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# Knowledge Exchange Seminar Series (KESS)

**Improving Access to Justice for Victims of Crime in Northern Ireland:  
The Role of a Commissioner for Victims and Witnesses of Crime**

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## KESS Policy Briefing

*...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-informed policy and law-making within Northern Ireland*

## Key points:

- The proposed Commissioner for Victims and Witnesses of Crime represents a significant institutional development within the Northern Ireland criminal justice system. Drawing on academic analysis and comparative experience, this briefing highlights core design choices arising from the current proposals.
- Purpose of the Office  
The remit covers both victims and witnesses. The key question is whether the office functions primarily as a voice for victims or as a system oversight body. In practice, this will depend less on the title and more on the statutory functions and how they are exercised.
- System Oversight vs Individual Complaints  
The model is focused on system-level oversight, not individual complaints. However, in a small system, expectations of accessibility may draw the office into case-level engagement. Clarity is needed on whether individual cases are used as evidence of system performance or as matters for direct intervention.
- Independence  
The Commissioner is intended to be independent in function but connected to the Department of Justice in appointment, funding and reporting. This raises issues of both actual and perceived independence, particularly when scrutinising departmental policy or agency performance.
- Duty to Co-operate  
Scope: Initially limited to criminal justice agencies, with extension to other public bodies left for later consideration. This risks excluding areas such as housing, health and social care, which often shape victims' experiences.  
Strength: The duty requires responses to recommendations and the sharing of information, but does not require implementation. It relies on transparency rather than enforceability.  
In Scotland, non-compliance with information requirements can be referred to the courts, providing an escalation mechanism that is not currently proposed in Northern Ireland.
- Powers of Scrutiny  
The model emphasises monitoring and reporting, rather than investigation. Stronger models exist, including the Commissioner for Older People for Northern Ireland, which has formal investigatory powers. The current approach points to a more reactive model, dependent on agency cooperation.
- Role in Policy and Law Reform  
The Commissioner is likely to engage in wider criminal justice debates. The issue is whether this role develops as evidence-based scrutiny or broader advocacy.
- Overall Observation  
The effectiveness of the office will depend on clarity around its purpose, independence and powers, which will determine whether it operates primarily as a system monitor or a stronger mechanism of accountability.

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## Victims Commissioner or Victims and Witnesses Commissioner

At one level, the move from a Commissioner Designate for Victims of Crime to a statutory Commissioner for Victims and Witnesses of Crime appears to be a modest drafting change. It is not. The shift in terminology points to a more substantive question about what this office is meant to do within Northern Ireland's criminal justice system.

The current designate role is framed, quite deliberately, around victims. Even in its non-statutory form, it is anchored in the idea of representing those who have suffered harm, monitoring delivery of the Victim Charter, and feeding victims' experiences back into policy and practice. The proposed statutory model explicitly includes witnesses. That is not an arbitrary addition. Witnesses, like victims, are drawn into a process they do not control and are often exposed to the same familiar pressures: delay, poor communication, uncertainty, and, at times, secondary trauma. In that sense, the proposed title reflects a broader concern about how the system treats those required to participate.

But the change does more than expand the list of those covered. It shifts the office's underlying logic. A victim-focused commissioner sits comfortably within a harm-based framework: the role carries a clear normative justification rooted in recognition, voice, and, to some extent, redress. Once witnesses are brought formally within scope, the office begins to look less like a representative body for a defined group and more like a mechanism for scrutinising the operation of the system as a whole. That may be an advantage. It positions the Commissioner to speak to systemic failure. At the same time, it risks blurring the role's focus and diluting the distinctiveness of victim advocacy.

This tension is not unique to Northern Ireland. A similar pattern is visible in comparable offices elsewhere, and it is instructive that it is not always resolved at the level of formal title. In England and Wales, the statutory role formally encompasses both victims and witnesses, yet in practice the office has developed as a predominantly victim-focused body, with limited sustained engagement with witnesses as a distinct constituency. While proposals in Scotland place greater emphasis on victims and witnesses together. In Australia, the position is different again. Victims' Commissioners and equivalent offices across the states tend to retain a more explicitly victim-centred mandate, focused on advocacy, rights and service oversight, rather than a broader system-user model.

A similar ambiguity is visible within the Northern Ireland proposals themselves. While they refer to victims and witnesses together and envisage a role in monitoring compliance and system performance, the operational framework remains more clearly developed around the Victim Charter. It is less clear how far equivalent attention will be given to the Witness Charter as a distinct basis for monitoring and scrutiny. This raises the question of whether

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witnesses are being incorporated as a separate constituency or subsumed within an existing victim-focused framework.

