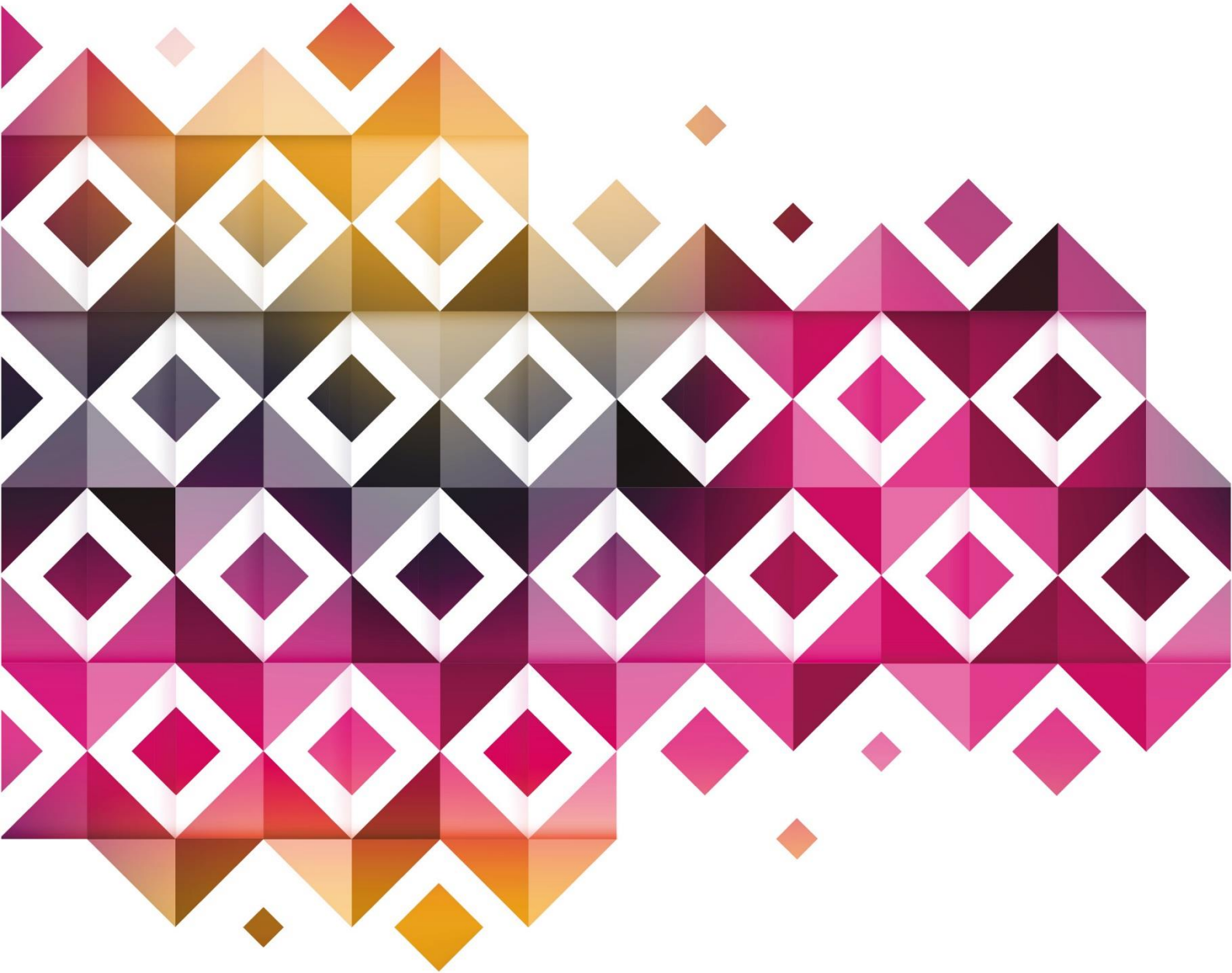


# Victims Law Policy Paper

Victims' Commissioner's Proposals for a Victims Law



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## Victims' Commissioner's Foreword

Our civilised society has a duty to treat victims of crime well. For the state to prosecute and uphold the rule of law, victims must have the confidence to report crimes and to testify in court.

Yet we know that victim confidence in our criminal justice system is in sharp decline. More and more victims are withdrawing their support for prosecutions and, in my recent survey of rape complainants, only around one in seven said they felt reporting could end in justice.

It cannot be in anybody's interests for this erosion in victim confidence to continue. It is certainly not in the interests of justice. Superficial changes are not enough if we are to reverse this downward trend.

I am therefore extremely pleased that the Government has set out its commitment to a long-awaited and much-needed Victims Law. Provided it has the right scope and level of ambition, this can be once-in-a-generation, landmark legislation to transform the victim's experience.

Our justice system is adversarial between the state, which prosecutes crime, and the defendant, who is fully entitled to be defended. Although a victim may be called upon as a witness, it is not to tell the court how they have been wronged but, like a bystander to the event, to describe what the defendant did. It is easy, therefore, for the criminal justice agencies to see victims as transient and peripheral to their core purpose.

This view of victims has to change. A victim is far more than a bystander. All victims are affected by crime, sometimes they are intimately and profoundly impacted. And they will be further affected by how the criminal justice system deals with them. We need to understand that, in that significant sense, victims are inevitably participants, from the day of the crime through the trial and beyond. We must ensure that their needs are met, and they are supported so that the system helps them to cope and recover and does not, through disregard, risk making them worse. We must also recognise that justice cannot be delivered without victims.

Far too often, victim entitlements are treated as favours rather than rights – a 'desirable' rather than a necessity. Recognition that victims are participants, central to the process, would make the delivery of their rights a clear obligation to these agencies. Without that status, core victim entitlements such as the offer of a Victim Personal Statement, restorative justice, or regular police updates are simply not happening. If we are to achieve change, we have a long way to go.

As my paper sets out, a Victims Law which reconceptualises the status of victims as participants does not in any way undermine the rights of the defendant. This is not a zero-sum game. However, this reframing of the victim's status is key to delivering the cultural shift we have long been calling for.

In this paper, I have given careful consideration as to what a Victims Law might look like and what is needed. I have listened to the voices of victims, consulted experienced stakeholders and drawn upon my office's own extensive research to form my recommendations. The list is not definitive, but indicative of how a participant victim might expect to be treated and includes practical, actionable recommendations.

A further change is urgent if we are to deliver the transformational change we need. The paucity of data collected on victims and their entitlements make it currently impossible to hold criminal justice agencies to account if they do not deliver victims' entitlements.

A Victims Law is an opportunity finally to address this issue by giving to the current and future Victims' Commissioners the power to monitor compliance with the Victims' Code. The law should also set out a streamlined system for complaints and require Police and Crime Commissioners to collect local data to ensure compliance at every level by every agency.

Finally - and importantly - we must recognise that minority groups are proportionately more likely to be victims of crime yet less likely to report it or to get access to specialist services. Service provision tailored to these groups is patchy at best. I make evidence-based recommendations on how the Victims Law should create a framework to monitor access and thereby to drive equal delivery of support and justice to all victims.

I look forward to a future where victims' rights are no longer viewed as an optional extra but are a key part of how we deliver justice. This is a long-overdue cultural change which would give us the tools to reverse the fall in victim confidence. I'd like to thank all those who contributed to this document and I commend these proposals to the Government. Strong and robust victims' rights are an essential part of a civilised society; they are not a challenge to the defence, and nor should they be a challenge to deliver.

A handwritten signature in black ink, appearing to read 'V Baird', written in a cursive style.

**Dame Vera Baird QC**

**Victims' Commissioner for England and Wales**

## **Acknowledgements**

The Victims' Commissioner would like to thank the many people who have contributed to their views, experiences and observations to this paper. In particular, she would like to thank all the attendees at her stakeholder engagement forums; the authors of the various reviews that have been used as sources of evidence; and the many victims, witnesses and professionals who have, over the years, participated in her research.

## **Executive Summary**

This report highlights the decline in victim confidence in the criminal justice system, with increasing numbers of victims withdrawing their support for prosecution, with others saying they would be unwilling to testify in court again or express increasing dissatisfaction with their treatment by criminal justice practitioners.

Yet victim participation is essential to the delivery of criminal justice. In this paper, we make the case for improving the treatment of victims in a practical and meaningful way, giving them confidence in the system and to help them to cope and recover from the impact of crime.

The report is divided into three key themes:

- Victim Participation in the justice system
- Monitoring compliance with victim entitlements
- Ensuring equality of access to justice for all victims

## **Victim Participation**

Crimes are seen as an attack on the state and not against the victim. So, proceedings are not there to put right the victim's wrong but to enable the state to inflict punishment and affirm the rule of law. If a case is brought, the victim can be compelled to be a witness but is not there to talk about what he/she has personally suffered, merely, like a bystander, to tell the court what the defendant did.

We explore how the treatment of victims as bystanders across the criminal justice system impacts not only on their experience of system but their perception of it. We make the case for re-conceptualising the status of victims. The criminal justice agencies need to see them as participants in the process from the day of the crime throughout proceedings and beyond. Victims will be affected by what has happened to them, that needs to be understood at every stage so that attention can be given to what they need to help them to cope and recover as well as to give the best evidence they can if they are witnesses.

We also make a series of inter-related, evidence-based recommendations about what the Victims Law needs to include to support the re-defined role of victims as active participants.

In the adversarial system, the defendant is at the centre of the court process. This centrality is not to be criticised and defendants' rights need fully to be protected. However, victims are all too often seen as temporary and marginal.

Yet, victims may have suffered serious injury, sexual assault or the death of a loved one. They are intimately involved from the day of the offence through the process and often beyond far into their future. The notion is that the state prosecutes on behalf of all the public. But there is a great difference between the interests of members of the public in having a good criminal justice system and the profound interest in one specific case of a deeply affected victim. That special interest requires that victims have rights and that it must be a key priority of all criminal justice agencies to ensure they are delivered.

We believe a Victims Law is an opportunity for the UK Government to give victims a distinct legal status within the criminal justice system, separate from that of the wider public and the Crown. We are calling for a reconceptualising of the victim, not simply as an onlooker or maybe a witness, but as a statutory participant, with statutory rights to be informed, supported and to be able to make informed choices.

In doing so, we cite the example of the 2015 Victoria Law Reform Commission in Australia, which recommended the role and rights of the victim as participant in the criminal justice process should be laid out in law.

**Victims Law recommendation 1:** Recognition that a victim of crime has an inherent interest in the response by the criminal justice system to that crime, giving rise to rights and entitlements acknowledging the victim's role as a participant, but not a party, in proceedings for criminal offences.

The new Victims' Code of Practice (the Code), which comes into force on 1 April 2021, structures victims' entitlements into twelve key 'rights'. On their own, these 'rights' are not enforceable. As such, they are not really 'rights' if that is a hallmark of rights. Neither are they expressed as rights.

A Victims Law is an opportunity to put these rights on a proper statutory footing, requiring compliance at all times.

**Recommendation 2:** A set of core statutory rights, with a statutory duty on those agencies listed in the Victims' Code to ensure all their policies and practice are compliant.

The police and CPS Victim Right to Review (VRR) Schemes allow complainants to request a review of any decision which will put an end to their case (for instance a decision not to charge). We are calling for police and prosecutors to have a statutory requirement to take all reasonable steps to advise a victim on details and progress of criminal proceedings, seek a victim's views regarding modifying or discontinuing charges, and provide reasons for decisions to a victim.

**Recommendation 3:** The Police and CPS are required to take all reasonable steps to advise a victim on details and progress of criminal proceedings, seek a victim's views regarding modifying or discontinuing charges, allow them the opportunity to make representations on VRR and respond to those representations and provide reasons for decisions to a victim.

For vulnerable victims, particularly those who have been subjected to serious sexual or violent assault or who are bereaved as a result of crime, the criminal justice system can be challenging and distressing. For such victims to participate effectively in the process of justice, they need informed and empathetic support from professional practitioners, ideally an 'advocate' or advisor who acts as a single point of contact and support them throughout their criminal justice journey. Whilst such advisors exist for certain groups of victims, there are other vulnerable victims who are not eligible for this one to one support. We are calling for all vulnerable victims of serious violent and sexual crime to be entitled to an advocate/advisor throughout their criminal justice journey.

**Recommendation 4:** A statutory entitlement for all victims of serious sexual or violent crime or victims who have been bereaved as a result of a crime to be allocated a victim advisor to support them through their criminal justice journey.

Where a victim's European Convention on Human Rights (ECHR) rights come into play, a participant victim will require legal advice, given independently from any advice given to the state because the victim's interests will differ to those of the state. This can occur, for example, when prosecutors who find anything on the victim's mobile phone or in health records of a

victim which they think might undermine their case or help the defence, must disclose them, thereby undermining the victim's Article 8 Right to privacy. Another such example is when defence counsel makes an application to cross examine a sexual violence victim on the issue of their previous sexual history.

These examples highlight a situation where the interests of the prosecutors and those of the victims clearly diverge and sometimes conflict. This goes to the core of why victims should be recognised as participants in their own right and not simply an adjunct to the case for the Crown.

**Recommendation 5:** Statutory right for victims to be given free legal representation in respect of any decisions taken by police, prosecutors or courts that threaten their Article 8 Right to Privacy.

Despite overwhelming endorsement from victims, the courts and CJS agencies frequently seem to have a poor understanding of the role or the value of the support of professional independent advisors. We have heard frequently of advisors not being allowed into a court room or the video-link room for example. We call for new, clear and widely disseminated guidance about the role of advisors which is based upon a statutory recognition of the role of victim advisors.

**Recommendation 6:** Those practitioners who are accredited to offer vulnerable victims with practical and emotional support be recognised as such by the courts, relied upon as trusted professionals and are entitled to support such victims when they are required to give evidence in court.

The present system of court ordered compensation requires the offender to make payments to Her Majesty's Courts and Tribunal Service (HMCTS) who forward the money to the victim. Often, payments are made in tiny instalments and can take years to pay in full. All too often the victim finds themselves having to chase for updates and further payments. And they are tied by this payment system into a relationship with a defendant who has already wronged them and whom they will be keen to forget. We are calling on this to change. Court ordered compensation should be paid upfront by the courts, leaving the offender to repay HMCTS and not the victim.

