

# Sex Matters

## Submission to the Victims' Bill consultation

Sex Matters is a not-for-profit human rights organisation which advocates for clarity about sex in language, policy and law. Sex matters in life and in law. This is particularly important for protecting women's rights, and for safeguarding children and vulnerable people.

Clarity about sex also has implications for protecting the rights and wellbeing of people with other protected characteristics, including age, disability, race, religion or belief, sexual orientation and gender reassignment.

### Question 1

**Do you agree that the key principles set out in the consultation are the right ones? If not, do you have any other suggestions?**

The key principles in the consultation are given as:

- Ensuring victims are informed – to ensure that victims can fully understand the criminal justice process, criminal justice agencies must pay due consideration to providing victims with the information they need throughout the entirety of their case, from reporting through to post-conviction.
- Ensuring victims are supported – although victims do not have to report a crime to access support, when they do, the Code stipulates that victims must be referred to a service that helps them cope and recover, supported during their journey at court, and assessed as to whether they need any specialised assistance, such as eligibility for special measures.
- Ensuring victims have their voices heard – victims must have their voices heard in the criminal justice process and be

offered the opportunity to make a Victim Personal Statement to explain how the crime has had an impact on them.

- Victims' right to review – victims must be able to challenge decisions that directly impact them, and the Code specifies that they have the right to ask for a review under the National Police Chiefs' Council or CPS Victims' Right to Review Schemes, which allow complainants to request a review of certain decisions not to pursue a prosecution or to stop a prosecution.

We agree with these principles.

In addition we think the code should include:

**Victims have the right to be treated with respect, dignity, sensitivity, compassion and courtesy.**

In order to meet these principles it is crucial that the Code, the government and agencies that implement it, and the data systems that they use, recognise sex and do not impose belief in gender identity on victims.

**The Victims' Bill should ensure that victims of Rape and Serious Sexual Offences (RASSO) and Domestic Abuse (DA) have the explicit right to choose the sex of their police interviewer.** This right was specifically announced by the Ministry of Justice on 1st April 2021:

“Victims of rape and sexual violence can choose sex of police interviewer.”

“Victims of sexual violence will be able to choose the sex of their police interviewer and there will be clearer advice on when they can have their evidence pre-recorded ahead of a trial...”

“Victims of sexual violence or domestic abuse will be able to choose the sex of police officers that interview them.”<sup>1</sup>

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<sup>1</sup> <https://www.gov.uk/government/news/new-victims-code-comes-into-force>

However, the published Code refers only to 'gender':

"If you are a victim of sexual violence, gender-based violence or domestic abuse, you have the Right to request that the police officer conducting the interview is of a gender of your choice. The police must meet your request unless doing so would prejudice the fairness of the proceedings. If this happens, the police will tell you why."<sup>2</sup>

This needs to be corrected in the Victims' Bill so that trust is restored.

The report *The Decriminalisation of Rape: Why the justice system is failing rape survivors and what needs to change* by the Centre for Women's Justice, End Violence Against Women coalition, Imkaan, and Rape Crisis England & Wales explicitly supports this important right:

"Victims/survivors who do report to the Police should in the first instance have the choice of a specialist female officer for the purposes of safe disclosure."<sup>3</sup>

**The principle of respect, dignity, sensitivity, compassion and courtesy requires that victims receive trauma-informed support.**

The *Tackling Violence against Women and Girls* report highlights the need for tailored support:

"The importance of tailoring support to individuals came across clearly. There were clear calls for an improved 'by and for', trauma-informed provision and for support to be tailored to specific forms of violence against women and girls or specific groups of victims and survivors (including men and boys, people from different ethnicities and LGBT people) to ensure all victims and survivors were able to access appropriate and effective support. Stakeholders in the focus groups discussed how tailored 'by and

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<sup>2</sup> <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime/code-of-practice-for-victims-of-crime-in-england-and-wales-victims-code#right-2-to-have-the-details-of-the-crime-recorded-without-unjustified-delay>

<sup>3</sup> <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/The-Decriminalisation-of-Rape-Report-Nov-2020-LARGE-PRINT-FINAL-1.docx>

for' services allow for a comprehensive, cultural understanding of victims' experiences and ensure accessibility."

