

Written evidence to the Public Bill Committee of the Victims and Prisoners Bill: Joint submission from VAWG organisations

This submission is made on behalf of:

- End Violence Against Women Coalition
- Women's Aid Federation of England (Women's Aid)
- Latin American Women's Rights Service
- Solace Women's Aid
- Refuge
- Agenda Alliance
- Birmingham and Solihull Women's Aid
- Respect
- Centre for Women's Justice
- Traveller Movement
- Surviving Economic Abuse
- Hibiscus Initiatives
- Safety4Sisters
- Southall Black Sisters

Introduction

1. Violence against women and girls remains disturbingly present in the UK and has been repeatedly committed to as a government priority. It remains the case that every three days, a woman in the UK is killed¹ and one in four women experience domestic abuse in their lifetimes², whilst the number of reported rapes is increasing.³ Specialist VAWG organisations are grappling with increased demand for support from survivors in the context of a cost of living crisis⁴ and with the lasting impact of the Covid-19 pandemic.⁵ Meanwhile, we have witnessed an explosion of misogyny online, which creates new and ever-emerging

¹ Femicide Census (2020) UK Femicides 2009-2018: <https://www.femicidecensus.org/wp-content/uploads/2020/11/Femicide-Census-10-year-report.pdf>

² Refuge (undated) The facts: <https://refuge.org.uk/what-is-domestic-abuse/the-facts/>

³ 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>

⁴ Various organisations (2022) Statement on behalf of VAWG organisations in England and Wales on the Cost of Living Crisis: <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2022/11/VAWG-Sector-Cost-of-Living-Statement-FINAL.pdf>

⁵ End Violence Against Women Coalition (2020) Initial briefing on the COVID-19 pandemic and the duty to prevent violence against women and girls: <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2020/04/EVAW-Coalition-Briefing-on-COVID19-Pandemic-and-Duty-to-Prevent-VAWG-April-2020-FINAL.pdf>

opportunities for VAWG in the digital sphere.⁶ It is clear that significant action is needed to tackle this problem. The government admits that only 35% of its Home Office Tackling VAWG strategy has been implemented to date.⁷

2. It is in this context that we make this joint submission on behalf of a number of specialist women's organisations concerned with ending violence against women, including domestic and sexual abuse. The Victims and Prisoners Bill presents an important legislative vehicle to deliver much-needed improvements for victims and survivors of VAWG. We submit this evidence to highlight areas of consensus on the Victims and Prisoners Bill, and our key priorities for amendments to ensure it fulfils its potential in better serving victims.
3. Whilst the Victims and Prisoners Bill contains some important measures, it has inspired little confidence in its ability to discernibly improve circumstances for victims and survivors of VAWG and requires quite significant revision. On its introduction, organisations within our sector described the Bill as 'disappointing'⁸, not going 'far enough'⁹ and requiring 'significant changes'¹⁰, with calls that 'it must go further'.¹¹ The Domestic Abuse Commissioner summarised that: "in its current form it's disappointingly far from the big picture promises we want to see."¹² Its expansion in scope to become a Victims and Prisoners Bill has also presented additional challenges and appears to be universally unwelcome.
4. This submission outlines our key recommendations for Part One and Part Three of the Bill on the following issues:

⁶ National Police Chief's Council (2023) Violence against women and girls strategic risk assessment: <https://www.npcc.police.uk/SysSiteAssets/media/downloads/our-work/vawg/violence-against-women-and-girls---strategic-threat-risk-assessment-2023.pdf>

⁷ Estimated figure relayed by the Home Office Safeguarding Minister Rt Hon Sarah Dines MP at meeting with the VAWG sector, 25 April 2023

⁸ 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>

⁹ 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/>

¹⁰ 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/>

¹¹ SafeLives (2023) SafeLives welcomes the Victims Bill, but calls on Government to not leave any survivor of abuse behind: <https://safelives.org.uk/victims-and-prisoners-bill>

¹² 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/>

- Migrant women
- Duty to collaborate
- ISVA/IDVA definitions
- Victim's Code
- Reform for survivors of rape and sexual abuse
- Criminalisation of women
- Parole
- Communication barriers

Part one

Migrant women

5. Women with insecure immigration status are at disproportionate risk of VAWG in the UK. Migrant women and children who experience abuse often find themselves trapped in escalating violence without recourse to support or safety as the result of so-called 'hostile environment' policies including the No Recourse to Public Funds condition (NRPF - which bars survivors from accessing many forms of social security), data-sharing between statutory services and Immigration Enforcement and discrimination in service delivery. Since the advent of Brexit, certain rights and entitlements are also no longer available to a number of migrant women who are unaware of these changes (e.g. Roma women).¹³ The Victims and Prisoners Bill provides an opportunity to tackle these urgent issues, with the introduction of a firewall and legislative protection for migrant survivors.

