

Response to Ministry of Justice consultation on the Code of Practice for Victims of Crime

May 2020

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Note: due to difficulties with accessibility to the consultation document, we have written our response as a Word document. We have used the same order of questions in the consultation document.

Introduction

Stay Safe East is a London based organisation which has been working with disabled victims of hate crime, domestic and sexual abuse and general crime, as well as other forms of abuse (institutional, financial, carer abuse) since 2010. We are unique in being a peer-led organisation of disabled people (Deaf and Disabled People's Organisation or DDPO) working with disabled survivors, and in working across most areas of crime, with a particular focus on violence against disabled women and girls and on hate crime. We are a partner/consultant to the London DDPO Hate Crime Partnership, helping to build the capacity of DDPOs to work with disabled victims of hate crime. Stay Safe East is part of the London Victims and Witnesses Service led by Victim Support London and of the Ascent Partnership of organisations working on violence against women and girls. We are also currently engaged in a national partnership with Victim Support for a project funded by the Home Office to build the capacity of providers to work with disabled victims of domestic



abuse, and to put violence against disabled women and girls on the national policy agenda. We are currently working with key VAWG organisations on our proposed amendments to the Domestic Abuse Bill.

Context: Disabled victims of crime

With thanks to Dr Susie Balderston for assistance with the data.

Disabled people are amongst the groups most affected by crime, and in particular violent crime against the person and repeat victimisation, but are least likely to report.

International research has found that disabled adults are at least 1.5 times more likely to experience violence than non-disabled people and, when stratified by impairment, the rate of physical and sexual violence is 1.6 times higher for people with intellectual disabilities and 3.8 times higher for mental health service users than the general population.¹

In the 2017/18 Hate Crime Report for England and Wales, 7226 disability hate crimes were recorded by the police. This is a 30% increase on those reported in 2016/17 and a +313% change between 2011/12 and 2017/18. Data from the Home Office shows that the majority (N = 181) of hate crimes against disabled people in England and Wales in 2017/18 fell under the category of violence against the person, accounting for 7% of all hate crimes in 2017/18. These figures are likely to be higher due to underreporting of such incidents, often as a result of difficulties around recognising such experiences as a hate crime and reporting it.

The National Intimate Partner and Sexual Violence Survey reports that disabled people are at greater risk of experiencing sexual violence and intimate partner violence, estimating that 39% of female rape victims were disabled when the rape occurred, and 24%

¹ Hughes, K., Bellis, M.A., Jones, L., Wood, S., Bates, G., Eckley, L., McCoy, E., Mikton, C., Shakespeare, T., Officer, A. (2012) Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies. *Lancet*, 379 (9826), pp.1621-1629.

of male victims of sexual violence other than rape were disabled when the rape occurred (Basile et al, 2016). The 2012-2013 Stop The Violence project found that disabled women were at greater risk of experiencing violence in residential and institutional violence, including deliberately withholding or refusing to provide medicine and assistance with everyday tasks, such as bathing and eating.

Disabled people are also more likely to experience domestic abuse than non-disabled people: The Crime Survey for England and Wales (2015) found that disabled people were more than twice as likely to experience domestic abuse than non-disabled people and, according to data from Safe Lives (2017), disabled women are twice as likely to experience domestic abuse than non-disabled women. These data also showed that disabled survivors are more likely to be living with the perpetrator, and to experience abuse for a longer period of time, than non-disabled survivors.

Disabled women are also significantly more likely to experience violence and abuse from those who 'care' for them or give them support than non-disabled women². Furthermore, family violence is twice as prevalent among disabled women than for non-disabled women.³ The level of violence experienced by disabled women is likely to be widely underestimated, due to factors including the fact that violence in residential care is not accounted for in the Crime Survey and the survey is not in accessible formats for Deaf and disabled people⁴.

The demonstrably increased risk of crime against disabled people compared to their non-disabled counterparts informs both the work of Stay Safe East and our response to this consultation.

² SafeLives (2017). *Disabled Survivors Too: Disabled people and domestic abuse*. Spotlight [online] London: SafeLives.

³ Crime Survey of England & Wales capped figures, 2012/13.

⁴ Contribution from Dr. Susie Balderston, Research Fellow, Department of Social Policy, Sociology and Criminology at University of Birmingham.

Disabled victims and the Victim's Code

As stated in our earlier evidence on the Victims' Code, below are some of the issues which our clients and their advocates have faced in relation to compliance with the Victim's Code in the past four years. These are in addition to the issues faced by non-disabled victims and witnesses.

