

## Women's Aid Briefing for Second Reading of the Victims and Prisoners Bill in the House of Lords

December 2023

**Women's Aid views the Victims and Prisoners Bill as a critical opportunity to improve the support that victims of domestic abuse, and other forms of violence against women and girls (VAWG) receive. We welcome recent amendments to the Bill at Report Stage in the Commons, including the renaming of domestic homicide related death reviews, the introduction of Joint Strategic Needs Assessments and Jade's Law, as well as the clarification that the definition of 'victim' includes those that don't report to the police. We were also encouraged by wider debates on the Bill that took place in the Commons. Despite this, we remain concerned by the Bill's lack of progress in regard to key priorities that victims and frontline services have raised with us and by unintended consequences of Jade's Law. Furthermore, the Bill still does not include provision to address the urgent needs of migrant victims in ensuring they have equal and full access to support.**

**This briefing sets out our recommendations for the Bill based on expertise from Women's Aid's national network of over 170 member services across England, engagement with victims, and partnership work with the wider VAWG sector.**

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Although Women's Aid generally uses the term 'survivor' when referring to those who have experienced domestic abuse, for the purposes of this briefing the term 'victim' is used to align with the terminology of the Bill.

**Women's Aid encourages Peers to attend the Second Reading of the Victims and Prisoners Bill on Monday 18<sup>th</sup> December and raise the following issues in the debate:**

**We have four main areas of concern:**

1. **The role of advocates** - by only recognising Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs) in legislation, the Bill risks creating a one-size-fits-all approach to the commissioning of services and excluding 'by and for' Black and minoritised services;
2. **The Victims' Code** – the measures within the Bill do not give the Code 'teeth' or ensure it is enforceable or monitored. A number of provisions relating to

the Code need to be strengthened to ensure all victims can access their rights and be signposted to specialist support;

3. **Commissioning of services** – there is no specificity that victim support services should be specialist and the Bill still lacks much needed oversight and monitoring.
4. **Family courts** – the Bill does not include any wider reforms to the family courts, which fail to manage the risk posed by domestic abuse perpetrators to adult and child victims and who continually use the family courts to further abuse.

## Recommendations

Women's Aid calls for the Victims and Prisoners Bill to:

- Avoid creating a **hierarchal approach to the commissioning of services that excludes 'by and for' Black and minoritised services by only defining IDVAs and ISVAs in legislation**, and instead **add a new clause defining "community-based specialist domestic abuse services"** to reflect the wide range of support victims use outside of the advocate model.
- **Require the Secretary of State to issue guidance about community-based specialist domestic abuse services** to ensure victims receive quality support that meets their needs. The Secretary of State should also work with specialist services and their national membership bodies to produce a definition of "community-based specialist domestic abuse services" in guidance, which captures the breadth of services available.
- Ensure **the Victims' Code**:
  - **Is accessible by all victims without discrimination;**
  - **Signposts victims to appropriate specialist support services.**
- **Require staff training at criminal justice agencies** so that they have an in-depth understanding of both domestic abuse and the Victims' Code.
- Establish **a national oversight mechanism to monitor the commissioning of support services**, particularly those with protected characteristics.
- **Attach statutory funding to the duty to collaborate** and ensure that the duty specifies that Commissioners should:
  - **Commission "specialist women's community-based and sexual violence support services"**
  - **Engage with both commissioned and non-commissioned services.**
- **Ensure that parents who murder their abuser as a result of the domestic abuse they have experienced do not lose their right to parental responsibility under Jade's Law** by including an exemption for cases where a

mother experiencing domestic abuse has killed her abuser.

- Provide protection to victims of domestic abuse within the family courts:
  - **Ensure any expert undertaking a physiological assessment of adult and child victims, and parties, are suitably qualified and regulated.**
  - **Prohibit unsupervised contact for a parent awaiting trial or on bail for a domestic abuse, sexual violence or a child abuse related offence, or where there are ongoing criminal proceedings for these offences.**
- **As recommended by Latin American Women's Rights Service (LAWRS) and the Domestic Abuse Commissioner, implement a firewall** between statutory services and Immigration Enforcement for victims of domestic abuse, **to ensure that migrant victims can safely report perpetrators to the police.**