Data-sharing between statutory services and the Home Office

6. Migrant victims of VAWG are prevented from reporting to the police and seeking help from other statutory agencies due to the justified fear of being met with immigration enforcement action rather than support.¹⁴ Data-sharing between the police and other statutory services and the Home Office constitutes one of the most severe

¹³ Traveller Movement (2022) A Good Practice Guide: Improving service provision for Gypsy, Roma and Traveller domestic abuse survivors. London: Online: <https://women.travellermovement.org.uk/wp-content/uploads/2022/12/2022.02.25-DA-Good-Practice-Guide.pdf>

¹⁴ C. McIlwaine, et al., 2019. The Right to be Believed: Migrant women facing Violence against Women and Girls (VAWG) in the 'hostile environment' in London. London: King's College London and Latin American Women's Rights Service. Online: <https://stepupmigrantwomenuk.files.wordpress.com/2019/05/the-right-to-be-believed-key-findings-final-1.pdf>

barriers for migrant women accessing the criminal justice system (CJS). Perpetrators are often able to exploit this situation, by threatening survivors that if they seek help, they will not be supported and will instead face detention, removal and/or separation from their children because of their status. Research by the Latin American Women's Rights Service (LAWRS) and the *Step Up Migrant Women* campaign found that 62% of migrant women had been threatened in this manner by their abusers. The same research also shows that 1 in 2 migrant victims with insecure immigration status do not report abuse to the police for fear of disbelief, destitution, detention and deportation.¹⁵ The case of former firearms officer David Carrick is the most recent high-profile example of how perpetrators are readily able to weaponise the lack of safe reporting mechanisms to trap women in abuse. One of Carrick's victims has relayed that the officer threatened to report her to immigration services if she ended their relationship.¹⁶ There are many more women similarly victimised who do not make the news.

A firewall

7. Since 2017, the *Step Up Migrant Women* campaign, led by LAWRS, has recommended the establishment of safe reporting mechanisms for survivors of VAWG in the form of a 'firewall' between statutory services and the Home Office. This would ensure there is a clear separation between a victim's reporting of a crime and their access to support from any form of immigration control. This recommendation, supported by all leading specialist VAWG organisations, is also endorsed by all Commissioners for victims, including the Domestic Abuse Commissioner¹⁷, the London Victim's Commissioner¹⁸ and the former Victims' Commissioner. A firewall has also been recommended by the Welsh government and two cross-party Parliamentary Select Committees, including most recently, the Justice Committee

¹⁵ Step Up Migrant Women (2019) The right to be believed: Migrant women facing violence against women and girls (VAWG) in the 'hostile immigration environment' in London: <https://stepupmigrantwomenuk.files.wordpress.com/2019/05/the-right-to-be-believed-full-version-updated.pdf>

¹⁶ P. Hill, E. Scully, 2023, Victim of police rapist David Carrick says he set SNAKES on her in twisted punishment. Online: <https://www.mirror.co.uk/news/uk-news/victim-police-rapist-david-carrick-29134439>

¹⁷ Domestic Abuse Commissioner (2022) Safety before status: The solutions: <https://domesticabusecommissioner.uk/wp-content/uploads/2022/12/Safety-before-status-The-Solutions.pdf>

¹⁸ House of Commons Justice Committee (14 June 2022) Oral evidence: Pre-legislative scrutiny of the draft Victims Bill, HC 304: <https://committees.parliament.uk/oralevidence/10387/html/>

scrutinising the draft of the Victim's Bill.¹⁹ These endorsements also follow the conclusions of the first super-complaint investigation, led by three independent police watchdogs, which concluded in December 2020 that data-sharing arrangements significantly harm not only victims of crime but also the public interest, as crimes are not reported and therefore remain unpunished. The policing inspectorate's report also concluded that in domestic abuse cases, data-sharing with Immigration Enforcement does not constitute a form of safeguarding,²⁰ as has been previously claimed by the Home Office without supporting evidence.

