



End Violence Against Women Coalition MP's Second Reading briefing: The Victims and Prisoners Bill

May 2023

Whilst violence against women and girls (VAWG) has emerged as a government priority in recent years, the victimisation of women and girls remains disturbingly prevalent and legislative reform is long-awaited to accelerate and embed progress.

Three women a week are killed in the UK, one in four women experience domestic abuse in their lifetimes,¹ and the Office for National Statistics in 2022 reported a record number of reported rapes.² The Covid-19 pandemic and cost of living crisis have created conducive conditions for VAWG, meanwhile we have witnessed an explosion of misogyny online as a means of attaining virality and profit.³ It is clear that significant action is needed to tackle this problem, whilst the government admits that only 35% of its Home Office Tackling VAWG strategy has been implemented to date.⁴

Whilst the Victims and Prisoners Bill promises to deliver a few new developments, overall it has inspired little confidence in its ability to discernibly improve circumstances for victims and survivors of VAWG. The consensus amongst VAWG organisations is that it requires significant revision. On arrival, it was variously described as 'disappointing'⁵, not going 'far enough'⁶ and requiring 'significant changes'⁷, with the Domestic Abuse Commissioner summarising that: "*in its current form it's disappointingly far from the big picture promises we want to see.*"⁸ This follows critical conclusions of the Justice Select Committee in its pre-legislative scrutiny of the Bill, with a total of almost 50 recommendations for improvement⁹ - only four of which were subsequently adopted in the published Bill.¹⁰

Its expansion in scope to become a Victims and Prisoners Bill appears to be universally unwelcome, with proposals that risk undermining the independence of the parole process, worsening delays for victims' and seeking to accelerate objectives of the much-maligned Bill

¹ Refuge (undated) Domestic Abuse: The Facts: <https://refuge.org.uk/what-is-domestic-abuse/the-facts/>

² Office for National Statistics (2023) Sexual offences in England and Wales overview: year ending March 2022: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/sexualoffencesinenglandandwalesoverview/march2022>

³ The Times (2023) Social media companies profit from misery spread by misogynistic influencers: <https://www.thetimes.co.uk/article/social-media-companies-profit-from-misery-spread-by-misogynistic-influencers-6bzbd2g23>

⁴ Estimated figure relayed by Home Office Safeguarding Minister Sarah Dines at meeting with VAWG sector, 25 April 2023

⁵ Refuge (2023) Refuge responds to the first reading of victims and prisoners bill: <https://refuge.org.uk/news/refuge-responds-to-the-first-reading-of-victims-and-prisoners-bill/#:~:text=The%20Victims%20and%20Prisoners%20Bill%20is%20a%20hugely%20important%20and,today%20for%20these%20vital%20services.>

⁶ Women's Aid Federation England (2023) Women's Aid responds to the Victims and Prisoners Bill:

<https://www.womensaid.org.uk/womens-aid-responds-to-the-victims-and-prisoners-bill/>

⁷ End Violence Against Women Coalition (2023) Victims and Prisoners Bill wont deliver what victims need:

<https://www.endviolenceagainstwomen.org.uk/victims-and-prisoners-bill-wont-deliver-what-victims-need/>

⁸ Domestic Abuse Commissioner (2023) The domestic abuse commissioner responds to victims and prisoners bill:

<https://domesticabusecommissioner.uk/the-domestic-abuse-commissioner-responds-to-victims-and-prisoners-bill/>

⁹ House of Commons Justice Committee (2022) Pre-legislative scrutiny of the draft Victims Bill:

<https://committees.parliament.uk/publications/28831/documents/174248/default/>

¹⁰ House of Commons Justice Committee (2023) Pre-legislative scrutiny of the draft Victims Bill: Government response to the Committee's Second Report: <https://committees.parliament.uk/publications/33610/documents/183133/default/>

of Rights,¹¹ through disapplying parts of the Human Rights Act. End Violence Against Women Coalition and other representatives of the VAWG sector, along with Commissioners,¹² have asked the new Lord Chancellor and Justice Secretary to remove Part Three of the Bill in its entirety.

We urge MPs to take the opportunity to call for much-needed amendments to the Bill for victims and survivors of VAWG, and to emphasise the extent of reform required for it to deliver on its ambitions. This briefing highlights some of the key priorities for the End Violence Against Women Coalition, which are as follows:

1. **Legislative reform for survivors of sexual violence** through a) a new higher threshold for disclosure which is unique to counselling and therapy records b) Independent legal advice and representation for survivors of rape and sexual abuse who report
2. **Addressing inequalities for migrant survivors** through a) firewall between statutory services and the Home Office b) legislative reform for equal protection
3. **New mechanisms for funding**
4. **The removal of Part Three provisions on parole**

We would also highlight the disappointing lack of provisions within the Bill for enforcement of the Victims Code. The Government is still yet to publish its proposed draft of an updated Victims' Code and the draft regulations setting out the key entitlements of the Code, despite recommendations that this should be published at the same time as the Victims Bill was presented to Parliament.