## Context

- **The criminal justice system is failing women and children who have experienced domestic abuse.** Most victims (82%) do not report domestic abuse to the police. These barriers to reporting include structural discrimination and inequality, as well as lack of trust in, and understanding of, the criminal justice system.
- Women's Aid welcomes the Government's commitment to tackling domestic abuse and VAWG. **It is crucial that this work focuses not only on reducing prevalence but improving the provision of support and protection of victims by public services.**
- Every day **our frontline specialist services provide a lifeline to women who feel unsafe, isolated and have nowhere to turn.** These services, however, continue to face real terms funding cuts (off the backdrop of inflation and the increased cost of living) and poor commissioning decisions, which fail to keep them secure.
- **We also know the current system is inefficient for domestic abuse spending.** The social and economic cost of domestic abuse is over £70 billion annually in England alone.
- Women's Aid's research found that **a minimum of £427 million per year is needed to fund specialist domestic abuse services in England.** This equates to 0.6% - a small fraction - of the combined Government expenditure (MoJ, DLUHC, HO) on domestic abuse support during 2021-22.
- **Adequate investment in specialist domestic abuse services could equate to a saving to the public purse of at least £9 for every £1 invested.** It would also reduce pressure on already overstretched statutory services, including the NHS

and police.

- The Ministry of Justice's Harm Panel review concluded that there are ***"deep-seated and systemic problems with how the family courts identify, assess and manage risk to children and adults"***.
- **Perpetrators of domestic abuse often use family court proceedings as part of an ongoing pattern of control and abuse, which many women report to be, as bad as, or worse than the abuse itself.** There is a particularly urgent concern in relation to the use of 'parental alienation' as a counter allegation to domestic abuse in the family courts, and the appointment of unregulated experts.

### **The role of advocates**

- **Women's Aid fully recognises the key role IDVAs have in working with victims of domestic abuse** to understand their experiences and their risk of ongoing harm. However, they **are only one form of support** within the broader range of support provided by community-based support services.
- **Many women and children seek alternative forms of support from specialist domestic abuse services that fall outside of the IDVA model,** including other forms of advocacy services, outreach support, floating support, formal counselling and support groups. These all play a vital role in supporting the recovery of women and children.
- Moreover, victims from minoritised backgrounds often value, and need access to, holistic support and intersectional advocacy from organisations led 'by and for' Black and minoritised women, and those providing specialist advocacy to d/Deaf and disabled, and LGBTQ+ victims, which **do not fall within the IDVA framework.**
- **Only defining IDVAs and ISVAs in the Bill therefore risks creating a one-size-fits-all approach. This may not only result in victims not receiving support that actually meets their needs,** but it could also lead to the decommissioning of specialist advocacy and wraparound support that specialist services provide outside of the advocate model.
- Whilst Women's Aid understands the rationale behind Clause 15, which is to achieve greater consistency, awareness and understanding of IDVAs and ISVAs within the criminal justice system due to their increasing numbers, **we are concerned that Clause 15 will unintentionally create a hierarchy whereby victim support services that fall outside of the remit of IDVAs and ISVAs will suffer further commissioning challenges.**
- During Committee Stage in the Commons, Minister Argar also disagreed with a hierarchal approach to funding and commissioning services, saying ***"the Government agree that there should be no hierarchy when it comes to funding***

*and commissioning support services and that commissioners should commission services that are tailored to the needs of their local population."*

- **Women's Aid therefore recommends the removal of Clause 15 and a new clause defining "community-based specialist domestic abuse services" to be inserted.**
- **We also recommend that the Secretary of State issues guidance about all forms of community-based specialist domestic abuse services**, and that the Ministry of Justice works with specialist domestic abuse services and their national membership bodies to produce a definition of "community-based specialist domestic abuse services" in guidance which captures the full breadth of services available.

### **The Victims' Code**

- The Code of Practice for Victims of Crime (Victims' Code) focuses on victims' rights and **sets out the minimum standard that organisations must provide to victims of crime.**
- The Victims' Code establishes that **victims should be treated in a respectful, sensitive and professional manner without discrimination of any kind.**
- Women's Aid warmly welcome the Government's clarification to the Bill at Report Stage in the Commons which clearly set out that the Code will apply to all victims regardless of whether they report their abuse to the police or not.
- **The Bill must also ensure that all victims can access the Victims' Code via means that are suitable for them.** This is especially pertinent for d/Deaf, disabled, and blind victims, whose needs are often overlooked, neglected or addressed inadequately.
- During Committee Stage in the Commons, Minister Argar highlighted the importance of accessibility saying ***"Accessibility is hugely important. The Code, however brilliant it may end up being, is of limited value if people cannot access it to understand it and know how it relates to them. We know that victims not only need to know about the Code but need to understand it. We recognise the importance of that."***
- The 'Listen to us!' report produced by a range of organisations and bodies working in the VAWG sector, found that **Black, Minoritised, Migrant, d/Deaf and Disabled victims are being failed by statutory agencies who often neglect to uphold their right 'to be able to understand and to be understood' under the Victims' Code.** Demonstrating the urgent need for the Bill to improve the Code's accessibility.

