

Response to proposals for revising the Code of Practice for Victims of Crime

About Rights of Women

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BME women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. 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 enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

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Rights of Women's consultation response

Before answering the specific questions asked in the consultation 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.

Questions for consultation

1. Are there any specific areas/issues that you think we should also focus on in our second consultation?

a) Language

We would wish to see consultation and consideration on the language used within the code, and whether any reflection is needed within the code of the use of the word 'victim'. Within organisations representing the victim-survivors of sexual and domestic abuse the terms 'survivor' or 'victim-survivor' are often considered preferable to that of 'victim'. 'Survivor' implies 'active' and 'resistant', whereas 'victim' suggests passivity and weakness (see for example, *Papendick and Bohner (2017) 'Passive victim- strong survivor? Perceived meaning of labels applied to women who were raped'*). The term 'victim-survivor' acknowledges that those who have experienced sexual or domestic violence may find their identities within one or both of these terms, and thus may be more inclusive.

Whilst the term victim might be appropriate for those who have experienced some offences, the term survivor or victim-survivor may be more appropriate for those who have experienced sexual or domestic violence. Without suggesting that we should dispense with the term 'victim', we would welcome consultation on whether and how the terms used to describe 'victims' of crime might affect their confidence and experiences through the justice system, and whether there is a need to reference this within the Victim's Code.

b) Specific groups

Focus within the next consultation should be given to specific groups of victim-survivors, their particular needs within the Victim's Code, and whether these specific groups require appendices to the Code, or specific guidance to be produced regarding the entitlements of these particular groups. There is no current distinction in the Victim's Code between the needs of different vulnerable groups. Different groups of victim-survivors may require

different considerations within the code beyond those which may apply generally. For example, women in prostitution who have experienced sexual violence may have different vulnerabilities to those who have experienced so called 'honour-based violence', and to men who are the victim of rape. The guidance provided to practitioners within the CJS may need to emphasise the different needs of such groups. Academic research into the different needs and experiences of different groups will provide guidance for which groups might require further consideration.

We would strongly recommend that consultation on the specific needs of different groups within the 'enhanced entitlement' category is needed to properly assess how additions to the code may be needed. This may, in turn, build confidence in the Code, improve the experiences of these different groups as they encounter the different facets of the Criminal Justice System, and in turn improve engagement with the CJS.

c) Creating a safe space for reporting

It is important that the Code recognises and addresses the many barriers that survivors must overcome to feel safe enough to report abuse to the police. Survivors often fear repercussions from the perpetrator, that they will not be believed, that there will not be enough evidence, or that they may lose their children if the abuse is reported to social services. These fears are especially acute for migrant women who are also threatened with deportation and may face language and cultural challenges.

We are aware of worrying reports of police questioning victim-survivors about their immigration status and passing information to Home Office Immigration Enforcement. A devastating report published on politics.co.uk in November 2017 exposed that a migrant victim of sexual violence was arrested in a Sexual Assault Referral Centre after reporting her rape to a Metropolitan police station. Freedom of Information requests by journalists have since revealed that of all 45 police forces in the UK, 27 police forces said they did refer victims to the Home Office for immigration enforcement purposes, 3 police forces said they did not and the remaining 15 police forces did not respond, gave unclear responses or said they had no data.

Rights of Women supports the [Step Up Migrant Women](#) campaign which highlights the negative experiences women face when reporting abuse to the police including not being believed and not being offered any support.

Women will only come forward following the trauma of an abusive relationship if they are confident that they will receive the help and support that they need without adverse repercussions. The Code must make clear that migrant women presenting to the authorities as victims of crime should not be subjected to any police action that seeks to investigate immigration related offences nor should any information be passed to the Home Office for the purposes of immigration enforcement.

d) Holding agencies to account

Further consultation on the options available to victim-survivors if agencies do not follow the Code is vital. The options currently available to victim-survivors are limited to judicial review, complaints (which can be a long, complicated, and ultimately futile process) and the Victim's Right to Review (only available in certain situations). For many women, these options are unlikely to be successful without support from a lawyer or professional such as an ISVA. Access to ISVAs and IDVAs is by no means guaranteed, with long waiting times, the failure of the police to make referrals to ISVA / IDVA services (or inform victim-survivors of self-referral), and oversubscription in some areas of the country. The women we support report

that it is difficult to find legal representation, cannot get legal aid, or are unable to afford to pay private fees.

