offenders in the Community
Youth Justice Under 18's Appropriate Adult Overnight provision	HCC Youth Justice Service	£20,400	Criminal Justice System Efficiency: Delivery of Justice
HACRO Growing Together	HACRO	£46,733	Reducing crime, Early intervention & prevention, Rehabilitation of Offenders in the Community
Herts, Minds & Goals	Princes Trust	£44,527	Reducing crime, Early intervention & prevention
Management of Released Under Investigation (RUI) cases in Hertfordshire Constabulary	Hertfordshire Constabulary	£38,018	Criminal Justice System Efficiency: Delivery of Justice
Community based video enabled justice	Hertfordshire Constabulary	£60,000	Criminal Justice System Efficiency: Delivery of Justice, Supporting victims and witnesses, Innovation and Digital CJS Efficiency
Custody distractions for vulnerable detainees	Hertfordshire Constabulary	£750	Early intervention & prevention
Step Forward	HACRO	£34,000	Reducing crime, Rehabilitation of Offenders in the Community

- v. Recommendations relating to these bids can be seen within Appendix A.

## BACKGROUND

### Analysis of previous CJIF

- vi. The CJIF was first established in 2018 with this being the third year of the fund operating. In 2018/19 funding was allocated to seven project across the year totalling £182,483.92. In 2019/2020 funding was allocated to four project across the year totalling £96,045<sup>2</sup>.
- vii. The table below shows 2018/19 and 2019/20 expenditure/allocation.

Project name	Applicant	Amount requested
Hertfordshire Community Rent Deposit Scheme	St Mungos	£30,000
Delivery of Hertfordshire's Integrated Offender Management Strategic Objectives	You Turn Futures	£19,670
Analysis if Out of Court disposal data	Hertfordshire Constabulary	£6,000

<sup>1</sup> There are 6 Board priorities; Reducing crime, Criminal Justice System Efficiency: Delivery of Justice, Supporting victims and witnesses, Innovation and Digital CJS Efficiency, Early intervention & prevention, Rehabilitation of Offenders in the Community

<sup>2</sup> A further project from probation and DWP was agreed however this was dependent on match funding which was not forthcoming

The Hertfordshire CJS Problem Gambling programme	GamCare	£55,047
Adverse Childhood Experiences / REACh Training	Hertfordshire Health & Wellbeing Board	£17,938
Oxygen Gateway Housing Project	DrugLink	£34,842.92
Domestic Abuse Perpetrator Worker	Three Rivers DC	£18,986
Community Resolution as an out of court disposal option for low level domestic abuse	Hertfordshire Constabulary	£19,000
The Hertfordshire CJS Problem Gambling programme	GamCare	£36,045 <sup>3</sup>
Out Of Court Disposals Framework Hardship Fund	Hertfordshire Constabulary	£1,000
Case File Quality Review Team	Hertfordshire Constabulary	£40,000

- viii. The majority of bids received focus on rehabilitation of offenders (9). Although it would be hoped that all the bids could have a positive impact on victims and witnesses (e.g., through more timely justice, reduction in repeat victims) there has been no project to date where supporting victims and witnesses has been the primary focus.
- ix. With the exception of the Three Rivers Domestic Abuse Perpetrator Worker, all the bids were Hertfordshire wide.

### 3 PROPOSED RECOMMENDATION(S) AND RATIONALE

- x. That the Commissioner approves £141,277 Criminal Justice Innovation funding for the 4 recommended bids in Appendix A due to the following reasons:
- They were assessed against a scoring matrix based on the Hertfordshire Community Safety & Criminal Justice Plan and then further scrutinised by relevant criminal justice partner organisations.
  - Detailed due diligence was carried which included checking for potential double funding from new Covid-19 themed grant schemes.
  - They were agreed by the Hertfordshire Criminal Justice Board on Friday 14<sup>th</sup> August 2020
  - These recommendations take the fund over budget by £3577. This will either be covered by the video enabled justice project costing less than £60,000 due to a phased roll out and 10 sites possibly not being needed, or by the early intervention & prevention funding £3577 of the Princes Trust project.

