

Enforceability of Victims' Rights Under the Victims and Prisoners Bill

Relevant Provisions of the Bill (Latest Version, 6 December 2023)

- **Main Principles of the Victims' Code** — (a) provision of information; (b) access to support services; (c) participation in the criminal judicial process; (d) challenging decisions with direct impact on victims (clause 2(3)).
- **Limitations in Application** — The Victims' Code does not impose obligations on persons acting in a judicial capacity or in the discharge of a prosecution function that involves discretion (clause 2(9)).
- **Direct Obligations on Criminal Justice Bodies** — (1) take *reasonable steps* to promote awareness of the Victims' Code; (2) undertake their own review of compliance. To this effect, they must collect and share information with relevant bodies to the extent set out in regulations made by the Secretary of State (clause 6)
- **Local Oversight Mechanism** — Elected local policing bodies must review compliance of criminal justice bodies on the local level. They must also report this information to the Secretary of State, to the extent prescribed in the regulations (clause 7). No additional powers are granted to local policing bodies should criminal justice bodies refuse to provide the data requested or if the data shows evidence of an agency's non-compliance with the Code (Justice Committee, Pre-legislative scrutiny, 30 September 2022)
- **Publication of Compliance Information** — The Secretary of State must publish compliance information. The interval of publications is not specified. The only indication here is "as soon as is reasonably practicable" (clause 10).
- **Victims' Commissioner** — The power to review the general operation of the Victims' Code is retained by the Victims' Commissioner (Domestic Violence, Crime and Victims Act 2004, section 49). The current bill adds a requirement for submitting an annual report to Parliament, and places a duty on specified criminal justice bodies to respond to recommendations made to them in reports within 56 days of their publication (clause 18). However, the Victims' Commissioner is unable to represent a particular victim or witness, bring individual proceedings in court, or do anything otherwise performed by a judicial officer (section 51, 2004 Act). In effect, the Commission represents victim interests in general, not particular victims.
- **Criminal Justice Inspectorates** — The bill requires different criminal justice inspectorates to consult with the Victims' Commissioner before preparing an inspection programme or framework. In the case of joint thematic inspection programmes, criminal justice inspectorates *may* be required to include matters relating to the experiences and treatment of victims. The bill leaves the matter to the discretion of the Secretary of State, the Lord Chancellor and the Attorney General (clauses 19-22).
- **Victims of Major Incidents** — Independent public advocates provide advice and support to the victims of a major incident through any investigation or inquiry. Support may include helping victims understand the actions of public authorities; informing victims about other available sources for support; communicating with public authorities on behalf of victims; and assisting victims in accessing relevant information. However, support may *not* include legal activity (clause 33).

Critical Assessment of the Bill

- **No Mechanism for Victim Involvement in Compliance Review** — Victims are not directly involved in compliance reviews. The process seems to fall entirely within the purview of public bodies. The compliance of criminal justice bodies is overseen by elected local policing bodies (Police and Crime Commissioners, PCCs), based on reports submitted to them by the former. There is no provision within the bill that prescribes the possibility for victims to submit direct complaints to the PCC, or even influence the review mechanism of the PCC.
- **No Judicial Remedies for Non-Compliance** — The current bill does not envision any possibility for judicial remedies as a result of non-compliance with victims' rights. In this sense, it only confirms the

general rule of non-enforceability in current legislation. As a reminder, section 34(1) of the Domestic Violence, Crime and Victims Act 2004 states that if a person fails to perform a duty imposed by the Victim's Code, "the failure does not of itself make him liable to criminal or civil proceedings". The former Victims' Commissioner, Dame Vera Baird, has voiced criticism against the enforceability of the Code, describing the rights therein as "favours to be delivered if convenient" by criminal justice bodies (House of Commons, Analysis of the Draft Victims Bill, December 2022).

- **Loose Review Process** — The bill leaves much discretion to the Secretary of State in shaping, through regulations, the process of compliance review. Importantly, it does not specify the intervals at which information about the provision of services to victims must be collected, shared or reviewed. Moreover, some of the obligations in the bill are limited to "reasonable steps" only, without clear criteria for judging the limitations of "reasonableness" (see, for instance, clauses 10(5) and 13(2)(a)).
- **No Legal Representation Provided for Victims of Major Incidents** — The Independent Public Advocate (IPA) is not permitted to provide legal representation or legal advice for victims of major incidents. In its current version, the bill does not provide these victims with a right to receive legal aid in relation to representation in inquiries.