Further consultation **must** address the need to:

- create enforceable rights for victim-survivors; and
- ensure that funding for legal support is available to enforce these rights

2. Do you agree with the proposal to have separate guidance alongside the Code aimed at victims and practitioners?

We agree that the Victim's Code, as a document, is a lengthy, complex, and somewhat inaccessible guide to the entitlements that victims have. We agree that particular groups may find it especially difficult to engage with this document: children and young people, those completely unfamiliar with the Criminal Justice System, those who experience literacy issues, and those for whom English is not their first language. It is somewhat ironic that the Victim's Code speaks about the right to have information in your own language and yet the Victim's Code itself is only available in English and Welsh

(<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>).

Furthermore, accessible versions are not immediately available and have to be specifically requested by email (<https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>). We agree that the language of the Victim's Code lacks empathy.

We would advise the following:

- The rewriting of the Victim's Code in language which is more accessible and empathetic, and which has regard to the fact that many victim-survivors may have little knowledge or understanding of the Criminal Justice System.
- The creation of separate accessible guidance for those under 18, for adults, and practitioners.
- That funding be made available to those organisations working in specific areas (such as with survivors of crimes related to Violence Against Women and Girls (VAWG), BME and migrant women, LGBTQI+ individuals and so on), to allow these organisations to produce guidance specifically targeted to those that they support, and to provide to practitioners.
- That these all be made available in a range of languages and accessible formats
- That a specific website be created to enable victim-survivors to find information in the Victim's Code easily.

It is also necessary to note – applicable here and throughout our responses – that many of the women we speak to at Rights of Women are unaware of the existence of the Victim's Code. They are not told about this by anyone they encounter during their journey through the Criminal Justice System. Fundamental to the success of any changes made as a result of this consultation is that victim-survivors are made aware of the existence of the Victim's Code and what it means to them. Failure to do this will render any changes superficial and fundamentally pointless.

3. Do you agree with the proposal to change the structure to a smaller number of overarching rights?

Without oversight of these changes it is difficult for us to properly assess whether this would be a beneficial approach. Whilst it will be easier for victim-survivors to understand a more concise Victim's Code, there is a risk that streamlining the entitlements could result in a lack of clarity on the part of the victim-survivors as to what they are entitled to expect.

Furthermore, this streamlining might create confusion amongst CJS practitioners as to what

the entitlements are and who is responsible for ensuring these are met. Clear guidance for practitioners on what each of the overarching rights means and how they should be implemented would help mitigate the risk that the 'finer details' of the entitlements don't get lost in the streamlining process.

For example, the 'right to be given information about the investigation and criminal proceedings' may create ambiguity for victim-survivors as to what information they should be given, by whom, and when. In our experience (with the Code as it is) women calling us are unaware of what they can expect the police to tell them about an investigation, and what they can ask the police. 'Information about the investigation' can be read to mean anything from 'being told if a suspect has been arrested' to 'being told precisely what account a suspect has given' – a lack of clarity will lead to expectations which cannot (and should not) necessarily be met, which will in turn create frustration and mistrust in victim-survivors.

We would also question whether reorganising the entitlements to be 'thematic' rather than noted as entitlements at each stage of proceedings (as the current Code sets out) might create some confusion with victim-survivors over who is responsible for that entitlement. Concise information which makes it clear what the entitlement is, when it applies, and who is responsible to meet that entitlement is essential.

We are therefore wary of the ways in which creating a smaller number of overarching rights might mean that there will be less clarity over what these rights actually are.

4. How else could we improve the accessibility of the Code?

As highlighted above, proper and careful consideration of the needs of different groups of victim-survivors would improve accessibility. Collaborating with organisations who specifically support those groups of victim-survivors will produce information which is more meaningful and helpful. We would advocate the provision of funding to organisations who can produce resources to help explain the Victim's Code to those groups, and to produce resources for practitioners to provide them with a better understanding of how these different groups have different needs within the Code. We would suggest thinking more about this within the second consultation. The Victim's Code (in its entirety and in any shorter summaries) need to be available in more languages than English and Welsh, and in formats which are accessible to those with visual impairments. These should be available as of right, rather than requiring a specific request.

5. Do you agree that there is a particular need to strengthen communication from the point of charge?

We would welcome strengthening communication from the point of charge, and support your suggestion of a single point of contact for the period from charge to completion of the case. Callers to our advice line have reported extremely poor communication which has left them distressed, angry, and afraid. This has particularly been the case when a suspect has been released from court on bail or with varied bail conditions and the woman has not been told about this (or has been told only some time after the person has been released). This creates fear and a lack of confidence that the justice system has any interest in the victim-survivor's well-being. It denies women the opportunity to seek alternative approaches to protecting themselves with appropriate speed. We are told that women are not informed of outcomes of hearings, or what events in a case might mean (for example what a Newton hearing is, or why a hearing has been delayed). Again, this creates frustration, a sense of powerlessness, and mistrust in the Criminal Justice System.