Taken together, these examples suggest that the inclusion of “witnesses” in the title does not determine how the office will operate. What matters is whether the legislation and subsequent terms of reference provide clarity on purpose, powers, and priorities, and whether these are reflected in the practical mechanisms of oversight.

Questions for Assembly scrutiny:

- What is the primary function of the proposed Commissioner: to act as an advocate for victims, or as an oversight body for all non-defendant participants in the criminal justice process?
- Does the inclusion of witnesses strengthen the office by enabling system-wide scrutiny, or risk diluting its focus on those who have suffered direct harm?
- Should the legislation distinguish more clearly between the Commissioner’s role in relation to victims and its role in relation to witnesses?

## Focus of the Commissioner: Systemic Oversight or Individual Complaints?

A central question is whether the Commissioner is intended to operate as a system-level oversight body or as a route for dealing with individual complaints. The distinction matters. It goes directly to what the office can realistically do, and how it will be judged.

Across comparable jurisdictions, the position is relatively settled, though not uniform. Commissioners are not, in general, constituted as complaint-handling bodies. In England and Wales, the Victims’ Commissioner does not investigate or determine individual cases. Individual experiences are used instead to identify patterns of systemic failure (delay, poor communication, inconsistent treatment) which are addressed through reporting and policy engagement. The same logic underpins proposals in Scotland, where individual cases are to inform the office’s work but are not the object of intervention.

However, some hybrid approaches exist. In Australia, certain Victims’ Commissioners engage with individual cases, including receiving complaints and assisting individuals in navigating the system. These functions are bounded and do not amount to formal adjudication, sitting alongside a broader focus on advocacy and systemic oversight.

There are good reasons why most models stop short of a full complaints role. A complaints model risks overwhelming the office, duplicating existing routes for redress, and shifting focus towards case-specific outcomes, weakening its ability to identify structural problems.

The Department of Justice proposals point towards an oversight model, centred on monitoring performance and reporting on the experience of victims and witnesses.

Individual cases are likely to inform that work, but not to be resolved by it. However, the

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proposals do not clearly define how individual experiences are to be received and translated into systemic analysis, nor how far the Commissioner may engage with complaint processes. This sits alongside current practice, where the Commissioner Designate invites individuals to raise concerns, signposts them to relevant complaints processes, and encourages being copied into complaints in order to monitor how agencies respond. That does not amount to a complaints function, but it does place the office closer to the complaints pathway than a purely system-level model might suggest. The result is a degree of ambiguity as to how the role is intended to operate in practice. In the absence of clearer boundaries, there is a tension between an oversight function and expectations of accessibility and responsiveness.

The relatively small and closely connected population of Northern Ireland places particular pressure on this distinction. In a system perceived as more immediate and accessible, there are likely to be stronger expectations that the Commissioner will engage directly with individual concerns. This reflects a context in which the distance between individuals and public authorities is relatively limited and sits uneasily with an oversight model that depends on maintaining distance from case-specific intervention.

This creates a tension between design and expectation. The issue for Northern Ireland is not whether individual cases should be considered, but how they are used, and whether the limits of the role are clearly set out.

## Questions for Assembly scrutiny

- Should the Commissioner have any role in handling or investigating individual complaints, or should this be expressly excluded?
- How will the legislation distinguish between considering individual cases as evidence and intervening in those cases?
- Does Northern Ireland's smaller institutional landscape justify a broader role, or does it strengthen the case for a tightly defined oversight function?

## Independence of the Commissioner

If the previous sections go to what the Commissioner is for, this section turns to a different question: how independent the office will be in practice. This is not limited to the relationship with the Department of Justice. It extends to the Commissioner's position within the criminal justice system. The answer will shape how credible and how effective the office is.

Some connection to the system is unavoidable and necessary. The Commissioner will engage with justice agencies, contribute to policy discussions, and require access to information. The issue is how that relationship is structured. A Commissioner that is too closely aligned with the system risks being perceived as part of it. A Commissioner who

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maintains a clearer distance is better placed to scrutinise policy, challenge performance, and command confidence.

The Department of Justice proposals point towards a statutory, but relatively light-touch model of independence. The Commissioner would be established in legislation, with functions centred on monitoring, reporting and engagement, but would remain institutionally connected to the Department. In practical terms, this is likely to involve ministerial appointment, reporting through published outputs and funding provided through the Department of Justice. Independence is therefore expected to rest primarily on statutory duties rather than structural separation.

