

Submission to House of Commons Public Bill Committee call for evidence on the Victims and Prisoners Bill from the Criminal Justice Alliance

Introduction

The Criminal Justice Alliance (CJA) is a network of over 180 civil society organisations and academics working towards a fair and effective criminal justice system. This submission draws on the expertise of our members working with victims and restorative justice (RJ). In June 2022 the CJA made a submission¹ to the Justice Select Committee's pre legislative scrutiny of the draft Victims Bill. On the 31 May 2023 CJA held a member meeting on the Bill. It was an opportunity for 16 of our members to share their views and priorities. Our focus will be Parts One and Three of the Bill.

Part 1 Victims of Criminal Conduct

Clause 1 *Meaning of victim*

Victims of non-criminal Anti-Social Behaviour (ASB) should be recognised and included in the definition of victims, so they have access to relevant advice, advocacy and support services. We recognise that ASB can impact victims' sense of safety and security, and agree with Victim Support² that ASB the definition of victim must be broadened to include victims of persistent antisocial behaviour. We do not consider that the government's projects to tackle ASB through the Safer Streets Fund, although welcome, are adequate to protect and support individual victims of persistent ASB.

Clause 2 *The Victims' Code*

The CJA have called for the Victims' Code (the Code) to be enshrined into law. The legislation as currently drafted does not achieve this and will not address the concerns around enforcement and accountability in relation to victims' rights and access to relevant support services. Whilst it is understood that it would not be suitable to transpose the Code in its entirety into legislation, it is vital that the basic rights are enshrined in more detail in primary legislation. The four overarching principles of the Code set out in Clause 3 (a) to (d) of the Bill should be expanded.

Members told us that the four proposed principles are too broad and unclear. Key entitlements that are included in the full Code — such as a victims' right to be informed about compensation; the complaints process; to have their case progressed without unjustified delay; to have their property returned and the right to be told about Restorative Justice — are not reflected in the four principles. Members are concerned that distilling victims' entitlements from 12 rights to four key principles risks diluting rather than strengthening them. In addition to our members, during the MoJ's 'Delivering Justice for Victims' consultation³, nearly half (44%) of respondents were in full or partial disagreement that these four principles were the right ones. We recommend the four principles are expanded to better reflect the entitlements in the current Code.

Clause 2 (3) (b) '*should be able to access services which support them (including, where appropriate, specialist services)*' should make specific reference to Restorative Justice.

Clause 4 *Revising the Victims' Code*

We are concerned that Clause 4 (2) (a) and (b), which prevents changes to the Code which would significantly reduce the quality or extent of services for victims, or significantly limit those who are entitled to receive them, leaves the definition of 'significant' open to interpretation. This would effectively allow for changes which would leave victims worse off, then before albeit 'not significantly.' No revision should make reduce the quality or extent of services or limit those entitled to receive them.

We have concerns that the current Bill already reduces the quality or extent of services for certain groups, such as those with insecure immigration status, due to the lack of firewall. People with criminal convictions are also routinely denied compensation to victims of serious crimes due to the exclusionary rule in the Criminal Injuries Compensation Scheme⁴. This Bill should ensure that all victims received equitable access to the support, services and compensation they need, and can have trust and confidence when they report a crime that they will be seen and responded to as a victim first and foremost.

Clause 5 *Effect of non-compliance*

All relevant agencies should have a statutory duty to comply with the Code's entitlements and inform victims of these entitlements – they currently do not. The MoJ have acknowledged that criminal justice agencies compliance with the Code has been weak so there should be clear enforcement mechanisms.

Clause 6 *Code awareness and reviewing compliance*

This clause compels criminal justice agencies to collect data to keep compliance under review, but this falls short of victims having enforceable rights and therefore fails to adequately address the issue of weak compliance.

We also share the concerns of the Justice Select Committee⁵ that the regulations have not been published alongside the Bill. We are concerned that the regulations '*may require*' the collection of information relating to the characteristics or experiences of users of services' (Clause 6 4 c). Both the collection of equalities data and the collection of victims' feedback are vital to ensure adherence to the Public Sector Equality Duty and to centre the voices of victims in understanding how well services may or may not be meeting their distinct needs.

