

Pre-legislative scrutiny of the draft Victims Bill

Written evidence from Rights of Women

About Rights of Women

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women’s vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women’s understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Rights of Women’s written evidence

Before answering the specific questions asked in the pre-legislative scrutiny we would point out that as a women’s legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Rights of Women

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Introduction

Rights of Women provides free legal advice to approximately 3500 women annually across England and Wales, the majority of whom are survivors of Violence Against Women and Girls (VAWG). In addition to the evidence and insight this frontline work provides, we also have an established panel of 16 women ‘experts by experience’ with lived experience of the family and criminal justice system who inform our work.

Our response to this call for evidence is limited by the notably short timeframe, which impacts our ability to provide detailed feedback based on our extensive contact with victims and the depth of our experience and expertise of supporting women survivors.

As such, we will address three of the points on which the Committee have welcomed evidence with a focus on two key points we wish to make: the wasted opportunity for meaningful change that this Bill represents and the ever-pressing need for access to legal advice for survivors.

A wasted opportunity

The Committee has invited comment on two points which we believe are relevant to the first point we wish to make that the proposals in the Bill are a wasted opportunity to achieve what the Government states they seek to achieve. They are:

- The Government’s proposal to put the overarching principles of the Victims’ Code in primary legislation and set out key entitlements in secondary legislation, consulting on changes to the Code once the Bill is in force.
- The key changes the Government should consider making to the Victims’ Code, including consideration of those already proposed by the Government in its response to the consultation

The existing Victims’ Code and its predecessors have served the purpose of signalling what victims are entitled to for many years – but continued shortcomings and persistent areas of concern in practice show that the Code as it exists now is not sufficient to prevent systematic failings. We have set out below why we do not believe the current Bill will succeed in the Government’s stated commitment to improve victims’ experience of the criminal justice system and put their rights in law.

Clause 2 of the draft Victims’ Bill mirrors the original section 32 of the Domestic Violence, Crime and Victims Act 2004, save for the addition of subsection 2, which outlines the four overarching principles of the Victims’ Code. In this respect, it makes little difference to the legislative underpinning of the Victims’ Code and does not go far enough in terms of securing meaningful change for victims. The content of clause 2 of the Bill has been in existence for 18 years – with very little resource to support it, and little power available to monitor its delivery or sanction failures.

Many women we speak to on our legal advice lines are entirely unaware that the Code exists, and this problem certainly won’t be addressed by a failure to include the Code on the face of the bill.

The principles in question are too vague and we anticipate that implementation, adherence and monitoring will be undermined as a result. The Government’s aim of

putting the interests of victims at the heart of the justice system can only be achieved by setting out the key entitlements of the Code in primary legislation.

Each of the principles, as currently drafted, could feasibly relate to a wide range of rights under the Code. While we support improved mechanisms for accountability, we believe it is crucial that there are clear, tangible rights for which those implementing the Code can be held accountable and the current proposals in the Bill are too vague to make any significant difference.

We will not go through each principle in the Bill but by way of example, Clause 2(a)(i) encompasses the current right 1 of the Code (to be able to understand and be understood), right 6 (information about the progress of your case), right 8 (information regarding the trial process and role as a witness), right 9 (information on the outcome of case and appeal), and right 11 (information about the offender following conviction). Clause 2(a)(ii) sets out the principle that victims should be able to access support services, however, the Code includes the more tangible right 4 - to be referred to services that support victims and have services and support tailored to your needs. This places the responsibility on the statutory services to ensure the victim is referred to services rather than the vague principle as currently drafted that they should 'be able to access' services. We believe that for the Bill to be effective, these tangible rights should be set out within the Bill itself and not relegated to secondary legislation or guidance as this is no different from the current position.

Placing the Code on a statutory footing would be the best way to support oversight and arrange for appropriate methods of enforcement, including penalties or sanctions for failure to comply. The failures reported to us over our advice line are an indicator of the underlying, problematic institutional culture of the criminal justice system. These failures often relate to deep-rooted misogynistic and discriminatory approaches to justice. When failures arise, the consequences should therefore be directed both at the criminal justice agencies as a whole and at individuals responsible – but individuals should not be scapegoated at the expense of addressing institutional failures.

