



Hearing the Relatives of Murder and Manslaughter Victims

The Government's plans to give the bereaved relatives of murder and manslaughter victims a say in criminal proceedings

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: Hearingthevictim@cjs.gsi.gov.uk, or send it to Julian Schon, Trial Policy and Procedure Unit, Office for Criminal Justice Reform, Ground Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF. **Thank you!**

This response has been written by Alison Penny, Network Development Officer at the Childhood Bereavement Network (CBN). If you have any queries about this response or the work of the CBN, please contact us at

Childhood Bereavement Network, 8 Wakley Street, London EC1V 7QE 020 7843 6309
cbn@ncb.org.uk www.childhoodbereavementnetwork.org.uk

The Childhood Bereavement Network

The CBN is a national, multi-professional federation of organisations and individuals working with bereaved children and young people.

The CBN is supported by all the major bereavement care providers and has approximately 300 members across England and the UK; c. 70% are organisations. Most of these organisations operate in the voluntary sector, and have charitable status. All members subscribe to a *CBN Belief Statement* that states,

"all bereaved children and young people have the right to information, guidance and support to enable them to manage the impact of death on their lives."

The work of the CBN is informed by a Consultant Panel. Current organisational members include

- Acorns Children's Hospice
- Barnardo's
- Bereavement Services Association
- Cruse
- Essex CAMHS
- Jigsaw4u
- Macmillan Cancer Relief
- Marie Curie Cancer Care
- National Children's Bureau
- Northern Ireland CBN Steering Group
- Norwich PCT
- Notre Dame Centre/ Seasons for Growth
- Release - Nightingale House Hospice
- SeeSaw
- St Christopher's Hospice
- The Child Bereavement Trust
- The Laura Centre
- University of Gloucester
- Wigan Family Support Team Counselling Service
- Winston's Wish

CBN is hosted by the National Children's Bureau (NCB). NCB promotes the voices, interests and well-being of all children and young people across every aspect of their lives.

As an umbrella body for the children's sector in England and Northern Ireland, NCB provides essential information on policy, research and best practice for our members and other partners. NCB aims to:

- challenge disadvantage in childhood
- work with children and young people to ensure they are involved in all matters that affect their lives
- promote multidisciplinary cross-agency partnerships and good practice
- influence government policy through policy development and advocacy
- undertake high quality research and work from an evidence-based perspective
- disseminate information to all those working with children and young people, and to children and young people themselves.

NCB has adopted and works within the UN Convention on the Rights of the Child.

The issue

Approximately 53 children a day are bereaved of a parent in the UK, equating to around 20,000 bereaved children and young people each year.¹ Statistics are not collected for how many children and young people are affected by the murder or manslaughter of a parent, sibling, friend or someone else close to them.

The death of a parent, sibling or other close relative or friend can have a devastating impact on the life of a child or young person, and their family. Bereavement and loss can significantly diminish a child's resilience and affect their emotional and physical health in both the short and long term.

At key transition points in their life, bereaved children will revisit and reassess the impact of the death. These periods of readjustment - which may occur years after the death - may also affect their physical and mental health and behaviour. Bereaved children are particularly vulnerable to being bullied and to school exclusion.

The death of a significant member may also have an adverse, traumatically disruptive effect on family dynamics, relationships and functioning.

There is increasing evidence that the experience of bereavement - if not properly acknowledged and supported - can lead to negative outcomes for children, young people and their families, and may have an adverse and enduring impact on emotional and physical health. Unfortunately, lack of research and comprehensive statistical data has inhibited informed debate on the issue and the development of effective policy and practice in the field of bereavement care for children.

We do know that the impact of traumatic deaths such as murder or manslaughter can be particularly difficult for children and young people to manage.

Question 1. **Do you agree that we should pilot arrangements for victim's advocates in murder and manslaughter cases?**

¹ Statistics supplied and verified by Winston's Wish, a bereavement support service for children and young people.

Comments:

If arrangements are to be piloted for victim's advocates, they must be made available and accessible to children and young people as well as adults. Article 12 of the UN Convention of the Rights of the Child, ratified by the UK government, states that:

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Question 2. **Do you agree with the basic aims?**

Comments:

We feel that it would be helpful to be more explicit about the aims of the proposal. It is clear that the proposal is intended to improve the information flow between the court and the family, but we are not clear whether the other aim of the proposal is to give the victim's family a voice, or to influence the sentence passed.