8. There are existing examples of safe reporting mechanisms internationally that have led to positive outcomes for migrant survivors, agencies and the wider community. In the Netherlands for example, a firewall was introduced nationally in 2016, with a policy called 'free in, free out' which enables people with insecure immigration status to report crime without having the police act upon their immigration status.²¹
9. We urge the Public Bill Committee to support an amendment to the Victims and Prisoners Bill to introduce a firewall between statutory services and the Home Office for survivors of VAWG.

Recourse to safety and support for migrant survivors

10. The Home Office domestic abuse statutory guidance explicitly states that migrant women may face additional 'barriers when attempting to escape' abuse as a result of their immigration status, because of the NRPf condition.²² According to Women's Aid Federation England, in 2019/20, over 95% of all vacancies posted on

¹⁹ *recommended the introduction of a complete firewall and called for the immediate end of data-sharing between the police and the Home Office for immigration enforcement purposes* House of Commons, Justice Committee, 2022. Pre-legislative scrutiny of the draft Victims Bill. Second Report of Session 2022–23. Online: <https://committees.parliament.uk/publications/28831/documents/174248/default>

²⁰ College of Policing, HMICFRS, IOPC (2020) Safe to share? Report on Liberty and Southall Black Sisters' super-complaint on policing and immigration status. Online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf

²¹ L. Ishibashi, et al, 2021, Preventing and addressing abuse and exploitation: a guide for police and labour inspectors working with migrants. Online: https://lawrs.org.uk/wp-content/uploads/2022/02/Preventing_and_addressing_abuse_and_exploitation_FINAL.pdf

²² Home Office (2021) See Paragraph 199: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089015/Domestic_Abuse_Act_2021_Statutory_Guidance.pdf

Routes to Support could not consider women who had NRPF.²³ There is a long-standing model of protection for migrant survivors to escape abuse, in the form of access to the Domestic Violence Rule (DVILR) and Destitution Domestic Violence Concession (DDVC), however its eligibility is primarily limited to those on spousal visas.

11. In these circumstances, many women and children who are not on spousal visas find themselves having to endure abuse and violence to avoid facing destitution, homelessness, detention and potential deportation. The same Home Office's statutory guidance on domestic abuse recognises that perpetrators are able to weaponise these conditions as part of their abuse, for example by threatening precarious immigration status against their victims, "using immigration law to threaten the victim with potential deportation", withholding documentation and giving false information to a victim about their visa or visa application. This is also recognised as a specific form of coercive control by the government which can take the form of "withholding ID, passports and visas from the victim, purposely letting a victim's visa lapse or failing to act on sponsorship duties for immigration purposes."²⁴

12. These untenable circumstances are well-evidenced and widely known, having emerged as one of the most urgent concerns raised during the passage of the Domestic Abuse Act through Parliament.²⁵ Two years on, the absence of legislative protection for migrant survivors remains one of the most pressing challenges for tackling VAWG and the delivery of VAWG specialist services, whose advocacy is hindered by the complex and hostile conditions that migrant survivors face. The Support for Migrant Victims scheme (SMV pilot), ostensibly introduced as a pilot scheme in 2021 whilst the Home Office decided on a long-term solution, has now been operating for two years. We are yet to see the publication of its evaluation, nor any movement towards a long-term solution. Indeed, the Domestic Abuse Commissioner laid its *Safety Before Status* report in Parliament on 13

²³ Birchall, J., McCarthy, L., Samuel, M., Davidge, S., (2021), *The Annual Audit 2021*. Bristol: Women's Aid Federation England
²⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1089015/Domestic_Abuse_Act_2021_Statutory_Guidance.pdf

²⁵ HC Deb Vol. 664 (2019): <https://hansard.parliament.uk/commons/2019-10-02/debates/C3488538-CFEC-4670-9299-732672E2BE67/DomesticAbuseBill>

December 2022, showing significant economic and societal gains of extending the eligibility of existing models of protection (DVILR and DDVC) for all migrant women. But despite the requirement, introduced in the Domestic Abuse Act, for government to respond to such reports within 56 days (by 7 February 2023), at the time of writing it has failed to do so.