**Recommendation 7:** Court ordered Compensation be paid to the victim by the court and the monies recovered from the offender by HMCTS.

Victims need to know what to expect as a case progresses through the system and be explained the rationale behind key decisions. We call for victims whose cases are heard in the Crown Court be offered a free transcript of the judge's sentencing remarks which will enable them to absorb the information at a time of their choosing and seek advice where appropriate.

**Recommendation 8:** Victims in cases tried by the Crown Court be entitled to an offer of a free transcript of the judge's sentencing remarks within six weeks of the conclusion of the trial.

**Recommendation 9:** Bereaved families who have lost a loved one through homicide should be given a free transcript of the coroner's findings at inquest.

Bereaved victims who have lost a loved one and where a public body's accountability will be tested at inquest (Article 2: Right to Life - cases) do not have automatic access to legal aid or



other legal funding to be represented at the hearing. State bodies instruct legal teams and are unrestricted in the rates and quantum of funding and the level of representation. We are calling for these families to be entitled to free legal representation.

**Recommendation 10:** All bereaved families to be entitled to free legal representation at inquest hearings in all Article 2 cases.

An inquest can be protracted, intrusive and distressing. A pen portrait can help to humanise the inquest process. Pen portraits encourage and enable full participation of the bereaved in the whole inquiry process and will harness their positive contribution to the quality and credibility of its outcome.

**Recommendation 11:** Bereaved families who have lost a loved one to a violent death to have the right to present a pen portrait of the deceased at inquest hearings.

We believe the victims of mentally disordered offenders to be given the same entitlements and support as other victims. This includes the right to submit a Victim Personal Statement to Mental Health Review Tribunals and the right to attend hearings.

**Recommendation 12:** Victims of mentally disordered offenders to be given the right to submit a Victim Personal Statement to Mental Health Review Tribunals and to attend part of the Tribunal to present their statement to the panel.

The Anti-Social Behaviour Act 2014 set up a trigger of three reported incidents of ASB over a six-month period at which point the victim can seek a community resolution meeting, set up by the responsible agencies, to resolve what might then be described as persistent ASB. Yet victims do not have the right to attend in person and explain the impact of the behaviour on them and their families. This deficiency needs to be addressed.

**Recommendation 13:** Victims to be given a statutory right to attend Community Trigger resolution meetings to explain the impact of the ASB on them and their families.

The Victims' Code includes an entitlement to all victims to be informed about restorative justice. Many victims have no recollection of an offer being made. We are proposing the offer of restorative justice becomes a statutory entitlement.

**Recommendation 14:** There should be a statutory entitlement that all victims be informed of the possibility of restorative justice.

It is important everyone in the criminal justice system treats victims with sensitivity and empathy. Many vulnerable victims are likely to be traumatised by the crimes committed against them and it is essential staff in the criminal justice system are trained and able to identify the signs and know how to react appropriately.

**Recommendation 15:** There should be a statutory requirement that all criminal justice practitioners who come into regular contact with victims of serious violent, sexual and domestic abuse undertake trauma informed training.

ASB can have a devastating impact upon its victims. Yet, many of these victims are not recognised as victims of crime under the Victims' Code. This means they have no statutory entitlement to access victim support services.

**Recommendation 16:** All ASB victims who meet the threshold for a Community Trigger should be recognised as victims of crime and be entitled to the rights set out under the Victims' Code.

## Compliance, Accountability and Data

Many victims are not receiving their entitlements under the Code. There are compliance monitoring systems in place, but these are ineffective. We make a series of inter-related, evidence-based recommendations about what the Victims Law needs to include to set the foundations for making agencies more accountable to the public and, importantly, to victims themselves.

The statutory provisions creating the role of the Victims' Commissioner are in the same Act of Parliament as those creating the Victims' Code. Whilst the Code gives victims entitlements, the Commissioner is there to give them a voice and to review the operation of the Code on their behalf. At present, it is impossible for the holders of this post effectively to keep the operation of the Code under review. There is no statutory requirement for agencies to either consider or respond to the Victims' Commissioner's recommendations for change and improvement. Neither is there any statutory obligation for agencies listed under the Victims' Code to co-operate with the Victims' Commissioner. Her powers need to be consistent with those of the inspectorates and other commissioners.

Since April 2019, Police and Crime Commissioners are responsible for monitoring key Code compliance at a local level. However, at present, Police and Crime Commissioners have no power to request data from other agencies and are reliant on local goodwill.

**Recommendation 17:** Criminal justice agencies listed within the Victims' Code to be required to respond to the Victims' Commissioner's recommendations within a reasonable timescale as determined by her.

**Recommendation 18:** Criminal justice agencies as listed within the Victims' Code to be subject to a statutory duty to cooperate with the Victims' Commissioner, including, where available, providing data on request.

**Recommendation 19:** The Victims' Commissioner to be required to submit to Parliament an annual report on compliance with the Victims' Code in pursuance of her existing statutory obligation to keep under review the operation of the Victims' Code.

**Recommendation 20:** Police and Crime Commissioners to be given the statutory duty to monitor compliance with the Victims' Code at a local level and be given the statutory power to request data from criminal justice agencies as listed in the Victims' Code, in order to fulfil this duty.

Victims all too often do not understand the system and their rights within it. Four in five have not heard of the Victims' Code. This means they do not know what support and information they are entitled to receive and when they might be able to challenge decisions. There must be an inherent expectation that all national criminal justice agencies listed under the Victims'

Code have a duty to promote the Victims' Code and to make victims fully aware of what they are entitled to expect from them.

There also needs to be local accountability. In 2015, responsibility for providing the bulk of victim support services was devolved to Police and Crime Commissioners. It is not clear how their local electorate might be expected to hold them to account for their delivery of victim services.

The Victims' Commissioner also needs to be fully accountable for her work as well and subject to Parliamentary scrutiny.

**Recommendation 21:** A statutory duty placed on all criminal justice agencies listed under the Victims' Code to promote the Code and its contents and draw them to the attention of every victim of crime.

**Recommendation 22:** Police and Crime Commissioners to be required to include within their five-year police and crime plans a section on their plans for providing victim services.

**Recommendation 23:** Police and Crime Commissioners to be required to appoint a Victims' Champion within three months of being elected to office.

**Recommendation 24:** The Victims' Commissioner's reports and reviews (including the annual report) to be laid in Parliament.

Whilst greater awareness of the Code will offer victims the opportunity to hold criminal justice agencies to account, this accountability will only be meaningful if there is a clear and effective complaints system. We are calling for a single complaints process, including a single point of contact for processing all initial victim complaints, with victims who are dissatisfied with the outcome being able to refer the matter to the Parliamentary and Health Services Ombudsman (PHSO). The Victims' Commissioner should also be able to refer cases to the PHSO.

**Recommendation 25:** Establishing a single cross-criminal justice system complaints body for all victim complaints in respect of non-compliance with the Victims' Code, which is responsible for the oversight of the handling and response to the complaint.

**Recommendation 26:** Victims to be able to approach the Parliamentary and Health Services Ombudsman directly when they want to complain about non-compliance with the Victims' Code, having first exhausted the local complaints process.

**Recommendation 27:** The Victims' Commissioner to have the power to refer victims' individual cases to the Parliamentary and Health Services Ombudsman.

Better compliance can only be achieved through the capture of victim data. Currently, most criminal justice system agencies do not systematically collect data on victims. We don't know who is in the system at any one time, and we don't know the extent to which they are receiving their entitlements under the Code. We need to improve the collection of monitoring data on service level provision of Code rights and related equalities information about victims and witnesses.

We are calling for a statutory obligation to be placed on public bodies named in the Code to provide access to data and information which is in a standardised, analysable format.

**Recommendation 28:** A duty on listed agencies to collect information about individual victims.

**Recommendation 29:** A duty on the MoJ to produce statutory guidance about what information should be collected about individual victims, including information on protected characteristics and the provision and receipt of Victims' Code rights.

## Equality of access

Minoritized groups are more likely to be victims of crime and less likely to report or obtain access to specialist services than majority populations. Service provision tailored to these groups can be patchy at the local level. Children, perhaps the most vulnerable of all victims, are not always being offered the services they need. And we have no systematic way of knowing whether CJS agencies are delivering on their obligations to victims under equalities legislation. We make a series of evidence-based recommendations for what the Victims Law should include to create a framework for monitoring and delivering equality of access for all victims to support and to justice.

Looking across this broad range of evidence, it is clear there need to be changes to ensure statutory agencies fulfil their 'Public Sector Equalities Duty' obligations under equalities legislation.

One significant obstacle to certain minoritized communities reporting crime and seeking support is the data sharing between the police and the Home Office immigration enforcement department. This deters migrant victims from reporting crimes and leads to discrimination since they are not treated as victims with all the protections and rights that this entails.

Victims of crime have a right to be equally protected irrespective of their immigration status and the law should make this unequivocal.

**Recommendation 30:** A non-discrimination clause to prevent victims who have insecure immigration status being treated not as victims of crime but as 'suspect' immigrants first.

Legislation cannot change cultures within the criminal justice system or the treatment of individuals, but it can create a framework where equality of access can be monitored effectively, and deficiencies are able to be swiftly addressed.

Section 149 of the Equality Act 2010 places a Public Sector Equality Duty (PSED) on public authorities to have 'due regard to the need to', in brief, eliminate discrimination, advance equality of opportunity, and foster good relations.<sup>1</sup>

It is not clear how, at present, criminal justice agencies monitor their PSED and identify what steps are needed to meet the needs of protected groups. Data is patchy and incomplete. It is also unclear the extent to which PSED feeds into policymaking and setting priorities. We are calling for an obligation on criminal justice agencies listed within the Victims' Code to produce an annual report on how it is meeting its PSED in respect of victims of crime. These reports should monitor and evaluate the performance of criminal justice agencies in preventing discrimination of victims under the Equality Act 2010.

The statutory provisions we are calling for would create a framework for monitoring and delivering equality of access for all victims to support and to justice.

**Recommendation 31:** The amendment to Section 5 of the Police Reform and Social Responsibility Act 2011 to require Police and Crime Commissioners to provide a plan for victim services as part of their five-year policing plan should include a requirement to set out within that plan how they intend to meet their PSED.

**Recommendation 32:** Criminal Justice agencies listed within the Victims' Code should be required to produce an annual report on how it proposes to meet its PSED in respect of victims.

**Recommendation 33:** The proposed annual report submitted to Parliament by the Victims' Commissioner in respect of the operation of the Victims' Code should include an assessment of the extent to which agencies and Police and Crime Commissioners have having regard to delivering on their PSED.

As well as minoritised groups, there are concerns about how children who are victims of crime can access support and how they are treated by the criminal justice system.

One example is the extent to which child victims are offered the support of a Registered Intermediary to assist them in giving best evidence. We are calling for a requirement for police and prosecutors to consider whether a Registered Intermediary is required in any case where the victim is below the age of 18.

**Recommendation 34:** A statutory requirement for police and prosecutors to demonstrate that the involvement of a Registered Intermediary was actively considered in every case involving children under the age of 18, and with reasons given in cases where it was not considered to be appropriate.

## **Scope of a Victims Law**

Some of the feedback and representations received in gathering this evidence raises legitimate concerns about issues such as funding, communications both between agencies and victims and between agencies themselves, the treatment of victims by individual practitioners and policies and practices of individual agencies. Some of our stakeholder groups focused on the overlap between victims and perpetrators, and how we treat those whose victimisation, including sexual or criminal exploitation and coercive control, has resulted in their subsequent engagement in criminal acts. These are all legitimate issues and ones which constantly engage the Victims' Commissioner and her team. However, the focus of this paper is the possible scope of a Victims Law, the first of its kind, and we have concluded that many of these issues fall outside of legislation completely or outside of this particular statute. This does not in any way undermine intend to undermine the legitimacy of the concerns that have prompted these representations.

## **Victims**

We acknowledge some victims dislike the negative connotations occasionally associated with the term 'victim'. Some victims and many non-statutory agencies prefer to use the word 'survivor'. Lawyers often prefer to use the term 'complainant' when referring to victims before and during a trial. We respect their views.

For the purposes of this report however, we have used the term 'victim' because it's the term that most agencies use and understand when referring to someone who has experienced victimisation.

## Introduction: Why do we need a Victims Law?

There are four good reasons why we need to be concerned about how we treat victims of crime.

Firstly, we need to recognise the plight of victims of serious crime. For many, their lives will be changed forever, whether through permanent physical injury or trauma.

Secondly, we need to provide reassurance to all victims 'that the state is on their side' as Theresa May wrote in the foreword to the government Victims' Strategy in September 2018. After all, the state has been unable to protect them from the crime itself.

Thirdly, we need victims to report crimes and testify if we are to convict the guilty and, in many cases, prevent further crimes being committed.

Fourthly, and most importantly, victims are human beings who, like defendants, deserve the very best we can bring.

Despite good intentions on the part of policy makers and political leaders, in recent years we have seen a steady decline in victim confidence in the criminal justice system. This is a bold assertion, but it is supported by a wide range of data:

- In 2009/10 MoJ statistics showed 67% of victim/witnesses who had given evidence would do so again. In another survey by the CPS in 2016 witnesses were asked how likely they were to do so and only 53% said that they would with a further 36% commenting that it would depend on the case.<sup>2</sup>
- In a Victims' Commissioner's survey of victims conducted in April 2020, just 18% of respondents felt that victims are given enough support through the court process.<sup>3</sup>
- In England and Wales, the most recent Home Office published statistics for the year to September 2020 show that a record 25% of cases had been closed down because victims did not support the prosecution, a proportion that has more than doubled in the past five years. When you look at complainants of rape, the figure rises to 42% and complainants of violence against the person shows 44%.<sup>4</sup>
- Data from the Crime Survey for England and Wales 2018-19 showed that whilst most victims were satisfied with their *initial* contact with police (73%), over a third of victims grew dissatisfied with the way the police handled their case, taking too little action, not communicating about the case.<sup>5</sup>
- In the Victims' Commissioner's survey of rape complainants conducted in the summer of 2020, overall, just 14% of respondents agreed that 'survivors of rape and sexual offences can get justice by reporting an incident to the police'. A full 75% actively disagreed and most respondents (71%) had experience of the system before expressing that view.<sup>6</sup>

Anecdotal evidence suggests that delays in investigating cases, making charging decisions and getting cases to trial has also taken its toll. This has been all the more so since the sharp increase in court backlogs arising from courts being closed during the first full Covid-19 lockdown. Local victim hubs report having to spend increasing amounts of time trying to keep victims engaged in the criminal justice system as an end date moves further into the distance.