The CJA carried out a survey of PCCs and commissioned victim services in January 2022 regarding how data on victim's protected characteristics was collected. We found there were inconsistencies on what data is collected; which agency collects the data (whether this is the PCC, the police, other criminal justice agencies or the commissioned service itself); how the data was collected; and how this data was then used to improve support services for victims. These inconsistencies were sometimes made worse by each commissioned service having different monitoring and reporting requirements.

Respondents told us there was a need for more consistent and standardised data collection and better data collection and visualisation tools. We recommend that any data collected by PCCs must be disaggregated by victims' protected characteristics, in order to identify any disparities in different groups' experiences of the Code.

We also recommend criminal justice bodies have a duty to report to PCCs on how they're meeting the needs of victims from minoritised groups, which includes commissioning specialist services. This was also recommended by the Justice Select Committee. The

government agreed to 'consider the suggestions', but in it still remains something that bodies 'may' be required to collect and share, not 'shall' be required to collect and share.

The definition of criminal justice body in Clause 4 (6) does not include all the agencies engaged in providing victim services, including community and voluntary sector organisations. It does not include prison governors, who would be responsible for providing services to victims in prison, or probation services. We would like to see the definition of criminal justice body expanded to include these groups.

Clause 13 Strategy for collaboration in exercise of victim support functions

The Bill states that '*In preparing the strategy, the relevant authorities must consult — (a) persons appearing to the relevant authorities to represent the interests of victims*'. This falls short of ensuring that people with lived experience of being a victim of crime will be consulted, as appearing to represent their interests may not have direct personal experience.

13 (2) (b) mentions '*persons appearing to the relevant authorities to represent persons providing relevant victim support services*', should specifically mention Restorative Justice services (see below). It should also be made clear that people with protected characteristics and specialist 'by and for' organisations should be consulted and an Equality Impact Assessment should be published alongside the strategy.

The Bill sets out how regions will develop strategies and oversight mechanisms, but doesn't mention any requirement or mechanism for developing a national strategy for or any national oversight group to analyse national trends, share good practice and identify any concerns. This national oversight group should include the Victims Commissioner.

We would like to see the Bill go further with collaboration by introducing a duty to co-commission specialist victim services with PCCs in neighbouring regions to meet the needs of victims with protected characteristics. For example, one member we consulted with provides specialist support to children and young adult victims. They have reported a huge demand for its service funded to work in one region, yet there are not funded in the surrounding areas so they have to turn away young people from their service. Demand for specialist victim services for specific groups, for example Bangladeshi women, might be low in one area, but co-commissioning would fill gaps in local services and provide cost effective solutions to meeting the distinct needs of all victims⁶.

Clauses 16-20 Victims Commissioner and Inspectorates

We welcome the provisions in Part 1 Clause 16 of the Bill around the Victims Commissioner's role and presenting their annual report to Parliament. Likewise, CJA also supports the provisions in the Bill in Part 1 Clauses 17-20 on joint thematic inspections of victim services and victim's experiences to be undertaken by the CJS Inspectorates. However, we would like to see a greater sense of compulsion for criminal justice agencies to implement recommendations given the repeated frustrations of various Inspectorates making repeat recommendations. HMI Prisons has an 'urgent notification' process, which could provide a model for victim services that are significantly or repeatedly failing to comply.

Omissions from Part One

- **Addressing the lack of information and access to Restorative Justice**

Research and testimony from parliamentary inquiries, academics, expert organisations and victims who have experienced RJ shows that it is a common-sense solution to crime and other harmful behaviour⁷.

- It gives victims a voice.
- It supports victims to cope and recover.
- It encourages people who have committed crime to take responsibility.
- It improves victim satisfaction.
- It reduces reoffending.
- It is cost effective

The Justice Select Committee recognised the importance of Restorative Justice within its pre-legislative scrutiny of the draft Victims and Prisoners Bill, noting that the legislation *'should include a provision for victims to have a legislative right to access Restorative Justice services'*.

The government rejected the recommendation, stating that as RJ is always voluntary for all parties then a right to access RJ is *'not practical or appropriate.'* However, the intention of the recommendation was not a right to have a RJ conference, but a right to access a Restorative Justice service so victims can receive full information to make an informed decision.

In a recent meeting with Minister Argar, it was argued that as the Victims Code already has provision for a right to receive information about services including Restorative Justice (Right 3), there was no need to enshrine this in law. However, we know that many victims have no recollection of an offer being made and data shows that demand is not being met. The Crime Survey for England and Wales Victimisation Data has shown that the proportion of victims who were offered Restorative Justice decreased from 7.5% in 2017–18 to 5.5% in 2019–20.