If the main aim is to enable victims' families to have an impact on the sentence passed (as suggested by para 43), then clearly this is a major step change for the judicial process, and the legislative and procedural changes hinted at in para 64 will need careful scrutiny. While some families, including children and young people, would like to have an influence on sentencing, others may see this as a burden which they would prefer to leave to the prosecution. It is vital then that families are given the option of making a statement and that they are in no way pressured by the prosecution to do so. Statements made by the children of victims will often be very powerful and may develop high currency with prosecutors: their right to participate in the court procedure must be carefully balanced with protection from pressure to provide emotive testimony.

If, by contrast, the main aim is to give victims' families a voice, then it must be made clear (clearer than in the existing proposal) that their statement will not affect the

sentence passed. Government principles for the participation of children and young people include:

'Children and young people's involvement is valued. Children and young people are treated honestly. That means that their expectations are managed and that they are helped to understand the practical, legal or political boundaries of their involvement' Learning to Listen: Core Principles for the Involvement of Children and Young People (2001) DfES

Whether or not the courts intend that the family's statements should affect the sentence, it may well be assumed by families that they are being taken into account. If a family member makes a statement they are likely to feel an increased sense of personal responsibility for the eventual sentence, which may be disappointing to them. Sensitive support must be offered to families, particularly children and young people, around this issue.

Question 3. **For the purposes of helping the relative make a personal statement in court, should relatives have a choice from:**

- a) an independent legally trained advocate with appropriate rights of audience**
- b) an enhanced Crown Prosecution Service role**
- c) a lay advocate**
- d) unrepresented appearance?**

Comments:

Whichever role is decided, it is clear that the relative responsibilities of the advocate and the prosecutor are clearly set out and explained to families, including any children and young people involved.

If the child or young person has also been required to give evidence during the trial, when the time comes to make an impact statement the differences between the two types of statement must be carefully explained: for example how their purpose differs, whether the impact statement will be cross-examined and who will be in court. It will be particularly necessary to make this distinction if the advocate has been involved in the

earlier parts of the trial.

Question 4. **Under the proposal, who do you think would be best placed to keep the victim's family better engaged in the criminal justice process:**

- a) an independent legally trained advocate**
- b) the police (e.g. a family liaison officer)**
- c) an enhanced Crown Prosecution Service role**
- d) the Witness Care Unit (which would thus remain the key central point of contact and co-ordination)**
- e) an outside agency such as a voluntary organisation**
- f) some combination of a) – e)**
- g) other (please make suggestions)?**

Comments:

Families are likely to see the quality of the information as of more importance than who is giving it. For many administrative processes, families have said that having one identified person responsible for providing them with information is preferable to a range of people. However, an alternative person must be made available for when the identified person is ill or on leave.

It is important that whatever the professional background of the advocate, the role is fully integrated into the functioning of the court and the advocate is kept informed and involved at all stages of the court process.

Question 5. **Should a single advocate be made available in each case (including "serial" and multiple offences), able to assist as many of the relatives who wished to make an oral statement?**

Comments:

Nominating one advocate per case is likely to mean that the role is constrained, as that person will have less time to dedicate to each relative wishing to make an oral statement.

If this route is chosen, then it is important that those family members who may need more time and assistance in making their statement, such as children, are not squeezed out of the process, and that any advocate appointed has the appropriate skills and knowledge to support children and young people. This may mean that two advocates should be made available in each case: one for adults and one for children and young people.

Question 6. **Or should the ability to instruct an advocate be limited to certain persons? If so, who should decide and on what criteria - a judge in court, the police family liaison officer or the prosecutor?**

Comments:

If the ability to instruct an advocate is limited, then whoever decides who is eligible must protect the rights of any children of the victim to make a statement if they wish. Please see the response to question 9.

Question 7. **Should bereaved be encouraged to nominate one relative to instruct the advocate?**

Comments: Please see the response to question 9.

Question 8. **Do you agree that the defendant should be excluded?**

Comments:

Question 9. **Would any special provisions be required if the relative was a child, a child in care or fostered, or an adult with learning disabilities?**

Comments:

A number of issues need to be considered in making provision for children and young people to make statements. Many of these have been considered at length in relation to child witnesses.