Any single point of communication would need to have greater availability and accessibility than the police currently do. Whilst we appreciate that officers work on shifts and that their

hours vary, this creates a situation where a woman may be trying to find out about her case and the officer is on leave or on nights. The inability to have a conversation with someone, and instead having to rely on leaving messages for a police officer and hoping for a response is upsetting, annoying and frustrating for women. Given the uncertainty that these victim-survivors are already facing in terms of not knowing how a case might proceed, not having clear answers to very straightforward questions is an unnecessary harm that can be easily avoided by improving communication.

However, we do not consider that your proposal goes far enough to address the issues that women report to us. Our experience is that women also experience extremely poor communication pre-charge. Women find themselves unsure as to how an investigation is progressing, whether a suspect has or will be arrested, whether a case has been referred to the CPS, how long a charging decision will take, and what their rights are if a case is stopped (many of the women we speak with are not told of the victim's right to review).

Another extremely poor point of communication is around evidence-gathering: this particularly relates to requests that victim-survivors hand over their mobile phones or provide access to social media profiles. We receive a high volume of calls asking why the caller's mobile phone is being seized, what will happen to their data, how long the data will be retained for, who will have access to that data in the first instance, precisely what data is being taken from the phones, and what might happen to their data (e.g. that it might be disclosed to the defence, and in what circumstances). Again, poor communication on this point is extremely frustrating and distressing to victim-survivors.

Of particular concern (and frustration for our callers) is that the police will often fail to contact the victim-survivor with an update or information about the case. Rather, the woman has to 'chase' the officer to find out what is happening. Not only are the police not updating the women within the time frames set out within the Victim's Code but in many cases they are not contacting the women at all – the responsibility for this is being placed with the women to seek this information. Women also find attempting to make this contact challenging, with officers often failing to return phone calls or respond to emails. A further complaint is that there is no single point of contact during the investigation procedure – particularly as the Officer in the Case may change throughout the investigation.

Therefore, whilst we would welcome having a single point of contact post-charge, we also strongly recommend that communication pre-charge is reviewed and improved. Whilst this might prove challenging, a single point of contact from the stage of reporting through to the conclusion of the case could vastly improve communication. There also needs to be greater emphasis on the proactive provision of information by the police, rather than victim-survivors having to request and chase this information themselves.

6. Should the victim's preferences relating to frequency and preferred method of contact through their criminal justice journey be recorded as part of the initial communication? And if so, should these preferences form part of the referral process between agencies?

We agree that victim preferences should be recorded, and passed on to other agencies. However these preferences also need to be followed (subject to where those preferences are unreasonably onerous), and there should be points at which these preferences are checked and reviewed. For example, where the victim-survivor is referred to another agency, that agency should check whether the preferences on mode and frequency of communication has changed.

Working to the needs to the victim-survivor around communication is essential to ensuring that they feel part of proceedings and that their requirements are being met. There is little

point in seeking preferences if they are then going to be ignored, and raising expectations about contact by asking for preferences, and then failing to meet those expectations will undermine trust in the criminal justice system. Therefore any guidance for practitioners needs to make it clear that victim-survivors should be told what contact they can expect.

7. Do you agree with the proposal to provide agencies with more discretion on when the Victim Personal Statement (VPS) is offered?

This would be better framed as discretion as to when a VPS is *made*. Rather than let the agencies decide when *they* think it is best for a victim-survivor to be offered the VPS, the victim-survivor should be told about this at the earliest stage, and informed that they can make the VPS at a later stage if they wish. Ensuring that victim-survivors are aware of the VPS gives them the agency to decide when they would be best able to make this statement.

8. Do you agree that victims should be provided with a copy of their Victim Personal Statement?

Yes. This will allow them to revisit and seek to revise their statement or correct any inaccuracies. However, it is fundamental that alongside providing them with their statement, they are told that they can revise this, and how they should do this. There also needs to be greater information given to victim-survivors about who will see this statement, and whether they can read this in court (and the consequences of such).

