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NICEM SUBMISSION

Draft Victim Charter: A Department of Justice Consultation

**DoJ
May 2014**

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1.1 The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities. Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society. Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Do you think that the ‘victim journey’ approach used in the Victim Charter is the right one?

2.1 NICEM feels that the ‘victim journey’ approach is a useful measure to ensure that the Charter is more accessible. However, it emphasised that the Charter should ensure its accessibility to BME victims of crime through additional means, such as the translation of its contents upon request. Additionally, NICEM would support the pre-emptive translation of the Charter’s summary document into key minority languages, as this will provide vital information to victims, particularly victims of trafficking, who may have little or no proficiency in English language.

Do you have any comments on who the Victim Charter is for?

3.1 The Victim Charter draws on elements from European Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (‘the Directive’), the Making a Difference to Victims and Witnesses of Crime Improving Access to Justice, Services and Support Strategy (‘Victims and Witnesses Strategy’) and the Inquiry of the Committee of Justice into the Criminal Justice Services Available to Victims and Witnesses of Crime in Northern Ireland (‘the Inquiry’).²

3.2 All of these documents emphasise the importance of providing for vulnerable victims and identify black and minority ethnic (BME) victims as vulnerable. Article 22 of the Directive considers the need for special measures for particularly vulnerable victims, highlighting the categories of trafficking victims and hate crime victims specifically under Article 22(3). The Victims and Witnesses Strategy states that ‘most attention’ should be focused on ‘the most vulnerable’ victims and witnesses.³ Additionally, Annex D of this Strategy specifically emphasises victims of hate crime and trafficking as being potentially afraid or

1 Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² Department of Justice, ‘Draft Victim Charter’ (2014) Available at:

<http://www.dojni.gov.uk/index/public-consultations/current-consultations/consultation_document_victim_charter_may_2014.pdf> [accessed 11/08/14], para.11

³ Department of Justice, ‘Making a Difference to Victims and Witnesses of Crime, Improving Access to Justice, Services and Support’ (2013) Available at:

<http://www.dojni.gov.uk/index/publications/publication-categories/pubs-criminal-justice/making-a-difference-to-victims-and-witnesses-of-crime-improving-access-to-justice_-services-and-support.-a-five-year-strategy.pdf> [accessed 11/08/14], para.25

distressed at the prospect of giving evidence.⁴ Finally, a key recommendation arising from the Inquiry was the provision of additional support to vulnerable victims.⁵ Indeed, the Inquiry specifically stated that the Department of Justice (DoJ) should ‘address the specific issues raised in relation to... victims of hate crime’.⁶

3.3 This identification of BME victims as being particularly vulnerable is reinforced by available data; despite only 1.7% of the Northern Ireland (NI) population being identified as having a non-white ethnic background in the 2011 Census⁷, 5.7% of victims of domestic violence (of those whose ethnic background was identified) had a BME background according to 2013/2014 statistics.⁸ It is further notable that these statistics are likely to under-represent the true scale of domestic violence perpetrated against BME individuals, as research suggests that domestic and sexual violence is widely underreported – for BME communities, this may arise from a number of particular factors, including a fear of becoming subject to immigration control if one’s residency status depends upon one’s spouse.⁹ Indeed, the international authorities have noted that domestic violence and domestic homicide disproportionately affect ethnic minority women in the UK, and that ethnic minority individuals are more likely to be in fear of sexual and physical assault.¹⁰

3.4 While domestic violence affects both men and women, the issue of violence against women is particularly important, as the UK’s ratification of the Council of Europe Convention on Combating Violence Against Women and Domestic Violence 2011 is impending, and the Convention itself has just recently come into effect. Article 1(c) of this Convention states that parties must provide policies and measures to give assistance to all victims of violence against women and domestic violence. Furthermore, the EU’s Council of Justice and Home Affairs has called upon Members to States to ensure that victims of violence against women have

⁴ *ibid* p.49

⁵ Committee for Justice, ‘Report on the Committee’s Inquiry into the Criminal Justice Services Available to Victims and Witnesses of Crime in Northern Ireland’ (2012) Available at: <<http://www.niassembly.gov.uk/Documents/Justice/7890.pdf>> [accessed 11/08/14], p.6

⁶ *ibid* p.7

⁷ Northern Ireland Statistics and Research Agency, ‘Ethnic Group – Full Detail: QS201NI’ (2011) Available at: <http://www.ninis2.nisra.gov.uk/Download/Census%202011_Excel/2011/QS201NI.xls> [accessed 11/08/14]