The impact of delay is further exacerbated by the treatment of victims by the criminal justice system – from disregard by the agencies to re-traumatisation by the process itself. This was very much a recurring theme throughout our stakeholder consultation,<sup>7</sup> with victim re-traumatisation flagged as a risk at every stage of the criminal justice process.

It is in nobody's interests for this erosion in victim confidence to continue. It is certainly not in the interests of justice. We can continue tweaking policies and practices and offering warm words about victims being at the heart of the justice system, but as we have seen already, this will not be enough.

If we are successfully to re-engage victims with the justice system, the starting point must be to examine: (i) the status of victims within it; (ii) the extent to which we are delivering the entitlements victims are entitled, by law, to expect; and (iii) whether all of our citizens have equal and fair access to all of these entitlements.

By addressing these three key issues we believe it is possible to give effect to a transformative change in the victim experience of justice, whereby we create a system committed to delivering justice to both victim and defendant

This policy paper examines how a Victims Law can be used as a vehicle for delivering such a change. It is divided into three sections relating to the victim's status (section one; victim's participation in the criminal justice system); the delivery of victims' rights (section two: compliance, accountability and data); and equality of access (section three). However, the common thread is that victims' unique place within the system needs to be formally acknowledged, and all further requirements of the Bill flow from that. Our proposals are evidence based and build on the research and analysis undertaken by the Victims' Commissioner and others over the past five years. It draws upon the responses of two online surveys of victims conducted in 2020, as well as victimisation data from the Crime Survey for England and Wales. We have also undertaken a stakeholder engagement exercise involving representatives from 68 organisations and institutions, which consisted of a series of group discussions (or roundtables, as they are often referred to in this paper), held online in November and December 2020.

Summaries of the evidence from this research and engagement can be found in Annexes A-C at the back of this report.



# Section One: Victim Participation in the Criminal Justice System

*“I felt that I was mistreated and lied to. It felt like the incident was very much the ‘CPS case’ not something that had happened to me... I felt like I was stuck on the outside, looking in to a bunch of people who didn’t care as it didn’t affect them, and there was nothing I could do to help myself.”<sup>8</sup>*

## 1.1 Introduction

Crimes are seen as an attack on the state and not against the victim. So, proceedings are not there to put right the victim’s wrong but to enable the state to inflict punishment and affirm the rule of law. If a case is brought, the victim can be compelled to be a witness but is not there to talk about what he/she has personally suffered, merely, like a bystander, to tell the court what the defendant did.

In this section, we explore how the treatment of victims as by-standers across the criminal justice system impacts not only on their experience of system but their perception of it. We make the case for re-conceptualising the status of victims so that they are seen as active participants from the point the crime is committed throughout the criminal justice process and beyond. If we can give the criminal justice agencies a clear understanding of that, they may be more likely to treat victims accordingly.

We also make a series of inter-related, evidence-based recommendations about what the Victims Law needs to include to support the redefined role of victims as active participants. Many of the recommendations will seem very specific and some relate to relatively small groups of victims. They should be viewed in their totality, a package of changes offering victims the right to engage in all parts of the criminal justice process, be better informed and advised and to be offered more opportunity to use their voice and to challenge decisions that impact upon them directly or their ability to secure a justice outcome.

## 1.2 Victim participant

In the adversarial system, the defendant is at the centre of the court process. The prosecution prosecutes them; the defence defends, the jury determines guilt and the judge ensures that their trial is lawful and fair. This centrality is not to be criticised and defendant’s rights need to be fully protected. However, all the agencies lean in towards this focus. It is inevitable that victims are all too often seen as temporary and marginal – at best ‘witness fodder’ as one academic has described.

Yet victims may have suffered serious injury, sexual assault or the death of a loved one. They are intimately involved from the day of the offence through the process and often beyond far into their future. The notion is that the state prosecutes on behalf of all the public. But there is a great difference between the interests of members of the public in having a good criminal justice system and the profound interest in one specific case of a deeply affected victim. That special interest requires that victims have rights, but we do not acknowledge their unique position and by failing to do so we fail to assure the rights urgently needed to support victims.

The criminal justice system, which can’t function without victims, needs to adjust its perspective to see them as valued participants and to support them appropriately. The rights that should be afforded to victim participants are no challenge to the defence. They include

help to understand the process, updates on their case, respectful treatment, procedural justice and support as and when it is needed. These are basic requirements which to which it is hard to object. They help victims to recover from victimhood and to restore their confidence in a society which has, after all, failed to protect them from crime in the first place.

Victims also want their voice to be considered at important stages in the proceedings, but never to take on decisions which remain the responsibility of the state.

There is legal recognition of the victim's special interest in their own case, requiring care to be taken of their rights. As the late Lord Steyn said: (AG's Ref 3 1999):

*"There must be fairness to all sides. In a criminal case this requires the court to consider a triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family, and the public."*

He reiterated the point in *R v A (No. 2)*:

*"It is well established that the guarantee of a fair trial under Article 6 is absolute: a conviction obtained in breach of it cannot stand... The only balancing permitted is in respect of what the concept of a fair trial entails: here account may be taken of the familiar triangulation of interests of the accused, the victim and society. In this context proportionality has a role to play."*<sup>9</sup>

A report commissioned by the Victims' Commissioner, prepared by the organisation Sisters for Change and published in December 2020, examines the role and rights of victims across England & Wales, Australia, Canada, New Zealand and the United States.<sup>10</sup> The authors found that despite progress by UK governments over the years, victims continue to feel marginalised and peripheral to the criminal trial process. In contrast, the authors cite the example of the 2015 Victoria Law Reform Commission in Australia, which recommended the role and rights of the victim as participant in the criminal justice process should be laid out in law.

The Victoria Law Reform Commission in 2016 recommended:

*"...the role of the victim should be conceptualised, understood and implemented in accordance with modern jurisprudence. In the modern trial, there is a triangulation of interests: those of the public, the accused and the victim. Within that triangulation, the interest of the victim in the criminal trial is not that of a party; but it is that of a participant."*

The State of Victoria moved legally to recognise the victim as participant in 2018. It is thereby acknowledged in law that the victim has an 'inherent interest' in the response by the criminal justice system and agencies are required to respect the rights and entitlements of victims as participants in proceedings.

In other words, the state redefined the role of bystander to that of participant – with a view to better practical treatment.

We believe the Victims Law is an opportunity for the UK Government to give victims a distinct legal status within the criminal justice system, separate from that of the wider public. In doing so, there is recognition they have suffered a wrong. Importantly, their rights are elevated from a favour, to be done where possible and if resources allow, to a core function of the system. The default position is that they may participate in all parts of the criminal justice process, they have a right to be heard and the right to challenge where appropriate.

Again, it is important to reiterate this does not mean they become decision-makers, nor do their rights in any way impact upon the rights of defendants.

We have therefore concluded that a Victims Law which has the ambition of transforming the victim experience of the criminal justice system needs to start by re-conceptualising the status of victims within that system. It should offer a formal and recognised status for the first time. The Bill should offer:

Recognition that a victim of crime has an inherent interest in the response by the criminal justice system to that crime, giving rise to rights and entitlements acknowledging the victim's role as a participant, but not a party, in proceedings for criminal offences

This new status would need to be supported by a set of enforceable minimum guarantees which support them to participate.

### **1.3 Victims' rights**

The new Victims' Code of Practice (the Code), which comes into force on 1 April 2021, structures victims' entitlements into twelve key 'rights'. We welcome the new format of the Code and the decision to present the Code in this way. However, on their own, these rights are not enforceable. As such, they are not really 'rights' if that is a hallmark of rights. Neither are they expressed as rights.

For example, the new 'Right 6' provides that where police/CPS are considering an out of court disposal you have the right to be asked your views and have them taken into account. Where this is not possible the police/CPS will tell you why. In other words, the victim's 'right' is confined to being told why they can't have their 'rights'. Another example can be found in 'Right 8', which tells victims that when attending court, they should be able to enter through a different entrance to the defendant and wait in a separate waiting room. The text continues – 'Some court buildings do not have separate entrances for victims and where informed HMCTS will....' do their best. If occupying a separate waiting room were a right, the courts service would have to organise one but at present they merely note that they may well haven't got one and do what they can, which may not be very much.

It is clear from the text that whilst well meaning, these rights are favours done, if it is convenient to the delivery agencies. Our concern was echoed very strongly by many stakeholders during our stakeholder engagement exercise.

A Victims Law is an opportunity to put these rights on a proper statutory footing, requiring compliance at all times. This means they are not delivered under the discretion of the agency concerned, where convenience or resource allows, but are adhered to with the same vigilance that is correctly applied to the rights of the defendant.

Furthermore, when agencies revise policies and operational practices that may impact upon victims, they must be required to demonstrate that there is no conflict with victim rights. In other words, victims' rights need to be deeply ingrained into the culture of the criminal justice system.

A set of core statutory rights, with a statutory duty on those agencies listed in the Victims' Code to ensure all their policies and practice are compliant.

## 1.4 Victims' Right to Review

For many victims, participation will be satisfied by information and support but for some it will involve being able to challenge decisions which directly impact upon them.

The Victims' Commissioner's survey of rape survivors highlighted the devastating psychological impact of victims' cases not going forward, and against this backdrop the opportunity to meet with the CPS and the formal Victims' Right to Review scheme is an important recourse for such victims. However, in the survey, only a third of those respondents whose cases were not charged by the CPS recalled being offered a meeting. Comments in open-ended questions vividly portrayed how impotent victims felt at such meetings:

*"I had to keep asking, but I was happy to meet with the CPS but it was already a given that this would change nothing. It was a box ticking exercise as far as I could see. I asked many questions, and they also were unable to give me answers. They couldn't properly explain how we had got to this point."*

The police and CPS Victim Right to Review (VRR) schemes, to be incorporated into the text of the new Code, allow complainants to request a review of any decision which will put an end to their case (for instance a decision not to charge). This year a judicial review<sup>11</sup> in the High Court established that in the CPS VRR scheme there is a fair opportunity for a victim to make submissions to get a favourable decision. CPS said that the VRR Scheme is only a complainant's request to have a review by them, not to seek to influence its outcome. The Court disagreed – it's an opportunity to make representations, and if taken, the CPS must respond to representations made. This judgment was warmly welcomed by our stakeholders during our roundtable discussions with them.

Again, we refer to the State of Victoria's Victims Charter Law 2018. This requires the Director of Public Prosecutions to take all reasonable steps to advise a victim on details and progress of criminal proceedings, seek a victim's views regarding modifying or discontinuing charges, and provide reasons for decisions to a victim.

The Sisters for Change report refers to this in their findings and calls on the Ministry of Justice to employ the same approach to underpin its development of a Victims Law.

We welcome the example set by the State of Victoria and the judgment in the High Court. The Victims Law is an opportunity to place the victims right of review onto a statutory footing. This does not mean victim's view is determinative. The CPS/police make the decision, but victims need to be heard.

The Police and CPS are required to take all reasonable steps to advise a victim on details and progress of criminal proceedings, seek a victim's views regarding modifying or discontinuing charges, allow them the opportunity to make representations on VRR and respond to those representations and provide reasons for decisions to a victim.

## 1.5 Victim advocacy and advice

*“They asked for my entire medical history, even though I only dated my rapist for 5 weeks – and said that they were asking for my complete records because the CPS will demand to see them, which sounds like nonsense given that the CPS are overwhelmed and irrelevant information will only add to their workload. They ‘let slip’ that any sign of drug abuse or depression in my medical history could influence the CPS’s decision. Can addicts and the mentally ill not be raped?”<sup>12</sup>*

For vulnerable victims, particularly those who have been subjected to serious sexual or violent assault or who are bereaved as a result of crime, the criminal justice system can be challenging and distressing. For such victims to participate effectively in the process of justice, they need informed and empathetic support from professional practitioners. Simply being referred from one agency to another, constantly repeating their story and trying to absorb often complex information can exacerbate their trauma and undermine their confidence in the system.

Under the Code, rape complainants are among those entitled to enhanced rights, better treatment. Yet the Victims’ Commissioner’s recent survey<sup>13</sup> shows that far from receiving any enhancement of service, many rape complainants found the CJS a hostile environment. Many of those who responded to the survey said they felt disbelieved and judged. The need for training for more sensitive handling of gender-based violence was also flagged up by our stakeholders from the domestic abuse and sexual violence sectors.

In February 2019 the Victims’ Commissioner published a Rapid Evidence Assessment of Victim Advocates which looked at the benefits of victim advocates or ‘advisors’ in respect of vulnerable victims.<sup>14</sup> It found some tangible outcomes for victims arising from advocacy interventions, including evidence there may be a benefit to victims’ mental health; and evidence that victims perceived an improvement in their safety following an advocacy support intervention e.g. a reduction in reported domestic abuse amongst victims. One study found that advocates’ work was more effective in decreasing the fear for BAME women compared to white, by almost threefold<sup>15</sup>. There was evidence of improved court attendance and greater victim confidence in interacting with the system. The government’s Victims’ Strategy committed to exploring the case for independent victim advocates further.