- Victims' needs not being accurately assessed, for example their learning disabilities, cognitive issues, autism or communication needs – as a result of which they have been seen as 'unsuitable' witnesses, or the case has been No Further Actioned by the CPS. Victims may come to Stay Safe East looking for resolution after a prosecution has been dropped.
- Numerous instances of Police Officers refusing our clients' request for their advocate (IDVA or hate crime advocate) to sit in with them at interview, even though we are very clear about our role and not intervening. Where this has been allowed, clients have been much more able to sit through an ABE interview because they had reassurance from our advocates.
- Failure to inform the victim in a format they understand about the Victim's Right to Review of charging decisions
- Victims not being updated by the OIC – even to the point of not being told the officer has left their employment
- Victims not being told they can update their VPS- and not being told it will be shown to the defendant; this has had a traumatic impact on clients
- Victims not being told in a way that they understand that counselling notes can be disclosed to the defence
- Police officers having no knowledge of how to obtain an assessment for an Intermediary
- Very few cases in local crown courts of intermediaries being used to support disabled witnesses

- Long wait for a suitably Advanced ABE trained officer to interview disabled witnesses, by which time the case had timed out or the victim had lost confidence in the criminal justice system.
- Local courts still have only one screen or room for video recording facilities so that a victim can give evidence from another room- and that facility being repeatedly booked out
- A Deaf victim of hate crime being told by the police attending to take his statement “if it happens again, we will get a BSL interpreter” but not offering one when he was making a statement. Stay Safe East complained and the police arranged an ABE interview with a trained officer.
- A victim of domestic violence who has severe anxiety being told by the police and another organisation she could be arrested if she did not attend court and give evidence – this was done without the knowledge of her advocate, when her advocate was on annual leave
- Two different traumatised and vulnerable victims being made to enter the court by a back entrance without the support of their advocate who is a wheelchair user, with the only alternative being to go past the perpetrator waiting outside the court
- A visually impaired victim being handed a copy of a police officer’s hand written version of her statement at the court, to read before she went to give evidence. The Officer said he was not allowed to read it to her; the court IDVA said she could not. The print was too small for the victim’s advocate, herself visually impaired, to read.
- A Deaf victim of domestic abuse having to come back to Magistrate court three times because on the first occasion, there were no BSL interpreters; she was told she could lipread- she cannot. On the second occasion, only one interpreter was

there for her and he was partially deaf himself, which would have left her responses open to mis-translation. She was then asked to share interpreters with the defendant. On the third occasion, two interpreters were provided, but only after her advocate had chased the Witness Care Unit three times

- A spoken community language interpreter who told one of our clients 'you won't get anywhere with this case': we were told there is no channel for redress as the interpreters are not employed by the police; we contacted the agency but no response was received.
- Consistent failure by Police to share information with each other or with other agencies about the access, communication or support needs of disabled victims, so that the victim has to repeat information and explain their needs again and again – and unless they have an advocate, the victim will usually decline to go further with the case
- No Court or Police budget for transport to court for disabled victims who cannot use public transport, or travel in a police car- Stay Safe East regularly pays for transport to court for our clients.

These examples relate to cases in the Family Court (for non-molestation and occupation orders), Magistrates and Crown courts. We have been much more successful in obtaining Intermediaries in the Family Court for Child Proceedings Courts.

Stay Safe East's comments on the questions

Improving the Victims' Code

Q1: Do you think our proposal to restructure the Code into 12 overarching rights is the correct one?

Yes in general. The principle of 12 overarching rights is a good one. Having clear rights is helpful. However, we believe that the 12 rights fail to fully address issues of intersectionality and in particular the rights of disabled adults and children, and need to be much more specific and precise. We would argue for the following additional principles

- **Right 13: The right of victims/witnesses (and particularly disabled victims) to special measures relating to** their language, access, communication or support needs: intermediaries, spoken community language or BSL interpreters, Makaton communicators, palantypists, the right to attend by video, as demonstrated by current court practice during the Covid 19 emergency etc. For example, the right of some witnesses to an Intermediary is rarely implemented; we have found that officers are poorly informed about the role of Intermediaries, including arguing the Intermediary is not needed at ABE interview stage. Our advocates often have to explain the current Victims Code but there is no force behind it and it is at the discretion of officers.
- **Right 14: The right of victims to attend police interview, court hearing and trials with the support of their advocate (including IDVA and ISVAs, hate crime advocate and Independent Victims Advocates)** support worker or other appropriate person who is there to support them through the process. Very few people are entitled to an intermediary in law, and many disabled people in particular want a choice of who supports them, provides emotional support and helps them

understand the process. This is a different role from an intermediary who can produce reports for the court and intervene, but it is essential in supporting victims to attend court. At present, apart from Court based IDVAs, other advocates have to argue case by case with police officers, Magistrates and Judges to be in the Court and rarely get to sit with the victim. Yet where our professional advocates have been involved, police and the courts have recognised our value in supporting the victim and ensuring they attend hearings. A Code of Practice for 'supporters' or victims giving evidence would help ensure that the role of such supporters was defined and appropriate boundaries set which would not hinder the justice process.