Consent: Some families may wish to protect their children from the stressful experience of participating in court proceedings. However, some children and young people may still

wish to make a statement. Bereaved children and young people often talk about the difficulties they experience through being excluded from the processes around death, often because their families want to protect them:

'Everyone was trying to stop telling me things, trying to hide stuff from me saying 'it will be better if you don't know these things' but I feel that if they'd have told me I'd have coped better' A death in the lives of ... (2002) Childhood Bereavement Network

'My Mum is dead. I don't know when the funeral is' 'I can't stop feeling sad': calls to ChildLine about bereavement (2002) Childline

Conversely, some young people may not want to make a statement, but the adults around them feel that their testimony would be so powerful that it must be heard. Research suggests that adults may underestimate the negative feelings which children and young people may have about attending court ('Evaluation of Witness Service support for child witnesses' Children in Court (1996) Victim Support)

In either case, the issue is clearly about giving children and young people a choice about making a statement. It will be necessary to issue guidance about whether consent to make (or refuse to make) a statement lies with the child, or the family, or both.

'After her fourth call [to ChildLine], a caller had managed to talk to her mother and had been allowed to go to the inquest into her brother's death. She said 'it was awful listening to it but I wanted to be there.' 'I can't stop feeling sad': calls to ChildLine about bereavement (2002) Childline

Access: some children of victims will have become looked after by the local authority as a result of the murder or manslaughter of their parent. Placements at some distance from the court, or frequently changing placements could affect the opportunities of the child to make a statement. The rights of such children to choose whether to make a statement must be carefully protected by liaison between the court and the child's appointed social worker. Similarly, the rights of disabled children and children whose first language is not English may need particular protection, and realistic resources must be allocated to this.

Information: any information about the court process, the role of the statement or the progress of the trial must be provided in a way which the child understands.

Making a statement: as in the case of child witnesses giving their evidence-in-chief, ways of making the experience less intimidating to children must be employed. This might be through video statements, or assistance from relatives, or the removal of wigs and gowns in the courtroom. Some children may prefer not to make an oral statement but to submit a written or drawn statement. If the court is seriously committed to hearing the voice of a bereaved child, then the admissibility of pictures, songs, poems, drawings and models should be considered: these are all tools used by child bereavement services to enable children to communicate the impact of what has happened to them.

Clearly, the advocate will need training and experience in working with children and young people to be an effective help to them.

Question 10. **If there were any conflicts of interest among relatives how might they be resolved?**

Comments:

Question 11. **At what stage in the criminal process would it be most appropriate to appoint an advocate?**

Comments:

This will depend on the role: if the advocate will be providing information to the family about the progress of the case then this will require the appointment to be made at the point at which the Crown Prosecution decides to proceed (and before the date of the first hearing is fixed). If their remit is purely to assist with making a statement, the appointment could be later. Whatever the role, if an advocate is assisting a child or young person in making a statement then they will need ample time to establish a rapport with the child and to prepare him or her properly .

Question 12. **Do you consider that victims' advocates should be appointed by a panel of the kind canvassed in paragraph 57?**

Comments:

Question 13. **Do you consider that the option of a lay victim's advocate as canvassed**

in paragraph 58 should be investigated?

Comments:

Question 14. **Should there be a means test before a victim's advocate is provided?**

Comments:

Question 15. **What sort of information and independent advice would relatives of murder victims find helpful it to receive?**

Comments:

As well as information about the court process and the progress of the case, families of murder victims will find it helpful to be offered information about bereavement and about local and national sources of bereavement support. High quality information and support is already being offered by many organisations around the UK: details of local childhood bereavement services can be viewed at www.ncb.org.uk/directory

Families may also find it helpful to receive information on welfare rights and criminal injuries compensation. Some families have also been particularly keen to know what is happening to the victim's belongings and when the family might be able to retrieve them.

Question 16. **How might these best be delivered e.g. leaflets, telephone contact, face to face advice or all of these?**

Comments:

All of these, so that families can choose how and when they access support. Tailored information and support should be provided for children and young people.

Question 17. **On what pre-trial matters should the relatives of homicide victims be able to make representations to the prosecution?**

Comments:

Question 18. **In the event that cross-examination were to be allowed by the trial judge,**

what sort of advice, support and preparation should the relative receive to assist them make the oral statement?

Comments:

Question 19. **Should the advocate have this preparation role?**

Comments:

Question 20. **Should the advocate be required to give advance notice to the court that the relative wishes to make an oral statement? If so, how much notice would be appropriate?**

Comments:

Question 21. **Do you consider that the relative should be required to give advance notice in writing of the contents of their oral statement?**

Comments:

It may be difficult for family members, including children and young people, to give advance notice of what they will say. Their feelings, and thus the contents of the statement, are likely to change during the trial process. Key events such as the hearing of evidence and the verdict, as well as the passage of time, are likely to affect the things they will want to say.

This point relates to the answer to question 2 on the overall aims of the proposal. If the contents of the statement are to affect the sentence, then advance notice of contents is likely to be necessary to ensure a fair trial. But if the statement is to give an opportunity for the relatives' voices to be heard, then having to give advance notice and later limit the statement will not fulfil this.