The Victims’ Commissioner’s survey of rape complainants found a promising link between receiving professional support and continuing in the process: 10% of rape survivors who received help from either an Independent Sexual Violence Adviser (ISVA) or other support service chose to take no further action or withdraw support, compared to 20% of those who did not have this.<sup>16</sup> The benefit to survivors of receiving such support was a recurrent theme in this research. For example, one survivor wrote:

*“I was lucky. I had an ISVA supporting me from [victims’ service organisation] and they took all the pressure off for me and so everything was smooth and plain sailing and stress free. An ISVA is vital - extremely important.”*

Whilst there are ISVAs, IDVAs, CHISVAs and FLOs<sup>17</sup> for specific groups of vulnerable victims, there are other vulnerable victims who are not eligible for this one-to-one support, a point raised several times during our stakeholder engagement exercise. The development of the role of “Advisors” has proven to be very positive but equally, it has been piecemeal.

We are calling for all vulnerable victims of serious violent and sexual crime to be entitled to an advocate/advisor throughout their criminal justice journey.

A statutory entitlement for all victims of serious sexual or violent crime or victims who have been bereaved as a result of a crime to be allocated a victim advisor to support them through their criminal justice journey.

## 1.6 Victims' human rights and legal representation

For many groups of victims, victims' advisors or advocates will offer emotional and practical support throughout the justice process, signposting victims to other agencies and therapies where appropriate and this will be sufficient.

However, there are certain situations where the victim's European Convention on Human Rights (ECHR) rights come into play. In these circumstances, a participant victim will require legal advice which is given independently from any advice given to the state because the victim's interests will differ to those of the state.

For example, the separation of the victim's rights from the state is relevant to the victims right to privacy under Article 8 of the ECHR.

The problem is at its most acute with victims of sexual violence. Prosecutors who find anything on the victim's mobile phone or in health records of a victim which they think might undermine their case or help the defence must disclose them. However, the 'triangulation of interests' recognised by the House of Lords means the victim can ask for a proper balance to be struck with their privacy rights. This is an interest not otherwise capable of being represented. It may be vitally important for the victim and is a right.

The Information Commissioner reported this year that the CPS and police have been over-intrusive in their requirements for complainants' confidential material.<sup>18</sup> This finding was endorsed by the Victims' Commissioner's survey of rape complainants, where just 33% of victims whose complaints were investigated by the police felt that the police clearly explained why any request to access their phone and other private data were necessary, with 48% disagreeing that this was the case. Only 22% felt that police explained how they would ensure that they would only access relevant and necessary mobile phone and other data, with a full 58% disagreeing with this statement. The feeling that data downloads were excessive was reflected in open-ended comments:

*"I felt it was very invasive, especially as so much of it (education records/social services/counselling for pre-existing anxiety and depression) was irrelevant and so was digital data."*

The downloading of personal data from a victim's phone or seeking to search confidential material such as medical notes is not the only place where there can be intrusion into the Article 8 right to privacy. Section 41 of the Youth Justice and Criminal Evidence Act 1999 sought strictly to limit the use of evidence about a victim's previous sexual behaviour with other people as evidence that a person consented to sex with the defendant. Evidence or questions about any previous sexual conduct of the complainant cannot feature save with leave of the court. This is on the basis that it relates to a relevant issue in the case, which is not consent and where excluding it might make a conclusion of the jury unsafe.

In reality, a great deal of sexual history evidence which may be allowed in evidence on an 'issue of fact' once admitted, can be used to suggest that they are likelier to have consented. That risk of prejudice and the protection of the complainant's right to privacy around their personal life requires that the complainant be represented on any pre-trial application to admit

previous sexual history. The prosecution is not only unable to represent their interests in that regard but often will not have knowledge of the facts upon which they would wish to rely.

These examples highlight a situation where the interests of the prosecutors and those of the victims clearly diverge and sometimes conflict. This goes to the core of why victims should be recognised as participants in their own right and not simply an adjunct to the case for the Crown. Acknowledging the triangulation of interests requires independent legal representation for a victim in such situations, at no financial cost to themselves.

The idea of independent legal representation for victims in these circumstances is not a new one. In 2005, the then government announced its intention to introduce legally-aided representation for victims in homicide, rape and domestic violence cases, though it was not brought in. In March 2014, the Ministry of Justice again raised the idea of independent legal representation in a review of the treatment of victims in sexual offence cases, but they did not implement the policy either. It is time to give this reality.

In 2016, the Sexual Violence Complainants' Advocate [SVCA] scheme was piloted in Northumbria to engage local solicitors to provide legal advice and support to local rape complainants who were aged 18+ at the time of the offence and whose cases were recent.

The support primarily related to complainants' Article 8 rights to privacy, advising on digital download requests, although there was also scope for general information about the legal process, attendance at ABE interview and help with the Victims Right to Review scheme.

The pilot scheme took 83 referrals from September 2018 until December 2019 and has now been evaluated. Casefile analysis showed poor practice around victims' privacy rights, with some police officers believing there was no need to seek consent from victims. Advocates challenged data requests in 47% of cases. The evaluation went on to show the scheme to be overwhelmingly positive. It increased complainants' confidence and understanding in the justice system, and improved their ability to cope with mental health impact of system (which is likely to reduce attrition). There was an overwhelming consensus that the project changed organisational cultures, significantly decreasing police and CPS requests for indiscriminate evidence gathering. Police and CPS felt investigations were more efficient, relevant, and proportionate. A judge commended the pilot scheme as encouraging earlier consideration of disclosure issues, making cases more efficient and proportionate. It also encouraged best practice when complainants had complex needs, e.g. special measures / ABE interview. All pilot participants agreed with principle of legal support being made available for sexual offence complainants.

We are calling for this scheme to be rolled out across the country, underpinned by statutory entitlement to receive independent advice where any complainant of serious sexual violence feels that their Human Rights are likely to be compromised.

Statutory right for victims to be given free legal representation in respect of any decisions taken by police, prosecutors or courts that threaten their Article 8 Right to Privacy
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## **1.7 Statutory recognition of Victim Advisors across the criminal justice system**

As already stated, the Victims' Commissioner's rape survey confirmed what other research has shown: that support of an ISVA/IDVA/CHISVA makes a huge difference to survivors and has a positive impact on attrition rates.

Respondents were asked about how important various forms of support were to them and overall ISVA support was ranked as very important by 65% and as important by 25% of 150 respondents.

However, despite this overwhelming endorsement from victims/survivors, the courts and CJS agencies frequently seem to have a poor understanding of the role or the value of this support. We have heard frequently of ISVAs not being allowed into a court room or the video-link room for example, or otherwise unable to do their job effectively, a point raised at our stakeholder roundtable for representatives of local victim hubs.

New, clear and widely disseminated guidance about the role and its parameters would help deal with common misunderstandings. It would ensure ISVAs do not face unwarranted barriers in doing their job, victims/survivors have appropriate support and the courts and judiciary can have trust in the role.

However, consistent with the concept of victims having participant status, with rights and entitlements underpinned by statute, we have concluded that this guidance should be on the basis of a statutory recognition of the role of victim advisors, with a right to attend court with their clients when they are giving evidence. Such a provision removes scope for variable practice from one court to the next and gives victims a guarantee that they will be able to give evidence with the support of their advisor if they so wish.

Those practitioners who are accredited to offer vulnerable victims with practical and emotional support be recognised as such by the courts, relied upon as trusted professionals and are entitled to support such victims when they are required to give evidence in court

## **1.8 Court ordered compensation**

The present system of court ordered compensation requires the offender to make payments to HMCTS who forward the money to the victim. Often, payments are made in tiny instalments and can take years to pay in full. All too often the victim finds they are having to chase for updates and further payments.

This is distressing to victims, it prolongs their engagement with the offender and impedes their ability to move on with their lives. Even worse, the court ordered compensation can be deducted from the victim's award of criminal injuries compensation even if it has not been paid in full to the victim at the time the award is made. Several of our stakeholders raised concerns about the operation of the court ordered compensation scheme and called for its reform.

Whilst the concept of court ordered compensation is sound, the practice is not. It can have the detrimental effect of undermining the victim's confidence in the justice system and reinforces a sense of being a bystander in a process that is all about the defendant and the Crown. Such a system cannot be consistent with victims being given statutory recognition as participants.



We are calling on this to change. Court ordered compensation should be paid upfront by the courts, leaving the offender to repay HMCTS and not the victim.

Court ordered Compensation be paid to the victim by the court and the monies recovered from the offender by HMCTS

## **1.9 Transcript of judges' sentencing remarks and findings at inquest**

Participant status can only be meaningful if victims are properly informed throughout the process. Victims need to know what to expect as a case progresses through the system and be offered an explanation of the rationale behind key decisions.

Nowhere is this more important than sentencing. Victims need to be offered a realistic assessment of sentencing options should the defendant be convicted. This will avoid disappointment and misunderstanding further down the line. And when a defendant is sentenced, the victim needs to understand what the sentence means in practical terms. Our sentencing laws are opaque, and it is little surprise so many victims are confused, and often dismayed, when the offender is released before the end of the sentence.

As a first step, we would like to see victims whose cases are heard in the Crown Court be offered a free transcript of the judge's sentencing remarks which will enable them to absorb the information at a time of their choosing and seek advice where appropriate. This was a point made at our stakeholder roundtable for organisations who supported bereaved victims following homicide. Expecting victims to absorb this information in a crowded and highly charged court room is neither reasonable or realistic.

A Victims Law should make provision for victims of any cases that go to the Crown Court to be offered a transcript of the sentencing remarks.

Similarly, stakeholders made a strong case for bereaved families to be offered a free transcript of the Coroner's findings after an inquest, on the basis of the same rationale as applies to sentencing remarks.

Victims in cases tried by the Crown Court be entitled to an offer of a free transcript of the judge's sentencing remarks within six weeks of the conclusion of the trial

Bereaved families who have lost a loved one through homicide should be given a free transcript of the coroner's findings at inquest.

## **1.10 Victim representation and participation in other forums**

Treating victims as participants applies more widely than simply the process leading up to and including trial. There are many other bodies whose decisions have a direct and significant impact on victims and where all too often, the victim is side-lined and ignored. These might include inquests, Parole Board hearings, Mental Health Tribunal hearings and even anti-social behaviour resolution meetings.

### *Representation at inquests*

Bereaved victims who have lost a loved one and where a public body's accountability will be tested at inquest do not have automatic access to legal aid or other legal funding to be represented at the hearing. This was an issue discussed at length at our stakeholder roundtable for those supporting bereaved victims of homicide. In current coronial proceedings, unless they can afford to instruct a lawyer, the family members are reduced to bystanders, beholden to the coroner to ask questions they wish asked on their behalf, should the coroner agree to do so. This has been a cause of concern in several high-profile cases, including the first inquest in relation to the Hillsborough tragedy and more recently inquests following terror attacks.

Although inquests are intended to be inquisitorial not adversarial in concept, they become an arena where the accountability of the public body in question is tested. State bodies instruct legal teams and are unrestricted in the rates and quantum of funding and the level of representation.

As taxpayers, these families are likely to be contributing to funding the public bodies who may be responsible for their loved ones' death, yet they are being denied public funding for representation for themselves.

The Victims' Commissioner is committed to ensuring that, in particular, victims of crime are given every assistance to 'cope and recover' from what has happened to them. This is the overarching aim to which governments over many years have committed funding for victims' support services and which they have set out in the statutory Victims' Code of Practice, the Victims Strategy and which is expected to be a central tenet of the proposed Victims Law. In order to cope and where possible, recover from the death of a loved one, it is well established that the bereaved need to know and to understand how their loved one met their death and to have all their questions answered and their doubts met.

By recognising families as 'interested parties' as the law does, there is a clear intention to allow them to participate. The Victims' Commissioner's rapid evidence assessment, "What Works for Victims" found that procedural justice – involving being treated with decency and concern, apprised of all relevant developments, furnished with information, given skilled and professional support and allowing the fullest engagement possible in proceedings – is a key part of the restoration process required for the cope and recovery of a victim of crime.

We are therefore calling for these families to be entitled to free legal representation at these Article 2 hearings. We are not the first to make this call. However, the debate is often framed in terms of legal aid, whereas we are calling for non means tested public funding, with the cost being met by restricting the quantum of funding available for the public bodies involved.

All bereaved families to be entitled to free legal representation at inquest hearings in all Article 2 cases
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### *Pen portraits at inquests*

The criminal justice system can all too often focus on process and lose sight of the human element of a case. This is why the Victims' Commissioner has pressed hard to ensure all victims are made aware of their right to make a Victim Personal Statement (VPS) following a conviction. The VPS is the only part of the process where the victim's voice is heard in describing the impact of the crime. The opportunity to make a VPS can offer some catharsis to victims and help them in their recovery.

Pen portraits can have a similar effect at inquests, particularly in large-scale tragedies where there is a fear that individual victims become a case number. An inquest can be protracted, intrusive and distressing. A pen portrait can help humanise the inquest process. Families involved in the Hillsborough inquest made this point to the subsequent review undertaken by Rt Rev Bishop Jones. He concluded:

*“The use of pen portraits at the fresh Hillsborough inquests helped to put the families at the heart of the proceedings. The process was vital in humanising the inquest and was both important and therapeutic for the bereaved families. In my view the use of pen portraits is an important point of learning. And the Chief Coroner should ensure that families are offered the opportunity to read a pen portrait of their loved one into proceedings at all inquests”.*<sup>19</sup>

In the words of the charity INQUEST, pen portraits:

*“... show respect for the dead, give dignity to the bereaved and are placed on the public record for generations to see and commemorate. Bereaved families have reported that they participate in protracted, intrusive and distressing processes following a death in the hope of establishing the truth about how their loved one died, holding those responsible to account and for learning to prevent other deaths in the future. It is only by contributing to that objective that many say some meaning can be given to their loss. The Inquiry is part of that journey.”*

Letter from INQUEST to the Grenfell Inquiry 7 March 2018

For this reason, we have discussed the use of pen portraits with charities who support victims of homicide. At our roundtable of these charities as part of our wider stakeholder engagement exercise, there was unanimous support for the suggestion that bereaved families following a violent death should be entitled to submit either in writing or orally a pen portrait of their loved one to an inquest. This is consistent with the view that victims are perceived as participants in the process and is a recognition that any inquiry can only be as effective as its participants. Pen portraits encourage and enable full participation of the bereaved in the whole inquiry process and will harness their positive contribution to the quality and credibility of its outcome.

