

# **VC** Briefing and proposed amendments

*This document contains a background briefing on the Victims and Prisoners Bill (pages 1-4) and proposed amendments to the Bill (pages 4-9).*

## **Baroness Newlove, Victims' Commissioner for England and Wales**

The Victims' Commissioner has a statutory duty to review the operation of the Victims Code of Practice (the Victims' Code). The Commissioner champions the interests of victims and witnesses of crime and advises and holds government and other criminal justice agencies accountable for their implementation of the code.



*"My priority this year is to ensure the Victims and Prisoners Bill, currently making its way through Parliament, truly delivers for all victims. I want to see this Bill transform the victim experience so that victims feel heard, respected, and supported throughout the criminal justice process. This has long been my aspiration and this Bill is an opportunity to make it a reality."*

**BARONESS NEWLOVE**

## **Victims Law: a once-in-a-generation opportunity**

Upon my appointment as Victims' Commissioner in October, I was tasked by the government to play a vital role in scrutinising the Victims and Prisoners Bill as it progresses through Parliament, ensuring it serves its purpose to improve victims' experiences of the criminal justice system.

I have long called for such a Victims Law and while there is much in this Bill to commend it, I believe it needs to be much more ambitious if it is to deliver a transformation in the victim experience of our criminal justice system.

When the system treats victims well, it aids victims in their recovery from the impact of the crime. It encourages victims to come forward and report crime, as well as supporting any ensuing prosecution. Yet my [victim surveys](#) suggest we have a long way to go before we can say with some confidence that all victims receive their statutory entitlements and able to access the support they need. This is the challenge before us.

The primary focus of this Bill must be to empower: victims must be better informed, listened to, able to challenge and be appropriately supported.

### ***The Victims and Prisoners Bill must deliver:***

- (i) **Accountability** - ensuring criminal justice agencies are held to account in their delivery of victim rights under the Victims' Code;
- (ii) **Accessibility** - providing vulnerable victims with the specialist support and rights they need; and
- (iii) **Inclusivity** - extending the remit of the Code to include those victims seriously impacted by crime who are currently or partially excluded.

This briefing sets out a package of amendments to the Bill which, if incorporated, will deliver on these three priorities, and transform victims' experience of our justice system. I hope you will give it due consideration.

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## **Accountability**

*Ensuring criminal justice agencies are held to account.*

The Victims' Code of Practice (the 'Code') offers much of what victims need. The challenge is making sure criminal justice agencies deliver on it. Based on the patchy and incomplete data available, and feedback from my victim surveys, current Code compliance is poor.

Victim Support has found<sup>1</sup> that as many as 6 in 10 victims do not receive their rights under the Victims' Code, including 20% of victims not being referred to support services, 46% not receiving a written acknowledgement of the crime, and 60% not receiving a needs assessment.

Poor compliance is a result of a lack of effective monitoring and agencies not being properly held to account when they fail to deliver.

During pre-legislative scrutiny of the Bill, the Justice Select Committee found: "...as drafted, the Bill fails to adequately address the issues of agencies' non-compliance with the Code – we are concerned by this given that it is one of the principal reasons for the Bill."<sup>2</sup> I share these concerns.

There is low public awareness of the Code, even among victims. In my most recent survey, fewer than 3 in 10 respondents were aware of the existence of the Code. If victims are not aware of what they are entitled to, how can they challenge agencies when they fail to deliver?

The Bill in its current form makes good efforts to improve data collection and monitoring, but we must go further. There needs to be robust and independent scrutiny of compliance and agencies need to be held to account when they fail to deliver.

**For the Victims and Prisoners Bill to deliver true **accountability**, I am calling for:**

- **Baseline compliance standards** - Minimum threshold compliance levels for each right under the Victims' Code, complemented by independent inspections in cases of breaches by the respective criminal justice agencies. *(See amendment D)*
- **An independent compliance report** - A statutory duty upon the Victims' Commissioner to compile and publish an annual independent report on Code compliance, drawing from data collected by Police and Crime Commissioners (PCCs). *(See amendment G)*
- **Enhanced powers for the Commissioner** - Strengthened Victims' Commissioner powers, including a right to be consulted on changes to the Code and related guidance, and a statutory duty for agencies listed under the Code to co-operate with the Commissioner. *(See amendments: A, B, C, E, F, H, I, J)*

***An in-depth briefing detailing proposed amendments to enhance monitoring of Code compliance can be found [online](#).***

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## Accessibility

*Providing vulnerable victims with the specialist support and rights they need.*

For many vulnerable victims, particularly those who have suffered sexual violence and/or domestic abuse, their experience of the criminal justice system will depend on the availability and quality of the specialist support available to them.

The Bill can address this and there are some welcome measures within the Bill that represent a step in the right direction. Notably, it imposes a duty on key agencies to collaborate in providing support for victims of sexual violence and domestic abuse, including the provision of a needs assessment. I want us to go further.