<sup>3</sup> Additional funding was to increase the service and extend support with an additional 3 days/week project officer support

<b>MEETING</b>	<b>Decision Making Meeting</b>
<b>DATE</b>	01 September 2020
<b>TITLE OF REPORT</b>	Review of Integrated Offender Management
<b>SUBMITTED BY</b>	Sara Miles – CJ Policy & Research Manager
<b>PURPOSE OF REPORT</b>	To review attached terms of reference for review of Integrated Offender Management in Hertfordshire.
<b>DECISION(S) REQUIRED</b>	To agree Terms of Reference attached
<b>FINANCIAL IMPLICATIONS</b>	None identified
<b>LEGAL IMPLICATIONS</b>	None identified
<b>EQUALITIES IMPACTS</b>	This will be considered and analysed as part of the review
<b>FREEDOM OF INFORMATION EXEMPTION SECTION IF APPLICABLE</b>	N/A

### INTRODUCTION

- i. Integrated Offender Management (IOM) was established in 2009 and aims to bring a cross-agency response to the crime and reoffending threats faced by local communities.
- ii. IOM aims to have a multi-agency response to reduce reoffending of the most problematic and persistent offenders.

### BACKGROUND

- iii. The PCCs Community Safety & Criminal Justice Plan (2019-2024) includes an action to 'Ensure better strategic governance of the IOM scheme' (action 21).
- iv. A joint HMICFRS and HM Probation Inspectorate thematic inspection of Integrated Offender Management Report was published in February 2020. The inspection contained an action for PCCs to '*assure themselves that all relevant partners and services are involved in the delivery of IOM, as a major contribution to reducing reoffending and community safety.*'

### **3 PROPOSED RECOMMENDATION(S) AND RATIONALE**

- v. A comprehensive report to be completed to understand the impact of IOM in Hertfordshire along with the effectiveness of the governance of the scheme.
- vi. The report will combine desk based research, data analysis and stakeholders interviews. Recommendations will be included for consideration by the Police & Crime Commissioner, IOM Board and Herts CJ Board.

### **4 BACKGROUND PAPERS**

- vii. Please see attached Terms of Reference.



## Terms of Reference Integrated Offender Management (IOM) review

### **1. Background**

Integrated Offender Management (IOM) was established in 2009 and aims to bring a cross-agency response to the crime and reoffending threats faced by local communities. The most persistent and problematic offenders are identified and managed jointly by partner agencies working together.

IOM helps to improve the quality of life in communities by:

- reducing the negative impact of crime and reoffending
- reducing the number of people who become victims of crime
- helping to improve the public's confidence in the criminal justice system

The Ministry of Justice and Home Office relaunched their approach to IOM in 2015 and refreshed the key principles. This was in line with the Transforming Rehabilitation Programme and the split to the National Probation Service and Community Rehabilitation Company. The new approach included diversifying the IOM cohort so that any persistent or chaotic offenders could now be considered.

The principles describe the main features of IOM and guide local arrangements and approaches. Local IOM models will vary to reflect local circumstances and priorities, but the common elements are:

- all partners manage offenders together
- a local response to local problems
- all offenders can potentially be included
- offenders face up to their responsibility or face the consequences
- best use is made of existing programmes and governance arrangements
- achieving long-term desistance from crime

IOM has not been the focus of much attention or priority from national government in recent years. This is illustrated by the fact that the Home Office disbanded the IOM Strategic Board in 2016, last up-dated the Gov.uk web-site on IOM in 2015 and the Home Office does not currently have an official that is responsible for IOM policy.

A joint HMICFRS and HM Probation Inspectorate thematic inspection of Integrated Offender Management Report was published in February 2020 which found little development had occurred since 2015. The report found that whilst the IOM programme was originally set up with the intention to bring together police, probation services and other agencies to identify and manage repeat offenders in local communities, schemes no longer focus exclusively on these types of offenders and current performance is disappointing.

Hertfordshire has moved to diversify the IOM cohort over recent years with the current cohort consisting of those individuals who:

- Are on the Choices & Consequences (C2) Programme
- Are on Serious Crime Prevention Order for the duration of their 5 year order
- Have recent convictions for Domestic Abuse
- Are a prolific offender (based the Cambridge crime harm index)
- Transitioning from Targeted Youth Service (from 17 years)
- Violent / gang offenders (new strand to the cohort to support the SV strategy)

## 2. Purpose

The review will seek to address issues raised in the recent joint thematic inspection along with the PCCs Community Safety and Criminal Justice Plan.

