

Victims' Commissioner's briefing for Victims' Code Compliance Monitoring

The Victims' and Prisoners Bill presents a once in a generation opportunity to improve the criminal justice response for victims. The Victims' Commissioner welcomes the introduction of this Bill into Parliament; however, the Victims' and Prisoners Bill misses an opportunity to strengthen victims' ability to receive their 'Code' rights.

Issue

[The Victims' Code](#) outlines the rights that victims should expect to receive in response to a criminal offence and as they progress through the criminal justice system. One of the statutory roles of the Victims' Commissioner is to monitor how criminal justice agencies comply with the Victims' Code and Witness Charter. Currently the Victims' Commissioner is unable to monitor code compliance as no data is collected on the CJS agencies' compliance with the Victims' Code.

The Victims' Code is already included in statute under the [Domestic Violence, Crime and Victims Act 2004](#). The Victims and Prisoners Bill seeks to build on this by placing the principles of the Victims' Code into law, raising awareness of the Code and increasing scrutiny of compliance of the Code. This will be overseen locally by Police and Crime Commissioners (PCCs) and nationally by the Victims' Commissioner and other agencies, such as criminal justice inspectorates.

The Victims and Prisoners Bill seeks to strengthen victims' rights by introducing data metrics to measure compliance with the Code. It will also bring in new governance arrangements to collect and analyse local compliance data through PCCs.

This oversight is the backbone of the Bill for victims. The Bill does not grant victims many new individual rights but expects to see improvements in the delivery of rights through this data collection and scrutiny. It is therefore of fundamental importance that Code data metrics are well designed, well collected, and analysis and governance arrangements are robust.

However, despite some positive steps, in its current state the Bill does not go far enough in providing the scrutiny and accountability required. The changes proposed in the Bill will not, on their own, introduce the structural change required to ensure victims are receiving their Victims' Code Rights.

Barriers to monitoring code compliance

Code compliance is significantly below what it should be, and many victims are not getting the support and information they are entitled to expect. It is currently impossible for the Victims' Commissioner to monitor Code compliance as no data is collected in any systematic way. The Victims' Commissioner conducts an annual Victims Survey where we ask questions about code compliance and the responses we receive suggest that not all victims are receiving their code rights as a matter of course. In [the 2022 Victims' Survey](#):

- Less than a third of respondents (29%) said they were offered the opportunity to make a Victim Personal Statement
- Victims also tell us that sometimes the special measures they request are not implemented when they arrive at the court.

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- *I was supposed to have a block around the screen while I gave evidence, but the court did not do this on the day, so the offender saw me the whole time. This was the court's fault and impacted me greatly...I feel like no one took responsibility and I had to chase this with [the] victim liaison officer and courts to try and see what went wrong. Female victim, 16-24, North-East*
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Changes needed to the Bill“...as drafted, the Bill fails to adequately address the issue of agencies’ noncompliance with the Code—we are concerned by this given that it is one of the principal reasons for the Bill”¹.

Justice Select Committee during pre-legislative scrutiny of the Bill.

The Bill must provide a framework capable of delivering full Code compliance. The Code, as it stands, offers much of what victims need, and the challenge is making sure criminal justice agencies deliver on it. The success or failure of this piece of legislation will be defined by this issue. As the Bill currently stands, the existing measures do not go far enough in providing the scrutiny and accountability required.

The Victims’ Commissioner believes poor compliance can only be tackled effectively by allowing rigorous independent scrutiny of agency performance, greater transparency and measures that make agencies fully accountable. Anything less will not deliver the wholesale improvement in compliance that is required.

Currently, S.10 of the Bill requires the Secretary of State to produce a national report on Code compliance. Any report which can accurately assess Code compliance is a step forward and the focus on collecting compliance data is to be welcomed. However, this will be perceived by many as the government marking its own homework. The proposed system of Police and Crime Commissioners collecting compliance data locally and the MoJ preparing a national report does not provide independent rigour or challenge. The Victims’ Commissioner has statutory responsibility for reviewing the operation of the Code and it is logical that the annual assessment on compliance should fall to him/her.

An independent annual assessment of compliance must be underpinned by the potential for action to be taken when agencies consistently underperform. For this reason, the Victims’ Commissioner is supporting proposals for national thresholds for minimum compliance with Victims’ Code rights. As suggested by the charity Victim Support:

“If these thresholds are not met after a set period of time, then the criminal justice agency responsible for continual failure to meet them must be subject to external action. This action could take the form of an inspection or a new form of notice from the responsible government department, akin to other sectors, in order to drive improvements.”

The role of Victims’ Commissioner offers independent scrutiny and challenge.

“We welcome the appointment of the interim Victims’ Commissioner, which was announced in October 2023. But we are still concerned that the unfilled role during the last 12 months has compounded the lack of data and led to a loss of scrutiny of the victim experience.”

¹ Justice Committee, [Pre-legislative scrutiny of the draft Victims Bill: Second Report of Session 2022-23](#), 2022

Criminal Justice Joint Inspection – [*Meeting the needs of victims in the criminal justice system*](#), December 2023.

However, the Bill does not include a requirement to consult the Victims' Commissioner when redrafting the Victims' Code or issuing statutory guidance relating to the Code. Whilst this will almost certainly take place, it should be a statutory requirement and not a favour. Furthermore, there is no statutory duty for criminal justice agencies to cooperate with the Victims' Commissioner. If the Commissioner is to have an enhanced role in scrutinising compliance, this is an essential prerequisite.

The provisions in S.21 designed to give victims direct access to the PHSO (Parliamentary Health Services Ombudsman) will improve accountability. The Bill refers to the Ombudsman sharing their findings with local MPs however, there is no requirement for them to share their findings on individual cases with the Commissioner as a matter of routine.

In 2019 the Ministry of Justice announced their intention to restructure the Victims Code so that it was presented as a set of 'rights'. The framing of the Victims Code as 'rights', not favours makes the document more forceful in its presentation of victim entitlements and the use of the word 'rights' makes it more consistent with the language used in respect of defendants. This is important as it gives victims a sense of having a level playing field. Currently these rights are not mentioned on the face of the Bill, and therefore the Victims Code is lacking appropriate status and force.

Accountability also requires public awareness of the Victims' Code. The Bill recognises this, but there is no explicit commitment to ensure the Code is accessible to victims with visual or hearing impairment or English is not their first language.

Opportunities

The following amendments to the Bill would make the necessary changes required that would ensure that the criminal justice agencies, responsible for delivering victims code rights, are able to be effectively held to account.

- As the Victims' Commissioner has a statutory responsibility for monitoring compliance with the code, he/she should be responsible for compiling and publishing an annual assessment of Code compliance.
- The Bill should name the Victims' Commissioner as a statutory consultee on any amendments to the Victims' Code and any statutory regulations relating to the Code.
- The Bill should include a statutory requirement for the Secretary of State to impose national thresholds for minimum compliance with the Code.
- The PHSO should be required to share their findings, from victims' complaints with the Victims' Commissioner.
- The twelve 'rights' on the Victims' Code should be enshrined on the face of the Bill.
- The Bill should include an explicit commitment to make the Code accessible to victims with disability or where English is not their first language.

If you have any question on this or any other aspect of the Victims' Commissioners work please contact Dr Madeleine Storry, Head of Policy and Research at madeleine.storry@victimscommissioner.org.uk