1. Legislative reform for survivors of sexual abuse

In its *End to End Rape Review*, the government acknowledged that 'victims of rape are being failed' and committed to 'right[ing] the wrong'.¹³ Almost two years on however, it is widely understood that circumstances remain dire for the majority of survivors of rape and sexual abuse. 83% of rape survivors never tell the police, whilst for those who do, only 0.6% result in a charge, with an average wait of over two years for a case to reach completion in court.¹⁴

As co-authors of the *Decriminalisation of Rape* report, we have long highlighted that rape and sexual abuse "*is still treated with a worrying form of exceptionalism in the justice system; in no other crime type are prejudices about a victim centred in the investigation and prosecution.*" The criminal justice system is often experienced by survivors as a site of harm and re-traumatisation, and tackling this injustice requires significant reform. Along with partners, we are therefore supporting amendments to the Bill to:

- 1) Keep counselling confidential - legislative change for a new higher threshold for disclosure which is unique to counselling and therapy records.
- 2) Provide independent legal advice and representation for survivors of sexual abuse who report

¹¹ Centre for Women's Justice, End Violence Against Women Coalition, Rights of Women, Southall Black Sisters (2022) *Women's Rights are Human Rights: How the Bill of Rights harms the fight to end violence against women*: https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2022/09/EWAC_HumanRights_Report_web25.pdf

¹² The Independent (2023): Dominic Raab's 'power grab' of Victims Bill must be reversed now that he's resigned, commissioner says <https://inews.co.uk/news/dominic-raab-power-grab-victims-bill-reversed-resigned-commissioner-2302751>

¹³ HM Government (2021) The end-to-end rape review report on findings and actions: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001417/end-to-end-rape-review-report-with-correction-slip.pdf

¹⁴ HM Government. (2022). Criminal Justice System Delivery Data Dashboard. Online: https://criminal-justice-delivery-datadashboards.justice.gov.uk/#additional_downloads

Keep counselling confidential

victims and survivors who have reported into the criminal justice system and are also receiving counselling (or have received counselling), face a very serious problem.

The private and personal material contained in the counselling records of survivors of rape and sexual abuse are being routinely requested by police and Crown Prosecution Service (CPS) undermining confidentiality and jeopardising a safe therapeutic space. Some survivors feel forced to choose between seeking justice and seeking therapeutic support. Some survivors feel coerced into consenting (an oxymoron) to hand over their notes, to prove they have nothing to hide, and because they have been told that their case will be dropped if the material isn't disclosed. We believe that no one should have to make this choice. Counselling notes should be kept confidential and the privacy and dignity of survivors should be enforced by mechanisms that secure their rights.

Alongside Rape Crisis England & Wales and Centre for Women's Justice, we propose that the Bill introduces a system:

1. that does not unfairly put survivors in a situation where they either have to consent to share counselling and therapy records or suffer a detriment
2. with a higher threshold to protect privacy whilst only allowing through those rare cases where there really would be a threat to fair trial rights
3. where every request has to be approved by a judge to ensure the law is actually implemented and create clear case law and consistency.

There is a precedent for this change, drawing on existing legislation in New South Wales, Australia. The ask is also endorsed by the British Association for Counselling and Psychotherapy (BACP), the British Psychological Society (BPS), the National Counselling Society and the UK Council for Psychotherapy.

We encourage you to read our [detailed briefing](#) on this issue prepared by Rape Crisis England & Wales, Centre for Women's Justice and End Violence Against Women Coalition.

Independent legal advice and representation for survivors of sexual abuse

In our [The Decriminalisation of Rape](#) report, we explain that central to the way in which criminal justice agencies manage rape and sexual abuse cases, are decisions around how credible a victim/survivor is deemed to be. At every stage of the process, manifestations and preemptions of rape myths and stereotypes that attempt to undermine the credibility of victims and survivors play a major role in whether a case is taken forward or not. Victims and survivors are faced with a wide range of intrusive and often unlawful practices by the police and the CPS.

Rates of attrition (people exiting the criminal justice process) have now risen to staggering levels: According to the Government's own assessment, a staggering 63% of cases end with "victim does not support action".