In providing tailored support there needs to be clear understanding of what these categories mean. Women and girls are female people. This includes lesbian and bisexual women and female people who identify as transgender or non-binary. Men and boys are male people and this includes gay and bisexual men, and men who identify as transgender or non-binary. Services may need to be differentiated to meet the needs of people with different characteristics, also including religion and belief and disability.

As a minimum:

- Victims should be able to access single-sex services, in particular services for women and girls who have been the victim of sexual and domestic violence.
- Victims should be able choose the sex of Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs).
- Victims should not be forced to use opposite-sex words and pronouns when referring to defendants who self-identify as a gender other than their birth sex.

### **Sex must be clearly included in all data collection and reporting across the CJS.**

The report by the Office for National Statistics' inclusive data taskforce, *Leaving no one behind – how can we be more inclusive in our data?*, states that:

"Trust is crucially important for the collection and use of data and for inclusion in statistics. People are happy to provide their personal information when they believe that (1) their data matters and will be used to improve people's lives and are convinced of the (2) reliability, (3) responsiveness, (4) openness and inclusiveness, (5) integrity and (6) fairness of the data producer. To enhance trust and trustworthiness in the provision and use of data, data producers should develop a social contract with those who provide their data (the respondents)."

It recognises that sex is a critical characteristic:

"Data producers should explore how to improve the collection of administrative data on characteristics that are legally protected in

equalities legislation in England, Wales and Scotland with users and relevant government departments [...] Regularly collected (and also legally protected in England, Wales and Scotland) characteristics such as sex, ethnic group and disability status should continue to be comprehensively and appropriately recorded.”

“**Sex**, age and ethnic group should be routinely collected and reported in all administrative data and in-service process data, including statistics collected within health and care settings and by police, courts and prisons. The quality of these data should be regularly reviewed to provide information that better reflects those in contact with these settings.”

It is extremely important for trust that sex is recorded and reported accurately in cases of RASSO and DA.

Recording sex (male or female) as a biological category is critical to facilitate safeguarding, risk assessment and meaningful analysis of data, including understanding how different characteristics intersect with sex, including gender reassignment.

The new National CJS Scorecards need to show data by sex so that patterns of offending and pathways into offending, and risk, can be analysed in a meaningful way.

## Question 2

**What more can government and agencies listed in the Code do to ensure that frontline professionals are aware of what is required of them under the Code?**

The following organisations are required to deliver the Code:

- Police and Crime Commissioners
- all police forces in England and Wales, the British Transport Police and the Ministry of Defence Police
- police witness care units
- the Crown Prosecution Service
- Her Majesty’s Courts and Tribunals Service

- Her Majesty's Prison and Probation Service
- the National Probation Service
- the Parole Board for England and Wales
- the Criminal Cases Review Commission
- the Criminal Injuries Compensation Authority
- the UK Supreme Court
- the youth offending team

Under the Code, some victims will receive a service through a combination of the service providers listed above, and other service providers including:

- the Competition and Markets Authority
- the Department for Business, Energy and Industrial Strategy (Criminal Enforcement)
- the Environment Agency
- the Financial Conduct Authority
- the Gambling Commission
- the Health and Safety Executive
- Her Majesty's Revenue and Customs
- Home Office (Immigration Enforcement)
- the Information Commissioner's Office
- the Independent Office for Police Conduct
- the National Crime Agency
- the National Health Service
- Natural Resources Wales
- the Office of Rail and Road
- the Serious Fraud Office

We are concerned that many of the agencies tasked with implementing the Victims' Code are members of the Stonewall Diversity Champions scheme.

Stonewall encourages organisations to replace the protected characteristic of sex with “gender identity” and to treat people who think that sex matters as not worthy of respect. This influences their internal HR and discipline, their policies, monitoring, and commissioning of other services.

All organisations with responsibility for implementing the Victims’ Code should recognise that sex is real, immutable and important.

They should also protect and respect people who have a belief in gender identity, but they cannot allow these beliefs to override the organisation’s responsibilities to record sex according to material reality, and to treat people with respect.

## Question 18

**a) What data should criminal justice agencies collect about victims’ experiences, and at what key points in the process?**

**b) Can you provide any examples – in the UK or elsewhere – of this being done effectively?**

Data about victims’ experiences must be capable of analysis across a range of intersecting variables so that effective public policy can be developed.