13. It is important to affirm that legislative reform for migrant survivors must be understood firmly as a justice issue. The Bill cannot achieve its stated aim of “improv[ing] victims' experiences and access to support and justice”²⁶ without rectifying these formidable barriers to justice.
14. We recommend that the Victims and Prisoners Bill provides legislative protection for migrant survivors, by extending eligibility to the Domestic Violence Rule and Destitution Domestic Violence Concession to all survivors of VAWG. This amendment would finally help to make reality the government's words that migrant women should be treated ‘as victims first and foremost’.

Duty to collaborate

15. We support the aims of the Bill's duty to collaborate, in bringing together Local Authorities, Police and Crime Commissioners and Integrated Care Boards to create joint strategies on how they will commission services. However, we are not reassured that this clause will deliver for survivors without some revision. We recommend that this clause is accompanied by:
 - A duty to conduct a joint strategic needs assessment (JSNA), with accompanying funding for duty-holders. Within the Joint Strategic Needs Assessment there must be a specific focus on VAWG included, and this section must give attention to the needs of girls, minoritised women and women with NRPF as an expectation.
 - A national government duty to fund specialist ‘by and for’ services for minoritised survivors, disabled survivors and LGBT+ survivors.
 - Specification for commissioners to commission “specialist women's community-based domestic abuse and sexual violence support

²⁶ Ministry of Justice Victims and Prisoners Bill explanatory notes:
<https://publications.parliament.uk/pa/bills/cbill/58-03/0286/en/220286en.pdf>

services,” including services led by Black and minoritised women, services for disabled women, services for LGBT+ survivors and services for economic advocacy.

- A duty on relevant public bodies to provide victim support services including economic advocacy services.

The case for funding and a joint strategic needs assessment

16. The vast majority of survivors seek support from some form of community-based service (the figure is 95% for those accessing specialist support provided by Refuge²⁷). However, all too often, survivors cannot access the specialist support they need due to inconsistent provision across the country and gaps in funding for specialist support. Research by the Domestic Abuse Commissioner found that in 2022, less than half of survivors who wanted to access community-based services were able to.²⁸ Barriers to accessing ‘by and for’ community-based services are even greater for Black and minoritised, migrant, disabled and LGBT+ survivors. Whilst the Ministry of Justice refers to its increase in funding for services in recent years, the existing commitments are simply insufficient to plug the gap following decades of chronic underfunding and to meet the current demand for specialist community-based services across England and Wales. The situation is even more desperate in the cost of living crisis, with a recent national Women’s Aid survey finding that nearly every member service (96%) said they were experiencing at least one financial issue including funding not increasing in line with costs, increased rent for premises, and increased cost for food or supplies. We estimate that in 2022-23, a funding settlement of at least £238 million is needed for specialist women’s domestic abuse services in England. Economic analysis by Women’s Aid, carried out by ResPublica, found that the benefit-to-cost ratio of investing in specialist domestic abuse services is £9.14: £1.
17. We’d ask that the Committee also seriously considers the need for safeguards to be written into the legislation to ensure that the duty to collaborate does not exacerbate existing trends in commissioning

²⁷ Refuge data 22/23

²⁸ Domestic Abuse Commissioner (2022) A Patchwork of Provision: How to meet the needs of victims and survivors across England and Wales: https://domesticabusecommissioner.uk/wp-content/uploads/2022/11/DAC_Mapping-Abuse-Survivors_Long-Policy-Report_Nov2022_FA.pdf

which are harming specialist VAWG services, both by defining specialist services in the legislation and requiring joint strategic needs assessments to more accurately identify the scope of need. As outlined by Shadow Safeguarding Minister, Jess Phillips MP:

*“Specialist women-only services have given way to generic services that could offer a lower contract price in local authority areas”.*²⁹