The ways of working which seek to undermine victims and survivors rather than investigate and scrutinise suspect behaviour, is directly at odds with the interests of the victim, as well as justice outcomes. However, victims and survivors have no access to the necessary specialist legal advice to challenge the injustices they face when their rights are undermined and disregarded. We believe this must change.

Alongside Rape Crisis England and Wales, Centre for Women’s Justice and Rights of Women, we are calling for the provision of free independent legal advice for all survivors of sexual violence and abuse. This is required for two purposes:

1. To ensure victims/survivors’ rights are respected where their interests diverge from the interests of the police, CPS and other criminal justice agencies
2. To boost the confidence of victims/survivors when engaging with the criminal justice process through access to a legal professional who is ‘on their side’

Some key areas where victim/survivors require advice include:

1. Requests for disclosure of victims/survivors personal data
2. Victim’s Right to Review (a system established by the CPS and all police forces in England and Wales, which allows a victim to ask for a decision not to continue a criminal case to be reviewed)
3. Formal complaints to the police and CPS
4. A range of other issues that arise during a criminal justice journey. Recent examples of queries and issues on which victims/survivors have sought legal advice include: a victim/survivor with autism being denied an intermediary by the police; the CPS refusing to make applications for early video-recorded cross examination of the victim/survivor as a vulnerable witness under S.28 of the Youth Justice and Criminal Evidence Act.

There is a tried and tested precedent for independent legal advice, following a positive evaluation¹⁵ of a successful Northumbria pilot (2018-2020), which recommended its national roll-out.

Please read our detailed [briefing](#) on this issue, prepared by Rape Crisis England & Wales, Centre for Women’s Justice, Rights of Women and End Violence Against Women Coalition.

2. Addressing inequalities for migrant survivors

Migrant women are at disproportionate risk of VAWG. Routinely excluded from access to public funds and housing support when seeking safety, migrant women (and their children) are often turned away from refuge spaces, safe accommodation and welfare and are therefore faced with the impossible decision of becoming destitute/homeless or returning to their abuser(s).

During the passage of the Domestic Abuse Act through Parliament, it was glaringly apparent that the absence of equal protection for migrant women was one of the most urgent problems faced by victims and survivors of VAWG in the UK.¹⁶ It also remains one of the most pressing challenges for VAWG specialist services, whose advocacy is hindered by the complex and hostile conditions that migrant survivors face as a result of discrimination, the No Recourse to Public Funds condition and data-sharing practices between statutory services and the Home Office. Two years on, the Victims and Prisoners Bill provides a long-awaited opportunity to deliver legislative reform to make reality the government’s words that migrant women should be treated ‘as victims first and foremost’. Article 4(3) of the recently

¹⁵ Smith and Daly (December 2020), *Final Report: Evaluation of the Sexual Violence Complainants’ Advocate Scheme*, Northumbria Police and Crime Commissioner and Loughborough University

¹⁶ The absence of protection for migrant women was raised a total of 23 times during Second Reading in the Commons, and in the words of Baroness Williams, responsible for the Bill, ‘practically the whole House talked about the needs of migrant victims’ in the Lords.

ratified Istanbul Convention, as of November 2022, states that its implementation shall be secured without discrimination on any ground, including migrant or refugee status.

End Violence Against Women coalition supports amendments for:

1. The establishment of a firewall between statutory services and the Home Office for survivors of VAWG
2. Lifting the No Recourse to Public Funds condition and providing a route to support and settlement for survivors of VAWG, through an extension in eligibility for the Domestic Violence Rule and Destitution Domestic Violence concession.

Firewall between statutory services and the Home Office

When minoritised and migrant victims and survivors come into contact with public services to seek help, they are at risk of being referred to the Home Office for immigration enforcement. As highlighted by the Step Up Migrant Women campaign, this practice undermines survivors' trust in statutory services, deters victims of VAWG from reporting, increases their risk of enduring or suffering further abuse and prevents perpetrators - who often weaponise women's insecure immigration status as a tool of coercive control from being held into account.¹⁷ Freedom of Information requests show that between May 2020 and September 2022, every police force across England and Wales reported victims of domestic abuse to Home Office Immigration Enforcement, with a total of over 2,000 vulnerable victims of crime being referred following their report of a crime.¹⁸

In 2020, a joint investigation by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), College of Policing and Independent Office for Police Conduct (IOPC) concluded that "*data-sharing*" between the police and the Home Office caused "*significant harm... to the public interest*" because victims of crime with insecure immigration status are fearful that, if they report to the police, their information will be shared with the Home Office and/or the reported crimes will not be investigated. In the interim, it recommended an immediate cessation of data-sharing for victims of domestic abuse. A firewall is now recommended by two independent select committees, for both the Victims Bill¹⁹ and Domestic Abuse Bill, Welsh government, the VAWG sector, the former Victim's Commissioner and current London Victims Commissioner and Domestic Abuse Commissioner.