⁸ Police Service of Northern Ireland, ‘Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/5 to 2013/14’ (2014) Available at: <http://www.psni.police.uk/domestic_abuse_incidents_and_crimes_in_northern_ireland_2004-05_to_2013-14.pdf> [accessed 11/08/14], p.27

⁹ McWilliams, M. and Priyamvada, Y., ‘The Protection and Rights of Minority Ethnic Women Experiencing Domestic Violence in Northern Ireland’ (2013) Available at: <<http://nicem.org.uk/wp-content/uploads/2014/03/PRBMEWEDVNI-1.pdf>> [accessed 10/09/14] pp.8-9

¹⁰ Special Rapporteur on Violence Against Women, ‘Special Rapporteur on violence against women finalizes country mission to the United Kingdom and Northern Ireland and calls for urgent action to address the accountability deficit and also the adverse impacts of changes in funding and services’ (2014) Available at: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14514&LangID=E>> [accessed 12/09/14]; European Agency for Fundamental Rights, ‘Violence Against Women: An EU-Wide Survey’ (2014) Available at: <http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf> [accessed 12/09/14] p.143

access to specialist victim support services.¹¹ Securing awareness of these services is a vital aspect of making them accessible, and may produce an incentive for incidents to be reported.

- 3.5 Additionally, recorded racist hate crime incidents have increased by 30.9% between 2012/2013 and 2013/2014, but the rate of successful outcomes has decreased by 1.7 percentage points.¹² This low outcome rate could itself be viewed as evidence of the need to promote the use of special measures to protect vulnerable victims, who may otherwise be reluctant to testify; Crown Prosecution Service research has identified numerous examples of cases where a lack of special measures provisions has resulted in withdrawn testimony and thus discontinued prosecution.¹³
- 3.6 The vulnerability of BME communities is further enhanced by the reluctance amongst many of these individuals to approach the police. Research illustrates that there is a lack of faith in the police amongst many BME communities¹⁴ and that hate crime is widely underreported.¹⁵ Thus, the importance of acknowledging the particular needs of these vulnerable victims is apparent.
- 3.7 Ultimately, it is evident that the Directive, the Inquiry and the Victims and Witnesses Strategy, taken alongside current data, illustrate the importance of protecting vulnerable victims and identify BME victims as being particularly vulnerable.
- 3.8 NICEM would support a greater emphasis on protecting vulnerable victims, including BME victims, at this point in the Charter. As has been emphasised throughout the Directive, Inquiry and Victims and Witnesses Strategy, vulnerable victims are entitled to particular attention and should be the primary focus of the Charter. The Charter should state this.**
- 3.9 NICEM also recommends that the Charter note the availability of key domestic violence services, such as local PSNI Domestic Violence Officers, who can be accessed by calling the PSNI's non-emergency number and asking to speak to a DVO. Additionally, Northern Ireland's 24-hour national domestic violence helpline (0800 917 1414) should be mentioned.**

¹¹ Council of the European Union, 'Council conclusions - "Preventing and combating all forms of violence against women and girls, including female genital mutilation"' (2014) Available at: <http://ec.europa.eu/justice/gender-equality/files/jha_violence_girls_council_conclusions_2014_en.pdf> [accessed 12/09/14] para.6

¹² Police Service of Northern Ireland, 'Incidents and Crimes with a Hate Motivation Recorded by the Police in Northern Ireland: Quarterly Update to 31 March 2014' (2014) Available at: <http://www.psni.police.uk/quarterly_hate_motivations_bulletin_apr-mar_13_14.pdf> [accessed 11/08/14], p.2

¹³ Charles, C., 'Special measures for vulnerable and intimidated witnesses: research exploring the decisions and actions taken by prosecutors in a sample of CPS case files' (2012) Available at: <www.cps.gov.uk/.../research/cps_research_on_special_measures.pdf> [accessed 12/08/14], pp.45-49

¹⁴ Jarman, N., 'Criminal Justice Responses to Hate Crime in Northern Ireland' (2012) Available at: <http://www.niacro.co.uk/filestore/documents/hate_crime_project_papers/01_Criminal_Justice_Responses_to_Hate_Crime_in_NI.pdf> [accessed 12/08/14], p.8; Geoghegan, P., *A Difficult Difference: Race, Religion and the New Northern Ireland* (2010, Irish Academic Press), pp. 72 and 81

¹⁵ op cit n 14, p.8

Furthermore, the existence of the DHSSPS's Domestic Violence Unit should be noted (028 9052 0597).

