

Victims' Commissioner for England and Wales

Submission to the Public Bill Committee on the Victims' and Prisoners Bill

June 2023

The Victims' Commissioner for England and Wales is dedicated to promoting the interests of victims and witnesses.

The role of Victims' Commissioner is set down in the [Domestic Violence, Crime and Victims Act 2004](#). The Commissioner must:

1. promote the interests of victims and witnesses;
2. take such steps as they consider appropriate with a view to encouraging good practice in the treatment of victims and witnesses;
3. keep under review the operation of the code of practice issued under section 32.

The role of Victims' Commissioner is currently subject to an open recruitment process, following the resignation of Dame Vera Baird in September 2022. During this interim period and in the absence of a Victims' Commissioner in post, the Office of the Victims' Commissioner (OVC) cannot provide new independent views, positions or analyses and are instead empowered to signpost and reference previous work and analysis undertaken by former Commissioners. This submission summarises work undertaken by the previous Victims' Commissioner, in particular the [2021 Victims Law Policy Paper](#) and [2022 Victims Law consultation response](#), in the hope that it may prove useful to the Bill Committee.

Introduction

1. There has been ongoing concern from representatives of victims' rights about the treatment of victims in the criminal justice system. Baroness Newlove (Victims' Commissioner from 2013 to 2019) used her [2017/18 Annual Report](#) to actively call for a Victims Law, stating at the time that it needed "to make the rights of victims central to the delivery of justice." These calls were later echoed by Newlove's successor, Dame Vera Baird KC. During her term as Victims' Commissioner (2019 to 2022), Dame Vera went further and published concrete proposals for a new Victims Law, including her [2021 Victims Law Policy Paper](#) and [2022 Victims Law consultation response](#). These proposals built on the work of the former Victims' Commissioner Baroness Newlove, particularly in relation to protections for victims of antisocial behaviour and murder abroad.

2. The Victims and Prisoners Bill was first introduced to Parliament in March 2023, following the earlier publication and subsequent pre-legislative scrutiny of the original draft Victims Bill. Since its introduction in draft form, the scope of the Victims and Prisoners Bill has expanded significantly (Parts 2 and 3), with legislation now included to cover the introduction of an Independent Public Advocate (IPA) and reforms to the Parole System.
3. The later inclusion of these reforms means they were not subject to formal pre-legislative scrutiny and fell outside the term of the former Victims' Commissioner, Dame Vera Baird KC, who left office in September 2022. In the absence of an incumbent Victims' Commissioner, the OVC cannot provide new, independent views, positions or analyses; the office will instead signpost and reference previous work and analysis undertaken by former Commissioners. Comment and analysis from the OVC will therefore necessarily reflect those aspects of the bill that were in the public domain before the resignation and departure of the Victims' Commissioner in September 2022.

Part 1 – Victims of crime

Code compliance

1. In February 2022, the previous Victims' Commissioner, Dame Vera Baird KC, published [her response to the government's Victims Law consultation](#). Chapter 2, which dealt with 'Improving oversight and driving better performance', proposed a structural framework to consolidate the victim's position as 'participant' in the criminal justice system and better deliver the 12 rights of the Victims' Code (the Code), through mechanisms which deal with monitoring Code compliance, strengthening accountability, and driving improvement.
2. In her Victims Bill consultation response, Dame Vera Baird KC proposed a new bespoke monitoring and oversight system to deliver a quality service for victims across the criminal justice system. This system comprised several elements.
3. The first component was a proposal to introduce a rolling programme of joint inspections, specifically on the whole of the criminal justice system's delivery of the Victims' Code. The consultation response proposed joint inspections between His Majesty's Inspectorate of Constabulary (HMICFRS), His Majesty's Crown Prosecution Service Inspectorate (HMCPSI) and His Majesty's Inspectorate of Probation (HMIP). HMIP would specifically concern itself with Right 11 under the Code (the right to be given information about the offender following conviction). Such inspections would examine all 12 rights, or a sub-set of these at an appropriate level of local geography (e.g. police force area, CPS area or HMCTS area, depending on how these map onto each other and the level of granularity that is feasible).

4. It was envisaged that such a programme would lead to inspections of police forces (or groups of forces), CPS and HMCTS regions (or parts of CPS and HMCTS regions) around once every 3 years and would produce a transparent system of rating and ranking. Although infrequent, the Commissioner believed that the anticipation of such inspection would drive up standards of delivery around the Code (as is understood to be the case in other sectors, like schools and care), as will the possibility of negative media attention for local criminal justice agencies that are found to be inadequate in their treatment of victims.
5. A further element of monitoring and tackling non-compliance was the Victims' Commissioner's recommendation that there should be a requirement for all PCCs to appoint a local Independent Victims' Champion within three months of taking office. This would be someone who is independent of all criminal justice agencies, accountable to the PCC but operating at arm's length. They would be responsible for providing local scrutiny of the police and other criminal justice agencies in relation to victims, as well as being a point of contact when victims are dissatisfied with local services, as set out above.
6. The Independent Victims' Champions would be responsible for seeking to resolve and monitor all complaints made in relation to the Code at a local level. The Victims' Commissioner considered this an effective way to monitor non-compliance.
7. Dame Vera Baird KC considered a strong and effective Victims' Commissioner role to be a crucial element of holding criminal justice agencies more strongly to account for the service they provide to victims and monitoring compliance with the Code. [A report commissioned by the Victims' Commissioner in 2020](#) examined the functions and powers of the Victims' Commissioner and concluded that there are significant gaps in the powers of the Victims' Commissioner in relation to the Victims' Code and that, at present, the Code is neither enforceable in law nor subject to effective review.
8. The report also found that the Victims' Commissioner role does not have the power in statute to undertake an independent review of the Code. Dame Vera Baird KC proposed that this be addressed in the bill.