18. This is a long-standing problem. Research by Imkaan from 2015 found that over two thirds (67%) of members spoke about the huge barriers they experience in accessing local funding because of the “unequal playing field created by a funding/commissioning environment and culture, which favours larger, generic service providers.”³⁰ However, “nothing in the Bill says what a specialist sexual violence or domestic abuse service is.”³¹ Without specifying the types of services that need to be commissioned to best support women and children experiencing domestic abuse and sexual violence, there is a risk that the duty to collaborate results in yet more large, pooled budgets across a range of commissioners which incentivise large, generic contracts at the expense of local specialist services. The duty should specify that commissioners should commission “specialist women’s community-based domestic abuse and sexual violence support services” which operate independently from the state and whose organisational purpose is to support victims and/or children and young people impacted by VAWG. This should include services led ‘by and for’ Black and minoritised women, given the scarcity of their resources and the funding challenges they face, along with economic advocacy services.³²

19. We recommend that the duty to collaborate is also accompanied by a duty on local commissioners to conduct a Joint Strategic Needs Assessment, along with funding for duty holders to commission

²⁹ HC Deb Vol.732 Col.623: <https://hansard.parliament.uk/commons/2023-05-15/debates/FC7E0C2D-1FF5-49A2-91AE-C9BC9804E524/VictimsAndPrisonersBill>

³⁰ Imkaan (2015) State of the sector: Contextualising the current experiences of BME ending violence against women and girls organisations. An executive summary: <https://static1.squarespace.com/static/5f7d9f4addc689717e6ea200/t/61e6a32fa8fe28662d9da4e7/1642505008903/2015+-+Imkaan+-+State+of+the+Sector+%5BExecutive+Summary%5D.pdf>

³¹ HC Deb Vol.732 Col.623: <https://hansard.parliament.uk/commons/2023-05-15/debates/FC7E0C2D-1FF5-49A2-91AE-C9BC9804E524/VictimsAndPrisonersBill>

³² Surviving Economic Abuse (2023) Briefing on the Victims and Prisoners Bill: <https://survivingeconomicabuse.org/wp-content/uploads/2023/04/Victims-and-Policing-Bill.pdf>

specialist VAWG services in line with identified need. National government should have a duty to meet the needs of minoritised survivors through funding specialist 'by and for services' directly.

ISVA/IDVA definitions

20. We agree that increased awareness of the ISVA and IDVA roles amongst other services is necessary, and would like to see greater understanding of the roles, including awareness of the support and advocacy IDVAs and ISVAs can provide outside of the CJS. We are concerned however, that the current wording of Clause 15 of the Bill could have unintended consequences, by enshrining a hierarchical system with regards to the support available for victims of domestic abuse and sexual violence, which risks narrowing the types of support victims can access.

21. As the guidance currently stands, specialist sexual violence and abuse services are also concerned that the current drafting of the ISVA guidance could ultimately risk the independence of the role, and its current iteration does not support the recognition of the role. There are additional concerns that commissioners who will read this, will:
 - a. Conflate the range of roles that exist
 - b. Expect ISVAs to carry out work that is "sometimes done" by ISVAs and advocacy workers without additional funds. This would exacerbate the unfunded work ISVAs are already undertaking.

22. IDVAs and ISVAs are vital, but crucially, not the only frameworks for providing support to women and children experiencing domestic abuse and VAWG. For example, many women and children seek alternative forms of support from specialist domestic abuse services that fall outside of the formal IDVA title, including outreach support, floating support, formal counselling and support groups. These specialist forms of advocacy all play a vital role in supporting the recovery of women and children. Research shows that survivors from minoritised backgrounds value and need access to holistic support and intersectional advocacy from organisations led 'by and for' Black and minoritised women, alongside those providing specialist advocacy to

Deaf and disabled and LGBT+ victims, which do not all sit within the IDVA framework.

23. The Domestic Abuse Commissioner's 'A Patchwork of Provision: mapping report' noted:

"While a significant number of respondents wanted the type of support offered by an advocate such as an Independent Domestic Violence Advocate (IDVA), it is important to emphasise that the majority of support that was wanted would not typically be provided by this role."

24. The Bill's current proposal to define only the IDVA and ISVA model without enshrining the value of community-based specialist domestic abuse services more generally in the Bill, risks reducing the types of specialist support commissioned and therefore available to women and children. We do not want this to lead to a further increase in larger, more generic services at the expense of smaller specialist services - nor more services run in-house by local authorities. We do not envision that the Bill's intention is to seek to narrow the landscape of help that is available for women experiencing domestic abuse and sexual violence. Therefore, we recommend the production of a definition of specialist community-based services and accompanying guidance to this legislation, in partnership with national membership organisations and specialist services, in order to help ensure that all survivors can access appropriate, tailored support to aid their recovery.