Does the Victim Charter contain the key services and entitlements that you would expect to see in it?

- 4.1 While the overview of key services is a welcome move to improve the accessibility of the Victim Charter, it is notable that the Charter omits to mention the role of the Police Service for Northern Ireland's (PSNI's) Hate Crime Victim Support Advocacy Service. While the Charter's overview does mention victim support services¹⁶, the Support Advocate's role is to signpost victims to relevant services rather than provide them.¹⁷ This serves a vital facilitative role, which is aligned with the spirit of the Charter in seeking to make victim services more available.
- 4.2 As has been noted above, BME individuals are disproportionately likely to be victims of domestic violence. Furthermore, the Directive and its accompanying guidance for implementation both highlight the need to pay particular attention to victims whose relationship or dependence upon the offender makes them particularly vulnerable.¹⁸ Therefore, it is felt that further mention of key domestic violence services operating in NI could be beneficial for vulnerable victims. For example, a pilot of a Court Listing Arrangement is currently being undertaken in Derry/Londonderry, whereby sessions of the Magistrates' Court will consist solely of cases involving domestic violence offences.¹⁹
- 4.3 NICEM feels that the role of Hate Crime Victim Support Advocates, as a service available to direct victims through available support services, should be mentioned within the overview and elaborated upon within the text of the Charter. Additionally, the Charter could pay closer attention to services available to victims of domestic violence in NI.**

¹⁶ op cit n 1, p.2

¹⁷ Northern Ireland Housing Executive, 'Hate Crime Victim Support Advocacy Service' (2014) Available at: <www.nihe.gov.uk/victim_support_advocacy_service.pdf> [accessed 11/08/14]

¹⁸ Directive 2012/29/EU, Recital 56; European Commission, DG Justice, 'DG Justice Guidance Document Related to the Transposition and Implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA' (2013) Available at: <ec.europa.eu/justice/.../victims/guidance_victims_rights_directive_en.pdf> [accessed 11/08/14], p.44

¹⁹ See:

<https://www.courtsni.gov.uk/SiteCollectionDocuments/Northern%20Ireland%20Courts%20Gallery/Court%20Lists/LMCPilot-new-listing-arrangement.pdf>

Is there anything that you think should be added to or omitted from the Victim Charter?

5.1 Currently, the Charter fails to adequately address the particular needs and vulnerabilities of BME victims of crime in a number of ways. Firstly, the Charter states that the provision of compensation and some other services may be dependent on the residence status or nationality of the victim.²⁰ It is emphasised throughout the Directive (for example, under Article 1(1)) and accompanying guidance on its implementation²¹ that the rights provided for within, such as Article 16 concerning the right to a decision on compensation, are to apply without discrimination, including with respect to residence status. This fact is reemphasised in recitals 10 and 49 of the Directive, with recital 49 directly referring to compensation and stating that the right to a decision on compensation should be made available to victims resident in a Member State other than the Member State in which the crime was committed.

5.2 Consequently, the statement within the Charter on this issue requires further clarification as to what residence status it is referring to, as the proscription of applications by EU citizens could constitute a violation of the Directive. Additionally, what services are affected must also be made clear, otherwise victims will be unaware of what services they are entitled to access, thus defeating the object of the Charter. It is notable that some services, such as compensation, are available to non-EU victims depending on the nature of their victimhood (for example, if they are a victim of trafficking²²). NICEM would like to emphasise that Article 1 of Council Directive 2004/80/EC entitle EU citizens to submit an application for compensation in a Member State in which they have been subjected to a violent, intentional crime. Additionally, Article 2 states that the Member State within which that crime was committed will pay compensation to the victim. Thus, it is of extreme importance for improving the understanding of victims that the services available to them, and the criteria of their availability, be fully explained.

5.3 NICEM recommends that the issues regarding residence and service provision be clarified. The Charter must state what the residence requirements are and what services and entitlements they apply to.

5.4 Further problematic is the fact that the Charter does not sufficiently consider the particular obstacles that BME victims may face in accessing support services. In NICEM's experience, victims of hate crime can be particularly fearful of providing testimony in court, especially if violence has arisen from their local community. This means that it is of vital importance that victims have their entitlements communicated to them as early as possible into the criminal justice process, or else cases may be jeopardised by the absence of victims' evidence.