Clause 4 of the Bill (lifted in its entirety from s34 of the Domestic Violence and Victims Act 2004) absolves those responsible for the implementation of the Code from any liability for a breach of the Code or non-compliance with the Victims Bill. This weakens implementation, resourcing and accountability. Consequences for significant failures should have the effect of challenging and changing the problematic behaviour or actions at its root and preventing their recurrence. This can only be achieved if there is liability for non-compliance.

This will resonate particularly with victims of VAWG, for whom delays and dysfunction in relation to complaint handling and oversight may also carry consequences for their safety and place them at risk; for example, where the complaint relates to their treatment or breaches of the Code by the police in how they investigated a VAWG crime against them.

In relation to changes to the Victims' Code, we believe that placing the Code in primary legislation will help with the identified problems with the Code, which largely relate to failure to implement the Code in its current form, rather than significant deficiencies in the Code itself. We direct the Committee to our submission to the Ministry of Justice's

consultation¹. The Code was consulted on and revised as recently as 2021. We note guidance can still supplement the legislation at a later time and suggest the proposal to place entitlements in secondary legislation and consult on the Code will ultimately fail victims by leading to not giving the Code the appropriate statutory footing it needs despite the weight of evidence that has identified this is needed. Placing the Code in primary legislation will provide greater impetus to appropriately fund services that need to comply with the Code and ensure training on the Code is delivered to all services.

Examples of the breaches of the Code that the women we advise share with us on a regular basis include, but are not limited to:

- Being told by the police that there is insufficient evidence to prosecute their abuser without being given any further reasons or explanation for the decision not to prosecute including pro forma letters being used to notify victims of outcomes
- Not being informed until many months after a decision not to prosecute has been taken
- Not being informed of the circumstances of the abuser's release
- Not being informed when their abuser is released from prison following the end of their sentence

These are all common breaches of the current Code that demonstrate the need to place the Code on a statutory footing. We do not believe consulting further on the Code will do anything to address these problems.

Access to legal advice for survivors

The third point on which the Committee has invited comment that we wish to address is:

- Whether there should be any further measures included in the Bill

Despite expert recommendations from across the breadth of the VAWG sector about urgent measures needed to address victims' needs, there is sadly no provision made for legal advice for victims in this bill.

Unlike perpetrators, who are entitled to free legal support at the police station, the women we advise over our legal advice lines are expected to endure the process alone, without a legal advocate. Even in best case scenarios, where other types of support are made available, independent legal advice does not form part of the offering.

As the only frontline free legal advice service for women who experience violence against women and girls in England and Wales, we hear from countless women how our legal advice has been transformative: *"The advice you gave me previously totally changed things for me, completely changed things. The police turned around, put a*

¹ <https://rightsofwomen.org.uk/wp-content/uploads/2022/02/Response-to-Consultation-on-Delivering-justice-for-victims-A-consultation-on-improving-victims-experiences-of-the-justice-system.pdf>

higher-ranking officer on the case and started a fresh inquiry. Your advice completely changed the situation, every aspect of it.”

The advice we provide is from qualified women lawyers who are able to advise women on the legal issues that affect them including the rules of evidence, disclosure, the Full Code Test, complaints and the Victims Right to Review. We provide advice on issues such as the disclosure of mobile phone data or medical records that are currently subject to review. These issues raise complex legal problems in relation to individuals right to privacy and the proper conduct of an investigation. It is vital that victims are able to access independent legal support to ensure they are fully informed about the process and that their voice is heard – especially where their rights conflict with the interests of the police or CPS.

A victim cannot reasonably be expected to understand these issues without appropriate advice and victims should be empowered in navigating a complex criminal justice system that is frequently weighted against them.