Bereaved families who have lost a loved one to a violent death to have the right to present a pen-picture of the deceased at inquest hearings

### *Victims of mentally disordered offenders*

The Victims' Commissioner's report, 'Entitlements and experiences of victims of mentally disordered offenders' was published in 2018 and called on victims of mentally disordered offenders to be given the same entitlements and support as other victims.<sup>20</sup> This includes access to a victim liaison officer, the right to submit a Victim Personal Statement to Mental Health Review Tribunals and the right to attend hearings. At present, this group of victims are excluded from participating in the review process completely other than being able to request discharge conditions. This situation is wholly inconsistent with the status of participant that we are calling for in this paper.

Giving these victims the right to have a voice at the tribunal not only provides parity of treatment with those victims whose offenders are referred to the Parole Board, but it is also consistent with the status of victims as active participants in the criminal justice system. It also assists victims in coping and recovering from what has happened to them.

The Victims' Commissioner has pressed for these changes to be made, and now considers that there should be a statutory requirement to provide this group of victims with the same level of treatment as all other victims:

Victims of mentally disordered offenders to be given the right to submit a Victim Personal Statement to Mental Health Review Tribunals and to attend part of the tribunal to present their statement to the panel.

## 1.11 Anti-Social Behaviour

The Victims' Commissioner published her report on anti-social behaviour (ASB) in April 2019. The report, 'Living a Nightmare', was prepared jointly with leading experts from academia and the charity sector and looks at victims' experience of anti-social behaviour, reporting ASB and its impact and ASB Help's research into the Community Trigger.

The Anti-Social Behaviour Act 2014 (the 2014 Act) set up a trigger of three reported incidents of ASB over a six month period at which point the victim can seek a community resolution meeting, set up by the responsible agencies, to resolve what might then be described as persistent ASB. The Home Office guidance supporting this legislation acknowledges '*the debilitating impact that persistent or repeated anti-social behaviour can have on its victims, and the cumulative impact if that behaviour persists over a period of time*'. It also explains '*the "Community Trigger", is an important statutory safety net for victims of anti-social behaviour*' and that it helps to ensure '*that victims' voices are heard.*'

Despite this preamble, the guidance stops short of giving victims the right to attend in person. Instead it talks about '*good practice to have somebody involved in the case review to represent the victim, such as from Victim Support*'. It goes on to say: '*Consideration should also be given to whether it is appropriate for the victim to be invited to attend the case review... or whether, in the circumstances, there are good reasons for them not to do so. In such circumstances, it may more be appropriate to invite a representative of the victim to attend*'. The tenor of the guidance is that inviting a victim to attend should be seen as the exception and not the rule.

The guidance fails to recognise the victim as a participant in the process, even though it acknowledges the debilitating impact of persistent ASB. There is no central data on the extent to which victims are allowed to participate in these hearings, but the charity ASB Help recently undertook sample research of 40 councils' websites. It found that just three local authorities published their Community Trigger policy and procedures on their websites, with only one noting the victim may be invited to discuss their concerns at a panel hearing. A further 27 inferred that the victim was not invited, by noting that a panel hearing would take place and the victim notified of the result.

This deficiency needs to be addressed and this was called for by stakeholders involved in supporting victims of ASB. It must be right that a process set up to support victims must also recognise them as active participants in that process. A Victims Law is an opportunity to remedy this.

Victims to be given a statutory right to attend Community Trigger resolution meetings to explain the impact of the ASB on them and their families.

## 1.12 Statutory Recognition of victims of ASB as victims of crime

As set out above, persistent ASB can have a devastating impact upon its victims. Yet many of these victims are not recognised as victims of crime under the Victims' Code, a point raised by stakeholders responsible for supporting victims of ASB. This means they have no statutory entitlement to access victim support services.

Anecdotal evidence suggests many Police and Crime Commissioners do offer support but have to do so from their discretionary spend and not from the spend allocated by the Ministry of Justice for the support of victims of crime. This means victim support services for this group of victims is dependent on which part of the country they happen to live. We fear there will be victims who are suffering significant distress as a result of persistent ASB and who are not receiving the emotional and practical support they deserve to both cope and recover.

This needs to be addressed, as there needs to be consistency in provision and a recognition of the cumulative impact of ASB. We are calling on the Victims Law to make this change.

All ASB victims who meet the threshold for a Community Trigger should be recognised as victims of crime and be entitled to the rights set out under the Victims' Code

## 1.13 Victim participation in restorative justice

The Victims' Code includes an entitlement to all victims to be informed about restorative justice.

Many victims have no recollection of an offer being made. The Victims' Commissioner's statistical bulletin on Crime Survey for England and Wales Victimization Data found that the percentage of victims who were offered restorative justice decreased from 8% in 2017-18 to 5% in 2018-19. Of those victims who were not offered a restorative justice meeting, the percentage who would have accepted such an offer was 26% in 2018-19.<sup>21</sup> This has remained stable over the past five years. This suggests there is a demand for restorative justice on the part of victims, but they are not being informed.

Victims who are participants in the criminal justice system ought to be reasonably able to expect to be informed of their entitlements so that they can make their own decision whether to pursue options such as restorative justice. We are proposing the offer of restorative justice becomes a statutory entitlement. We understand the cost of such a proposal was calculated at £30m p.a. by the Criminal Justice Alliance (2017).

There should be a statutory entitlement that all victims be informed of the possibility of restorative justice

## 1.14 Trauma care

It is important everyone in the criminal justice system treats victims with sensitivity and empathy. Many vulnerable victims are likely to be traumatised by the crimes committed against them and it is essential staff in the criminal justice system are trained and able to identify the signs and know how to react appropriately. This was one of the most consistent themes arising from our stakeholder roundtables.

Some will already have received training to enable them to be trauma informed, but the ambition should be that this training is available and compulsory for all.

We are calling for a statutory provision that requires all, including the judiciary, both lay and professional, to undergo compulsory trauma informed training, with particular focus on victims of domestic and sexual abuse, modern slavery and serious violence.

In addition to those working in criminal justice agencies, the time has come for compulsory trauma informed training for those at the criminal bar. It is impressive that the criminal bar has itself initiated training on cross examination without re-traumatising already traumatised victims, but this is currently voluntary and depends on volunteers for its delivery. This must change, so that every victim can be confident that the defendant's case will be put to them firmly but fairly and sensitively.

There should be a statutory requirement that all criminal justice practitioners who come into regular contact with victims of serious violent, sexual and domestic abuse undertake trauma informed training.

## Section Two: Compliance, accountability and data

*“If victims’ rights are important, why is it that they cannot be enforced? If agencies have duties, why is it that they cannot be compelled to perform these duties?”*<sup>22</sup>

### Introduction

We know many victims are not receiving their entitlements under the Code. There are compliance monitoring systems in place, but these are ineffective. Furthermore, five years of our research-based reviews have made recommendations for numerous changes to enhance victims’ experiences of the justice system and keep them engaged, but there is no obligation whatsoever on agencies to respond to recommendations made by the Victims’ Commissioner. Several of our stakeholders made the valid point that we don’t even know exactly who the victims in the criminal justice system are – their age, gender, what crime they have been a victim of, whether they have been a victim more than once and so on.

This section makes a series of inter-related, evidence-based recommendations about what the Victims Law needs to include to set the foundations for making agencies more accountable to the public and, importantly, to victims themselves. The Code needs to be underpinned by robust systems to monitor compliance, to provide greater accountability and scrutiny and to offer effective means of challenge, as we explain below.

### 2.1 Compliance

#### *What we currently know about compliance with the Victims’ Code*

The Code articulates a range of service-level rights, such as the right to be informed and the right to support. Currently, our only measure of whether victims are receiving many such rights under the Code are self-report data from victims themselves – as, for example, captured in the Crime Survey for England and Wales (CSEW). The CSEW suggests that a majority of victims are unaware of the Code and are not being offered its core entitlements. The CSEW shows us that this is the case amongst all victims. For example:

- The current Victims’ Code sets out an entitlement for all victims of crime to make a Victim Personal Statement. Yet the Victims’ Commissioner’s report, published in August 2019, on the requirement to offer all victims the chance to make a Victim Personal Statement showed just 14% of victims recalled such an offer being made in 2018-19. This is consistent with data collated over the past four years.<sup>23</sup>
- As set out in the Victims’ Commissioner’s report, ‘Victims statistics, 2014-15 to 2018-19: victims’ services, restorative justice and information, advice and support’, restorative justice is the practice of offering victims the option to meet with the offender to ask why they committed the offence and the Victims’ Code states victims should be informed of their right to apply to do this. Yet most victims have no recollection of this offer being made. CSEW data shows the percentage of victims who were offered such a meeting decreased from 8% in 2017-18 to 5% in 2018-19. Of those victims who were not offered such a meeting, the percentage who would have accepted the offer was 26% in 2018-19.<sup>24</sup>
- Victims have a right within the Code to be told about victims’ services: According to the CSEW 2018-19, just 4% of victims overall and 10% of victims of crimes in which the police came to know about the incident had contact with victims’ services. These

proportions have declined from 6% and 13% respectively in 2014-15.<sup>25</sup> While most of those who did not have contact with victims' services did not feel the need for information or support (83%), 17% would have liked such support.<sup>26</sup>

Even more of concern, our recent research suggests that even those victims of the most serious crimes may not be experiencing their entitlements. The Code states victims of serious sexual assaults have the right to be informed by the police of key developments in their case within a matter of days. However, the Victims' Commissioner's survey of rape complainants found that rape survivors did not feel that they were being kept well informed in this way: just 26% felt fully informed about how their case was progressing, and only 56% recalled being told about one of the key developments in the case – when the perpetrator was interviewed. Less than half recalled being referred by the police to support services on reporting and only 36% recalled being given the chance to make a Victim Personal Statement.<sup>27</sup> These first hand experiences of victims were endorsed by stakeholders from the domestic abuse and sexual violence sectors who made the point that this lack of communication places the victim at increased risk.

### *The history of compliance-monitoring*

The 2006 Victims' Code was accompanied by a compliance framework, and yet, since that time, we have never had clear picture of compliance across England and Wales. This has restricted our ability to identify problems and improve the service victims receive.

In April 2018, the National Criminal Justice Board agreed to a cross-government approach aimed at improving data and transparency on whether victims are receiving their entitlements in the Code and whether criminal justice agencies are meeting their obligations under the Code. Police and Crime Commissioners, taking responsibility for compiling performance data for their local area, would oversee a new monitoring process of measuring criminal justice partners' compliance with key entitlements in the Code.

The new monitoring arrangements commenced in April 2019, but they have been beset with difficulties. These include: limitations in what data can be extracted from agencies' data systems, resulting in Police and Crime Commissioners having to rely on data sampling; variable communication with criminal justice agencies on how the new monitoring system will operate; and PCCs being unable to compel other agencies to provide information.

Whilst it should fall to the Ministry of Justice and Police and Crime Commissioners to put in place systems to monitor compliance and provide robust data, we believe there is also a case for creating a statutory role for the Victims' Commissioner in monitoring the quality and effectiveness of this compliance. This role would be consistent with and give effect to the current statutory provisions which require the Victims' Commissioner to 'review the operation' of the Code.

## **2.2 The role of the Victims' Commissioner in compliance monitoring and oversight**

It is no coincidence the statutory provisions creating the role of the Victims' Commissioner are in the same Act of Parliament as those creating the Victims' Code. Whilst the Code gives victims entitlements, the Commissioner is there to give them a voice and to review the operation of the Code on their behalf. In short, the Code and the Commissioner are the two sides of the same coin, intended to make sure all victims are treated with decency and respect.



At present, it is impossible for the holders of this post effectively to keep the operation of the Code under review. There is no statutory requirement for agencies to either consider or respond to the Victims' Commissioner's recommendations for change and improvement. This needs to be addressed. Furthermore, this requirement needs to be supplemented with the Victims' Commissioner having the power to set a deadline for responding so that consideration cannot be open ended. These powers would be consistent with those of the Inspectorates and other Commissioners.

Neither is there any statutory obligation for agencies listed under the Victims' Code to cooperate with the Victims' Commissioner, for example to provide data and information when required. Most agencies already cooperate, to varying degrees, but this needs to be formalised so that it is a statutory duty and not a favour. Again, this would be in line with the powers of other commissioners and inspectorates.

The provisions that create the role of Victims' Commissioner as currently drafted require her to keep under review the operation of the Victims' Code. In December 2020, the Victims' Commissioner published a report, 'Comparison of Victims' Rights in Adversarial Systems' which recommended:

*"The Victims' Commissioner for England & Wales should be given the statutory function and powers to monitor compliance with the Victims' Code and implementation of the Victims Law and make recommendations to the Ministry of Justice to improve implementation and enforcement, reporting annually to Parliament."*<sup>28</sup>

We agree with this recommendation and it was further endorsed by many of those participating in our stakeholder engagement exercise. An annual report to Parliament, which has been compiled by someone independent of government avoids the claim that agencies are 'marking their own homework' and will offer appropriate scrutiny and rigour. It is also consistent with her existing statutory obligations to review the operation of the Code.

As set out above, since April 2019, Police and Crime Commissioners are responsible for monitoring key Code compliance at a local level. Local Police and Crime Commissioners are well placed to provide scrutiny across criminal justice agencies on how they comply with the Victims' Code and victims' statutory rights. For example, nearly all Police and Crime Commissioners now chair their Local Criminal Justice Boards. However, we note that at present, police and Crime Commissioners have no power to request data from other agencies and are reliant on local goodwill.

With Police and Crime Commissioners offering independent local scrutiny, and the Victims' Commissioner providing independent national scrutiny, there is a framework for delivering independent and effective monitoring of victim entitlements. However, both need the statutory power to undertake this work effectively.