- Whilst Minister Argar asserted that Code accessibility is covered by Clause 11, the provision only requires the Secretary of State to issue statutory guidance regarding Code awareness and Code compliance.
- **We are clear that the Bill needs to go further and require that the Code is fully accessible in line with the standard of accessibility set out in the Public Bodies Accessibility Regulations 2018 and BSL Act 2022.**
- Victims' Commissioner Baroness Helen Newlove emphasised at a Women and Equalities Committee oral evidence session, that **victims are unaware of the support services available to them as they are never provided with this information.** She asserted that this needs to change and Women's Aid fully support this call.
- Minister Argar also agreed that victims need to be made aware of the support services available to them, saying during Committee Stage in the Commons that **"It is absolutely right that victims should be signposted to appropriate support services."** However, he claimed that the current duty on criminal justice agencies to take reasonable steps to make victims aware of the Code, adequately addresses this issue by increasing victims' awareness of their entitlement to be referred to support services.
- **Women's Aid is clear that this is not sufficient and places the onus on the victim. We therefore recommend that the Bill requires victims to be signposted to a full range of practical advocacy support and information, including Women's Aid's Live Chat Helpline, and other relevant domestic abuse and VAWG services.**

### **Commissioning specialist services**

- The Bill currently places a duty on key agencies, such as local authorities and health bodies, to collaborate when commissioning community-based services. Women's Aid **welcome the Government's inclusion of Joint Strategic Needs Assessments (JSNAs)** to the Bill at Report Stage in the Commons which will strengthen the duty to collaborate by fostering collaboration and strategic commissioning. However, **we are clear that the Bill's implementation of JSNAs must improve upon the shortcomings of the statutory duty included in the Domestic Abuse Act 2021, which often increases the burden on specialist services by requiring them to respond to lengthy data requests without adequate resources of funding to do so.**
- **The Bill also does not attach any statutory funding to the duty, or to these services.** This is a real concern - Women's Aid's Annual Survey highlighted that **44.0% of respondents had been running an area of their domestic abuse service in 2021-22 without any dedicated funding.**
- Women's Aid is clear that statutory funding must be attached to the duty to collaborate. The economic case is clear - **investing £427 million per year, as a**

**minimum, to fund specialist domestic abuse services across England could save the public purse as much as £23 billion a year.**

- Currently, there is no dedicated funding within health to ensure Integrated Care Boards (ICBs) can respond to VAWG, hence we are also calling for **funding for ICBs** to enable them to fulfil their role under the duty to collaborate. This is vital given that **the cost of domestic abuse to the NHS is estimated at over £2.3 billion per year**. Each ICB also has a duty to address the needs of domestic abuse victims in their Joint Forward Plans, with each ICB having appointed a Domestic Abuse and Sexual Violence Lead at Board Level, however, **no new funding has been attached to these new duties or their associated roles in the Bill**.
- **To address the urgent need for funding of specialist domestic abuse services and reap much needed savings to public services, Women's Aid is calling for statutory funding to be attached to the duty to collaborate.**
- **Currently, a wide range of different organisations are commissioned locally to deliver VAWG services**, ranging from non-specialist organisations, such as local authorities, to specialist women's domestic abuse services, such as 'by and for' organisations.
- **Victims of domestic abuse continue to report poor responses from non-specialist organisations.**
- In contrast, **specialist women's domestic abuse services have unique expertise, knowledge and a proven track record in supporting women and children experiencing domestic abuse.**
- **The distinction between specialist and generic services for VAWG is recognised in Article 22 of the Istanbul Convention**, and this must be reflected in the Bill.
- **Women's Aid therefore recommends that the duty to collaborate be amended to ensure Commissioners conduct their obligations under the duty in relation to "specialist women's community-based and sexual violence support services" rather than "relevant victim support services".**
- **Specialist domestic abuse services led 'by and for' minoritised women face some of the greatest challenges to accessing vital funding.** In 2022, 85% of services run 'by and for' Black and minoritised women reported that if the increased financial strain they are under continues without intervention, it would stop them from supporting victims – either turning them away, reducing services or closing altogether.