The February 2020 thematic inspection contained an action for PCCs to *'assure themselves that all relevant partners and services are involved in the delivery of IOM, as a major contribution to reducing reoffending and community safety.'* The report also noted that whilst the IOM programme was *originally set up with the intention to bring together police, probation services and other agencies to identify and manage repeat offenders in local communities*, schemes no longer focus exclusively on these types of offenders and current performance is disappointing. A key element of this review will be to test Hertfordshire's scheme against this statement.

The PCCs Community Safety & Criminal Justice Plan (2019-2024) includes an action to *'Ensure better strategic governance of the IOM scheme'* (action 21). The in depth review will evaluate the effectiveness of the scheme and make recommendations for the future. Furthermore, IOM is a statutory function and the review will identify how effectively the scheme is operating locally.

Therefore the objectives of the report are to:

1. Identify the role for the police and any minimum requirements that exist for an IOM scheme
2. Review whether all relevant partners and services are involved in the delivery of IOM, as a major contribution to reducing reoffending and community safety
3. Review how effective the strategic governance of the IOM scheme is
4. Review whether the Hertfordshire scheme brings together police, probation services and other agencies to identify and manage repeat offenders in local communities
5. Identify the impact that IOM has on reoffending rates compared to those who do not receive the support of the scheme.
6. Make recommendations with regards to IOM funding arrangements and future opportunities

### 3. Approach / Methodology

A comprehensive report will be completed combining desk based research, data analysis and stakeholders interviews. Recommendations will be included for consideration by the Police & Crime Commissioner, IOM Board and Herts CJ Board. The report will include:

- Review the governance of the Board
- Review minutes and actions from the last 3 years
- Interviews with key partners engaged in IOM including all Board members
- Identifying timeline of changes to IOM in Hertfordshire since inception
- Review of Hertfordshire scheme against the IOM principles
- Review of CJIF project delivered by You Turn Futures
- Review of the IOM practitioner event feedback report (May 2019)
- Review C2 report from Sheffield Hallam & Leeds Beckett Universities.
- Review of HMICFRS and HM Probation Inspectorate thematic inspection of Integrated Offender Management (February 2020)
- Review of best practice IOM schemes across the country (including how they are funded)
- Identify how the Hertfordshire cohort compares nationally and across our most similar force areas?
- Identify the metrics and measurements used to track and monitor those on IOM
- Review of available Hertfordshire IOM data including cohort, cohort characteristics, deselections and reoffending
- Identify whether IOM performance is being measured effectively
- Review of IOM funding arrangements & the longevity of such arrangements
- Identifying opportunities for the future, particularly with regards to the probation transformation programme

### 4. Timeline

Start date	Completion	Item
20.07.2020	14.09.2020	Commence desk based research
03.08.2020	31.08.2020	Discussions with IOM Chair
31.08.2020	13.09.2020	Data to be made available to review
07.09.2020	09.10.2020	Stakeholder interviews
13.09.2020	18.10.2020	Review of available data
09.10.2020	08.11.2020	Preparation of draft report
02.12.2020	02.12.2020	Draft findings presented to IOM Board
17.12.2020	17.12.2020	Review presented to Herts CJ Board

# Use of the terms Victim and Complainant and impact on Criminal Justice culture and behaviour

## Introduction

The purpose of this report is to understand the use of the terms 'victim' and 'complainant' within the Criminal Justice System (CJS) and to determine the impact on Criminal Justice culture as well as victims' perception of procedural justice, which, both in relation to process and balance of probability, starts from a position of the accused 'innocence' until proven guilty. The intention is to advise the Police and Crime Commissioner could the word 'complainant' be avoided so as to provide an equivalent equal status to victim (starting from a position of believed).

To inform a view, the author has undertaken a review of published literature; consulted with victim support services and held several conversations with victims who have gone through the Criminal Justice System. To ensure an informed and considered view, the author also consulted those responsible for investigating and prosecuting crimes as well as those involved in academia, responsible for teaching the next generation of lawyers.

