

Domestic Abuse Commissioner for England and Wales
2 Marsham Street, London SW1P 4JA
commissioner@domesticabusecommissioner.independent.gov.uk

Victims Commissioner for England and Wales
5th Floor, 7 Petty France
London SW1H 9EX
Victims.Commissioner@victimscommissioner.org.uk

4 February 2022

Dear Deputy Prime Minister,

Thank you for the opportunity to respond to the consultation on the Victims' Law and we have each put in a sizeable document which we hope you will find helpful. We would, of course, be more than willing to discuss any part of our submissions with your officials at any time.

Very recently we have appreciated a point which concerns us and which we wanted to draw to your attention.

In the consultation document, 'Delivering Justice for Victims', on page 5 at footnote 1, the authors set out the definition of 'victim' taken from the Victims' Code, April 2021 edition. We assume that it is there because it is the definition of victim you would use in the new Act. We want to suggest that instead of using that definition you should instead rely in the new Act on the definition of victim which is in the Domestic Violence Crime and Victims Act 2004 (DVCA). That is, of course, the legislation which requires the Secretary of State to publish a Victims' Code and we would suggest that the definition in the Code ought always to have been the same as the broader definition in the (DVCA) and that any new version of the Code should revert to that.

In s32 (1) DVCVA 2004 says 'The Secretary of State must issue a Code of Practice as to the services to be provided to 'a *victim of criminal conduct*'

s32(7) DVCA defines *criminal conduct* that as '*conduct constituting an offence*'

Oddly, though the DVCA requires the Code to be applicable to 'a *victim of conduct constituting an offence*' the current Code itself defines a victim more narrowly as 'a *person who has suffered harm...which was directly caused by a criminal offence.*'

It seem to us that the purpose in the wider definition in DVCA is to remove any doubt that a person can be a victim and be entitled to Code rights if they are a victim of criminal conduct even if there is no charge and no other formal way in which the criminal conduct has been recorded as a criminal offence.

Our worry is that if the narrower definition in the current Code is used in the new Act it will risk limiting the applicability of all the provisions in the new Act to *'a person who has suffered harm...which was directly caused by a criminal offence'*

That would be to limit the definition for all of the purposes of the new Act to one which we think you will agree is too narrow. There cannot be a requirement that in order to be eligible for Code rights, a victim who in fact is a victim of *conduct constituting an offence* has, in some way, to have it rubber stamped as 'a criminal offence'. In particular, that would appear to be inconsistent with the provision in the DVCA (s.32(6)) which states:

'in determining whether a person is a victims of criminal conduct for the purposes of this section it is immaterial that no person has been charged with or convicted of an offence in respect of the conduct'

We see it therefore as crucial that the new Victim's Law should apply to "a *victim of conduct constituting an offence*", as set out in the DVCA.

We would add that the addition of the words 'a person who has suffered harm' to the DVCA definition of a victim might be a reassurance to the criminal justice authorities that the definition is not exceptionally wide and at the same time it would be helpful for victims to recognise their entitlements. So, we would overall ask you to consider a definition following the DVCA as follows: *'A victim is a person who has suffered harm as a result of conduct constituting an offence.'*

The government has made very clear that it intends to improve the rights of victims in this legislation and certainly not to narrow them. There would be many uncertainties if the statutory definition of a victim was linked to a criminal offence. For instance, as you are aware up to 80% of victims of rape and sexual assault, and domestic abuse, do not report what they have suffered to the police and yet are in real need of their Code rights, in particular of Right 4 to have access to victims support services. Some victims report a case anonymously to assist police with intelligence, often via contact with a Sexual Assault Referral Centre, but do not intend to take it forward into the criminal justice system. In addition, many reported cases are not recorded by the police for a range of reasons and up to 40% of many kinds of victim withdraw from the criminal justice process even after they have entered it, often prior to any charge. It would be difficult to say which of any of these and other categories of victims who had, in fact, suffered '*criminal conduct*' would be clearly eligible for their Code rights on the narrower definition

We would be very grateful if you would feel able to consider the point we raise which is an extremely important one for many of the victims whose interests we represent.

Kind regards



Dame Vera Baird QC
Victims' Commissioner for England and Wales



Nicole Jacobs
Domestic Abuse Commissioner for England and Wales