



**Dame Vera Baird QC**  
**Victims' Commissioner for England and Wales**

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Victoria Atkins MP  
Parliamentary Under-Secretary of State for Safeguarding  
The Home Office

Sent by email

Dear Victoria,

I write further to the Police Crime Sentencing and Courts Bill Scrutiny Committee evidence session on Thursday 19 May. I was pleased to be able to continue to assist government in my official capacity by sharing with the Committee scrutinising the legislation, the impact of the Bill on victims.

As you are aware, I have been involved at an early stage by officials in your department tasked with drafting the digital download clauses for the Bill. I have worked hard with those officials to try and ensure victims' Article 8 rights are protected under the new clauses.

As I made plain in my evidence, despite some positive co-operative working, as drafted the clauses do not offer any substantial protections for victims. I have consulted widely in the violence against women and girls' sector, in particular with those whose ISVAs frequently accompany complainants at police stations and are present when requirements for digital download are made. They confirm that there is a continuing problem of what is seen as over demand for this and an urgent need for national legislation which guarantees Article 8 rights where they are not in conflict with Article 6 rights. They are opposed to this legislation as it will not achieve this.

I have also obtained legal advice from counsel who agrees there is a need to put protections into these clauses and predicts a Human Rights Act challenge to the legislation at an early stage if this is not done

I know we both share a passionate commitment in ensuring victims of rape are able to access justice and you are only too aware of the current criminal justice landscape in respect of rape.

However, and as you might have realised, I was genuinely surprised when you appeared to be arguing legislative protections for victims are unnecessary and that a code of practice will 'do the job' even whilst the legislation specifically limits liability for breach of the code of practice.

Whilst not wanting to rehearse the arguments I made during our exchange in Committee, I have significant concerns the digital disclosure clauses contained in the Bill will serve to legitimize current practice. This would be extremely problematic bearing in mind a CPS internal report (still unpublished) shows almost two-thirds (65%) of rape cases referred by police to the CPS for early investigative advice (EIA) had disproportionate requests for information.

The ICO also found requests to be disproportionate and that demand for this material is CPS driven. HMCPSI have said around 40% of CPS requests were not proportionate and the Northumbria pilot of Independent Legal Advisers (SDVCs) found that in only around 50% of cases referred requests were appropriate, while the other half were open to challenge (most of which were upheld).

Additionally, the research for the Rape Review observes:

*'They [police survey participants] felt that requests for third-party and digital evidence had become a standard CPS request for all rape cases rather than specifically for cases where there was a direct link to the incident, with CPS lines of enquiry described as being too broad and a 'fishing expedition' [ ].*

*'CPS survey participants, however, described the importance of obtaining as much digital and third-party evidence as possible in all cases to ensure prosecutors could make robust charging decisions.'*

I was very pleased to be approached by your officials and in response, I entered into consultation with both the Information Commissioners Office and the Police, took further legal advice once the police need for this legislation was made clear to me. I quickly appreciated it was eminently possible to put protections into the draft clauses for victims without in any way impeding or weakening the effect of them in meeting police requirements. With the support of counsel, I drafted clauses which met both needs. I was delighted when both the NPCC representative and the ICO representative, having consulted their offices and colleagues, confirmed their agreement to these drafts.

The Police were equally agreeable to the Home Office draft clauses and did not feel strongly that either set of clauses would work better for their purposes. Of course, they are not tasked with championing the rights of victims, but they accepted the additional protections in my draft clauses.

I acknowledge that based on my feedback, your officials have made efforts to 'strengthen' the victims' position in these clauses. Unfortunately, what those measures actually do is allow individual officers to stray further from the current framework contained in legislation, guidance and case law.

For ease, I have attached my briefing on this subject which I sent to you back in April as I plan to send it to all members of the PCSC Bill Committee. It takes the issues outstanding and hopefully, makes them clear, clause by clause.

I fear campaigners and many victims of rape will be deeply disappointed with this legislation in its' current form. It offers no solution to the current practice of coerced consent (i.e. 'you need to give me your phone or this case won't go any further'), no solution to the problem of wholesale download and 'credibility trawls' and no recourse to victims who have their private lives scrutinised in wholly intrusive and 'illegal' way. It is already proving to be a contentious point as the VAWG sector considers the Action Plan for the End to End Rape Review where it features as if it was a positive development. As it is a negative development it appears to fly in the face of what the review seeks to achieve in terms of supporting victims and significantly decreasing attrition.

Whilst the code of practice you referred to has been cited as a possible solution to the above, sadly it is not. It is of secondary legal standing behind the untrammelled rights for officers set out in the legislation. With no consequence for a breach in the code of practice it will be toothless.

For the avoidance of doubt, the ICO supports a code of practice but not as subordinate legislation to this statute. It proposes an overarching code to cover in detail all aspects of the recommendations they made in their report in connection with data processing.

None of those consulted by Home Office officials on this matter have had any sight of any draft code of practice

I hope you will consider further collaboration with my office so that together, we can work out how, through this legislation, government can improve the position for

victims, which is frequently, and I believe, genuinely declared to be one of its fundamental aims.

I look forward to hearing from you.

Your sincerely

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

**Dame Vera Baird QC**

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