Victims of sexual violence are being forced to choose between justice and their right to a private life. That is not a choice, that is an ultimatum. Victims frequently face unjustified demands by police and prosecutors for personal

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<sup>1</sup> Victim Support, [Victim of the system: The experiences, interests and rights of victims of crime in the criminal justice process](#), 2017

<sup>2</sup> Justice Committee, [Pre-legislative scrutiny of the draft Victims Bill: Second Report of Session 2022-23](#), 2022

data held by third parties, such as lifelong medical, school and social services records or therapy and counselling notes. These requests often appear to be more about undermining the victim's credibility as a witness than pursuing a 'reasonable line of enquiry' and cases are frequently dropped if victims do not sign over their information. Worryingly, victims also face the possibility of having therapy and counselling records disclosed, something which deters some victims from supporting prosecutions and others delaying therapy until after trial.

**For these victims to receive true justice, the Victims and Prisoners Bill must enhance accessibility to justice. I am calling for:**

- **An accessible Code** - A statutory duty upon the Secretary of State to ensure the Code is accessible to victims who are deaf, disabled, visually impaired or who do not speak English as a first language. *(See amendment K)*
- **Enhanced protections for third-party materials** - More robust safeguards for victims to limit requests for personal records from third parties to what is strictly necessary and proportionate in pursuit of a reasonable line of inquiry, mirroring protections for digital materials (i.e., data held on phones). *(See amendment M)*

***An in-depth briefing detailing proposed amendments to the Bill, and specifically aimed at improving the criminal justice system for victims of rape and sexual assault, is available [online](#).***

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## Inclusivity

*Extending support to those victims seriously impacted by crime who are currently or partially excluded.*

As well as looking at how we treat victims, I also want to see the Bill extend the remit of the Code and the entitlements this should afford to specific groups of victims currently excluded. There should also be parity of treatment to all victims who fall within the remit of the Code.

### Victims of anti-social behaviour

Persistent and targeted anti-social behaviour (ASB) is a crime, and it causes high levels of harm, as I know only too well. The impact is derived from the continuous nature of the conduct. Yet the police often treat ASB as a misdemeanour and not as a crime. As a result, many victims of persistent ASB are not made aware they are victims of crime; neither are they referred to victim services. Regrettably, there is no mention in the Bill of how these victims can be guaranteed to receive the support they often desperately need. This must change.

### Victims of mentally disordered offenders

Victims of mentally disordered offenders have suffered some of the worst crimes and yet have fewer rights than victims whose offender is serving a sentence in prison. Unlike victims involved in parole proceedings, they cannot submit a Victim Personal Statement (VPS) to the Mental Health Tribunal or directly present their statement to the panel. I want to see this group of victims afforded the same rights as all other victims.

### Victims of homicide abroad

Bereaved victims of overseas homicide must grapple not only with the emotional pain of losing a loved one to violence but also face the added challenges of navigating a foreign jurisdiction. This group is not recognised under the Victims' Code, and they are ineligible for criminal injuries compensation unless the death is due to an act of terror. They deserve the same level of support as victims of homicide within England and Wales.

### Migrant victims

We know those with insecure immigration status face significant barriers to accessing the support and protection they need. I support the Domestic Abuse Commissioner in seeking to remove obstacles for migrant victims who need

the protection and support of enforcement agencies and victim support. Victims must be able to seek safety and justice without fear and regardless of their status.

### Child victims of modern slavery

Children of victims of modern slavery will witness the most appalling abuse of their parents and yet, unlike children of victims of domestic abuse, they are not recognised as victims of crime in their own right. This needs to be addressed.

**The Victims and Prisoners Bill must promote **inclusivity** if we are to deliver for all victims. I am calling for:**

- **ASB victims to be given access to support services** - Victims of persistent and targeted anti-social behaviour should be recognised as victims within the Bill, with access to support services as provided to other victims. Those victims who qualify for the ASB Case Review should be listed within the definition of a victim. (See amendment M) **An in-depth briefing can be found [online](#).**
- **Parity of treatment for victims of mentally disordered offenders** - Provide victims of mentally disordered offenders with the right to submit a Victim Personal Statement, and the right to make representations to the Mental Health Tribunal in person. (See amendments: O, P, Q) **An in-depth briefing can be found [online](#).**
- **Recognition for bereaved victims of murder abroad** - Bereaved victims of murder abroad must be recognised under the Victims' Code. (See amendment L)
- **Children of victims of modern slavery must be recognised as victims of crime** - Many of these children will have witnessed appalling abuse and will have been traumatised as a result. (See amendment N)

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## Amendments to the Victims and Prisoners Bill

In this section you will find the Victims' Commissioner's proposed amendments to the Victims and Prisoners Bill. These are organised according to the Commissioner's priorities for the Bill: accountability (4-7), accessibility (7-8) and inclusivity (8-9).