Weaknesses Within the Victims' Code Itself

- **Decision Not to Investigate** — Victims have the right to ask for a review of a decision not to prosecute (6.11, Code), but no such right exists in relation to the decision of the police not to investigate (6.2, Code).
- **Out of Court Disposals** — The right of the victim to be heard before a decision is made can be overridden by "practicality reasons", without a possibility to challenge the reasons given by the police or the prosecution (6.7, Code).
- **Complaint Procedure** — Victims can make a complaint about their rights under the Code not being met. This can be done through an internal complaint procedure set up by the service provider (12.2, Code). However, the form of the procedure, including the timescale for processing a complaint, is left to the discretion of the service provider. If dissatisfied with the outcome, the victim can ask their Member of Parliament to refer their complaint to the Parliamentary and Health Service Ombudsman. The outlines of this procedure are not clear, and the victim cannot directly contact the Ombudsman. Furthermore, it is not clear how the provisions extend to victims who are not British nationals.

Comparative Aspects

- **Assertion of Victims' Rights in Judicial Proceedings — United States of America** — The Crime Victims' Rights Act (CVRA) outlines a set of rights for federal crime victims. These rights can be asserted by the victim or their lawful representative in the district court before *and* during prosecution. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus (an order to compel the performance of a specific act refused by the lower court). In any case, this mechanism cannot be construed as implying a cause of action against state authorities or officials for damages, and in no way can it be construed to impair prosecutorial discretion. This limitation seeks to strike a balance between victims' rights and the ability of criminal justice bodies to carry out their functions without threat of civil liability (see subsection (d) of 18 U.S. Code § 3771).
- **Challenging the Outcome of Internal Complaint Mechanisms — Canada** — Every victim who has exhausted their recourse under an internal complaint mechanism of a federal public body and who is not satisfied with the outcome, may file a complaint with any authority that has jurisdiction to review complaints in relation to that body (section 25, Canadian Victims Bill of Rights).
- **Minimum Statutory Standards for Complaints Mechanisms — Canada** — Every federal department, agency or body that is involved in the criminal justice system must have a complaints mechanism that provides for (a) a review of complaints involving alleged infringements or denials of rights; (b) the power to make recommendations to remedy such infringements and denials; and (c) the obligation to notify victims of the result of those reviews and of the recommendations, if any were made (section 25, Canadian Victims Bill of Rights).

- **Action on Behalf of Particular Victims — South Australia** — The Commissioner for Victims' Rights is empowered by law to assist victims in their dealings with prosecution authorities and other government agencies. Upon request from the Commissioner, a public agency or official must consult with the Commissioner regarding steps to further the interests of a particular victim or class of victims. If, after consultation, the Commissioner is not satisfied with the treatment of the victim, they may issue a written notice recommending the public agency or official provide a written apology to the relevant victim. The number of notices given by the Commissioner, and the public agencies or officials to whom the notices are given, must be detailed in the annual report of the Commissioner (see sections 16(3)(b) and 16A of the Victims of Crime Act 2001 (SA)).
- **Commission for Compensation of Victims of Crime — France** — In cases where damages are not compensated by perpetrators or other parties, victims can seek compensation from the Commission for Compensation of Victims of Crime (Civi). The Commission will refer the request to the Victims Guarantee Fund, which will compensate the victim in the name of national solidarity before going back to the person responsible. This arrangement is similar to the Criminal Injuries Compensation Scheme in the UK, but is not restricted to violent crimes only.
- **Reimbursement of Victim Expenses — EU** — Member States are required to afford victims the possibility of reimbursement of necessary expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role assigned to them in the relevant criminal justice system (EU Victims' Rights Directive of 2012)
- **Legal Aid for Victims — France** — Financial support to cover the costs of legal representation for victims in part or in full on a means-based test. The application is made to the "Bureau d'aide juridictionnelle (BAJ).
- **Training for Criminal Justice Bodies — EU** — Member States shall ensure appropriate training for officials likely to come into contact with victims, such as police officers and court staff, so as to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner (EU Victims' Rights Directive of 2012).
- **Specialised Victim Care Units — France** — Victim Aid Offices are attached to the Courts of Justice (Code de Procédure Pénale Article 706-15-4). These offices offer psychological help to victims, information regarding their rights and assistance with eventual legal steps.