The Victims Law provides a statutory vehicle for delivering compliance. It is recommended that such a law include the following provisions:

Criminal Justice Agencies listed within the Victims' Code to be required to respond to the Victims' Commissioner's recommendations within a reasonable timescale as determined by her.

Criminal Justice Agencies as listed within the Victims' Code to be subject to a statutory duty to cooperate with the Victims' Commissioner. This must include where available,

providing data on request and facilitating and co-operating with the Commissioner's reviews.

The Victims' Commissioner to be required to submit to Parliament an annual report on compliance with the Victims' Code in pursuance of her existing statutory obligation to keep under review the operation of the Victims' Code.

Police and Crime Commissioners to be given the statutory duty to monitor compliance with the Victims' Code at a local level and be given the statutory power to request data from Criminal Justice Agencies as listed in the Victims' Code, in order to fulfil this duty.

## **2.3 Effective accountability for delivering victim entitlements**

Victims all too often do not understand the system and their rights within it. In the Victims' Commissioner's report: 'An analysis of victimisation data in the Crime Survey for England and Wales' published in March 2020, which analyses victimisation data within the survey, she highlighted the fact that fewer than one in five victims are aware of the existence of the Victims' Code.<sup>29</sup> This means they do not know what support and information they are entitled to receive and when they might be able to challenge decisions, a point re-enforced by a number of our stakeholders. Crucially, it means victims cannot hold agencies to account when they fail to deliver their Code entitlements.

With all criminal justice agencies, their responsibility for victims is secondary to their core business. Traditional means of holding them to account, such as independent inspections or Parliamentary scrutiny, rarely touch in any detail on their performance in respect of victims. Equally, low levels of victim awareness of what they can rightfully expect means there is often little challenge from individual victims.

Developing an effective system of compliance monitoring is one means of increasing accountability, but on its own, it is insufficient. It is unlikely to change the existing culture within agencies where victims' needs are seen as secondary to the delivery of core business.

To begin with, there must be an inherent expectation that all national criminal justice agencies listed under the Victims' Code have a duty to promote the Victims' Code and to make victims fully aware of what they are entitled to expect from them. In practice, this means every conversation and letter makes reference to the Code and what the victim is entitled to expect. There is no evidence this is routinely happening at the present time.

In addition, there also needs to be local accountability. Since 2015, when responsibility for providing the bulk of victim support services was devolved to Police and Crime Commissioners, there has been a great deal of work to develop local commissioning models that best meet the needs of the local population. However, as with all other parts of the criminal justice system, we recognise this area of work is secondary to Police and Crime Commissioner's primary role of scrutinising the police. Neither is it clear how their local electorate might be expected to hold them to account for their delivery of victim services.

Consistent with the Conservative Party manifesto commitment to make Police and Crime Commissioners more accountable, there should be a statutory requirement to publish their plans for devolved victim services. This requirement should form part of their five-year Police and Crime Plans. This five-year plan provides a basis for more effective local scrutiny of the delivery of local victim services.

In addition, there should also be a requirement for all Police and Crime Commissioners to appoint a local Victims Champion, someone who is independent of the police and accountable to the Commissioner. This person would be responsible for providing local scrutiny of the police and other local criminal justice agencies, as well as being a point of contact when victims are dissatisfied with local services.

The Victims' Commissioner also needs to be fully accountable for her work as well. To achieve this, we are calling for the Victims' Commissioner to have direct reach to Parliament so that Parliamentarians are aware of what she is saying and doing. This can be achieved by requiring the Victims' Commissioner to lay her reports in Parliament. This would underline her independence from government and raise the current level of scrutiny from Parliamentarians. At present, all the Victims' Commissioner's reports, including her annual report, are submitted to Ministers and placed on her website.

A statutory duty placed on all criminal justice agencies listed under the Victims' Code to promote the Code and its contents and draw them to the attention of every victim of crime.

Police and Crime Commissioners to be required to include within their five-year police and crime plans a section on their plans for providing victim services.

Police and Crime Commissioners to be required to appoint a Victims Champion within three months of being elected to office.

The Victims' Commissioner's reports and reviews (including the annual report) to be laid in Parliament.

## 2.4 Effective Complaints System

Whilst greater awareness of the Code will offer victims the opportunity to hold criminal justice agencies to account, this accountability will only be meaningful if there is a clear and effective complaints system.

This is a challenge, as victims will come into contact with a range of criminal justice agencies and they it is often unclear who is responsible for what. Furthermore, each agency has its own separate complaints system. This can be bewildering and off-putting, particularly when victims have complaints that cut across several agencies. Such complexity can only act as a barrier to victims challenging agencies when they feel they have not been treated appropriately.

Moreover, challenging a criminal justice agency can be even more difficult if, as a victim of serious sexual or violent crime or bereavement, you are struggling with trauma and injury.

The Sisters for Change report on the comparative treatment of victims in adversarial criminal justice systems also raises the issue of victims being able to make complaints. The report makes two recommendations:

*(8) The Ministry of Justice should include in the new Victims Law a duty on all criminal justice agencies and victims' services to provide accessible and transparent complaints-handling systems for victims who allege a breach or denial of their rights under the Victims' Code or forthcoming Victims Law.*

*(9) The Ministry of Justice should establish an effective independent complaints review mechanism for victims dissatisfied with the internal complaints process of a criminal justice agency or service.*

Turning to the first recommendation, an ‘accessible and transparent’ complaints system might only be achievable if we move away from the multitude of complaints processes in place for victims at present. For example, it might be possible to have a single complaints process, including a single point of contact for processing all initial victim complaints. This point was made by several stakeholders during our engagement exercise. This single point of contact might also be responsible for coordinating complaints that expend beyond just one agency to ensure the victim receives a comprehensive response.

As far as an independent complaints review mechanism is concerned, this exists already in the form of the Parliamentary and Health Services Ombudsman. Once internal complaints processes have been exhausted, if the victim is still feeling dissatisfied, are able to refer the matter to the Parliamentary and Health Services Ombudsman (PHSO) but can only do so through their local constituency MP. We understand the PHSO only receives a handful of complaints each year, either because MPs are unaware of the fact the PHSO can deal with victim complaints or they are operating a vigorous sift. Whatever the reason, this cannot be acceptable and suggests there may be many victims who simply feel they have run out of options if they are dissatisfied with the internal complaints process. We have concluded these victims must be given direct access PHSO.

Some victims refer their complaints to the office of the Victims’ Commissioner. The statutory provisions creating the role of Victims’ Commissioner preclude her from getting involved in investigating individual cases. After careful consideration, we propose that this should continue to be the case, but holders of this office should be able to refer cases to the PHSO as well. At present, the Victims’ Commissioner can only make such referrals by writing to the victim’s local MP, which is an untenable situation.

To address these issues, we are calling for the following provisions within a Victims Law:

Establishing a single cross-criminal justice system complaints body for all victim complaints in respect of non-compliance with the Victims’ Code, which is responsible for the oversight of the handling and response to the complaint.

Victims to be able to approach the Parliamentary and Health Services Ombudsman directly when they want to complain about non-compliance with the Victims’ Code, having first exhausted the local complaints process.

The Victims’ Commissioner to have the power to refer victims’ individual cases to the Parliamentary and Health Services Ombudsman

## **2.5 Data on victims**

Better compliance can only be achieved through the capture of victim data. Currently, most criminal justice system agencies do not systematically collect data on victims. We don’t know who is in the system at any one time, and we don’t know the extent to which they are receiving their entitlements under the Code. For example, to the best of our knowledge, we have no way of knowing how many vulnerable victims (e.g. children and young people under 18) are in the system or in different parts of the system at any one time. This point was raised by a number of our stakeholders.

It is almost inconceivable to think this would be the case for defendants or offenders: that we would not know, for example, how many offenders were under 18 at the time they committed a crime. However, about victims, who we would argue have hugely strong interest in the criminal justice process, we can currently say almost nothing.

In order to monitor Code compliance, we first need to know who our victims are – basic information like which crimes they have been a victim of, their ages, gender and other protected characteristics, and whether they have been a victim before. Then we need to be able to link this to whether these individuals have been offered and received their entitlements under the Code through a centralised management information system across agencies, or within agency systems collating directly comparable data.

### **2.3 Data on whether victims are receiving the entitlements they are due**

Attendees at the Victims Law roundtables repeatedly raised the important need for improved collection of monitoring data on service level provision of Code rights and related equalities information about victims and witnesses. We need to know from criminal justice agencies whether entitlements are being offered and delivered.

The Victims Strategy<sup>30</sup> published in September 2018 made a commitment to hold agencies to account for compliance with the Victims' Code through improved reporting, monitoring and transparency. Other than the decision to devolve responsibility to Police and Crime Commissioners as from April 2019, it is not clear what further progress has been made.

Recent attempts to measure Code compliance have demonstrated the limitations of the information collected by statutory agencies and service level providers at a national and local level on management information systems.

- In 2015, the OVC and MoJ sent a questionnaire to agencies and found compliance monitoring varied greatly between agencies.
- Currently, there are several large data projects underway across the criminal justice system. These do not have a significant focus on victims or Code data.<sup>31</sup>
- Our current review of special measures shows very limited collection of national information about volumes of vulnerable victims or provision of special measures in courts.<sup>32</sup>

Each of these examples suggest insufficiency of current data collection about Code compliance equalities information.

An independent report recently published by the Victims' Commissioner has made similar recommendations. Our 'Constitutional Powers' report recommended:<sup>33</sup>

- 1c. *That a revised Code establishes protocols for data collection on Code compliance by named agencies.*

If a statutory obligation is placed on public bodies named in the Code to provide access to data and information, that does not necessitate that those agencies collect information of sufficient quality or standardisation to facilitate effective review of Code compliance. First, the data needs to be collected in a standardised, analysable format. Secondly, these data need to be centrally collated and scrutinised.

To this end, we are calling on the Bill to include:

A duty on listed agencies to collect information about individual victims.

A duty on the MoJ to produce statutory guidance about what information should be collected about individual victims, including information on protected characteristics and the provision and receipt of Victims' Code rights.

## Section Three: Equality of access

*“There are so many other layers and personally as a black woman, I feel like there are disadvantages that luckily they will never experience. I feel like if I was sitting opposite a woman who could identify and was not white washing what I was saying we could get to the root causes a lot quicker”<sup>34</sup>*

### Introduction

Minoritised groups are more likely to be victims of crime and less likely to report or obtain access to specialist services than majority populations. Service provision tailored to these groups is can be patchy at the local level. Children, perhaps the most vulnerable of all victims, are not always being offered the services they need. And we have no systematic way of knowing whether CJS agencies are delivering on their obligations to victims under equalities legislation.

This section makes a series of evidence-based recommendations for what the Victims Law should include to create a framework for monitoring and delivering equality of access for all victims to support and to justice.

### 3.1 Minoritised groups’ experience of crime and of accessing victims’ services

We know crime disproportionately affects vulnerable and minoritised groups. For example, data from the Crime Survey in England and Wales shows that in the year ending March 2020:

- The likelihood of being a victim of crime decreased with age, with 18% of 16- to 24-year-olds having been a victim of crime and 5% of those aged 75 years or older having been a victim of crime;
- People of a Mixed or Multiple or Asian ethnic background were significantly more likely to have experienced crime in the last year, at 20% and 15% respectively, compared to 13% of White people.
- People who identified as Heterosexual or Straight were less likely to have experienced crime (14%) than those who identified as Gay or Lesbian (21%) or those who identified as Bisexual (21%);
- People with a disability were slightly more likely to have experienced crime (14%) than people who did not have a disability (13%);
- Christians were less likely to have experienced crime (11%) than those with No Religion (15%) and Muslims (17%).<sup>35</sup>

SafeLives’ report, ‘Disabled Survivors Too: Disabled People and Domestic Abuse’<sup>36</sup>, found disabled women are twice as likely to experience domestic abuse than non-disabled women and typically experience abuse for a longer period of time before accessing support (3.3 years’ average length of abuse versus 2.3 years).

Galop’s report, ‘Recognise & Respond: Strengthening advocacy for LGBT+ survivors of domestic abuse’<sup>37</sup>, found more than one in four gay men and lesbian women and more than one in three bisexual people have reported at least one form of domestic abuse since the age of 16. Gay, bisexual and trans survivors and LGBT+ survivors with BME background are considerably more likely to access LGBT+ specialist services over other domestic abuse

support. Out of approximately 900 full time IDVAs working in England and Wales only four are hosted within specialist LGBT+ services.

As well as being more likely to become a victim of crime, we are also aware that people from minority groups are less likely to seek support. This was recorded in Catch 22's 2018 report 'The Changing Needs of Victims' which found:<sup>38</sup>

*“Reasons for this vary across groups, but active outreach from local, tailored services can help to create support pathways for these demographics. Services should always be flexible and responsive enough to support people from all backgrounds, and if there's more expertise needed, teams should work with local specialists to make sure individuals get what they need.”*

According to MoJ's 'Tackling Racial Disparity in the Criminal Justice System: 2020 Update', 'there is some evidence that BAME victims can be less likely to be aware of or take up support than White victims'.<sup>39</sup>

Crime Survey data from the 12 months prior to March 2017, shows that less than 1% of White women were victims of rape, compared with over three 3% of Mixed ethnicity women, 2% of Black or Black British women, and 2% of Other ethnic group women. Based on London Met Police Data on victim attrition, outcomes in sexual violence cases show that white suspects are significantly more likely to avoid further investigation, especially if a victim is from a minoritised group, whilst offenders are more likely to be prosecuted if they are from a minoritised group. BME women were less likely to be believed and encounter racialised victim blaming.

According to an Imkaan report published in 2020, 'Reclaiming Voice':<sup>40</sup>

*“The exploratory study of service responses to BME women and girls experiencing sexual violence (Thiara, Roy and Ng, 2015), which preceded this current research, found that existing services were viewed as inaccessible and underutilised by BME women even in areas where there are considerable BME populations”.*

Another issue is the availability of specialist support services for minoritised groups to turn to having become the victim of a crime, and this was raised by our stakeholders from the domestic abuse sector. Provision of such services fall to Police and Crime Commissioners and the availability of their commissioned services across England and Wales is variable, not least because in some parts of the country they simply do not exist. The current situation is that access to specialist support services for minoritised groups is a postcode lottery. Where such support is not at hand, inevitably some groups of victims may be reluctant to report or to engage with the criminal justice system.