Providing victims the right to access their local Restorative Justice service for information will enable the victim to make a better informed decision about whether it is right for them. Given the low levels of public trust in the police, in particular Black, Asian and minority ethnic communities, hearing about RJ from a victim service, rather than the police, will help ensure all victims receive the full information from a trusted source to make an informed choice, in line with the Public Sector Equality Duty.

'We heard consistently that trained restorative practitioners are best placed to explain the process to a victim and answer their questions or concerns. Where this information is provided by a non-practitioner, there is a risk that the person giving the information will not be able to discuss the options, explain the benefits and answer the victim's questions as effectively. A greater risk is that this information may not be passed on at all.' RJ APPG Inquiry into Restorative Practices 2021/22.

We ask that parliamentarians support amendments which would provide for the right to access a Restorative Justice service for information, so victims can make an informed choice about Restorative Justice.

We would also like to see the Bill improve the strategic leadership and oversight of restorative justice to end the postcode lottery of RJ services. The MoJ has previously produced an RJ Action Plan aimed at widening its use throughout the CJS and overcoming the structural barriers limiting its effectiveness. However, the MoJ have not produced a RJ Action Plan since 2018⁸.

We want to prevent the production of action plans lapsing again, so would like to see a statutory framework for a Restorative Justice Action Plan for the Criminal Justice System for England and Wales, which will operationalise the MoJ's commitment to RJ, support victims by putting their rights into practice and reduce reoffending. The purpose of the plan would be to improve access, awareness, capacity and evidence of the use of Restorative Justice and practices across England and Wales. The MoJ and the Home Office should be jointly responsible for the plan, so RJ is available throughout the CJS. It should be produced every five years and progress reports published annually.

An amendment was tabled by the House of Lords to this effect to the Police, Crime, Sentencing and Courts Bill in November 2021⁹. The government responded that a statutory framework for an action plan would create an *'unnecessary bureaucratic burden'* and that *'work is already underway to improve the current position of RJ.'* However, a year has passed, and the government have still not published an updated RJ National Action Plan. Instead, HMPPS have issued a policy framework on restorative practice in February 2023, without any consultation, which the APPG RJ have raised concerns about the impact on victims accessing Restorative Justice¹⁰. If the RJ action plan is not provided for in legislation, we are concerned the lack of strategic leadership will persist and victims will continue to suffer from a postcode lottery of provision¹¹.

- **Addressing the unjust criminalisation of women victims of domestic abuse and other forms of VAWG and exploitation**

We agree with the submission made by the Double Disadvantage Partnership¹², of which we are a members, that the Bill does not address the gaps in law and practice that can lead to the unjust criminalisation of victims of domestic abuse and other forms of VAWG and exploitation, including Black, Asian, minoritised and migrant victims. We support proposals¹³ to address this by:

Adding new statutory defences to the Bill to provide effective defences for those whose alleged offending results from their experience of domestic abuse.

Ensuring the Victims' Code includes a requirement to protect victims of domestic abuse and other forms of VAWG and exploitation from unjust criminalisation, including by addressing intersectional discrimination and inequality faced by Black, Asian, minoritised and migrant women.

- **Addressing the unjust treatment of migrant women victims**

We also agree that the following changes would improve outcomes for migrant women victims:

Introduce a firewall to stop data sharing between statutory agencies and Immigration Enforcement to enable victims to come forward to report abuse and seek help, as recommended by the Justice Select Committee, Independent Domestic Abuse Commissioner and super-complaint bodies (HMICFRS, College of Policing and the IOPC).

Extend the Domestic Violence Indefinite Leave to Remain (DVILR) and Destitution Domestic Violence Concession (DDVC) model for those on partner/spousal visas to all migrant victims of abuse regardless of their immigration status, to prevent them from being trapped in violent relationships due to no recourse to public funds.

Extend the current three-month provision to six months under the DDVC to give victims the 'breathing space' to resolve problems by seeking advice and recover from abuse, and to encourage more refuge providers to accept referrals and not turn victims away.

- **The need for independent victim services**

We echo the concerns of Victim Support that independent victim services are being closed and replaced with 'in house' support services delivered by the police. Polling shows 82% of adults want victims to have access to an independent victim service. We agree with their recommendation that the Bill must give victims the right to access specialist support service independent of the police. This is particularly important given the record low levels of trust and confidence in the police highlighted by numerous reports, including most recently The Casey Review¹⁴.