Finally, this report will reflect on opportunities to enhance the victim/witness experience when attending court with specific recommendations for the Police and Crime Commissioner to consider.

## Background

Sir Richard Henriques' report into Operation Midland raised the issue of 'unquestioned belief' by investigators into a victim's account, setting out the argument that the use of the term 'victim' creates a mind-set with investigators that the account must be true and fact, hindering the police to conduct an unbiased and thorough investigation<sup>1</sup>.

Henriques' observation should not be surprising due to his long and established career in criminal justice, first as a distinguished barrister and more latterly, as a High Court Judge. Indeed, Sir Richard reinforces the judicial position that it is for the court to determine whether a "complainant is a victim" and concludes that "not all complainants are victims". His view is that the use of the term 'victim' creates the impression of pre-judging the outcome of a trial which may be prejudicial to both the 'neutrality of the court' as well as impact on the defence for a fair trial. It is a position shared across the judicial system and robustly defended taking into account that a defendants trial commences on the basis of not guilty until proved otherwise.

Henriques' consideration of "victim" and of those across the Criminal Justice System is deeply rooted in the interpretation of the established legal texts including Black's Law

Dictionary that defines a victim as “a person harmed by a crime, tort or other wrong”<sup>2</sup>. However, the term victim is typically used in a less legalistic manner across society. Common dictionary definitions include:

1. A person harmed, injured, or killed as a result of a crime, accident, or other event or action
2. A person who has come to feel helpless and passive in the face of misfortune or ill-treatment.<sup>3</sup>

Whilst the former is familiar and rooted to an actual occurrence, the latter is largely based around a person’s capacity to process and comprehend what has taken place. For some, to be labelled as ‘helpless’ or ‘passive’ is a sign of weakness and a categorisation to be avoided. Indeed, at a societal level, the term ‘victim’ evokes expressions of pity and sorrow rather than strength and decisiveness. It is for this reason that the term ‘survivor’ has emerged as an alternative, signifying the ability to cope, adjust and move forward, however, it should be noted that this term is not universally embraced by all victims either. Indeed, more recently, Vera Baird, The Victims Commissioner for England and Wales, carefully navigated the issue in her Annual Report by settling on ‘those who have experienced victimisation’<sup>4</sup>. Even so, whilst there appears to be a general consensus around the understanding and meaning of ‘victim’, the same cannot be said about ‘complainant’. Once again, legal texts such as Archbold and Blackstone’s set the legalistic understanding which define ‘complainant’ as ‘a person who makes a formal complaint in a court of law’ and it is this definition that is widely taught (and reinforced) to first year legal students. Therefore, the use of the term ‘complainant’ by the Judiciary and barristers at court is both literally and legally correct and, as Henriques’ asserts, does not risk prejudging or prejudicing the outcome of a trial. However, a more usual widespread public understanding of the term can be found in the word ‘complain’ which, according to the Oxford Dictionary, is to “Express grief, pain or discontent” or alternatively, “accusation”. Thus, ‘complaint’ and ‘complainant’ have different meanings to different audiences with ‘complainant’ having legal status within a legal setting.

### **The victim’s view**

According to the Courts Based Witness Service<sup>5</sup>, for some, the word ‘complainant’ can be considered demeaning to the point of dismissive for those who have suffered harm as often, as suggested above, it can be misconstrued as reference to an everyday occurrence such as drawing attention to sub-standard goods or services. This observation is a view supported by Refuge<sup>6</sup>, who suggest that the term ‘complainant’ can have adverse significance to victims of Domestic Abuse who often exhibit doubt whether they should be pursuing or supporting a criminal case in the first place. For those who do, it is usually because they have been persuaded by both Police and CPS that they have a legitimate case and where prosecution is necessary both in the interests of theirs, and public safety. Therefore, the term ‘complainant’ can confuse and undermine what the victim had been led to believe by the investigative and prosecutorial teams. In the words of one DA victim “I was shocked. They spent all this time telling me I was a victim only to say at court I was complaining”<sup>7</sup>.