Independence is also shaped by how the Commissioner engages with other parts of the system. In Northern Ireland, this question already arises in practice. The Commissioner Designate has participated in policy-focused settings, including the Lady Chief Justice's Sentencing Group, which helps shape and approve sentencing guidelines. Participation in such a body places the office within an influential part of the system's decision-shaping architecture, rather than wholly external to it.

Comparative experience suggests that these choices matter. In England and Wales, the Victims' Commissioner for England and Wales is formally independent but closely connected to government, with influence exercised through reporting, advice and, in some cases, a parliamentary platform in the House of Lords. By contrast, proposals in Scotland place greater emphasis on parliamentary accountability, with the Commissioner reporting directly to the legislature. This reflects a more deliberate attempt to secure institutional distance from government, informed by concerns that influence-based models may lack sufficient leverage where systemic issues persist.

For Northern Ireland, the issue is not simply formal independence, but practical and perceived independence across the system. The Commissioner will be expected to comment on agencies within the Department's remit, and at times on departmental policy itself. Participation in influential system bodies may enhance access and facilitate early engagement but may also blur the distinction between scrutiny and participation, particularly where the Commissioner is later expected to comment on policies to which they have contributed. In a smaller and closely connected jurisdiction, this issue is likely to be more acute. The risk is not simply one of formal dependence, but of institutional capture in a softer sense, where proximity and repeated interaction make it more difficult to maintain visible distance and a critical perspective.

The question for the Assembly is therefore not whether the Commissioner can speak independently, but whether the structure ensures that they can do so across the system, without constraint, and be seen to do so.

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## Questions for Assembly scrutiny

- How will the Commissioner be appointed, and what role, if any, will the Assembly have in that process?
- To whom will the Commissioner formally report: the Department of Justice, the Assembly, or both?
- To what extent will the Commissioner have the ability to scrutinise and publicly report on Department of Justice policy and performance?
- Are the proposed arrangements sufficient to ensure both the reality and the perception of independence?

## Ensuring the Co-operation of Agencies with the Commissioner

The Department of Justice's proposals to introduce a duty to co-operate are a necessary starting point, but they raise two distinct questions: scope, that is, which bodies are subject to the duty, and substance, namely what the duty requires in practice and how far it can secure meaningful change.

On scope, the duty appears likely to apply primarily to criminal justice organisations, including the police, prosecution, courts and associated agencies, with an emphasis on information sharing and compliance with the Victim and Witness Charters. This points towards a model centred on the formal justice system. The Department has indicated that the scope could be extended over time. However, the Commissioner Designate has already been in post for a period, and experience has highlighted the importance of engagement beyond the core justice system. It is therefore not clear why the initial formulation would not extend more fully to public authorities such as housing, local government, and health and social care, which often shape victims' experiences in practice.

The second issue concerns the nature of the duty. The proposals include specific obligations on criminal justice organisations, including a requirement to respond to reports, to provide annual complaints data, and to co-operate with the Commissioner. These introduce a degree of structure, but their effect is limited. The duty to respond requires engagement, not compliance. Public bodies are not required to implement recommendations, and there is no clear mechanism to enforce follow-through. The requirement to provide complaints data is informational, and the broader duty to co-operate remains framed in general terms. The model therefore combines formal obligations with a continued reliance on transparency and reputational pressure.

In Scotland, the Commissioner may require information, and failure to comply can be referred to the Court of Session, which may make enforcement orders or treat the matter as contempt. This creates a clear escalation mechanism in relation to information provision, though not to the implementation of recommendations more generally. No

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comparable enforcement pathway is proposed in Northern Ireland, reinforcing the reliance on engagement rather than compulsion.

A separate issue concerns the Commissioner's investigative capacity. The current proposals are framed around monitoring and reporting, supported by access to information, but do not provide an explicit power to initiate formal investigations or to compel the production of evidence. By contrast, other models confer clearer investigative authority. In Scotland, the Victims Commissioner is given an express power to carry out investigations into the treatment of victims and witnesses, supported by the ability to require information. Within Northern Ireland, the Commissioner for Older People similarly has the power to conduct formal investigations and to compel evidence. The absence of comparable powers in the present proposals points towards a more data-led and reactive model of scrutiny, dependent on information provided by agencies rather than inquiry initiated by the Commissioner.

For Northern Ireland, the issue is not whether a duty to co-operate should exist, but how it should be calibrated. An incremental approach to scope and a response-based model may be sufficient in some areas, but risks leaving the Commissioner reliant on engagement rather than structured accountability. The question is whether the duty is intended to operate primarily as a mechanism for scrutiny and visibility, or as a more robust tool for securing consistent change across the system.