²⁰ op cit n 1, p.15

²¹ op cit n 18, p.8

²² PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046, para.163

- 5.5 While the Charter acknowledges the role of police officers, when conducting a needs assessment, to determine ‘whether and to what extent’ special measures are required²³, there is no obligation envisioned within the Charter for officers to consider the views of victims/witnesses in conducting this assessment. It is notable that current Crown Prosecution Service guidance regarding special measures states that prosecutors should take witnesses’ views into account when applying for special measures.²⁴ This could be viewed as an example of best practice in facilitating victim/witness participation in the criminal justice process.
- 5.6 NICEM recommends that police act as ‘first responders’, ensuring that victims are provided with sufficient information on their entitlements to relevant special measures and taking account of victims’/witnesses’ views in assessing their need for these measures. In order to achieve this, officers will need to be provided with guidance on facilitating victims’/witnesses’ views and on what weight to accord them.**
- 5.7 For victims/witnesses themselves, information should be provided to inform them about special measures and their availability. This could comprise a part of the information leaflet mentioned within the Charter.**
- 5.8 In delineating the entitlement of victims/witnesses to translation and interpretation, it is reassuring that the Charter implements the standards of the Directive regarding qualification for free translation and the provision of a complaints mechanism for when requests are refused.²⁵ However, the Charter does not notify victims/witnesses of the fact that they should not be refused translation services simply on the basis that their language is not widely spoken, as stated under Recital 36 of the Directive.
- 5.9 As this section of the Charter is intended to inform victims/witnesses of their entitlements and to implement the EU Directive, NICEM recommends that a sentence be included which states that victims/witnesses should not be refused translation/interpretation services solely on the basis that their language is not widely spoken.**
- 5.10 A further manner in which the current draft falls short is in its omission to consider the particular process that trafficking victims experience. Individuals who have been identified as potential victims of trafficking are dealt with via the National Referral Mechanism, which operates to determine whether or not the individual is a victim of trafficking. This system involves the identification of a potential victim of trafficking by a ‘first responder’ agency²⁶, which then refers the victim, if they consent, to a ‘competent authority’. This authority is responsible for making a preliminary determination on the individual’s victimhood (a ‘reasonable grounds’ decision, which entitles the potential victim to

²³ op cit n 1, p.23

²⁴ Office for Criminal Justice Reform, ‘Special Measures Meetings Between the Crown Prosecution Service and Witnesses: Practice Guidance’ (2009) Available at: <www.cps.gov.uk/.../13007%20special%20measures%20cps%206th.pdf> [accessed 12/08/14], p.4

²⁵ op cit n 1, pp.13-14

²⁶ For a list of first-responder agencies, see: <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

Article 12 assistance, referred to below) and the final determination of whether or not an individual has ‘conclusive grounds’ to be considered a victim of trafficking. If the individual is identified as a victim of trafficking, then certain rights become engaged; for example, a victim of trafficking has the right to seek compensation from the trafficking perpetrator under Article 15 of the Convention on Action Against Trafficking in Human Beings 2005. Victims also have the right, under certain circumstances, to a renewable residence permit under Article 14 of the Convention. Additionally, trafficking victimhood is likely to have an impact on any claims that an individual may wish to make for asylum in the UK.²⁷

5.11 Furthermore, a trafficking victim is entitled to a 45-day recovery period while a decision on their victimhood is being reached, during which they will be provided with Government-funded assistance.²⁸ This assistance is provided pursuant to Article 12 of the Convention, which entitles victims to emergency healthcare²⁹, accommodation³⁰, translation services³¹, counselling³² et cetera.

5.12 The National Referral Mechanism process is a daunting one, with numerous different entitlements, burdens of proof and organisations becoming engaged at different points. Therefore, it is of particular importance that trafficking victims be informed of the process, what it involves and what certain outcomes mean for them.

5.13 NICEM recommends that the Charter include a breakdown of the National Referral Mechanism system, which indicates what the process involves, what services victims and potential victims of trafficking are entitled to at different points in the process and what the outcome of the ‘conclusive grounds’ decision means for the individual. Relevant references should also be included in the summary document and the information leaflet.

Do you have any other comments on the content of the Victim Charter?

6.1 It is notable that while the Charter does communicate the ability of victims to report hate crime online via the PSNI website, it does not reference the fact that victims of racist hate crime in Northern Ireland may now report hate crimes through a dedicated phone line run by the PSNI.