9. Are there any additional comments you wish to make on changes to the Victim Personal Statement process?

No

10. Which agency is best placed to support victims of unrestricted patients?

No comment

11. Do you agree that the right to access practical and emotional support for victims should be made clearer in the revised Code for those victims':

a) who do not report incidents to the police?

Yes, providing that support is actually available. It is important that support is independent from the police and that the Victim's Code makes clear that this support is not conditional on reporting. It also needs to be made clear what this support is likely to be and whether it will include specialist services (such as a specialist sexual violence support).

b) who choose to withdraw after reporting an incident to the police?

Yes, providing that support is actually available. Withdrawal in cases of sexual and domestic violence is a particular risk. Making women aware that they can continue to seek support even after withdrawal may allow them to access resources to escape abusive situations, or feel more confident coming forwards in the future.

c)at the end of their case?

Yes, providing that support is actually available. Women report to us that they try to seek support, for example from ISVAs, but are told that they are no longer entitled to support once a case has concluded. It would be harmful to suggest that this support is available when it is not.

12. Do you agree with the proposed changes to eligibility categories for access to specialist support?

Our concern, as an organisation that works primarily with victim-survivors of domestic and sexual violence, is that moving from 'victims of the most serious crimes' and 'persistently targeted victims' towards 'victims with the greatest needs' may detriment the women we support. Using the term 'victims with greatest needs' may create a situation in which a huge number of victims of crime then fall within this category, creating a greater number of individuals entitled to enhanced rights. This might make it difficult to provide a suitable and specialised service to everyone within the category, which in turn may result in those who are experiencing sexual or domestic violence being unable to access that specialised and enhanced support. We are also concerned that certain forms of victimisation might be overlooked if those women are not recognised as having 'the greatest need' – for example those subject to coercive control or harassment.

Therefore, we would be wary of a change in this way, without clearer guidance on what 'victims with the greatest needs' would mean. However we would welcome the acknowledgement that particular groups of victims might have greater needs regardless of the seriousness of the crime (for example, disabled people, refugees and those with an insecure immigration status). We therefore would want further consultation on this to ensure that whilst the greater needs of certain groups are recognised, this is not at the expense of the victim-survivors of sexual and domestic violence.

13. Are there other types of support or information which would benefit those victims who are offered specialist support?

There are a number of organisations who provide specific support to victim-survivors: Rights of Women are one such organisation, who provide support specifically for women. Other organisations provide specific support and information for other groups. These specialist organisations are chronically underfunded but do a huge amount to fill in gaps where agents of the Criminal Justice System do not or cannot abide by the requirements of the Victim's Code. Greater funding and support for these services is desperately needed and will continue to be required until (and unfortunately inevitably after) the entitlements enshrined in the Victim's Code are actually enforceable and mechanisms of accountability are put in place to deal with failures to abide by the Code. Therefore we strongly recommend greater collaborative relationships with specialist support organisations, and greater funding to bolster the support these services provide.

14. What changes should be made to the existing needs assessment process?

We would support the greater use of needs assessments by a single point of contact, who can then share these needs assessments with relevant agencies. This needs assessment ideally needs to be undertaken by or in conjunction with those with specialist knowledge of the circumstances of the victim-survivor is: for example, someone with specialist knowledge of the needs of women survivors of sexual violence, survivors of domestic abuse, survivors of other forms of VAWG, LBTQI+ survivors, BME survivors and so on. Specialist assessment by someone competent and aware of the particular needs of specific groups will allow a more open and honest assessment to be conducted.

15. Do you agree that PCCs should work with their local criminal justice partners to adapt the victim guidance to explain the local offer for victims?

We are not entirely clear on what is being proposed here. However we are concerned that devolving responsibility to PCCs may result in no one taking responsibility. We question

whether it is at the PCC level that the guidance needs adapting, or whether this should be adapted for particular groups.

A report by the End Violence Against Women and Girls Coalition¹ found that the “*absence of a gendered approach to domestic violence and sexual offences means that in some areas there is a reluctance to commission services specifically for women*” and “*Even where PCCs have good funding models and understand the gendered nature of domestic and sexual violence, there is usually still little appreciation of how ‘intersecting inequalities’ are related to victimisation and create additional barriers to getting support and justice, particularly in regard to BME women*”. Rights of Women has serious concerns about devolving further responsibilities to PCCs in light of this report.

Whilst we see the value in making clear to victim-survivors what is available to them locally, we are concerned that adapting the guidance may result in variation in what is provided to victim-survivors in different areas.

Rights of Women

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¹ *England and Wales Police and Crime Commissioners: Are they working for women and girls?* EVAW, July 2019