Legal advice would, for example, improve uptake of the Victims Right to Review scheme. The MOJ, in their own findings, have shown how few victims exercise their right to review, a review is requested in just over 2% of decisions eligible for VRR.² The review process often involves legal arguments and victims – who are often extremely distressed - are told their case will not progress further. Victims are being denied access to justice when they are expected to challenge the various technicalities of the decision made without legal advice and representation.

A lawyer is also better able to navigate the complexities about the ways in which a case may not progress. For example, in circumstances where no evidence is offered, a victim can technically exercise their right to review, but the proceedings cannot be recommenced. This is something a victim should be made aware of ahead of making an application, but in our experience often isn't.

It is notable that the current complaint systems across the CJS can be challenging for survivors to engage with. Furthermore, it is clear from our contact with women survivors that there is little trust and confidence in complaint systems to either resolve ongoing problems in a fair and timely manner or provide redress for failings in the past. Our experience is that this lack of trust and confidence is well-founded and that CJS complaint systems have a history of failing survivors through a lack of transparency and discriminatory responses. Access to independent legal advice can support victims in knowing their rights and investigating alternative routes of redress. Early pilots of the provision of legal advice to victims suggest it also improves the whole system by ensuring poor decision making is challenged³.

In our experience, women are often frightened to complain and feel that any complaint would have a negative impact on the outcome through reprisals from those in authority that are investigating their case and hold the responsibility to help them to achieve justice.

² [Victims' Right to Review Data 2019-2020 | The Crown Prosecution Service \(cps.gov.uk\)](#)

³ [Smith, O. and Daly, E. \(2020\) Evaluation of the Sexual Violence Complainants' Advocate Scheme](#)

These experiences exemplify why the bodies that handle complaints are often not fit-for-purpose. Complaint processes should fundamentally support and empower victims to assert their rights rather than conversely, as they often do now, empower institutions to evade scrutiny.

It is important to draw a clear distinction between the provision of IDVA/ISVA support and the provision of legal advice. IDVAs/ISVAs should not be put in the position of having to provide their clients with legal advice. This is not appropriate; the roles of advocate and lawyer are distinct. IDVA/ISVAs are not qualified to provide legal advice and it is unfair to place them in a position where this is expected of them. Survivors of abuse should be provided with legal advice to enable them to understand both the system itself and understand the legal consequences of decisions made both by the courts, agencies and themselves.

We agree with the conclusions of the Home Affairs Committee inquiry into the investigation and prosecution of rape, published in April 2022⁴, which recommended the Government must make the question of providing independent legal advice to rape complainants a priority. It concluded that specialist legal advice would help victims and survivors navigate requests for disclosure of third-party material, data from their digital devices and questioning of victims regarding their previous sexual history.

This follows on from the positive impacts of introducing a right for victims of sexual offences in Northern Ireland to access legal advice and a pilot scheme in Northumbria⁵, which served a similar purpose but prioritised protecting victims' rights to privacy under Article 8 of the ECHR, due to concerns that the recovery of third-party material and mobile phone data impacted negatively on victims' engagement with the criminal justice system.

The evaluation of this advice showed that it changed organisational culture and significantly reduced requests for indiscriminate evidence gathering with no subsequent impact on the defendant's right to a fair trial. Commenting on the situation in Northern Ireland, the Right Honourable Sir John Gillen who led the review that led to the law change said: "No longer will complainants feel alone, there will now be equality of arms, and they feel that the state is hearing them."

Rights of Women strongly supports the growing calls from a wide range of experts including victims with lived experience for the provision of legal advice to victims who report to the police. The successful pilot of the provision of legal advice shows the difference it can make not only to victims of abuse but to the functioning of the system as a whole. The Government must also commit to proper reform of the legal aid system to ensure that victims are able to access legal aid in the family justice system which includes a commitment to improving fees for legal aid providers to be able to continue to do this vital work.

⁴ [Investigation and prosecution of rape \(parliament.uk\)](https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2022/investigation-and-prosecution-of-rape/)

⁵ [Smith, O. and Daly, E. \(2020\) Evaluation of the Sexual Violence Complainants' Advocate Scheme](#)