Victim's Code

Enforcement

25. Enshrining the Victims Code in primary legislation (clause 2) presents an opportunity to improve survivors' experiences in the criminal justice system. However, as drafted, clause 2 proposes enshrining just four broad overarching principles of the Victim's Code into primary legislation, rather than a comprehensive set of standards with legal purpose. We support the Justice Committee's assessment that "this is not strong enough to drive the necessary cultural change

in the treatment of victims in the criminal justice system”³³. This issue was a key concern across the House during Second Reading of the Bill.

26. Further, for the Victims Code to be effective, it must dispense an enforceable right. The vast majority of the Victim’s Code is currently not adhered to by the police and other criminal justice agencies and survivors are often not informed about their rights under the Code or even aware of its existence. Without clear responsibility and accountability mechanisms to ensure compliance, we fear that the Victim’s Code will continue to fail to deliver for survivors.

Voice of victims

27. We welcome that the Bill requires PCCs to ensure they consider the experiences of victims to contextualise and add to the Code compliance data. To ensure that the voices of all victims are meaningfully heard, any guidance accompanying this duty should explicitly state the need to engage and collaborate with specialist domestic abuse and VAWG services, including those led ‘by and for’ Black and minoritised women.
28. Women’s Aid’s Annual Survey 2022 highlighted that 27.3% of responding domestic abuse services reported having received no local authority funding³⁴ and specialist ‘by and for’ services were overall less likely to be commissioned by their local authority, with 55% being non-commissioned³⁵.
29. It is therefore vital that the Bill requires PCCs to engage with both commissioned and non-commissioned services to ascertain the full breadth of victim experiences and needs and ensure that all victims voices are heard. We recommend that subsection 1 of Clause 7 of the Bill to state that this must be done by “engagement with local commissioned and non-commissioned specialist domestic abuse and sexual violence services”.

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https://www.google.com/url?q=https://committees.parliament.uk/publications/28831/documents/174248/default/&sa=D&source=docs&ust=1686742252394752&usq=AOvVaw3suB_DCT-rCdJBZetMRcw3

³⁴ Women’s Aid. (2023) The Domestic Abuse Report 2023: The Annual Audit. Bristol: Women’s Aid

³⁵ Women’s Aid. (2023) The Domestic Abuse Report 2023: The Annual Audit. Bristol: Women’s Aid

Reform for survivors of rape and sexual abuse

30. Two years on from the government's *End-to-End Rape Review*, in which it acknowledged that 'victims of rape are being failed',³⁶ there is a long way to go to deliver on the government's promises and to provide justice for survivors of rape and sexual abuse. Far too many survivors continue to be failed and victim attrition rates remain persistently high. In June 2023, the Lord Chancellor and Justice Secretary Alex Chalk MP KC acknowledged that the job is "not done"; announcing the intention to extend the government's actions on the Rape Review until the end of Parliament. The Victims and Prisoners Bill therefore provides an opportune moment to deliver two key legislative measures to improve the experience of survivors of rape who report and engage with criminal justice system: 1) a new higher threshold for disclosure which is unique to counselling and therapy records 2) independent legal advice and representation for survivors of rape and sexual abuse who report.

Keeping counselling confidential

31. The first recommendation, led by the *Keep Counselling Confidential* campaign, formed of Rape Crisis England and Wales (RCEW), the Centre for Women's Justice (CWJ) and End Violence Against Women Coalition (EVAW) is for legislative reform to address the impossible position that far too many rape survivors are forced to face; choosing between either seeking justice or seeking therapeutic support.³⁷ Given the importance of counselling and therapy for sexual violence and abuse survivors, including for the overwhelming majority who never have their cases charged, there is a clear public interest in securing access to this means of recovery. The Lord Chancellor and Justice Secretary Alex Chalk MP KC himself accepts the need to stop "unnecessary phishing exercises" of survivors' records and during Second Reading, announced that the Victims and Prisoners Bill will introduce statutory guidance on requests to disclose survivors' therapy