Part 3 Prisoners

The CJA share the concerns and recommendations made by CJA member Prison Reform Trust¹⁵ in relation to Part 3, namely that it weakens The Parole Boards independence (sections 35-37)¹; disappplies human rights enshrined in the Human Rights Act (sections 42-45 and 47, 48-50); removes procedural safeguards for prisoners and victims (section 35-41) and undermines the expertise of The Parole Board. We would therefore like to see Part 3 removed from the Bill.

We agree with Victim Support that expectations have been set for victims and survivors that this will be a Victims' Bill. Including parole reforms within the Bill pulls focus away from victims' measures and detracts from the government's commitment to 'put victims' interests firmly at the heart of the justice system', given that victims will not be at the heart of this Bill. We believe that the significant financial costs associated with Part 3 (see below) would be better spent on improving access to victim services, including tackling the postcode lottery of Restorative Justice.

We are deeply concerned that these provisions in Part 3 will increase the prison population by an additional 640 prison places by 2034, costing around £238.3 million over the next ten years. The high scenario estimates costs of £702.6m. This will also put additional pressure on an already creaking prison system with a staffing crisis, despite a paucity of evidence that the changes are even needed. Neither the root and branch review nor the explanatory notes to the Bill make explicit the evidence on which a 'precautionary approach' is necessary, nor why the Secretary of State is better qualified to make release decisions than an expert Parole Board panel.

We are also concerned about the disproportionate impact on Black and Asian prisoners, and young adults (aged 18–20). The Equality Assessment finds that the provision for the creation of a 'top tier' of prisoners will disproportionately impact Black and Asian prisoners, and young adults (aged 18–20). The government's own impact assessment therefore shows that the provision will result in indirect discrimination on the basis of both race and age, but it makes no provision to mitigate or prevent that discriminatory impact.

Appendix One

Equality Statement

It is concerning that the Equality Statement¹⁶ sets out that '*Wider equalities issues raised in the consultation response, such as trust in the police and the criminal justice system more broadly, fall outside of the scope of our Bill and this statement*', when the same statement admits that '*too many people from ethnic minority backgrounds feel that the system is not on their side.*' Lack of trust and confidence in the Police therefore

acts as indirect discrimination when victim services are police-led. We therefore echo the recommendation from Victim Support that all victims should have access to an independent victim service.

The Equality Statement notes that consultation responses emphasised the importance of tailored support, which may make support services more accessible to victims with certain protected characteristics, due to these services' ability to meet victims' complex needs. However, there is no specific duty in the Bill to ensure that tailored services are provided and no additional funds have been allocated to improve equalities outcomes for victims with protected characteristics.

The Equality Statement says that there will be no indirect discrimination and that '*all individuals who have suffered a crime should be treated as a victim first and foremost, regardless of potential barriers, such as having a particular protected characteristic*'. However, we know some groups are not treated as a victim first and foremost, including people with insecure immigration status and young people / women who may have also committed offences, for example as a result of being criminally exploited or abused. We would therefore like this indirect discrimination to be addressed by introducing a firewall and other mechanisms to ensure all victims are treated as a victim first and foremost.

The Equality Statement admits there is a lack of data around equalities. This is a serious and significant barrier to improving outcomes and we recommend that the Bill ensures this is remedied through a statutory duty to collect such information and that there is sufficient resource allocated to analyse and respond to what the data shows. This must also include the collection and analysis of intersectional data – where victims have two or more protected characteristics which compound discrimination and disadvantage.

The Equality Statement says '*The Victims' Commissioner's reports will be able to draw out issues relating to particular protected characteristics, and the relevant agency or department will be required to respond accordingly*'. The Bill should be amended to ensure that all Victims Commissioner reports include an analysis of data relating to protected characteristics, an analysis of this data and recommendations to improve outcomes.

The statement says that '*the Government remains mindful to ensure special consideration for victims with protected characteristics, and those working to support them, and will continue to engage with these groups as the Bill progresses*.' We suggest that the committee ask what specific consultation the government have engaged in with specialist 'by and for' organisations and what changes they have made as a result of their engagement with those organisations to mitigate indirect discrimination and improve outcomes for victims with protected characteristics. There must be greater targeted engagement with these organisations and their concerns should be addressed.