Criminal justice agencies should be required to collect data based on UK Statistics Authority guidelines to ensure the data is meaningful for the development of good public policy.<sup>4</sup>

The *Tackling Violence Against Women and Girls* report (July 2021) acknowledged that there were legitimate...

“calls for the collection of comprehensive, comparable and disaggregated data across Government and for this to include information on protected characteristics...for both victim and perpetrator, and the relationship between the victim and perpetrator.”

HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) recently made a clear recommendation (*Police Response to VAWG* report, page 124) that: “By March

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<sup>4</sup> <https://uksa.statisticsauthority.gov.uk/publication/inclusive-data-taskforce-recommendations-report-leaving-no-one-behind-how-can-we-be-more-inclusive-in-our-data/pages/7/>

2022, all police forces should ensure information on the Protected Characteristics of victims is accurately and consistently recorded.”

This should be followed through and implemented in all police forces.

We know that data-recording in the criminal justice system is inconsistent, with many constabularies not recording sex at all, and instead using self-declared gender identity

The HMICFRS *Police Response to VAWG* report clearly states that data gaps and inconsistency in protected characteristics has

“been a common finding from other thematic inspections in this area (such as our 2021 joint inspection of the police and CPS response to rape).”

And the HMICFRS report on Clare’s Law made similar comments about inadequate data on protected characteristics.

Page 24 of the *CPS response to rape* is clear:

“Accurately recording protected characteristics is very important and can affect many aspects of the case for the victim. This includes how well the police understand the prevalence of rape, contributing to rape profiles and how the police respond.”

It continues:

“But its main value is in better awareness and in helping victims get the right support. Urgent and immediate improvement is necessary, and we make a recommendation to that effect.”

Basic data collection requirements for protected characteristics should be mandated across the CJS and not left for individual constabularies and agencies to decide what data to collect. A national standard is required.

## Question 25

**How could the commissioning landscape be better brought together to encourage and improve partnership working and holistic delivery of victim services for: a) all victims of domestic abuse b) all victims of sexual**



## **violence c) all victims of other serious violence d) children and young people who are victims of these crimes?**

The provision of trauma-informed and specialised services, including single-sex services, should not be compromised in the interest of “inclusivity”.

Increasing numbers of transgender people are requiring services and there needs to be a plan to provide them with appropriate services that do not compromise the needs, particularly of women, to have access to single-sex services.

On this topic, the *Tackling Violence Against Women and Girls* report (July 2021) highlighted that:

“The specialist ‘by and for’ services are in crisis mode and they have been for years. There are closures of these organisations everywhere.”

VAWG organisations are under intense funding pressures and other pressures to be seen to comply with the Stonewall approach which treats male people as women based on self-identification.

It must be made clear that single-sex services are allowed, legitimate and valued and do not need to admit members of the opposite sex under any circumstances.

The review of police and crime plans in the EAW Coalition Briefing (July 2019)<sup>5</sup> also made a number of important observations that are of relevance. The report noted that police and crime commissioners (PCCs) should have a...

“specific focus on women and girls to reflect the disproportionate impact of these crimes on this group.”

It noted that the majority of victims of rape, sexual assault and domestic abuse are women, and that we need specific services to support them. This does not mean that we diminish or ignore the suffering experienced by men and boys. The services that PCCs commission should support victims and survivors whatever their sex, and PCCs should also plan to provide specific support for men and boys.

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<sup>5</sup> <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/PCC-Report-2019-Final.pdf>

Importantly, the EAW report notes that the absence of a sex-based approach to domestic violence and sexual offences means that in some areas there is a reluctance to commission services specifically for women. The report comments that:

“The increasingly fragmented and complex commissioning environment was tending to leave local ‘by and for’ women’s support services, among other user led victim groups, at a severe disadvantage.”

And noted that:

“It is clear that many PCCs are not commissioning according to this model.”

This has an impact on male as well as female victims, since their needs may be different. The report notes that there is potential as a result for the defunding of life-saving and life-changing support services for survivors where the value and importance of specialist rape-support services is not recognised by the PCC. This trend needs to be reversed.