Submitting notice in writing early in the day on which the statement is to be given or heard could balance these priorities.

Question 22. **Do elements of the function mentioned in paragraph 64 require a legal qualification or could it be performed by others such as Victim Support**

or a Witness Care Unit?

Comments:

Question 23. **Do you consider that special measures should be available to assist relatives who are children or vulnerable or intimidated adults?**

Comments:

Certainly, as outlined in the answer to question 9

Question 24. **Should the procedure enable only an oral statement to be made?**

Comments:

In the case of children and young people: no, as outlined in the answer to question 9

Question 25. **Do you consider that relatives should be able to make an oral statement before the judge gives an advance indication of sentence?**

Comments:

As outlined in the answer to questions 2 and 21, this depends on whether the statement is intended to affect the sentence. If it is intended to affect it, then yes, families should be able to make a statement before the judge gives an advance indication of sentence. However, if this happens and the defendant then pleads not guilty and the case proceeds, the family should be given an opportunity to give a further statement as their feelings are likely to change post-verdict.

This will also complicate the issue raised in the answer to question 3. If a child or young person is given the opportunity to make a statement before the judge gives an advance indication of sentence, is then required to give evidence and is then given a further opportunity to make a statement, the different purpose and type of the various statements will need to be carefully explained.

Question 26. **Do you consider that an independent advocate should have a role in assisting the prosecution on behalf of the relative at the plea in**

mitigation stage of the sentencing process?

Comments:

Question 27. **If so, what action might be taken to facilitate access for the relative? For example, would it be practical for the defence to be required to give advance notice of pleas in mitigation, even where the plea contains nothing that is derogatory about the victim?**

Comments:

Question 28. **Should the victim's relative be able to choose to liaise directly with the prosecution at court at this stage without using an advocate?**

Comments:

Question 29. **Do you agree that provided that the Court of Appeal has a copy of the transcript of the relative's oral representations at the sentencing stage of the proceedings, it is not necessary for the advocate to appear at the Court of Appeal?**

Comments:

Yet again, this depends on the purpose of the statement. If it is to affect the sentence, then there is probably no need for the advocate to appear at the Court of Appeal. However, if it is to give the relatives a voice, then this might be better served by the appearance of the advocate.

Question 30. **Do you consider that the advocate should be able to advise and assist the bereaved on approaching the CPS/Attorney General about the exercise of his powers to refer unduly lenient sentences to the Court of Appeal?**

Comments:

Question 31. **What information do you consider that the advocate would need in order**

to perform effectively?

Comments:

Question 32. **In addition to the provision of information, how should the advocate be kept informed of the progress of the case more generally? For example should this be a responsibility of the police family liaison officer, CPS, or the court?**

Comments:

Question 33. **What type of training might be needed and who is best placed to advise on and oversee training, for example Victim Support, Legal Services Commission?**

Comments:

The advocate will need training in supporting bereaved children, young people and their families, and in the impact of trauma. Family context is key to the way children and young people manage their bereavement, including that caused by sudden, violent and traumatic deaths. Many members of the Childhood Bereavement Network offer such training.

Question 34. **Do you consider that the role of the victim's advocate could include intervening, wherever possible, to ensure that the body of the victim is released as quickly as possible to the next of kin, to enable a funeral to take place?**

Comments:

There are a number of other issues not covered by the proposal or the consultation questions which we wish to raise:

The reporting of the statement

Guidance will need to be issued on media reporting of the statement, particularly when it is being made by a child or young person. The paper mentions families talking to the media, but the assumption should not be that all family members wish to be identified in the making of their statement. Ways of protecting the identity of children and young people making statements must be considered, along the lines of the protection offered to child witnesses.

Take-up of the proposals

The paper refers to the patchy take-up of the opportunity to make a Victim Personal Statement. Lessons learned from the evaluation of that scheme must be incorporated into these plans. Similarly, the Executive Summary of a recent NSPCC report *In their own words: the experiences for 50 young witnesses in criminal proceedings* concluded

'Despite a network of policies and procedures intended to facilitate children's evidence, only a handful of young witnesses in this study gave evidence in anything approaching the optimum circumstances. Their experience reveals a chasm - an implementation gap - between policy objectives and actual delivery around the country' (p8)

The proposed pilots for victims' advocates must be adequately resourced and carefully evaluated if the voices of the children of murder and manslaughter victims are truly to be heard.

Alison Penny
Childhood Bereavement Network
November 2005