Proposed Modifications

- **Structured Compliance Review and Clarification of Timescales** — The bill should place minimum obligations on public bodies to enhance the overall structure of compliance review. As things currently stand, the structure of the review mechanism depends largely on the regulations of the Secretary of State. Minimum obligations can entail a duty of annual reporting on elected local policing bodies; or a duty of annual publication of compliance information on the Secretary of State.
- **Direct Involvement of Victims in Non-Compliance Complaints**— The bill should include provisions that enable victims to directly challenge the non-compliance of criminal justice bodies with their rights under the Victims' Code. Since it is not possible for victims to assert their rights directly in judicial venues, they should have the right to launch direct complaints with a designated independent body. The designated body must, in turn, be empowered to investigate each complaint on an individual basis and, when necessary, act on behalf of the victim vis-à-vis criminal justice bodies. For this mechanism to be successful, the designated body must also be granted some powers of enforcement, including the power to seek financial compensation for victims whose rights have been breached. The role of this body might be fulfilled by the Victims' Commissioner or the Victims' Ombudsman. If this is not possible, at least some enforcement powers should be granted to Local Policing Bodies (PCCs).
- **Strengthening the Role of the Victims' Commissioner** — The bill should amend the Domestic Violence, Crime and Victims Act 2004 with a view to empowering the Victims' Commissioner to take all necessary steps to ensure compliance with victims' rights. This can include the right of the Commissioner to investigate particular complaints, request consultation with criminal justice bodies with regard to such complaints, and in cases of non-compliance, issue written notices or penalties to those

bodies (for recommendations on enhancing the powers of the Victims' Commissioner, see Cox et al, 2022)

- **Legal Aid for Victims in Non-Compliance Complaints** — The bill should include provisions guaranteeing access to legal support from an independent body with regard to compliance complaints made against criminal justice bodies.
- **Legal Aid for Victims of Serious Crimes or Major Incidents** — Currently, legal aid for victims in the UK appears to be restricted to cases of domestic abuse. The bill should include provisions that enable, at least, victims of serious crimes or victims of major incidents to receive legal aid.
- **Victims Who Are Not British Nationals** — The bill should include provisions ensuring the accessibility of the existing victims' complaint procedure to non-British nationals.
- **Specialised Victim Care Units / Officers** — The bill should include provisions requiring criminal justice bodies (police, prosecution, court system) to appoint specialised victim care units.
- **Provision of Training to Criminal Justice Bodies** — The bill should include provisions requiring training for personnel involved in providing services to victims so as to ensure the proper application of the Victims' Code.

Important Sources

- House of Commons Library, The Victims and Prisoners Bill (Research Briefing, May 2023)
- Pamela Cox et al, Constitutional Powers of the Victims' Commissioner for England and Wales (Victims' Commissioner, November 2020)
- Crime Victims' Rights Act, 18 U.S. Code § 3771 — US Legislation
- Canadian Victims Bill of Rights, S.C. 2015, c. 13, s. 2 — Canadian Legislation
- Victims of Crime Act 2001 (SA) — South Australia Legislation
- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime — EU Directives
- UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34, 29 November 1985)
- Tyrone Kirchengast, "Enforceable Rights for Victims of Crime in Adversarial Justice", *Revista de Victimologia / Journal of Victimology* 3 (2016)
- Kerstin Braun, *Victim Participation Rights: Variation Across Criminal Justice Systems* (2019) — comparative account of victim rights in criminal proceedings
- Michael Vitiello, *The Victims' Rights Movement: What It Gets Right, What It Gets Wrong* (2023) — Critical evaluation of victims' rights reforms in the United States and its implications on racial discrimination within the justice system
- Ministère de la Justice, *Guide des droits des Victimes* (Online, 2023) — comparative aspects from France
- Vie Publique, "Justice : l'évolution du statut de la victime dans la procédure pénale" (February 2023) — comparative aspects from France
- Victims' Commissioner — A Framework for Enacting the Victims' Code (Chart, January 2022)

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ANNEX — Current Compliance Process Regarding Victims’ Rights in the UK (Victims’ Commissioner, January 2022)

A Framework for Enacting the Victims’ Code
Functions