³⁶ Ministry of Justice (2021) End to End Rape Review Report on Findings and Actions:

<https://www.gov.uk/government/publications/end-to-end-rape-review-report-on-findings-and-actions>

³⁷ <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2023/05/Keep-Counselling-Confidential-FINAL-10th-May-23.pdf>

notes.³⁸ However, this announcement simply reinforces what's already in law for third party materials under the Data Protection Act 2018 - RCEW, CWJ and EVAW published a joint statement to clarify this point.³⁹

32. We recommend rather that the Victims and Prisoners Bill is amended to introduce a higher threshold for disclosure which is unique to counselling and therapy records, with permission by a judge before the disclosure of therapy records can be made to the defence. This model is based on an existing scheme in New South Wales, Australia, and adapted for the jurisdiction of England and Wales, and appropriately balances victims' rights to privacy with a defendant's right to a fair trial - there has been no evidence of miscarriages in the 20 years' since it was established.

Independent legal advice and representation

33. More broadly, it is evident that rape survivors need somewhere to turn when they come up against an issue in the legal process where their interests are not protected. Rape and other sexual offences are unique criminal offences in that 'victim credibility' is at the heart of the police investigation, such that victims and survivors often feel that they are themselves under investigation. The provision of independent legal advice and representation for victim and survivors of rape and sexual abuse is an appropriate measure to address these circumstances. This would serve two key purposes: firstly, to boost the confidence of survivors when engaging with the criminal justice process, and secondly, to ensure their rights are respected where their interests diverge from the interests of the police, CPS and other criminal justice agencies. It would also benefit the criminal justice system by improving practice through a mechanism of accountability. A model of legal advice has already been successfully piloted in Northumbria, between 2018 and 2020.⁴⁰

³⁸ <https://www.gov.uk/government/news/end-to-intrusive-fishing-expeditions-of-rape-victims-therapy-notes>

³⁹ <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2023/05/EVAW-RCEW-CWJ-joint-statement-on-the-MOJ-third-party-materials-announcement-170523.pdf>

⁴⁰ <https://needisclear.files.wordpress.com/2020/11/svca-evaluation-final-report-1.pdf>

34. Rights of Women, Rape Crisis England & Wales, Centre for Women's Justice and End Violence Against Women Coalition have set out further detail on the appropriate principles and model for legal advice and representation in their Second Reading briefing,⁴¹ and in separate written evidence to the Committee.

Criminalisation of women

35. CWJ's *Double Standard* report highlights how women and girls' alleged offending is frequently directly linked to their own experience as victims of domestic abuse and other forms of violence and exploitation.⁴² This can occur where victims use force against their abuser in self-defence, where they are coerced by their abuser into offending, or where they offend under duress of circumstance. Allegations against victims are sometimes deliberately used as a tactic by perpetrators to extend their control. In this way, the criminal justice system can be led to collude in the abuse. The government recognises this and aims to divert women and girls from the criminal justice system and from custody where appropriate. However, whereas legislative reforms have been introduced to provide effective defences for other groups of victims facing similar circumstances, including trafficking victims and householders facing an intruder, no such protections have been introduced for women and girls whose alleged offence takes place in the context of domestic abuse.

36. The Victims and Prisoners Bill provides a key opportunity to ensure appropriate protection for victims of VAWG who are accused of offending. They would offer legal protection in line with the public interest and stimulate a strategic focus on implementing reforms throughout the criminal justice process in order to achieve the following outcomes:

- **Identification of victims:** Suspects/defendants who are potential victims of domestic abuse and other forms of VAWG are identified as such at the earliest possible stage in proceedings.

⁴¹ <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2023/05/Keep-Counselling-Confidential-FINAL-10th-May-23.pdf>

⁴² Centre for Women's Justice: <https://www.centreforwomensjustice.org.uk/double-standard>

- **Protection of victims:** Once identified, victim suspects/defendants are protected from abuse, effectively referred to support services, have their rights upheld as victims, and are not stigmatised.
- **CJS competency and accountability for considering the context of abuse in which offending may have occurred:** Criminal justice practitioners at every stage (police, CPS, judges, magistrates, juries, prisons and probation) have access to the necessary guidance, tools, processes and expertise to enable them to take proper account of the abuse suffered by victim suspects/defendants/offenders and its relationship to any alleged offending – including cultural competency in relation to Black, Asian, minoritised and migrant women - and are accountable for doing so.
- **Accessible procedural safeguards:** Effective procedural safeguards are accessible to enable victim suspects/defendants to give their best evidence about any context of domestic abuse in which the alleged offending took place.