Stay Safe East would like to see an investigation into the ways in which the criminal justice system fails to meet the needs of particular groups of victims e.g. Deaf and disabled victims, specific groups of BAME and LGBT victims, etc and in some cases directly discriminates against them.

Q2: Do you agree that the rights we have identified cover the most important needs of victims?

To some extent. However, we note the following:

- **Right 1 (1.1):** It is important to understand and clarify what 'simple and accessible' language means. This should mean including the information in Easy Read, and should also make explicit reference to British Sign Language. See our points about accessibility below under Q4. It is not only about language: How different people 'understand' information may be different- for example someone may say they have understood, but may not have fully processed information given to them – asking them to explain in their own words what is told to them

is one way of ensuring they have understood. Others may need more time and for information to be repeated.

- **Right 3 (3.2):** *'Where the police consider there may be a risk of harm to you from sending the written confirmation, for example in domestic abuse cases, they may agree with you not to send one'.*

We are sceptical about the police being given sole responsibility and power over the decision to send written confirmation. We believe that the victim should have a say in this, rather than leaving it to the police to 'agree' with them on their experiences of their own safety. Giving victims a degree of control over the handling of their cases is especially important in domestic abuse, carer abuse hate crime and cuckooing cases, where victims often feel they have little control in their situation.

Q3: Do you agree that these rights cover the key stages of the victim's journey in the criminal justice system?

- Overall, yes
- It should be acknowledged that there is an overriding need to strengthen communication, not only from the point of charge but before the alleged perpetrator is charged, during the investigation stage, as there are often long delays. This is especially important with cases involving a continued risk to the victim, such as domestic abuse, most cases of sexual violence, hate crime, gang-related crime and many others.
- Victims should receive support throughout that is tailored to their needs, including: independent support e.g. advocacy, access to trauma counselling, IDVA, IVA, ISVA, other, person of their choice

Information

Q4: We have included more practical advice and information in the draft revised Code, do you agree with our proposed approach?

Yes, but the advice and information must be accessible to as many people as possible, including those with limited literacy, and published in a range of formats. The published consultation document when printed was illegible to one of the writers of this response. Our suggestions to ensure the accessibility of this information are as follows:

- ‘Main’ version in plain English using everyday terms and avoiding jargon/professional language
- We would suggest a ‘you have the right to’ style of pathway guidance, ‘how does a court work?’ etc
- Possibility of police officers handing it out to victims
- Consideration for the fact that some people may not be able to access the guidance online, thus ensuring it is available as a physical copy and in large print, braille etc
- Introducing a BSL DVD with English subtitles
- Easy Read print with pictures showing a diverse range of people
- DVD which explains victim’s rights using words, pictures and scenarios

Q5: Is there any important information that you feel we should also include?

- Case studies should be used in the guidance, including disabled victims who have access or communications needs.
- Any guidance aimed at children and young people must be age-appropriate – guidance for children giving evidence would be very different from that aimed at young adults.

Impact Assessment and Equalities Statement

Q6: Are you aware of any evidence or sources of information that would help us to understand and assess equality and economic impacts in greater detail? Please supply.

Stay Safe East has produced a briefing on the Domestic Abuse Bill, outlining our four proposed amendments, as well as some additional issues for consideration by the Parliamentary Committee. Link below:

https://drive.google.com/file/d/1GBA95OxQHMzmx3n3Pztag03uHbt_n9gkD/view

- We would suggest that Deaf and Disabled people's organisations (DDPOs) be consulted on further guidance, including the National Disability Hate Crime Network and members of the London DDPO Hate Crime Partnership, Sisters of Frida, Sign Health Hate and Stay Safe East
- In the interests of fostering confidence in the criminal justice system, a focus must be on increasing the number of disabled magistrates, barristers and judges, including those from minoritised communities.
- In looking at the impact on people with protected characteristics, the aim must be to achieve equality of outcome rather than of opportunity so that for example the chances of a conviction where the victim is disabled and/or from a BAME community become equal – this would help raise confidence in the criminal justice system, which is very low amongst these groups.

Q6a: If you are aware, what do you believe would be the effect of this evidence/information on our proposals?

- This would mean that more disabled people can get justice through the courts. Current sanction detection rates for

significant crimes such as disability hate crime, domestic or sexual abuse and financial abuse against disabled people are some of the lowest in the criminal justice system and most cases are 'No Further action'ed'.

The Draft Revised Code

Q7: Do you have any further comments about the draft revised Code?

We would like to raise concerns regarding the points relating to victims of domestic abuse and hate crime, specifically disabled victims.