Looking across this broad range of evidence, it is clear there need to be changes to ensure statutory agencies fulfil their 'Public Sector Equalities Duty' obligations under equalities legislation.

### **3.2 Insecure immigration status and reporting of crime**

One significant obstacle to certain minoritised communities reporting crime and seeking support is the unlawful data sharing between the police and the Home Office immigration enforcement department. This deters migrant victims from reporting crimes and leads to discrimination since they are not treated as victims with all the protections and rights that this entails. This was an issued raised by a number of our stakeholders in our engagement exercise.



This is the subject of a police super-complaint. HMICFRS' report, 'Safe to share? Report on Liberty and Southall Black Sisters' super-complaint on policing and immigration' found victims with insecure immigration status may face specific difficulties in reporting crimes to the police.<sup>41</sup> The report found evidence that police officers are not always clear on their priorities in safeguarding victims and immigration enforcement. It found no evidence that sharing of personal victim data between the police and the Home Office supports safeguarding of victims of domestic abuse. It also found significant harm is being caused to the public interest due to victims with insecure immigration status being fearful that their information will be shared with the Home Office and/or the reported crimes will not be investigated.

Victims of crime have a right to be equally protected irrespective of their immigration status and the law should make this unequivocal.

A non-discrimination clause to prevent victims who have insecure immigration status being treated not as victims of crime but as 'suspect' immigrants first.

### 3.3 How can equality of access be achieved?

Attendees at the Victims Law roundtables raised issues about equality of access, mostly in terms of victims with protected characteristics' access to Code rights provided by the police, criminal justice agencies and victims' services. These services are largely 'owned' by the Home Office, PCCs and the Ministry of Justice. As with the lack of available data on victims, there are issues around monitoring and evaluation of service level provision.

As discussed above, we know that this and a range of other evidence tells us certain sections of the population are:

1. more likely to become victims of crime;
2. less likely to access victim support services; and
3. more likely not to report the crime.<sup>42</sup>

It must be a primary objective of any civilised country for all its citizens have equal access to justice. In light of growing evidence that this is not happening, we are calling on the Victims Law to introduce a range of measures to address this deficiency in our justice system. We would want to see equality of access as a key theme of a Victims Law. It is central to any justice system that all citizens should be treated equally and fairly regardless of their protected characteristics, whether they be defendant or victim.

Legislation cannot change cultures within the criminal justice system or the treatment of individuals, but it can create a framework where equality of access can be monitored effectively, and deficiencies are able to be swiftly addressed.

Section 149 of the Equality Act 2010 places a Public Sector Equality Duty (PSED) on public authorities to have 'due regard to the need to', in brief, eliminate discrimination, advance equality of opportunity, and foster good relations.<sup>43</sup> Equality and Human Rights Commission (EHRC) guidance on the PSED sets out that having regard for advancing equality involves:

*"Taking steps to meet the needs of people from protected groups where these are different from the needs of other people."*<sup>44</sup>

The EHRC have powers to monitor the PSED and issue compliance notices.<sup>45</sup>

It is not clear how, at present, criminal justice agencies monitor their PSED and identify what steps are needed to meet the needs of protected groups. Data is patchy and incomplete. It is also unclear the extent to which PSED feeds into policymaking and setting priorities. The

current lack of centralised, national data collection about victims (see section two) prevents comprehensive assessment of whether criminal justice agencies are meeting the PSED.

We believe the Bill should include an obligation on criminal justice agencies listed within the Victims' Code to produce an annual report on how it is meeting its PSED in respect of victims of crime. These reports should monitor and evaluate the performance of criminal justice agencies in preventing discrimination of victims under the Equality Act 2010. The reports should include an assessment of disparities, disproportionality, and discrimination in meeting victims' needs, access to services and support, criminal justice outcomes and Victims' Code rights.

Such reports would increase transparency about the justice system, build confidence that criminal justice agencies are actively preventing direct and indirect forms of discrimination and allow agencies and the public to identify improvements and gaps in service-level provision to victims.

This paper has already made the case for Police and Crime Commissioners to include their plans for victims in their police and crime plans.<sup>46</sup> We are also calling for this plan to include an explanation of how the Police and Crime Commissioner intends to meet the PSED over the period of the plan.

This paper also makes the case for the Victims' Commissioner to submit an annual report to Parliament in respect of the operation of the Victims' Code. There should be a requirement that this report also assess the extent to which agencies and Police and Crime Commissioners have 'due regard to the need to', eliminate discrimination, advance equality of opportunity, and foster good relations in respect of victims.

The statutory provisions we are calling for would create a framework for monitoring and delivering equality of access for all victims to support and to justice. The provisions in the Victims Law would be:

The amendment to Section 5 of the Police Reform and Social Responsibility Act 2011 to require Police and Crime Commissioners to provide a plan for victim services as part of their five-year policing plan should include a requirement to set out within that plan how they intend to meet their PSED.

Criminal Justice agencies listed within the Victims' Code should be required to produce an annual report on how it proposes to meet its PSED in respect of victims.

The proposed annual report submitted to Parliament by the Victims' Commissioner in respect of the operation of the Victims' Code should include an assessment of the extent to which agencies and Police and Crime Commissioners have having regard to delivering on their PSED.

### **3.4 The particular needs of child victims**

As well as minoritised groups, there are concerns about how children who are victims of crime can access support and how they are treated by the criminal justice system.

In February 2017, the Victims' Commissioner published a report, 'Are we getting it right for young victims of crime? A review of Children's entitlements in the Victims' Code'.<sup>47</sup> This review investigated the treatment of children and young victims of crime by criminal justice agencies.

It found that these agencies were at risk of failing children and young people who come forward to report crimes because they were not being taken seriously or not believed by the police, social workers, teachers or by society as a whole.

The following year she published a further report, 'Giving a Voice to the Voiceless', which examined the role of Registered Intermediaries, who are specialists in communication and are provided to children and vulnerable victims to enable them to have a voice in the criminal justice system.<sup>48</sup> Findings indicated that not all eligible victims were being offered a Registered Intermediary, there was inconsistent take-up of Registered Intermediaries across England and Wales, limited understanding of the role in the criminal justice system and variation in how vulnerability and eligibility was assessed. The report found the use of this service varied dramatically from force to force and there were different practices even within forces. This failure affected children particularly and the Commissioner was concerned many children were unable to access justice as a result.

To address the variable practice and to ensure that all child victims get the best opportunity to achieve best evidence, and in doing so, access to justice, we consider there should be a requirement for police and prosecutors to consider whether a Registered Intermediary is required in any case where the victims is below the age of 18 with a requirement to provide an explanation in cases where they do not:

A statutory requirement for police and prosecutors to demonstrate that the involvement of a Registered Intermediary was actively considered in every case involving children under the age of 18, and with reasons given in cases where it was not considered to be appropriate.

## **Annex A: Victims' Commissioner's Research and Reviews**

In making recommendations for proposals for a Victims Law we have drawn from the evidence provided by the Victims' Commissioner's published reports and reviews, all of which can be found on the Victims' Commissioner's website.<sup>49</sup> In particular, the following reports and reviews have informed our conclusions:

### ***What Works in Supporting Victims of Crime***

This report identified four key principles that work in supporting victims of crime. These are: information and communication; procedural justice; multi-agency working; and professionalised services, particularly those that provide the victim with a single individual advocate or victim case worker to help them in their whole journey throughout the criminal justice system. The findings of this seminal piece of work have formed a cornerstone of Victims' Commissioner's approach as to how best to support victims of crime.

### ***Constitutional powers of the Victims' Commissioner for England and Wales***

This report was commissioned by the Victims' Commissioner and undertaken by the University of Essex. It considers the current powers and duties of the Victims' Commissioner and compares them to those of selected public scrutiny bodies in England and Wales. It identifies significant gaps in the powers of the Victims' Commissioner in relation to the current Victims' Code. It identifies changes that could be made to close these gaps and to enable the Commissioner to better fulfil her statutory duties. The Victims' Commissioner has three core statutory duties: to promote the interests of victims and witnesses; to take such steps as considered appropriate to encourage good practice; and to keep under the review the operation of the Code.

This report recommends that, in order to fully perform these connected duties, the Commissioner needs additional powers to: undertake effective review of the operation of the Code; rely on the cooperation of bodies named in the Code when encouraging them to adopt good practice; identify weakness in the implementation of the Code; require action if bodies are found not to be complying with the Code; in the last resort and if necessary to clarify the law in the public interest, to bring appropriate legal proceedings; receive and direct complaints from victims as users of services provided by bodies named in the Code; conduct and commission research and training on, for example, what constitutes good practice and on victims' emergent needs; ensure that Parliament is fully aware of victims' needs, and upholds their entitlements and rights; and recommend changes to the law.

### ***The role and rights of victims of crime in adversarial criminal justice systems: Recommendations for reform in England & Wales***

This piece of research was commissioned by the Victims' Commissioner and undertaken by the charity, Sisters for Change. The report examines the role and rights of victims across England & Wales, Australia, Canada, New Zealand and the United States. It found that despite progress by governments over the years, victims continue to feel marginalised and peripheral to the criminal trial process. In contrast, the authors cite the example of the 2015 Victoria Law Reform Commission in Australia, which recommended that the role and rights of the victim as participant in the criminal justice process should be laid out in law. The State of Victoria moved legally to recognise the victim as participant in 2018. It is acknowledged in law that the victim has an 'inherent interest' in the response by the criminal justice system and agencies are required to respect the rights and entitlements of victims as participants in proceedings. The State of Victoria's Director of Public Prosecutions is also required to take all reasonable steps

to advise a victim on details and progress of criminal proceedings, seek a victim's views regarding modifying or discontinuing charges, and provide reasons for decisions to a victim.

The authors call on the Ministry of Justice to employ the same approach to underpin its development of a Victims Law for England & Wales. Victims of crime in England and Wales are currently accorded rights to information and support and limited procedural rights in the revised Victims' Code, but these rights are not enforceable and patchily delivered.

### ***Sowing the Seeds: Children's experience of domestic abuse and criminality***

This review was initiated by the recent surge in gang-related crime, appalling violence inflicted by children onto other children through knife crime, as well as so called 'county lines' dealing in drugs, with children pulled into dangerous criminal activity. It found an overlap between children's experience of domestic abuse and children's offending behaviour and called for children who experience domestic abuse to be recognised in statute as victims of crime. The review recommended targeted interventions and support to help these children and young people recover from domestic abuse, all care homes to be regulated, including those for young people aged 16 who can be just as vulnerable and susceptible to exploitation as those under 16 and a comprehensive strategy for children as victims of criminal exploitation, serious violence and organised criminal groups.

### ***Victims statistics, year ending March 2019***

This was a statistical bulletin of victim related data from the Crime Survey for England and Wales (CSEW). The bulletin included statistical data from the CSEW about victims' contact with the police, courts, attitudes to the criminal justice system and the Victims' Code and Witness Charter. The findings showed some interactions between victims and those working in the criminal justice system are positive, for example, most of victims are satisfied with their initial contact with the police, feeling they have been treated fairly and with respect. However, the report also found there is growing dissatisfaction amongst victims with how cases are handled. The Victims' Code of Practice sets out what support and information victims are entitled to receive. Yet the CSEW data shows four out of five victims of crime have never heard of the Victims' Code. This research found that agencies are not universally doing as they should, with a risk that the public starts to withdraw support from the police and the courts. There needed to be robust systems in place to monitor compliance with the Victims' Code.

### ***Victim Personal Statements***

This is an in-depth statistical analysis of survey data about Victim Personal Statements (VPS) from the Crime Survey for England and Wales (CSEW) and the fifth in a series of annual analysis. It found that for the year ending March 2019, few victims reported being offered the opportunity to make a VPS by police, and that their VPS was read aloud in court. Both levels have remained consistent since the question was first introduced to the Crime Survey for England and Wales. In over half of incidents where victims were given the opportunity to make a VPS, victims decided to do so. There was a sharp drop in the proportion of victims who feel that their statement has been taken into account by the criminal justice system.

### ***Anti-Social Behaviour – Living a Nightmare***

This report was co-written with academics from Nottingham Trent University and the charity ASB Help. It found examples of police and council staff failing to appreciate the cumulative impact of persistent anti-social behaviour (ASB) on its victims with each incident being treated in isolation and the underlying causes being ignored. The report called for the Victims' Code to be amended to include victims of ASB who reach the threshold to activate the Community

Trigger, victims to be able to attend community resolution meetings and explain the impact of the ASB and for such meetings to be chaired by an independent person.

### ***Victims of mentally disordered offenders***

The report was based on a review of relevant policy and the experiences of nine bereaved victims of homicide, where the crimes were perpetrated by mentally disordered offenders. It concluded the current position does not offer equal treatment to these victims. Instead, there is a clear distinction between entitlements for victims whose offenders are serving prison sentences and those who are patients detained in mental health hospitals. For example, victims of mentally disordered offenders are not entitled to submit a Victim Personal Statement to the Tribunal when the offender is considered for discharge, nor are they allowed to attend the hearing in person to speak directly to the panel members. This is in sharp contrast to the entitlements of other victims who can submit a VPS to the Parole Board and attend a parole hearing.

In December 2018, in his report 'Modernising the Mental Health Act', Sir Simon Wessely recommended that the Ministry of Justice and Department of Health work together to deliver on the recommendations of this report. Since that report was published, there have been improvements in the treatment of these victims, but their entitlement to be heard by the Tribunal has yet to be addressed.

### ***Victims' Advocates***

This was a rapid evidence assessment into victims' advocates, assessing the strength of the existing evidence base on advocacy interventions provided to victims of crime in England, Wales and other jurisdictions. The report found that advocates deliver benefits for crime victims, in terms of their mental and physical health and their sense of wellbeing. They can provide advice and guidance and challenge other professionals if entitlements are not being delivered. Advocates can also deliver assistance to the criminal justice professionals they work alongside. An example of this is the trust that advocates build with victims which can, over time, be extended to other professionals involved in a victims' case.