- **Women's Aid therefore recommends the creation of a national oversight mechanism to monitor the commissioning of services led 'by and for' Black and minoritised women.**
- Our research has shown that due to insufficient capacity of domestic abuse support services, **many victims must cross local authority borders in order to access suitable support, with 83.0% of women placed in refuge during 2021-22 coming from a different local authority area.** This issue is particularly pertinent for Black and minoritised women, who often can only access appropriate 'by and for' support outside of their local area due to the scarcity of these support services.
- We were therefore disappointed by amendments to the Bill at Report Stage in the Commons which **limit the duty to collaborate by only requiring those within the local police area to obtain the views of victims when developing a strategy in relation to victim support services.**
- **To rectify this, Women's Aid is calling for the duty to collaborate when commissioning community-based support services to be expanded to encourage cross-boundary collaboration, particularly to support Black and minoritised women in accessing appropriate 'by and for' services as needed outside their local area.**

### **Improvements to the family courts**

- **Domestic abuse and other forms of VAWG continue to be minimised, ignored and undermined in the family court system** and these proceedings are a source of significant trauma for the women we work with.
- **In 2020, the Government accepted the findings of the Ministry of Justice Harm Panel report,** which identified four key barriers in the family court's response to domestic abuse and other forms of harm:
  1. the court's pro-contact culture;
  2. the adversarial nature of the court system;
  3. resource limitations affecting all aspects of private law proceedings;
  4. the lack of coordination with other courts and organisations dealing with domestic abuse.
- To address these issues, the Harm Panel report contained a range of recommendations. Some of these have been implemented, but without appropriate resourcing or monitoring in relation to their effectiveness, and **we remain highly concerned about the lack of progress in transforming the family courts' response to domestic abuse.**



- In the family courts, experts are sometimes appointed to conduct an assessment of the child and/or parents and **their advice can have a significant influence on the judge's decision about the custody agreement.**
- In recent years, there has been a rise in the use of experts to 'prove' so-called 'parental alienation', a pseudoscientific concept with no basis in law or medicine. **'Parental alienation' is often alleged by perpetrators of domestic abuse to undermine and silence a victim** and can lead to the victim having her child removed from her – a hugely traumatic and damaging experience for both of them.
- These concerns were recently highlighted by the UN Special Rapporteur on VAWG who specifically cited research and evidence on this issue from England and Wales. The Domestic Abuse Commissioner's recent report on the family courts in 2023 also stated **'parental alienation' is being used as a counter allegation to domestic abuse, drawing the court's focus away from the perpetrator and undermining the child's wishes.**
- **In some cases, these experts are not qualified psychologists and are not regulated by professional bodies.** They may also have a financial interest in the recommendations for 'treatment' they give. This has severe consequences for children's lives. **The Domestic Abuse Commissioner concluded that the impact of successful claims of so-called 'parental alienation' by perpetrators can be devastating on both adult and child victims** - with children being intentionally removed from their primary carers to facilitate a relationship with the non-resident perpetrator parent.
- **Women's Aid is therefore calling for the Bill to provide protection for adult and child victims and other parties in the family court undergoing psychological assessment by ensuring the expert undertaking the assessment is suitably qualified and regulated.**
- **An independent report in 2020 found that the family courts is saturated by a 'pro-contact culture'.** This drives judges and magistrates' decisions, which in the vast majority of cases specify that a child should have contact with both of their separated parents.
- **Given that around 60% of the cases in the family courts involve domestic abuse, this is extremely worrying.** As the Domestic Abuse Act 2021 recognises, **children are victims of domestic abuse in their own right**, such is the impact on their mental health, behaviour, development and safety.
- **In the most extreme cases, contact with an abusive parent can lead to child homicide – Women's Aid's research has found 19 cases of this over the**

**period 2005-2015.** It is vital that the family courts protect children from harm from perpetrators, rather than ordering contact with them.

- **Women's Aid is therefore calling for the Bill to prohibit unsupervised contact for a parent waiting trial or on bail for a domestic abuse, sexual violence or child abuse related offence, or where there are ongoing criminal proceedings for these offences.**

## **Wider VAWG sector priorities**

Women's Aid supports the priorities of other VAWG sector organisations to ensure this Bill meets the needs of victims – including but not limited to:

- Latin American Women's Rights Service's calls for the Bill to implement a firewall to enable victims with insecure immigration status to safely report domestic abuse.
- Southall Black Sisters' recommendation to ensure that successful existing models of protection for migrant women on spouse visas (DVILR/DDVC) are extended to all migrant victims of abuse.
- Centre for Women's Justice's calls to address the unjust criminalisation of victims, including Black and minoritised and migrant victims.
- Joint campaign by Rape Crisis England & Wales', the Centre for Women's Justice, and the End Violence Against Women coalition to ensure that the counselling notes of victims are kept confidential.

Women's Aid also supports the recommendations proposed in the joint briefing compiled by the VAWG sector, which are vital to ensure the Bill meets the needs of all victims – for example, Rape Crisis England & Wales' recommendation on provision of independent legal advice and representation for victims of rape and sexual abuse.