This one observation appears to point to the root of the issue; 'complaining' versus 'complainant' and the correct understanding of the word, as well as the meaning. Despite this, there are some victims of crime who accept there is a need to evidence their account and that the term 'complainant', albeit seemingly minimising or dismissive of the harm caused, is acceptable within the context of where it is used. In the words of one victim of assault "provided I have access to justice and it is conducted fairly I have no real issue"<sup>8</sup>. A common observation amongst campaigning organisations and victims is the expectation that where a crime has occurred 'society needs to put matters right'<sup>9</sup> irrespective of terminology used. There is an acknowledgement that the 'system' is required to observe due process with a realistic if not rather blunt view offered by NSPPC who state, "Victims of abuse need to know that they will be listened to and taken seriously. This is not the same as being automatically believed. No victim can or should be guaranteed that their testimony will be assumed to be the truth"<sup>10</sup>. The overarching view is that irrespective of words used, there needs to be trust in the system to do what is right.

## **Discussion.**

Academic research into both the practical and psychological impact of victim versus complainant terminology is sparse to the point of non-existent. Indeed, Hertfordshire University School Of law believes this would be an interesting area for study. However, numerous academic studies have evidenced through 'labelling theory' that the use of words can influence behaviour<sup>11</sup> and this fact is reinforced to first year legal students, where it is suggested that the use of the word 'victim' could promote a mind-set where a Jury becomes unconsciously biased towards the 'complainant' as opposed objectively and impartially assessing evidence to prove guilt or innocence. Whilst there are no studies or published evidence to show that this is the case, Bavelas and Coates (2001) assert that "language is not impartial; rather, it reflects our perceptions, biases and prejudices" and specifically in relation to trial judgments, "language can never be neutral; it creates versions of reality"<sup>12</sup>.

Despite the arguments around language and 'labelling', it is a concern for many involved in the administration of Justice that those crimes where the most long-term harms occur - such as rape - due to the nature of the allegation and burden of proof required - use of the term complainant, whilst from a legal perspective technically correct, has a demeaning and potentially belittling effect for the victim personally. This is especially so if their case is not proven. It is for this reason that investigators, whilst maintaining a professionally inquisitive mind-set, do not use the word 'complainant' preferring reference to 'Injured Party' or, more widely accepted and adopted today, victim. From an investigators perspective the term 'victim' does not presume the guilt or innocence of anyone but does provide a categorisation with a route to access support. Anecdotally, it has been proffered by investigators and prosecutors that 'complainant' is rarely heard other than when used by the legal profession in court.

In part, this 'shift' could be a result of the growth in victim advocacy with the rights and needs of victims now formally recognised in policy and legislation.

Both the Crown Prosecution Service (CPS) and the Ministry of Justice (MoJ), whilst recognising the use of the term 'complainant' in a legalistic manner, adopt the wider use of the word victim, sometimes out of necessity. The MoJ champions the Code of Practice for Victims of Crime in which the broader definition of victim ensures entitlements to those who otherwise would not receive support. Furthermore, CPS, who, alongside the Constabulary hold a responsibility for a Victims Right to Review, must necessarily recognise the broader definition of victim otherwise a 'complainant' could theoretically have no recourse to challenge if a case were to be dropped.

With a growing acceptance and adoption of the term 'victim' across CJ agencies, it would seem the issue is the use of 'complainant' in the confines of a court room and the impact on victims should the accused be found not guilty. This is especially the case for victims of Domestic and Sexual Abuse. Recounting personal relationships in a public setting is traumatic enough, however when a person's character is subject to hostile questioning to test credibility, the impact can result in significant long-term psychological harm, sometimes resulting in tragic consequences<sup>13</sup>.

Despite guidance to lawyers and barristers, Smith (2018) points to barristers who "use manipulative cross-examination techniques to appeal to a jury and advance their case" and whilst acknowledging that many legal professionals are now "sensitive to survivors' well-being, a blinkered interpretation of the right to a fair trial can limit the extent to which this sensitivity is acted upon"<sup>14</sup>. Whilst both the judiciary and CPS prosecution advocate have a responsibility to ensure challenge in the event of inappropriate or hostile cross-examination, this usually comes after infringement and too late to prevent the victim blaming process, irrespective of the label 'complainant' or 'victim' used. Indeed, when 2 victims of rape contacted Hertfordshire OPCC to complain how their medical records were used in court to discredit them, they did not raise an issue with the manner in which they were addressed, it was solely how their background was used against them and the behaviour of the defence barristers.