Victims' Code

9. Clauses 3 and 4 of the Victims' and Prisoners Bill deal with preparing and issuing the Victims' Code and revising the Victims' Code, respectively. These clauses oblige the Secretary of State to consult the Attorney General on preparing a draft of the Code and on any amendment to it. It was the view of the Victims' Commissioner, and [that of the Justice Committee](#), that this obligation should be extended to include the Victims' Commissioner as a

statutory consultee. In its response to the Justice Committee's pre-legislative scrutiny of the bill, the government agreed to consult the Victims' Commissioner, amongst other relevant stakeholders, on amendments to the Code but opted not to name these stakeholders in legislation.

Victims with insecure immigration status

10. The Victims' Commissioner has previously made representations around the plight of victims with insecure immigration status. The bill does not currently include any measures for the protection of these victims. The previous Victims' Commissioner [recommended](#) that the bill include a non-discrimination clause to prevent victims who have insecure immigration status being treated as 'suspect' immigrants first and a victim of crime second.

Legal safeguards for victims of rape and sexual assault

11. The government recently announced that they will bring forward an amendment to block unnecessary and intrusive third-party material requests in rape and sexual assault investigations. This appears to be in line with previous calls from this office. The previous Victims' Commissioner discussed the need for legislative control properly regulating requests for third-party material in her Victims Law consultation response. As the clauses are not yet published, it is not possible to provide substantive comment on these proposals. The Victims' Commissioner has issued [detailed briefings](#) in this area which can be used to inform the drafting of these clauses.
12. Dame Vera Baird KC also recommended that there should be a 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.
13. The former [Victims' Commissioner was also in favour of making notes of therapy and counselling subject to a form of privilege](#), as they have successfully modelled in many states in Australia.

Funding of victims' services

14. Dame Vera Baird KC [suggested](#) that the bill could be used as a vehicle to ensure a well-funded accessible support offering and favoured a duty to commission such services at a local level, not least because so few victims engage with the criminal justice system. She also called for long term sustainable funding and ring-fenced funding for specialist 'by and for' services.

Anti-social behaviour

15. Both previous Victims' Commissioners, Baroness Newlove of Warrington and Dame Vera Baird KC have argued for increased rights for victims of anti-social

behaviour. Baroness Newlove's 2019 report, '[Living a Nightmare](#)', recommended that the Victims' Code should be revised, to give victims of anti-social behaviour the same entitlement to support as all other victims of crime when they reach the 'three complaints' threshold needed to activate the Community Trigger, now known as the Anti-social behaviour case review. This position was reiterated by Dame Vera Baird KC in her Victims Law consultation response.

Victims bereaved by murder abroad

16. Dame Vera Baird KC echoed Baroness Newlove's calls to strengthen the rights of those bereaved by murder abroad. Dame Vera Baird KC's 2019 report, '[Struggling for Justice](#)', recommended that key entitlements for victims of murder abroad should be included in the Victims' Code. These might include an entitlement to be referred to the Homicide Service, a right to receive key information from the FCO, and to receive consular support. A similar point was included in Dame Vera Baird KC's 2022 Victims Law consultation response, where she recommended that bereaved families of those murdered abroad must receive their rights under the Code insofar as it is possible for agencies within England and Wales to deliver them.

Part 2 – Victims of major incidents

17. Part 2 of the bill was not included in the draft Victims Bill presented in June 2022 and fell outside the term of the former Victims' Commissioner, Dame Vera Baird KC, who left office in September 2022. In the absence of an incumbent Victims' Commissioner, the OVC cannot provide new, independent views, positions or analyses on these measures. The previous Victims' Commissioner was in favour of all victims having access to independent advocates. Her views on this topic can be found in [Chapter 4 of the Victims Law consultation](#). As such this addition to the Bill could be considered in line with the Victims' Commissioner's views.

Part 3 – Prisoners and parole

18. Part 3 of the bill was not included in the draft Victims Bill presented in June 2022 and fell outside the term of the former Victims' Commissioner, Dame Vera Baird KC, who left office in September 2022. In the absence of an incumbent Victims' Commissioner, the OVC cannot provide new, independent views, positions or analyses on these measures.
19. The Victims' Commissioner provided [a submission to the government's 2020 consultation on making parole hearings open to victims](#). Parole was also briefly discussed in the context of the Victims' Commissioner's Victims Law consultation response. The view of the Victims' Commissioner was that the purpose of pursuing better victim engagement with the Parole Board, insofar as a victim wishes it, allows them the maximum opportunity to understand the

progress that the offender has made and be better able to accept their release.