These are amendments that the Victims' Commissioner believes are necessary to ensure the Bill deliver for victims.

For more information on these amendments, please email [victims.commissioner@victimscommissioner.org.uk](mailto:victims.commissioner@victimscommissioner.org.uk).

### Accountability

*Ensuring criminal justice agencies are held to account.*

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This group of amendments would amend Clauses 3 and 4 to require the Secretary of State to have a statutory duty to consult the Commissioner for Victims and Witnesses when preparing a draft of the Victims' Code, and when revising the Code.

#### Clause 3 – Preparing and Issuing the Victims' Code

- Clause 3, page 3, line 28, at end insert— “and the Commissioner for Victims and Witnesses”*
- Clause 3, page 3, line 34, after “General” insert— “and the Commissioner for Victims and Witnesses”*

#### Clause 4 – Revising the Victims' Code

- C. Clause 4, page 4, line 22, after “Attorney General” insert— “and the Commissioner for Victims and Witnesses”
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### **New Clause – Compliance with the Victims’ Code: threshold levels**

This new clause would require the Secretary of State to set minimum threshold levels of compliance with each right of the victims’ code.

- D. After Clause 4, insert the following new Clause—

*“Compliance with the Code – Minimum Thresholds*

- (1) The Secretary of State must by regulations issue minimum threshold levels of compliance with each right of the victims’ code.*
- (2) If a minimum threshold is breached by an organisation, the Secretary of State must commission an inspection of that body with regard to that breach.*
- (3) The Secretary of State must, as soon as is reasonably practicable, lay before Parliament the report of any such inspection.”*

### **Clause 6 – Code awareness and reviewing compliance: criminal justice bodies**

This amendment would amend Clause 6 to make the Victims’ Commissioner a named statutory consultee to regulations issued by the Secretary of State in accordance with this clause.

- E. Clause 6, page 5, line 27, after “...must consult” insert— “the Commissioner for Victims and Witnesses and any ....”
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### **Clause 7 – Reviewing Code compliance: elected local policing bodies**

This amendment would amend Clause 7 to make the Victims’ Commissioner a named statutory consultee to regulations issued by the Secretary of State in accordance with this clause.

- F. Clause 7, page 6, line 22, after “...must consult” insert— “the Commissioner for Victims and Witnesses and any other....”
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### **Clause 10 – Publication of Code compliance information**

The Bill as currently drafted requires the Secretary of State to prepare an assessment of Code compliance (there is no reference to the regularity of this assessment). This amendment passes responsibility for this assessment from the Secretary of State to the Victims Commissioner and stipulates the assessment needs to be annual. This ensures that Code compliance is subject to independent scrutiny and as such, has the confidence of victims.

- G. Clause 10, page 8, line 27, leave out from “must” to “considers” on line 28 and insert—  
“provide, annually, the Commissioner for Victims and Witnesses with compliance information provided to the Secretary of State under section 7(2)(a), 8(5)(a) or 9(4)(b).”

*(1A) The Commissioner for Victims and Witnesses must publish such compliance information, and their assessment thereof, annually."*

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### **Clause 11 – Guidance on code awareness and reviewing compliance**

This amendment would amend Clause 11 to make the Victims' Commissioner a named statutory consultee to guidance issued by the Secretary of State in accordance with this clause.

- H. Clause 11, page 9, line 33, after "...must consult" insert— "the Commissioner for Victims and Witnesses and any other...."*
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### **Clause 14 – Guidance on collaboration in exercise of victim support functions**

This amendment would amend Clause 11 to make the Victims' Commissioner and the Domestic Abuse Commissioner named statutory consultees to guidance issued by the Secretary of State in accordance with this clause.

- I. Clause 14, page 12, line 3, after "consult" insert— "the Commissioner for Victims and Witnesses, the Commissioner for Domestic Abuse and any other"*
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### **New Clause – "Duty to co-operate with Commissioner for Victims and Witnesses"**

This new clause places a statutory duty on agencies specified in the Victims Code to cooperate with the Victims Commissioner.

- J. After Clause 18, insert the following new Clause—*

*"Duty to co-operate with Commissioner for Victims and Witnesses*

*(1) The Commissioner for Victims and Witnesses may request that a specified public authority co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of monitoring compliance with the victims' code.*

*(2) A specified public authority must, so far as reasonably practicable, comply with a request made to it under this section.*

*(3) In this section, "specified public authority" means any of the following—*

- (a) a criminal justice body as defined by section 6(6) of this Act;*
- (b) the Parole Board;*
- (c) an elected local policing body;*
- (d) the British Transport Police Force;*
- (e) the Ministry of Defence Police.*

*(4) The Secretary of State may by regulations amend this section so as to—*

*(a) add a public authority as a specified public authority for the purposes of this section;*

*(b) remove a public authority added by virtue of paragraph (a);*

*(c) vary any description of a public authority.*

*(5) Before making regulations under subsection (4) the Secretary of State must consult the Commissioner for Victims and Witnesses.*

*(6) A statutory instrument containing regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.”*

## Accessibility

*Providing vulnerable victims with the specialist support and rights they need.*

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### **New Clause – Improving accessibility and awareness of the Victims’ Code**

This clause seeks to place a statutory duty for the Secretary of State to make the Victims’ Code accessible for victims with disabilities and those where English is not their first language.

