

Supplementary written evidence submitted by the National Police Chiefs' Council (NPCC) (VPB41)

Victims and Prisoners Bill – Additional Evidence Submission

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1. PURPOSE

- 1.1. This submission should be viewed as in addition to the oral evidence given to the Bill committee on 20 June by NPCC Victims and Witnesses Lead, DCC Emma Barnett. The portfolio wishes to submit further written evidence addressing some of the issues raised during the session as well as reiterating the main points for the portfolio regarding the Bill.
- 1.2. In addition, this document pulls together the views of other NPCC Leads on specific areas of the Bill. In some instances these views as in response to comments made during Committee stage.

2. ADDITIONAL COMMENTS FROM THE VICTIMS AND WITNESSES PORTFOLIO

2.1. Key points from the portfolio:

- **Levelling up/strengthening of accountability across all agencies:**
 - The NPCC agrees with the aims of the Bill, to raise awareness of the Code and improve agency compliance which in turn should improve the victims' experience of the justice system. We are supportive of the accountability arrangements proposed, using PCCs to convene agencies through existing, well established structures such as LCJBs to review Code compliance. This accords with our current governance structures based

on local accountability of an operationally independent Chief Constable. However, PCCs need the appropriate authority to hold the other CJ agencies to account otherwise the accountability for our key partners in the criminal justice system, who also have responsibility for delivery of the Code, will be questionable.

- In a similar vein, policing is inspected by HMICFRS and has a robust complaints process in place. This is not the same for all other agencies charged with delivering Code rights; we again suggest this scrutiny and accountability is 'levelled' across the agencies involved.
- **Data provision duty** – it is important that policing understands the impact of this duty on them and the resourcing required to meet it:
 - The MoJ have worked closely with the us to develop a suite of measures that are workable. There will be a resource impact however, as some of the metrics require manual extraction of data from our systems. At least 20hrs per quarter has been estimated for initial sampling time (although this excludes post-charge sampling). Further consideration of a funded resource to be able to meet these requirements would be welcome. PCCs have had their analytical requirements recognised and we would request similar for policing who are under a duty to obtain and collate the data. An alternative is that through local agreement the PCC resource allocated does the collation as well as interpretation and analysis.
- **Compliance and accountability** – organisational accountability not individual:
 - 'Failure to comply' – however this is defined – must be seen as an agency issue and not an individual's liability. Any suggestion that individual staff receive a sanction (such as the docking of pay) is strongly opposed. A robust complaints process is in place in policing that covers circumstances of poor service. This would include consideration of service recovery and early resolution, performance or conduct issues. Post charge however, any shortcomings in service may be harder to identify. Victims may find it difficult to identify which agency their complaint needs to be directed to, which can result in victims being passed from agency to agency, resulting in a poor service of the system as a whole, with no way of ensuring cross agency learning and service improvement.
 - Whilst there is much focus on the compliance and accountability of policing, arguably as a reflection of the Code, language and description of "rights" diminishes as the Code progresses and victims move further into the CJ system. For example, there are few rights for victims at court – such as a right to a separate entrance, separate waiting area. Nowhere in the Code, or indeed the Bill, does the timeliness of a victims' case heard at court feature – there are no rights for example to have your case heard in a set period of time, or that relisting is kept to a minimum. We welcome the Home Office Victims Experience Survey, but this will focus solely on victims' experience of the police. Accountability for other aspects of the victims' experience of the criminal justice system is light in comparison. We have argued for some time that victims should have the right to know how their VPS has been used in court but this feedback loop is still absent. Delays in the criminal justice system waiting for court (cases now listed into 2025),

multiple relisting of cases and changes in court location feel like the “elephant in the room” and accountability for this crucial aspect of a victims journey is absent within the Bill.

- It is worth remembering too that policing has a myriad of tasks – not all concerning victims nor the delivery of Code rights per se; the ability to solely concentrate on victims’ rights therefore can be challenging against these other tasks. This includes, but is not limited to; policing protest and keeping the peace; managing offenders; problem solving; safeguarding. Greater confidence in delivery of rights could come from more dedicated units or teams, along the lines of current witness care units (currently only post charge) but this would come at a significant cost.
- **Expanding the definition of victim** – there is a risk of not fully understanding the cumulative impact of the proposals to change or expand the definition of a victim:
 - There is a risk that the definition becomes too broad and dilutes the service being provided. Agencies will not have the resources to deliver rights to a larger group of individuals e.g. ASB complainants and there is a further risk that more minor additions may be viewed as inconsequential owing to anticipated low volumes (e.g. children born of rape). We are very concerned about the cumulative impact of these proposals or where there is a lack of clarity over the implications for their inclusion (e.g. witnesses and what they have the Right to under the Code). This is evident in the number of questions being raised by forces to the portfolio.
- **Options re funding into part 1 of the Bill:**
 - The Bill feels like a missed opportunity for agencies to work together and to view the delivery of rights through the lens of a victim moving through the criminal justice system as opposed to Code delivery by agency. In the absence of standardised, consistent and inclusive accountability there is no incentive to consider more radical approaches to Code right delivery.
 - We were asked about funding for Part 1 of the Bill. Investment in resource to deliver the rights could look like dedicated teams or the development of joint units with other agencies to deliver the rights and make the process as seamless for victims as possible. Investment in a single IT system for victim case management is another option.