Part three

Parole reforms

37. The former Justice Secretary’s decision to expand the scope of the Bill to become a Victims and Prisoners Bill was met with surprise and disappointment by organisations representing victims and survivors of VAWG. Following the appointment of Rt Hon Alex Chalk KC as the Justice Secretary and Lord Chancellor, a number of VAWG organisations wrote to the Minister to outline our serious concerns about the expansion of the Victims Bill to include Part Three. We made a formal request that the Bill’s provisions on parole (Part Three) be withdrawn in their entirety; “reflecting the broad consensus that the expansion in scope of the Bill is not in the interests of victims and in fact, risks undermining the purpose of the Bill overall.”⁴³

⁴³ A private letter was addressed to the Lord Chancellor and Justice Secretary Alex Chalk dated 3 May 2023, signed by End Violence Against Women Coalition, Centre for Women’s Justice, SafeLives AVA (Against Violence and Abuse), Latin American Women’s Rights Service, Birmingham and Solihull Women’s Aid, Rights of Women, Rape Crisis England & Wales, Solace, Surviving Economic Abuse, Southall Black Sisters, Juno Women’s Aid, The Traveller Movement, Victim Support, Refuge Agenda Alliance, Women’s Aid Federation England, Safer Places

38. It is our view that the proposals outlined in Part Three collectively risk undermining the independence of parole processes and that a lack of procedural safeguards are not in the interests of victims, which the Bill purports to benefit. The reforms risk exacerbating delays to the parole process and incurring greater trauma, disappointment, and disengagement among victims and bereaved families. This section appears 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. We submit that victims would be better served through increased clarity and provision of information rather than elongating what can be an incredibly traumatic process.
39. We specifically oppose the disapplication in this Bill of Section 3 of the Human Rights Act (HRA). Section 3 was carefully constructed in a way which provides individuals facing human rights violations with a route to gaining effective relief, whilst also preserving the proper role of Parliament. Neither the Independent Human Rights Act Review (IHRAR), nor the respondents to the Government's consultation on the Bill of Rights recommended its repeal.
40. We are alarmed by the re-emergence of this attempt to withdraw Section 3 of the HRA, applied within this Bill to prisoners. Undermining the principle of universality in human rights protection is not in victims' interests, and we would ask that this clause be strongly reconsidered.⁴⁴

Communication barriers

41. Evidence shows that victims from marginalised communities are less likely to approach the police despite experiencing higher rates of gender-based violence⁴⁵. For these groups of victims/survivors, some reasons behind not coming forward include the fear of facing discriminatory treatment and a failure of agencies to respond to their communication needs. Communication needs may arise from limited literacy skills, as well as language barriers or a difference in ability⁴⁶.

⁴⁴ 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>

⁴⁵ The Right to be Believed, Step Up Migrant Women

⁴⁶ Listen to us! Online: <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/2023/04/Listen-to-us.pdf>

42. For many years 'by and for' organisations have raised concerns about how public bodies, including the police, often fail to comply with their obligations under the Equality Act to eliminate discrimination, harassment, and victimisation when interacting with survivors facing communication barriers. Moreover, the victims' right 'to be able to understand and to be understood' under the Victims Code is not upheld.

43. As a result of this neglect, victims/survivors are compelled to stay longer with those who abuse them, and are at risk of increased harm whilst being denied justice. By failing to address and respond to communication barriers, statutory bodies allow perpetrators to exploit these vulnerabilities to keep controlling victims/survivors while remaining unpunished. We therefore recommend:

- The Bill should include a legal duty to ensure victims' rights to communication support, similar to those accused of a crime.
- The police and other criminal justice agencies should ensure all resources are produced in accessible formats and available in other community languages.
- The Secretary of State to meet with specialist 'by and for' services to discuss how to tackle communication barriers in the criminal justice system.