Given the lack of evidence for the need for measures set out in Part 3, we disagree that the indirect discrimination identified is a '*proportionate response to achieving a legitimate aim*'.

Appendix Two

Impact Assessment

We are concerned that many of the measures in Part 1 have been assessed as having no additional costs. The total 'best estimate' costs for all the Part 1 measures is £30.4m. This compares to the costs associated with Part 3 of £530.2m. It cannot be right that a

landmark bill for Victims does not include increased funding to victim services and criminal justice agencies with oversight. The difference is stark and shocking.

One of the stated aims of the Victims Bill was to '*bolster the level of support [victims] receive*¹⁷. It is therefore concerning that measures to increase knowledge of victims entitlements which could lead to additional demand are expected to be '*met through redirecting existing budgets.*'

The Impact Assessment states that: '*Raising the profile and visibility of the Victim's Code may lead to increased demand for associated services. There is a risk that this cannot be delivered with the current resource, despite these being current requirements. It is assumed that improved communication about the Victims' Code can be met through redirecting and improving existing activity and resourcing.*'

In addition, the measures relating to improved scrutiny and oversight also do not include any predicted increased spend on improving quality and access to victims' services: '*Requiring public authorities to respond to direct recommendations in the Victims' Commissioner's reports will not require them to accept the recommendations. If agencies wish to take forward a recommendation, then, as with usual processes, they will need to consider doing so within existing resources or seek out further funding.*'

By not providing any additional resource, this undermines the process and could lead to other services suffering because of funding being taken from one service to improve another. By removing Part 3 from the Bill, those resources could be spent instead on improving victim services and oversight, that really would lead to a significant step change in victims' experiences.

The PHSO has also not been given any additional funding as they do not predict the level of demand will increase significantly, despite the changes removing the need to go to an MP first. It is concerning that there is a lack of data about this as the statements says 'exact information on the number of complaints made to the PHSO which relate to the complainant's experience as a victim is not collected' and this should be remedied. Also, if it is not expected that demand will rise much, we would suggest that the Bill should amended to introduce a specific Victims Ombudsman – as we set out in our response to the White Paper¹⁸.

Disclaimer: The views expressed in this response are not necessarily those of any individual CJA member or funder.

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References

¹ CJA- Justice Select Committee's Victims Bill response- [Justice Select Committee Victims Bill response | Criminal Justice Alliance](#)

² [Victim Support outlines four key updates needed to the Victims and Prisoners Bill - Victim Support](#)

³ Ministry of Justice, [Consultation outcome. Delivering justice for victims: Consultation response 2022](#)).

⁴ [2022.07.29-CJA-response-to-CICA_final.pdf \(criminaljusticealliance.org\)](#)

⁵ [The role of adult custodial remand in the criminal justice system - Committees - UK Parliament](#)

⁶ [CJA/MoJ Policy Forum on BAME victims of crime | Criminal Justice Alliance](#)

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- ⁷ [Restorative Justice works – improving victims’ access to justice | Criminal Justice Alliance](#)
 - ⁸ [Restorative justice action plan: November 2016 to March 2018 - GOV.UK \(www.gov.uk\)](#)
 - ⁹ [Government responds to amendment on restorative justice in PCSC Bill | Criminal Justice Alliance](#)
 - ¹⁰ [Letter to Secretary of State regarding HMPPS RJ Policy Framework - Restorative Justice APPG \(rjappg.co.uk\)](#)
 - ¹¹ [Valuing Victims — Why Me? Restorative Justice \(why-me.org\) / A journey of learning, growth and change | Criminal Justice Alliance / Inquiry | Restorative Justice APPG \(rjappg.co.uk\)](#)
 - ¹² [Double Disadvantage Project - Hibiscus Initiatives](#)
 - ¹³ [Centre for Women’s Justice \(2022\) Double Standard: ending the unjust criminalisation of victims of violence against women and girls](#)
 - ¹⁴ [The Baroness Casey Review | Metropolitan Police](#)
 - ¹⁵ [Victims and Prisoners Bill | Prison Reform Trust](#)
 - ¹⁶ [HM Government \(2023\) Victims and Prisoners Bill Equality Statement](#)
 - ¹⁷ [Landmark reforms for victims - GOV.UK \(www.gov.uk\)](#)
 - ¹⁸ [Delivering Justice for Victims consultation response | Criminal Justice Alliance](#)