3. ADDITIONAL COMMENTS FROM OTHER NPCC PORTFOLIOS

3.1. Anti-Social Behaviour (ASB) – ASB victims in the Victims Code:

- Everyone has the right to live their life free from intimidation and harassment.
- ASB can have a devastating impact on victims and the wider community. That is why police forces across England and Wales must and will continue to focus on tackling ASB and those responsible for it.

- This is best achieved by partnership working, between the police and other local agencies, so that the behaviour of ASB offenders is directly address as well as the underlying causes of ASB including alcohol abuse, drug abuse and mental health.
- The Anti-Social Behaviour, Crime and Policing Act 2014 introduced specific measures designed to give victims a say in how complaints of ASB are dealt with. This includes the ASB Case Review which gives victims of persistent ASB the right to request the police and other local agencies listen to their concerns and review the action taken.

3.2. Violence Against Women and Girls

- The Victims & Prisoners Bill has a series of measures that are victim centric and place victims' voices at the heart of considerations, and we know that disproportionate number of women and girls (particularly but not exclusively in the Domestic Abuse sphere) do not, (or withdraw their) support for a criminal justice outcome due to a lack of provision. Clause 15 recognises in law, the importance of Independent Sexual Violence Advisors and Independent Domestic Violence. Ensuring that these vital provisions are used, will be a focus of the Domestic Abuse Joint Justice Plan, while more widely, through improved training and accreditation, professionalising public protection and Operation Soteria will help embed the use of victim support provisions by police personnel. The combined effect of these measures will ensure that police and partner agencies work even harder to ensure better outcomes for victims and ensure that their voices are heard at every stage of the process.

3.3. Adult Sex Offences/Rape

- Access to counselling material:
 - Requests for Third Party Material (TPM), including counselling material, must be necessary, proportionate, and relevant, and supported by a clearly defined and justifiable rationale behind each request. There should be no blanket requests for such material and requests should not be speculative. We are moving away from requests for counselling material unless a there is a clear rational for their need. Such requests can be a barrier to survivors reporting RASSO, and a barrier to obtaining the support needed to heal from trauma. We must do all that we can to remove such barriers.
 - The addition of something to ensure judicial scrutiny of access to rape survivors counselling records would be a welcome measure to ensure such requests from police, Crown Prosecution Service, and defence teams is not speculative and is fully rationalised to show it is necessary, proportionate, and relevant. This will help ensure fair and balanced RASSO investigations that focus on the alleged offence, including the entirety of the suspects relevant behaviour, without over-investigating the survivor.
- Independent legal advice for rape survivors:
 - Giving survivors access to independent legal advice is a concept that has been piloted in Northumbria and evaluated by academics as a positive step forward. Further trials

are in development linked to the work of Operation Soteria Bluestone and these will also be subject to robust evaluation. It is suggested that these trials take place and a view taken at that point of the value of wider roll out. The introduction of the new national operating model for RASSO investigations includes specialist training and professional development for investigators and managers. Training, which is to be accredited, will include disclosure requirements. This may work to alleviate the need for independent legal advice or at least require it only for a transitional period. An additional benefit however of the availability of such advice is likely to increase victim engagement, the absences or loss of which is a factor in these cases.

3.4. Disclosure

- Third Party Material:
 - As a result of the 2022 Information Commissioner's Opinion Report and the recommendations therein, the NPCC, alongside the Home Office, has been working to create advice and a Third-Party Material Notice (TPMN) for police to use when requesting material from third parties where an expectation of privacy would apply. The purpose of the TPMN is to:
 - Support a consistent process in line with the ICO Opinion.
 - Outline the legal basis for the request.
 - Provide clear advice to third parties who will be in receipt of such requests.
 - Outline the relevant parameters of material sought and explain the reason for seeking the information.
 - Obtain and record the views of the data subject where appropriate.
 - Explain that information sought may end up being disclosed to a defendant.
 - Ensure effective governance and oversight of the request by an Inspector.
 - This TPMN has been circulated nationally for feedback and is in its final stages of creation, with force pilots underway and implementation planned for late this summer.
- Police, Crime, Sentencing and Courts Act / Digital Processing Notices:
 - The PCSC Act came into force as legislation in November last year and introduced a new Code of Practice and powers to ensure extraction is lawful, necessary and proportionate, and protects the privacy of the complainant or witness and third parties.
 - The Code of Practice mandates that a written notice must be provided to the user of the device when exercising the power, in the form of the NPCC digital processing notice.
 - While the Act and Digital Processing Notices have been in place for some time now, we recognise the complexity of this work and along with the Home Office, are keen to better understand how forces have implemented the PCSC Act powers, how the digital processing notices are being used, and whether forces are able to track the use of the new powers.