Enhanced rights and special measures

- We propose that the term 'vulnerable', used throughout to refer to victims, should be replaced with 'at risk of serious harm, abuse or neglect' for the definition to be consistent with the Care Act 2010.
- Stay Safe East takes issue with the phrase 'mentally disordered', preferring to refer to the social model of disability and individuals who are experiencing acute mental health issues and are a risk to the victim or any other person.
- Every victim should have the right to be kept informed and to nominate someone of their choice with whom information can be shared. This may be a family member, but may also be an advocate, supporter or friend. Stay Safe East takes issue with the discriminatory principle that a nominated family spokesperson should automatically have a right to information if the victim is disabled. IN line with the Mental Capacity Act, there should be an assumption of capacity unless proved otherwise. Victims with limited or fluctuating capacity would/should in any event be granted the right to an intermediary. Even where the crime does not involve either other family members or, paid or unpaid carers, involvement of

family member can lead to disabled people minimising the crime or of being pressurised into not ‘creating a fuss’, or deterred from speaking out because of the risk to family reputation. For example abuse by a paid carer in institutional care may lead to ‘family guilt’ at having placed the disabled person in residential care, and may lead to family member pressuring the victim. Many disabled people have been rejected by their families and would prefer to nominate a friend who can help keep them informed.

- Victims should have the right to be flagged by the Crown Prosecution Service as ‘consistently targeted’, as victims could be a repeatedly targeted victim by different people (especially in domestic abuse, sexual violence or cuckooing cases).
- **Special measures, 4.13:** the document states that victims have the right to be assessed for giving evidence using special measures by the police, but we believe that this could, and should, be done by an IDVA/ISVA, IVA or hate crime advocate in some circumstances.
- There is no mention of the right to have special measures/access in prison, and it should be acknowledged that disabled victims may also be offenders due to over-criminalisation of disabled people.
- The promotion of **restorative justice** is problematic. We believe that there should not be an automatic right to restorative justice, especially where the perpetrator has power/control or a position of trust or authority over the victim.
- Victim Personal Statements
 - Victims should have the right to be assisted to make a VPS, and to make as multiple updates – the impact of a crim is often not felt immediately, and the long term impact may not become apparent for months.

- It should also be acknowledged that the way the Victims' Personal Statement is written about does not consider the other people affected by the crime such as the victim's partner or friends (for example a group of people with learning disabilities living in supported housing where one person is targeted for hate crime but the crime impacts on the wider group and the community. We propose that the Victims' Personal Statement is instead referred to as a 'Victim Impact Statement' to account for this.

It is also important to note that there are only three very small specialist IDVA/ISVA or Victims Advocate services for Deaf and disabled people in the country and therefore the provision of, and access to, specialist support for victims is in part a funding issue.

Suggestions

Stay Safe East presents the following general thoughts and recommendations regarding the implementation of the Victims Code:

- Victims should receive support throughout that is tailored to their needs, including: independent support e.g. advocacy, access to trauma counselling, IDVA, IVA, ISVA, other, person of their choice
- all parts of the Criminal Justice system should receive specialist training to deal with Deaf and disabled victims
- Specifically, police should be trained to deal with disabled victims. This includes more ABE/advanced ABE trained officers
- Implementation of measures to address the issue of contact with and proximity to the perpetrator in court: e.g. the victim and defendant should be able to wait in separate accessible waiting areas

- Access measures should be in place at least 72 hours before court takes place, and confirmed with the victim and if necessary their advocate before hand

In summary

What disabled victims need

1. A right enshrined in law to support throughout the criminal justice process

To be offered access to an IDVA, IVA, ISVA or hate crime advocate, or other suitable advocate, who is trained to understand how to support disabled victims

To be accompanied by that advocate or a friend or supporter (who is not a witness) when making a statement to the police and in all other formal or informal encounters with the criminal justice agencies

2. Accessible information about their rights/entitlements as a victim and witness

3. Access to an intermediary where appropriate, from police interview through to the court

4. To be dealt with by suitably trained officers and legal representatives

- **This means an increase in the number of trained ABE and Enhanced ABE officers**
- **Basic training on dealing with disabled victims for all officers**

5. To be kept updated on a pre-agreed basis as frequently as the victim needs

- **A trained Single Point of Contact officer or civilian member of staff who keeps the victim update on the case**

- **More frequent contact for some victims who need additional reassurance, or for example have memory issues or severe anxiety**
- 6. The right to make a Victim Personal Statement/Victim Impact Statement in a way that is appropriate, timely and accessible**
 - **Initial statement updated if necessary several times**
 - **The right to prepare the statement with the help of the victim's IDVA, IVA etc**
 - 7. The right to reasonable adjustments in relation to disability needs throughout the process**

Stay Safe East May 2020