As in any use of language and as offered by Bavelas and Coates, it is the context, intonation and perception that gives it meaning. Some victims are accepting of the word complainant within the court setting, whilst others perceive it as belittling the harm and grievance experienced. Its use across the legal community is firmly embedded and not intended to belittle or offend victims, but to ensure a level of neutrality that does not pre-judge the outcome. However, trust can be quickly undermined by the behaviour exhibited by those charged to uphold and maintain a fair and just legal system and this includes not only what is said, but how it is said.

Is it likely then that the word 'complainant' could ever be dropped from court proceedings? Given its established literal and legal definition; the guidance given to first year legal students and the Judiciary insistence on the 'neutrality of the court' - unlikely. If anything, such a move would be sternly rebuffed. Even if the move were embraced, there would then be the discussion of an alternative that would suit most. This has previously been considered by the College of Policing<sup>15</sup> who could find no realistic alternative although surprising that the terms 'accuser' and 'accused' have not been explored more widely and could potentially address a number of conflicting and competing issues.

This is not to say that a cultural shift is not happening across the Criminal Justice System in relation to victim empathy. Investigative and prosecutorial practitioners are more widely embracing, understanding and adopting the term victim in its broader sense. Moreover, it is likely that the revised Code of Practice for Victims of Crime – setting out 12 ‘rights’ as opposed ‘entitlements’ - and its probable enshrinement into a Victims Law, will promote further cultural shifts.

Where there is scope for challenge is in both the defence community and Judiciary to ensure the sensitive handling of those who have come to court to seek justice. Victims’ are looking for confidence in the CJS to ‘put things right’. Part of this comes from empathy and understanding and ensuring victims/complainants are treated fairly and with dignity. Trial results will not always fall in the victim’s favour and when this is the case, care should be taken to explain why the burden of proof was insufficient to secure a conviction. The failing is usually within the system – not with the victim. This should be explained. It is perhaps odd that where a court finds a defendant guilty it has a statutory obligation to give the reasons for its decision whereas a not guilty outcome the court has discretion<sup>16</sup>. Much could be learned from the process adopted across CJ agencies in relation to the Justice After Acquittal protocol for bereaved families<sup>17</sup>.

Furthermore, pre-trial preparation, so often frowned by those charged with prosecuting cases on the grounds of ‘coaching’, should become more freely and openly available. Whilst CPS has good guidance with regard pre-trial therapy<sup>18</sup>, going as far to state that occasionally, in the interests of the victims’ mental health, it would be better not to proceed with a prosecution, as the recent consultation and commissioning of the online counselling support for witnesses has demonstrated, not all CPS officials are either aware, or accept the guidance. This is potentially one area where the Police and Crime Commissioner could achieve an important cultural and near immediate behavioural shift that will benefit witnesses as they will be better informed and prepared for their court encounter.

## **Recommendations**

- For the PCC to continue to assert victims’ rights and entitlements through his roles both at HCJB and APCC.
- In acknowledging the neutrality of the court, remind practitioners they have a duty of care to witnesses.
- To ensure adequate and accessible pre and post-trial briefing and support for victims and.,
- Challenge the negative perceptions prosecutors have in relation to pre-trial therapy by highlighting the value and benefits of having better prepared witnesses.
- Advocate that the Criminal Procedure Rules should be changed that where a not guilty verdict is returned, the court must also provide it’s reasoning.
- Investigate an extension of the Justice After Acquittal Protocol
- Consult on the alternative ‘accuser’ and ‘accused’.



Kevin McGetrick  
Head of Commissioning and Victim Services.  
Office of Police and Crime Commissioner for Hertfordshire.  
July 2020.

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## References

1. Henriques. R (2016) An independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence. 8.
2. Documentation. (2009) In Black's Law Dictionary
3. Documentation. (n.d.) In Oxford Dictionary. Can be found on-line at <https://en.oxforddictionaries.com/definition/victim>
4. Baird, V (2020) 2019/20 Annual Report. Dame Vera Baird QC. Victims' Commissioner for England and Wales. 10.
5. McGetrick. K (2020) Personal Communication. Director of Operations. Courts Based Witness Service. 16<sup>th</sup> June 2020.
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