- To this end, a survey to all force disclosure champions has been launched to help capture this data, with a closing date of 26 June. The Home Office and NPCC will then analyse data received in order to inform next steps and any force support required.

3.5. **Immigration** – The need for a 'firewall' between police and immigration enforcement:

- To facilitate the recommendations made within the Policing 'Safe to Share?' report and the following parliamentary review the NPCC have consulted on the Migrant Victim Protocol, owned by Immigration Enforcement which formalises operational processes to support victims.
- NPCC guidance 'Information sharing with the Home Office where a victim or witness of crime is a suspected immigration offender' sets out the information sharing requirements between the police and the Home Office in relation to migrant victims and witnesses of crime. This guidance clearly states that the police priority is to protect victims and investigate crime. When someone reports a crime, we will always, first and foremost, treat them as a victim.
- The guidance also emphasises the importance of collaboration between police and immigration enforcement to effectively respond to the needs of victims.
- Whilst we recognise that data sharing between the police and Home Office can be a contributing factor influencing the decisions of migrant victims not to report a crime we are constantly seeking ways to address the needs of victims and hold perpetrators accountable.

3.6. **Children and Young People** – Children involved in crime treated as victims:

- In response to this point which was made during Committee, NPCC Children and Young People Lead, CC Roper, said the following: "I advocate a Child Centred approach, which recognises vulnerabilities and treats children and young people empathetically, whether a suspect or a victim. There are important safeguards for children suspected of criminal offences, that may be impacted, albeit unintentionally, were a blanket victim definition applied. I note the concerns the Children's Commissioner has raised regarding Child Criminal Exploitation and reinforce the need for all those working with children and young people to be mindful of contextual safeguarding considerations"

3.7. **Parole** – Possibility of law enforcement personnel on the parole board:

- In essence the NPCC are really supportive of taking this approach and think it would enhance the capabilities of the Parole Board. Those with a law enforcement background have specialist skills and a wealth of experience in risk management as well as mitigation strategies for the purposes of public protection. Having individuals experienced in law enforcement and skilled in risk identification, assessment and risk management supporting parole boards is important for several reasons:
 - Expertise: Professionals with experience in law enforcement possess an understanding of criminal behaviour and how social factors can effect this. Their knowledge and insights can help parole boards assess the potential risks associated with releasing an individual. They can identify red flags, evaluate the credibility of an offender's claims, and assess the likelihood of reoffending more effectively.

- Risk identification: Those with a law enforcement background can identify potential risks and threats that may not be apparent to others. They can support the board through their expertise, recognising behavioural patterns and other indicators of potential reoffending. By analysing an offender's history, circumstances, and behaviour, they can help parole boards make more informed decisions about the level of risk an individual may pose to society.
- Risk assessment: The risk assessment process requires a systematic examination of various factors, such as the nature of the offending and criminal history, mental health status, substance abuse issues, and social support systems. Those with more experience and expertise in risk assessment can support the evaluation process of this information effectively, considering both static (unchangeable) and dynamic (modifiable) risk factors. Their contribution can help parole boards gauge the level of risk associated with granting parole and make decisions accordingly.
- Risk management: Effective risk management is crucial to ensure public safety while also providing offenders with opportunities for rehabilitation and successful reintegration into society. Law enforcement professionals skilled in risk management can support the development of comprehensive and tailored supervision plans, establish appropriate conditions and restrictions, and provide valuable insight into the effectiveness of these based on relevant experience. Their expertise can help strike a balance between accountability and support, reducing the chances of reoffending and maximizing the potential for successful reintegration.
- Decision-making support: Parole boards face the challenging task of making complex decisions that significantly impact public safety and individual lives. Having experienced law enforcement professionals and risk management experts as part of the decision-making process provides valuable insights and different perspectives. Their expertise can enhance the board's ability to evaluate the risks and benefits of releasing an offender, reducing the chances of making decisions solely based on subjective factors or insufficient information.
- Overall, involving individuals experienced in law enforcement in parole board decisions helps ensure a more thorough and informed evaluation of an individual's potential for successful reintegration and minimises the risks associated with releasing offenders into the community.

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