### ***A Voice for the Voiceless: A review into the provision of Registered Intermediaries for children and vulnerable victims and witnesses***

Registered Intermediaries (RIs) are specialists in communication provided to children and vulnerable victims to enable them to have a voice in the criminal justice system. This review considered the provision of RIs, as set out in the entitlements under the Victims' Code and found not all eligible vulnerable victims and witnesses were being offered a RI, there is inconsistent take-up of RIs across England and Wales, limited understanding of the role in the criminal justice system and variation in how vulnerability and eligibility for RIs is assessed. The review included a number of recommendations to improve the provision of RIs, including the development of a centralised national RI service and a fast track service for the youngest and most vulnerable of victims.

### ***Are we getting it right for young victims of crime? A review of Children's entitlements in the Victims' Code***

This review into children's entitlements under the Victims' Code investigated the treatment of children and young victims of crime by criminal justice agencies. It found a mixture of experiences for these children when receiving their entitlements under the Code. Some did not feel they were treated with dignity and respect by criminal justice agencies, with some feeling they were neither believed nor taken seriously because of their age. Some

of the young victims interviewed were neither informed nor received all of their entitlements under the Code. The review concluded that the provision of a professional victims' advocate service would help alleviate many of the frustrations and difficulties that children, young people and their families reported in this review.

## **Annex B: Victims' Commissioner's Surveys of Victims**

As well as conducting in-depth research, the Victims' Commissioner was keen to ensure the lived experience of victims is fed into proposals for a Victims Law. In normal circumstances, the Commissioner meets many victims in the course of her visiting victim services across the country, but given that during most of 2020 social distancing requirements were in place, this has not been possible. She has instead relied upon on line surveys which have triggered feedback from over 900 victims.

### ***Victims' experience of the criminal justice system***

The Victims' Commissioner undertook an online survey during a 4-week period from 7 April to 5 May 2020 to help inform her response to the Government consultation on revising the Victims' Code of Practice. She was keen to ensure the voice of the victim influenced the final outcome of the review.

The Victim's Commissioner asked anyone who had reported a crime in the last three years to respond to the survey about their experiences in the criminal justice system. More than 400 people responded. A summary of the findings include:

- Respondents placed greater importance on being treated fairly and with respect by the police than on the perpetrator being arrested, being kept informed about the police investigation or being referred to victims' services.
- More than half of respondents felt the police investigation took too long. Only a minority agreed that they were kept regularly informed or received all the information they needed about the police investigation.
- Some respondents said the police treated their reports as 'not a priority'. Others said that they felt they had to chase the police to get information about the investigation.
- Less than half of those asked said that they would report a crime again, based on their experience of reporting this time
- Respondents placed greater importance on having judges understand the impact of the incident on the victim than the perpetrator being convicted of the crime or being treated fairly and with respect by court staff and lawyers.
- Two thirds of respondents felt they had to wait too long for the case to start. Only a minority agreed that the sentence was clearly explained to them, that judges and magistrates take account of the impact of the incident on victims or that victims are given enough support during the court process.

The Victims' Commissioner concluded that although the victim of any crime should be at the heart of the criminal justice process, this was not how many victims perceived it.

"When respondents use descriptions such as 'mistreated', 'disappointed' and 'the worst experience of my life' to reflect how they felt about the process something is not right," she said.

Continuing: "This is why this consultation on the Victims' Code is so important. It needs to be bolstered, expanded and enforceable and the rights it creates enshrined in statute with the introduction of a Victims Law."

### ***Rape survivors and the criminal justice system***

In 2019, the Government launched an End-to-End Review of how the criminal justice system deals with rape. Much work has been done, but the Review team took the decision to seek



little direct input from rape survivors. The Victims' Commissioner felt it was imperative the victim's voice was heard.

Consequently, Office of the Victims' Commissioner researchers took on the task of asking rape survivors for their experiences of the criminal justice system. They drew up a questionnaire and published it up on the Victims' Commissioner's website for six weeks in the summer of 2020. Four hundred and ninety-one rape survivors responded. It is a self-selecting group of respondents -not a representative sample-but it is a sizeable group and the unity of their views is compelling. The findings have helped form our thinking in respect of a Victims Law.

We found 95% of survivors who didn't make a report to the police stated a key reason was fear of being disbelieved. The second most frequent reason for not reporting was belief that the case would not be investigated or prosecuted successfully 'because of my gender, sexuality or lifestyle' (88% of non-reporters). Crucially, this suggests that survivors fear the impact of societal rape myths on their credibility – such as that police regard a high number of rape complaints as false and that only a 'perfect' model victim will be believed.

And these were not merely views held by non-reporters. Only about half of survivors agreed that police officers treated them with sensitivity, respect and fairness at the reporting stage (48% of earlier complainants improving to 54% for the most recent). Others felt they were disbelieved, judged or treated as if they were at fault. They reported that their credibility was repeatedly tested, and they felt that they were under investigation.

Requests to access their mobile phone data made this worse, a majority feeling that this was not sufficiently justified or explained, and that it felt intrusive. Clearly, being believed and taken seriously by police is a critical factor when survivors consider reporting rape or sustaining a report they have already made.

Survivors' accounts were peppered with language which expressed that the system re-victimised them. The police decision to take no further action and the CPS decision not to prosecute were frequently devastating. For some, this also seemed procedurally unjust: for example, evidence was not considered, avenues not pursued, or reasons for discontinuance not justified. Those who had subsequent interactions with CPS tended to find them insensitive and were frustrated as, in no case, did it make any difference to the outcome.

Amongst those who got to court, a majority felt they were treated fairly and with respect by judges but over three quarters found cross examination traumatising. The Criminal Bar trains its members how to cross examine without re-traumatising people but only a handful of these survivors said that defence lawyers treated them fairly.

Nearly two thirds reported that they were questioned about it. The only bright spot of the research was the praise for Independent Sexual Violence Advisers (ISVAs) who, with other support services, are highly valued. The research shows them making a real contribution to the criminal justice system overall; only 10% of those who had an ISVA or support service chose not to pursue their case, compared with 20% of victims who had neither.

Overall, just 14% of these respondents agreed that 'survivors of rape and sexual offences can get justice by reporting an incident to the police'. A full 75% actively disagreed and most respondents (71%) had had experience of the system before expressing that view.

## **Annex C: Victims' Commissioner's Stakeholder Consultation**

As well as gathering evidence from the Victims' Commissioner's research and reviews and seeking the views of victims through online surveys, we also organised a series of nine roundtables with a broad range of stakeholders, including charities, service providers, commissioners and academics.

We divided the groups by theme:

- Academics
- Commissioners
- Community (e.g. Restorative Justice, ASB)
- Criminal Exploitation, Gangs and County Lines
- Deaths Caused by Crime
- Domestic Abuse (two separate sessions)
- Intersectionality
- Police and Crime Commissioners' Victims' Hubs

Each session followed a discussion guide and was facilitated by a member of the OVC analysis team. The guide was divided into three sections: After the Crime, Courts and Trials, and Statutory Duties, Scrutiny and Compliance.

These were broad discussions, given the range of stakeholders with varying priorities and perspectives. However, key themes emerged throughout the discussions which encompassed many of the suggestions and priorities for the legislation: Victim as Participant, Equality of Access, and Data.

### ***Victim as Participant***

The idea of 'Victim as Participant', enabling the victim to have a formal role in proceedings beyond that of a witness, was introduced as part of the discussion guide and was well received throughout the roundtables. It was noted that the interests of victims and prosecutors do not always coincide, so having victim as a participant is important in ensuring their interests are represented in a defined sense.

There was a general consensus from stakeholders that the victim role in the criminal justice process needed to be clearly defined, offering them a formal status from which their rights and entitlements were derived. It would define their particular place in the process from reporting to post-trial, allowing them a say in the process and providing equity in relation to the offender.

The groups were positive about its inclusion in the law and some noted it as the most important change that could be made. Some stakeholders suggested that participant status could form the basis for some victims to be given access to legal representation before and at trial. There was also agreement that specific groups of vulnerable victims should also have a statutory right to an independent advisor to support them throughout their criminal justice journey.

A recurring theme of the discussions was a failure to communicate victims' rights to them adequately. Not only are they often unaware of their rights under the Victims' Code, but if agencies subject to the code fail to adhere to it, there is little recourse. The powers of the Victims' Commissioner were brought up unprompted in several sessions and was introduced by the facilitator in others. There was strength of feeling that someone needed to have powers of scrutiny and enforcement to hold agencies and service providers to account and that this

role might best fall to the Victims' Commissioner. She should be given stronger powers if she was to be able to perform this role effectively. Some felt that she should be able to hold agencies to account.

There was also discussion about the limitations of the various complaints processes and limited access to the Parliamentary Health Service Ombudsman (PHSO). Some suggested the Victims' Commissioner should perform the role of Victims' Ombudsman. Failing that, she should be able to refer individual cases to the PHSO and that victims should have direct access to the PHSO without having to go through their local Member of Parliament.

Several stakeholders noted that checks and balances must remain in place to protect the rights of offenders.

### ***Equality of Access***

Stakeholders identified multiple factors which prevented victims from vulnerable or minoritised communities from participating in the criminal justice system. The importance of the involvement of specialist services at the earliest opportunity, and throughout the criminal justice process, was flagged a number of times and was viewed as a vital change that would help to remove many of the barriers to reporting for minoritised communities.

Victims with a disability may need several hours of support before they reach a point where they are able to report a crime and a lack of support results in a low level of reporting from the disabled community. Similarly, some regions have police officers trained in British Sign Language to support deaf victims, however this is not available nationally.

There should be measures in place to identify needs and vulnerabilities at the earliest opportunity and several participants separately questioned whether the police were best placed to assess these needs. The idea of mandatory re-referral to victims' services during and after the case was flagged several times.

Extensive training for practitioners across the criminal justice system was seen as essential by many stakeholders. This should include the police, the judiciary, court staff, lawyers and judges. The training should focus on trauma and the affect it has on victims, but should also include LGBT+ issues, cultural sensitivities and gender-based violence.

### ***Data***

Stakeholders were in strong agreement that the way data is currently managed is unsatisfactory at every stage.

Decisions regarding what data was required needed to be made in consultation with specialist and local services, as this data has a vital role to play in informing strategy and decision making, as well as allocation of resources. Although feedback is often requested from victims by different services and agencies, this data is rarely processed or used in any meaningful way.

Participants were adamant that disaggregation of CJS and victim service data is crucial, otherwise assessing the scope and scale of any problems, such as disproportionality of victimisation, inadequacy of access to justice or support or delivery of Victims' Code entitlements, is difficult. Information regarding categories such as LGBT+ identities and people with disabilities are not collected, and rates of for example honour-based violence cannot be effectively monitored. This leads to invisibility within the system.

Copious data is collected on perpetrators, but almost no data is collected on victims. There is also insufficient data on the proportion of perpetrators who are also victims. Equally, data is often used only in a way to measure impact of services rather than to amplify the victims' voice.

Another key issue which arose was around the sharing of data. Due to data protection and GDPR regulations, information is not shared between services and agencies in a way that is helpful to the victim. Consent must be sought from the victim for one entity to speak to another, which results in victims being contacted far more often, and by many more people, than they might be happy with. Participants flagged that victims expect services to speak to one another and that legislating to enable them to do so more easily would be of great benefit to the victims' experience.

There was a call for explicit guidance regarding GDPR and confidentiality with regard to victim of crime data, as fear of falling foul of these standards encourages stasis and pro-active avoidance.

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<sup>31</sup> These include the Common Platform and Data First.

<sup>32</sup> In press.

<sup>33</sup> See Recommendation 1: Undertake effective review of the operation of the Code, (page 35): <https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2020/12/OVC-Constitutional-Powers-2020.pdf>

<sup>34</sup> Thiara, R. and Roy, S. (2020). Reclaiming voice: minoritised women and sexual violence. See: [https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/f98049\\_a0f11db6395a48fbac0e40da899dcb8.pdf](https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/f98049_a0f11db6395a48fbac0e40da899dcb8.pdf)

<sup>35</sup> ONS, Crime in England and Wales, YE March 2020. Crime figures exclude fraud. See:

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingmarch2020>

<sup>36</sup> <https://safelives.org.uk/sites/default/files/resources/Disabled%20Survivors%20Too%20CORRECTED.pdf>

<sup>37</sup> <http://www.galop.org.uk/recognise-respond-strengthening-advocacy-for-lgbt-survivors-of-domestic-abuse-2/>

<sup>38</sup> <https://cdn.catch-22.org.uk/wp-content/uploads/2018/04/The-changing-needs-of-victims-and-how-to-support-them-better-2.pdf>

<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/881317/tackling-racial-disparity-cjs-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881317/tackling-racial-disparity-cjs-2020.pdf)

<sup>40</sup> [https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/f98049\\_a0f11db6395a48fbac0e40da899dcb8.pdf](https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/f98049_a0f11db6395a48fbac0e40da899dcb8.pdf)

<sup>41</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf)

<sup>42</sup> MoJ, 2018: Statistics on Race and the Criminal Justice System, see: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/849200/statistics-on-race-and-the-cjs-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/849200/statistics-on-race-and-the-cjs-2018.pdf)

<sup>43</sup> <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>44</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>

<sup>45</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/monitoring-and-enforcement>

<sup>46</sup> VC December 2019 letter on the Victims Law.

<sup>47</sup> See: <https://victimscommissioner.org.uk/published-reviews/are-we-getting-it-right-for-young-victims-of-crime-a-review-of-childrens-entitlements-in-the-victims-code/>

<sup>48</sup> <https://victimscommissioner.org.uk/published-reviews/a-voice-for-the-voiceless-provision-of-registered-intermediaries/>

<sup>49</sup> <https://victimscommissioner.org.uk/published-reviews/>



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