6.2 NICEM recommends that the Charter note the ability for victims of racist hate crime in Northern Ireland to report incidents to the PSNI via a dedicated line, accessible through their 101 non-emergency phone number.

²⁷ Home Office, ‘Victims of Human Trafficking: Guidance for Frontline Staff’ (2013) Available at: <https://www.gov.uk/government/uploads/.../Human_trafficking.pdf> [Accessed: 03/09/14]

²⁸ Anti-Trafficking Monitoring Group, ‘Hidden in Plain Sight – Three Years On: Updated Analysis of UK Measures to Protect Trafficked Persons’ (2013) Available at: <http://www.antislavery.org/includes/documents/cm_docs/2013/h/hidden_in_plain_sight.pdf> [Accessed: 03/09/14]

²⁹ Convention on Action Against Trafficking in Human Beings 2005, Article 12(1)(b)

³⁰ *ibid* Article 12(a)

³¹ *ibid* Article 12(c)

³² *ibid* Article 12(d)

The Victim Charter is a lengthy document. In light of this it contains a two-page overview and flowchart. A summary document is also available (an easy read version of the final summary document will be prepared once the Victim Charter has been finalised).

- (i) Are these documents useful?*
- (ii) Do they contain the right level of information?*
- (iii) Is there anything that you think should be added to or omitted from them?*
- (iv) Have you any suggestions about improving them or making them more accessible?*

6.3 NICEM feels that it could be useful for victims, particularly victims of racist hate crime, if the summary document is provided in key minority languages, with further translations available upon request. Additionally, the summary document should state that the translations of the main Charter are available upon request.

6.4 Furthermore, any web materials should be made accessible for ethnic minority communities. The provision of translation/subtitles for relevant materials in key minority languages should be made.

Do you have any comments on how best to take account of the views of victims on the operation of the Victim Charter?

7.1 NICEM emphasises that any process for collecting victims' views on the Charter should be sensitive to the particular needs of BME victims. Translations of the text into widely-spoken languages, and the availability of translation upon request, must be provided for. Additionally, NICEM suggests that, in gathering the views of BME victims, the relevant unit could appear before the All-Party Group on Ethnic Minority Communities to present information on the Charter, raise awareness regarding its provisions and request information from Members who have contact with victims.

Annex C of the Charter

NICEM is pleased to note that the Charter provides contact details for a number of key organisations under Annex C of the Charter. However, it is recommended that some further organisations be added to this list:

Alternatives (a Restorative Justice organisation)

Northern Ireland Alternatives
64 Woodvale Road,
Belfast,
BT13 3BT
028 9031 1420
tom@alternativesrj.co.uk

Bi-lingual Hate Crime Advocates

Belfast and Mid-Ulster

Joanna Kuberczyk
bilingualsupportworker@nicem.org.uk
T. 028 9043 8962
M. 07827299347
C/o NICEM
1st Floor, Ascot House
24-31 Shaftesbury Square
Belfast, BT2 7DB

Northwest (excluding H district)

Agnieszka Luczak
bilingualsupportworker@nicem.org.uk
T. 028 71 372 235
M. 07827297119
The Old Church
Clarendon Street
L/Derry, BT48 7ES

Bi-lingual advocate- H District

Ivy Ridge
Ivy.ridge@bief.org.uk
T. 028 2564 3605
M.07525142205
20 William Street,
Ballymena, BT43 6AW

DHSSPS Domestic Violence Unit

Phone: 028 0952 0597

Domestic Violence Officers (Call 101 and ask to speak to the local Domestic Violence Officer)

Migrant Helpline (Primary contact/first responder for trafficking victims in NI)

Phone: 01304 203 977 or 07766 668 781

Email: mhl@migranthelpline.org

Website: www.migranthelp.org

Northern Ireland 24-hour National Domestic Violence Helpline

Phone: 0800 917 1414

Salvation Army (Manages support services for adult victims of trafficking)

Confidential Referral Hotline: 0300 303 81 51

Email: info@salvationarmy.org.uk

Website: www.salvationarmy.org.uk/uki/Trafficking

Sure Start Services (this is an outreach, family support and childcare service that some victims with young children are directed to)

Local contact details are available at: <http://www.nidirect.gov.uk/sure-start-services>

Further Information

For further information regarding this consultation response, please contact:

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