The objectives of the Victims Bill and indeed, the justice department, cannot be fulfilled whilst a cohort of survivors are barred from reporting abuse and excluded from protection.

Legislative reform to ensure equal protection for migrant survivors

End Violence Against Women coalition endorses the long-standing call for legislative protection for migrant survivors of VAWG to ensure that all women are able to access vital, often life-saving support and routes to safety.

¹⁷ Latin American Women's Rights Service (2020): Domestic Abuse Bill briefing on safe reporting mechanisms <https://lawrs.org.uk/wp-content/uploads/2020/12/Domestic-Abuse-Bill-Briefing-on-Safe-Reporting-Mechanisms-and-End-to-Data-Sharing.-House-of-Lords-September-2020..pdf>

¹⁸ L.Butterfly (2023) UK police referred sexually exploited children and victims of domestic abuse to immigration authorities. <https://thedetail.tv/articles/uk-police-forces-referred-thousands-of-migrant-victims-of-crime-to-immigration-authorities>

¹⁹ "We call for an immediate end to the sharing of victims' and witnesses' data between the police and the Home Office for immigration enforcement purposes and the introduction of a complete firewall for those group": <https://committees.parliament.uk/publications/28831/documents/174248/default/>

In 2021, the Government passed the Domestic Abuse Act, and alongside it established a purportedly temporary Support for Migrant Victims Scheme, as an interim measure before its evaluation and a long-term solution. Two years on however, the results of that evaluation remain unpublished - whilst the scheme has been extended in the absence of any legislative or policy reform. The reality is that migrant survivors remain without adequate protection - reliant on this limited 'pilot' scheme as a means of support and safety. Only 9.1% of all vacancies posted on Women's Aid's Routes to Support in 2021-22 could consider women who had no recourse to public funds.²⁰ This situation is untenable.

We support Southall Black Sisters' proposals for an extension in eligibility for the existing Domestic Violence (DV) Rule and Destitution Domestic Violence Concession (DDVC) to all survivors of VAWG. The DV Rule and DDVC provide a model of protection which is currently only available for those on spousal visas.

3. Mechanisms for funding

There is long-standing evidence that specialist VAWG services are crucial and effective in helping victims and survivors to cope and recover and rebuild their lives following abuse. However, services are currently unable to meet demand. The Domestic Abuse Commissioner's mapping of domestic abuse services across England and Wales found that less than half of survivors were able to access the community-based support they sought. Meanwhile, over one-quarter of domestic abuse services were forced to cease some services altogether due to lack of funding - this rises to almost half (45%) of 'by and for services'. Concerns about the absence of funding attached to the Bill was repeatedly raised by the Justice Select Committee, who in [scrutinising the draft Bill](#), warned that without further funding the Bill risks "*raising victims' awareness of their rights only to leave them unable to access them due to the relevant services already working at full capacity*".

There is little confidence that the current provisions in the Bill around Duty to Collaborate will be sufficient to tackle this issue. In oral evidence to the Justice Select Committee, Rape Crisis England and Wales's CEO, Jayne Butler summarised that: "*there is a real danger here that we end up in a situation where there is lots of busyness and work going on with very little impact on frontline services and victims themselves*".²¹ There is also a concern that this solution will only entrench the existing inequalities in funding for smaller specialist by and for services. As stated by Dr Hannana Siddiqui of Southall Black Sisters: "*any kind of duty to collaborate will be pulled in the direction of the priorities of the main funders, and you might find they do not want to fund specialist "by and for" organisations, which are already finding it very difficult to get funding under the current regime*".

End Violence Against Women Coalition supports amendments to the Bill for:

- 1) A duty on local commissioners to conduct a Joint Strategic Needs Assessments (SNAs) as part of the Duty to Collaborate; and to meet the needs of victims and survivors as identified through the SNAs
- 2) Funding for duty holders; ensuring that multi-year funding is provided to local duty holders to meet the needs of victims and survivors
- 3) A duty on national government to meet the needs of minoritised victims and survivors

²⁰ Women's Aid Federation England (2023) The Domestic Abuse Report 2023: The Annual Audit: <https://www.womensaid.org.uk/wp-content/uploads/2023/01/The-Domestic-Abuse-Report-2023-The-Annual-Audit-FINAL.pdf>

²¹ House of Commons (2022) Justice Committee: Oral evidence: Pre-legislative scrutiny of the draft Victims Bill, HC 304: <https://committees.parliament.uk/oralevidence/10439/pdf/>

through directly funding specialist 'by and for services'

4. Removal of Part Three of the Victims Bill

The expansion in scope of the Victims Bill to become a Victims and Prisoners Bill was met with immense surprise and concern by VAWG organisations, particularly as this change occurred without consultation or pre-legislative scrutiny. Indeed, many of its provisions were not even included in the root and branch review of parole.