## Questions for Assembly scrutiny

- How is the initial scope of the duty to co-operate to be defined, and on what basis will decisions be made about extending it beyond core criminal justice organisations to other public authorities?
- What is the intended effect of the duty to respond? Is it designed primarily to ensure transparency and engagement, or to drive substantive change in practice?
- Should there be a defined mechanism to enforce compliance with information requirements, including escalation where co-operation is not forthcoming?
- Should the Commissioner be equipped with formal investigation powers, including the ability to initiate inquiries and require evidence?

## Positioning the Commissioner in Criminal Justice Policy Debates

A further question, not fully resolved in the legislative proposals, is how the Commissioner will position the office in relation to criminal law and sentencing reform debates.

Across comparable jurisdictions, commissioners do not confine themselves to operational issues such as communication, delay, or service standards. They frequently engage to varying degrees, with wider questions about the direction of criminal justice policy, including sentencing, criminalisation debates, and the balance between punishment and

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rehabilitation. In doing so, they draw on their statutory role to reflect the experiences of victims but operate in a space that is often politically and normatively contested.

This is not a purely hypothetical issue in Northern Ireland. The current Commissioner Designate has already engaged in this space, including responding to consultations on sentencing reform and related policy developments.

The Department's proposals recognise a role for the Commissioner in reviewing law, policy and practice as they affect victims and witnesses, and in making recommendations. This goes beyond a purely operational focus. However, they do not set out clearly how the Commissioner is expected to engage in wider criminal justice reform debates. There is no clear distinction between reviewing the impact of existing law and policy and participating in more contested debates about the direction of reform, such as sentencing policy.

This also raises a further question about the Commissioner's status within the policy process. It is not clear whether the office is intended to operate as one stakeholder among many, contributing to consultations alongside other organisations, or as a more clearly defined institutional voice within the system, whose role carries particular weight in shaping policy. That distinction has practical implications for how the Commissioner's interventions are received, and for the expectations attached to the office.

Engagement in high-profile debates on sentencing or criminalisation may draw the Commissioner into areas where there is no single, settled "victim perspective", and where positions are likely to be contested. It may also create tension with the Commissioner's role as an evidence-based scrutiny body, particularly if interventions are perceived as normative rather than grounded in systematic analysis.

At the same time, excluding the Commissioner from these debates altogether would risk narrowing the role unduly. A Commissioner confined to operational matters may struggle to address the structural drivers of the issues it identifies. The issue is therefore not whether the Commissioner will engage in law reform debates, but how that engagement is framed and bounded in practice.

A coherent approach would be to position the Commissioner as an evidence-informed contributor to policy debates, rather than as a primary advocate for particular outcomes. This would allow the office to draw on its data access and experience to inform discussions while maintaining analytical distance. It would also align more closely with the Commissioner's core function as a scrutiny body.

The issue for Northern Ireland is therefore one of expectation and clarity. The statutory framework recognises a role in reviewing law, policy, and practice, and practice to date suggests that engagement in reform debates will occur. The question is whether the scope of that engagement, and the status of the Commissioner within it, is left to develop

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informally, or more clearly articulated from the outset, either in legislation or in accompanying guidance, as to how the office is expected to engage in this area.

## Questions for Assembly scrutiny

- How should the Commissioner's role in reviewing law, policy and practice be understood in relation to wider criminal justice reform debates?
- Should the legislation distinguish more clearly between assessing the impact of existing law and policy and engaging in debates about future reform, particularly in areas such as sentencing?
- In engaging with policy development, is the Commissioner intended to operate as one stakeholder among many, or as a designated scrutiny body whose views carry particular weight within the system?

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## Legislation:

- Northern Ireland:
  - Justice Act (Northern Ireland) 2011
  - Justice Act (Northern Ireland) 2015
  - Victims and Witnesses Bill
  
- England and Wales:
  - Domestic Violence, Crime and Victims Act 2004
  - Victims and Prisoners Act 2024
  
- Scotland:
  - Victims, Witnesses, and Justice Reform (Scotland) Act 2025
  
- Australia:
  - Victims' Commissioner and Sexual Violence Review Board Act 2024 (Queensland)
  - Victims of Crime Act 1994 (Australian Capital Territory)
  - Victims of Crime Act 1994 (Western Australia)
  - Victims of Crime Act 2001 (South Australia)
  - Victims of Crime Commissioner Act 2015 (Victoria, Australia)

## Official Commission websites:

- Commission for Victims of Crime in Northern Ireland: <https://www.cvocni.org>
- Victims' Commissioner for England and Wales: <https://victimscommissioner.org.uk>
- Victims of Crime Commissioner (Victoria, Australia): <https://victimsofcrimecommissioner.vic.gov.au/about>
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