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The Consultation Team

Sent by email: tpcsecretariat@justice.gov.uk

12th December 2023

Dear Consultation Team

Consultation Response: Possible amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008

I submit this letter as my formal response to your consultation '*Possible amendments to the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008*'.

As Victims' Commissioner for England and Wales it is my job to provide a voice for victims of crime and as such, I am opposed to the changes proposed here as they will have, in my opinion, a detrimental impact on victims' seeking to appeal criminal injuries compensation decisions.

I will, for ease, answer the question posed in your consultation here below.

Question 1: Do you with the proposed change to rule 30? If not, why not?

In both my previous and current terms as Commissioner, I have heard from victims' how important procedural justice is to them. This is that they are treated fairly, that they are treated with dignity and compassion and that they receive regular and accessible communication from justice agencies about their case. This procedural justice is often of greater or at least equal value to victims as the overall outcome of their case.

From my own experience of the criminal justice system, I know that often victims' feel like they are only 'worth' their evidential value to the system and the process can feel invasive, traumatic and undignified. Further, the system is frequently

experienced as disempowering, and much like the crime they have experienced, something that happens to them, about which they have very little say.

In my report on the criminal injuries compensation scheme (CIC) 'Compensation without Re-traumatisation' (2019)¹. I outlined how the CIC process can be highly traumatic for victims'; recounting details of the crime numerous times takes a massive toll on victims' mental health. I also shared that victims found the system complicated to navigate and that those who were able to employ legal representation tended to do better i.e., see better outcomes, although this also meant that some of their award was used to pay lawyers.

Specifically, regarding the appeals process, I heard that many find the tribunal highly traumatic, with one legal representative stating:

"It's very difficult for victims, it's very traumatic...A lot of clients go to their GP and have to be medicated to go through the tribunal." (interview 19)²

This is of course, the experience of victims who would have, as per the current rules, has their hearing in private.

Many will not have been through the criminal justice system because as you will be aware some of the most sensitive allegations, for example rape, never get to trial, the majority not even getting past report to the police. So, whilst some victims may have been through a 'public' hearing by no means all who appeal a CIC decision will have done so. Even if they have been through a trial, this appeal hearing is different in nature and purpose and will necessarily focus almost exclusively on the harm caused to the victim which is quite unlike a trial and likely as in the quote above extremely traumatic.

It is vital victims are better centred in the criminal justice response and empowered, as far as possible, by the process. Indeed, the Government's stated aim with the Victims' and Prisoners Bill currently going through parliament is to 'put victims back at the centre of justice system.' Victims inevitably view CIC appeals as part of this system as it relates to their experience of crime.

Allowing victims to continue to have a CIC appeal hearing in private, is a relatively small measure which could give victims' a feeling of control over what is happening to them, reduce the inevitable anxiety and trauma they experience as part of the compensation process and avoid making them feel more vulnerable to press or other intrusion (victim who have anonymity aside). Removing this measure will potentially further degrade victims experience and views of the 'justice system' which is already seen by many as a hostile place for them.

Additionally, the thought of this type of hearing being public may well have an impact on the numbers of victims' willing to appeal a decision, as my research³ also

¹ Accessed at <https://victimscommissioner.org.uk/document/compensation-without-re-traumatisation-the-victims-commissioners-review-into-criminal-injuries-compensation/>

² Ibid. Page 93

³ Ibid. 1

showed that many are too exhausted and traumatised by the time, they get a decision to even consider an appeal. Knowing that this hearing may be a public hearing is likely to compound this problem. This is while (at the time of my research) around a quarter of those who did appeal were successful, which suggests it is an important mechanism for ensuring that people get the compensation they deserve.

I would urge you to leave the rules as they currently stand as I firmly believe this is in the best interests of victims.

Please do not hesitate to contact me if you require any further information.

Kind regards,

A handwritten signature in black ink, appearing to read 'Helen', followed by a long, sweeping horizontal line that extends to the left.

Baroness Newlove LLD (hc) DCL
Victims' Commissioner for England and Wales