Part Three of the Bill does not deliver on the originally stated ambition of the Victims Bill to "improve the end-to-end support for victims of crime", instead detracting from the key objective of the legislation at immense cost,²² whilst introducing reforms which would ultimately usurp victims rights, exacerbate delays to the parole process and shoehorn in objectives from the much-maligned Bill of Rights; by seeking to undermine the universality of human rights. The VAWG sector does not see this as the appropriate legislative vehicle for any such reforms, and a number of organisations have formally requested that these proposals are removed entirely.²³

Part Three of the Bill, which pertains to prisoners and parole, includes:

- A new power to enable the Secretary of State or the Upper Tribunal to set or direct licence conditions (sections 40 and 41).
- A new power and procedure, in certain serious cases, to overtake the Parole Board's decisions (35 to 37).
- A new appeal route to the Upper Tribunal where the Secretary of State has used the new decision-making power (38 and 39).

Along with the disapplication of section 3 of the Human Rights Act to prisoners as a group (42 to 45).

There is a broad consensus that these proposals:

1. risk undermining the independence of parole processes, to the detriment of victims and survivors of VAWG.

Proposals which risk undermining the independence of parole processes and a lack of procedural safeguards are not in the interests of victims, which the Bill seeks to benefit.

The former Justice Secretary claimed that the reforms were being implemented to provide remedies to situations like the one that arose in the John Worboys case. However, Centre for Women's Justice, who represented the two victims of John Worboys in the judicial review challenge of the parole board decision reject this representation of the reforms. As a consequence of that judicial review, a mechanism was introduced to allow victims to challenge Parole Board decisions. It appears from the wording of the Bill that, if anything, the power of the Minister would usurp those victims' rights.

²² The Government's own impact assessment has said that the costs of Part Three of the Bill will cost £82 million annually, whereas Parts one and two of the Bill relating to rights of victims will cost £6 million.

²³ A letter to Rt Hon Alex Chalk KC MP was signed by End Violence Against Women Coalition, Centre for Women's Justice, SafeLives, Against Violence and Abuse, Latin American Women's Rights Service, Birmingham and Solihull Women's Aid, Rights of Women, Rape Crisis England and Wales; Solace; Surviving Economic Abuse; Southall Black Sisters, June Women's Aid, The Traveller Movement, Victim Support, Refuge, Agenda Alliance, Women's Aid Federation England, Safer Places.

2. exacerbate delays to the parole process and risk incurring greater trauma, disappointment, and disengagement among victims and bereaved families.

The mechanism for the Secretary of State to usurp the Parole board's decision appear to add yet another layer to an already complex process, which risks resulting in further legal challenges on the part of those who are refused release. Victims of VAWG would be better served by increased clarity and provision of information, rather than elongating what can be an incredibly traumatic process.

3. appear to accelerate some of the aims of the widely-condemned Bill of Rights Bill, in its disapplication of Section 3 of the Human Rights

The consensus across the VAWG sector is that the objectives and provisions of the Bill of Rights Bill undermine our mission to end VAWG.²⁴ We specifically opposed its removal of Section 3 of the HRA, noting that neither the Independent Human Rights Act Review (IHRAR), nor the respondents to the Government's consultation on the Bill of Rights recommended its repeal. We are therefore alarmed by the re-emergence of this attempt to disapply Section 3 of the HRA, applied within this Bill to prisoners. As we stated in our letter on Human Rights Day, undermining the principle of universality in human rights protection is not in victims' interests and it is inappropriate to attempt to shoehorn in such rights removing provisions in this legislation.²⁵

We would urge MPs to oppose Part Three of the Bill in its entirety.

For further information, please contact janaya.walker@evaw.org.uk

²⁴ See *Women's Rights are Human Rights: How the 'Bill of Rights' Harms Women* (2022): https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2022/09/EWAC_HumanRights_Report_web25.pdf

²⁵ See *Women's Rights are Human Rights: Statement on Human Rights Day* (2023): <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2022/12/Womens-rights-are-human-rights-letter-on-human-rights-day-101222-1.pdf>