*K. After Clause 6, insert the following new Clause—*

*“Improving accessibility and awareness of the Code*

*(1) In preparing the draft of the victims’ code under section 2, the Secretary of State must take all practicable steps to ensure that the code is fully accessible to all victims and to promote awareness of the code among those victims and associated services.*

*(2) For the purposes of this section the Secretary of State must by regulations prescribe—*

*(a) that criminal justice bodies must signpost victims to appropriate support services, and*

*(b) that appropriate training is delivered to staff in criminal justice bodies, including by specialist domestic abuse services.*

*(3) The steps taken under subsection (1) must include steps aimed at ensuring that victims who—*

*(a) are deaf,*

*(b) are disabled,*

*(c) are visually impaired, or*

*(d) do not speak English as their first language, are able to understand their entitlements under the code.”*

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### **Clause 24 – Information relating to victims (Third-party materials)**



This amendment seeks to mirror the wording of the clauses dealing with victim information requests with that of the clauses dealing with digital data requests in the [Police, Crime, Sentencing and Courts Act 2022](#).

Clauses 24-26 of the Bill will amend the PCSC Act to include a regime for making victim information requests in respect of information about them held by third parties (known as third party material/TPM). However, as drafted, these clauses lack the protections for victims that apply to requests for digital data within the PCSC Act, such as the provision that refusing to co-operate with requests will not automatically end investigations. This should be amended so that the wording mirrors that of the clauses dealing with digital material in the PCSC Act, providing consistency and parity between the frameworks for digital data requests and victim information requests, and granting victims who are subject to these requests the same additional safeguards that are in place for digital data requests.

**The full text of the amendment can be accessed on [the Victims' Commissioners website](#).**

## Inclusivity

*Extending support to those victims seriously impacted by crime who are currently or partially excluded.*

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### Clause 1 – meaning of a victim

This amendment seeks to ensure that bereaved victims of homicide abroad are provided with the same support given to victims of homicide within the UK, in recognition of the distress they experience and which is exacerbated by having to deal with the criminal justice systems of foreign jurisdictions.

- L. Clause 1, page 1, line 14, at end insert— “, including the death by homicide of a British national outside the United Kingdom”.*

This amendment seeks to ensure that victims of persistent anti-social behaviour are included in the definition of a victim and subsequently entitled to access victim support services under the Victims' Code.

- M. Clause 1, page 1, line 16, at end insert—*

*“(e) where the person has experienced anti-social behaviour, as defined by section 2 of the Anti-social Behaviour, Crime and Policing Act 2014, and the conditions necessary for an ASB case review under section 104 of that Act have been met.”*

This amendment seeks to recognise the trauma experienced from children of victims of modern slavery and to ensure they are eligible to receive the support they need to cope and recover.

- N. Clause 1, page 1, line 16, at end insert—*

*“(e) where the person is a child of a person who is a victim of modern slavery.*

This amendment would ensure that victims whose perpetrator is detained under the Mental Health Act are entitled to the same rights under the Victims' Code as those whose perpetrator is given a custodial sentence in prison, including the right to make a Victim Personal Statement.

- O. Clause 1, page 1, line 18, at end insert—*

*“(3A) A person is a victim whether the offender is given a custodial sentence in prison or detained under the Mental Health Act 1983.”*



**Clause 2 – The Victims’ Code**

These amendments seek to extend the principle that victims have a right to be heard in the justice process to include the NHS and HM Courts and Tribunals Service, bringing mental health tribunals decisions in line with the rest of the criminal justice system.

*P. Clause 2, page 2, line 25, at end insert—*

*“and with all state agencies with responsibilities under the victims’ code, including the HM Courts and Tribunals Service and the NHS when considering leave or discharge.”*

*Q. Clause 2, page 2, line 27, at end insert—*

*“(3A) The information provided under subsection (3)(a) must include information from all relevant state agencies, including the HM Courts and Tribunals Service and (if applicable) the NHS.”*

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*For the latest up-to-date and in-depth briefings, updates, and more, visit [the Victims’ Commissioner’s website](https://www.victimscommissioner.org.uk) or email [victims.commissioner@victimscommissioner.org.uk](mailto:victims.commissioner@victimscommissioner.org.uk).*