Victims and Prisoners Bill

House of Lords

Second Reading

Briefing

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Introduction

1. JUSTICE is a cross-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.

2. This Briefing outlines JUSTICE's views concerning the Victims and Prisoners Bill (the "**Bill**"). The Bill was originally conceived and presented to the Justice Committee for pre-legislative scrutiny, as the Victims' Bill. In that form, it contained just 13 clauses, focusing on defining "*victims*"; providing for the Victims Code; fostering collaboration in the provision of support services; and addressing the roles of Independent Domestic Violence Advisors ("**IDVAs**"), Independent Sexual Violence Advisors ("**ISVAs**"), and the Victims' Commissioner.[1] Following the receipt of evidence during mid-2022, the Justice Secretary reported on the Victims Bill in September 2022 and the Government's response was published on 19 January 2023.

3. When presented to the House of Commons at the end of March 2023, however, the Bill contained not only Part 1, addressing the position of victims of criminal conduct, but two further Parts. Those deal in turn with victims of major incidents, and reforms aimed at prisoners, in particular the parole process. Both of these additional subjects are significant ones, deserving of scrutiny and testing against the evidence, in terms of need for and effectiveness of reforms, before being addressed in primary legislation. A valuable opportunity for pre-legislative scrutiny has been missed in this case and the consequences of this can be seen in the legislative deficiencies. More positively, however, JUSTICE sees the late introduction of new Part 3, concerning expedition of compensation in response to the Infected Blood Inquiry, as a welcome one.

Part 1 – Victims of Criminal Conduct

4. Currently, too many people affected by crime[2] feel let down by a criminal justice system that seems complex, alienating, and ineffective. In consequence, many disengage with the

[1] JUSTICE provided evidence to the Justice Committee, both orally and in writing: see https://committees.parliament.uk/work/6730/prelegislative-scrutiny-of-the-draft-victims-bill/publications/.
[2] This is a helpful term used by Victim Support Scotland to encompass both victims and witnesses of crime, acknowledging the different experiences that people have and the potentially disempowering effect of more common language: see Victim Support Scotland, "Mind My Experience: The VSS Language Guide" (February

process, causing trials to collapse or otherwise hobble along without key evidence. This is not news, but rather a long-standing problem and, as a result, nearly six years ago, the Conservative Party's manifesto promised to "*enshrine victims' entitlements in law*". More recently, in 2021, the Queen's Speech announced a draft Victims' Bill, which would put the Code of Practice for Victims of Crime on a statutory footing, improve victims' experience of the criminal justice system, and set expectations for the standard and availability of victim support for victims of domestic abuse and sexual violence. Then, from December 2021 to February 2022, the Government consulted on how this might be achieved. Part 1 of the Bill represents the culmination of those efforts.

5. The major focus of Part 1 is the Victims' Code. In terms of who this would apply to, it is positive to note that the Government adopted the recommendations put to the Justice Committee that this should include bereaved family members of deceased victims, children who have witnessed domestic abuse, and individuals born of rape. The Government also accepted the Justice Committee's recommendation that the Victims' Commissioner should retain an oversight duty at a national level, where in the original draft, this responsibility was placed on local criminal justice bodies and Police and Crime Commissioners alone. Again, JUSTICE sees this change as a positive development.

6. We are also pleased to see that, by means of new clause 24 introduced at Committee Stage, those entrusted with the investigation and prosecution of offences will be subject to legislative control and receive greater guidance in relation to the pursuit of complainants' personal information. Although perhaps broad, these provisions adopt the right approach, by ensuring that individuals are notified and that police take decisions appropriately, without unnecessarily further burdening the courts nor interfering with the existing disclosure regime,[3] which does not appear to be the root of the problem.

2022), available at https://victimsupport.scot/wp-content/uploads/2022/02/Mind-My-Experience-VSS-Language-Guide-6.pdf.

[3] 'Disclosure' is the process of the police and prosecution providing the defence with material that has been obtained in the course of the investigation, which is not being used as evidence (i.e., as material which supports the prosecution case). The process is essentially as follows:

1. Police investigate, pursuing all reasonable lines of inquiry, whether they point to or away from a particular suspect/defendant.
2. The defendant, who has been charged, is provided with 'initial details of the prosecution case' (the "**IDPC**") (the basic evidence) for their first hearing, which happens at the magistrates' court. The IDPC should also include 'initial disclosure' – a schedule of material obtained by the police and prosecution which does not form part of the prosecution case. This schedule 'discloses' the existence of all such material at the present time, and should be marked up by the prosecution to show what material they consider must be further 'disclosed' to the defence by providing it to them. Material is disclosable if it is capable of undermining the prosecution case or assisting the defence case.
3. Further disclosure schedules are provided to the defence from time to time as new material is obtained by the police and CPS. In particular, the prosecution must give updated disclosure following receipt of a

7. Beyond this, however, the criticism remains that the Bill does little to aid people affected by crime in any meaningful sense. The issuing of a Victims' Code is already mandatory pursuant to section 34 of the Domestic Violence, Crime and Victims Act 2004 (albeit that less detail as to the Code's content is identified there). According to a 2021 Survey conducted by the Victims' Commissioner,[4] 71% of victims were unaware of their entitlements under that existing Code, while only a quarter of respondents agreed that they were kept regularly informed or received all the information they needed about the police investigation.[5] It is unlikely that altering the legislative source of the Victims' Code will change that situation. Most of those who have given oral evidence to the Public Committee Bill concerning Part 1 have expressed the same view.

8. Moreover, in presenting the Bill to Parliament, the Government did not put forward a draft of the new Victims' Code for review. A draft with subsequent updates has been published online,[6] but even so, various concerns remain.

9. First and foremost, what is ultimately required to ensure that people affected by crime are properly supported through the criminal justice process is adequate funding of the criminal justice system. Reforms seeking to improve processes for engagement by people affected by crime must be accompanied by real commitments to invest in the criminal justice system as a whole. Without this, complainants, witnesses and defendants alike will continue to face delays, confusion, and uncertain or missed trial dates. Meanwhile, opportunities to address risks of reoffending will be missed where probation and custodial rehabilitation programmes and mental health services remain vastly under-resourced. Similarly, if the Government's aim is for people affected by crime to have confidence in the criminal justice system, then the first step is for that system to function effectively, without the current

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defendant's defence statement, which must identify the matters in issue for trial. The same process of before, of annotation and substantive disclosure by provision of material to the defence where relevant, also continues – even beyond the point of any conviction.

4. Where the defence have served a defence statement and a dispute arises between the prosecution and defence as to whether material meets the disclosure test, the defence may apply to a Crown Court judge for a decision pursuant to section 8 of the CPIA that the material is in fact disclosable. The prosecution may also make a public interest immunity application, if they consider material to be relevant and disclosable but that it is not in the public interest (e.g. on grounds of national security) to disclose.

[4] This survey obtained responses from individuals who said they had been a victim of crime or had reported a crime of which they had been a victim in the three years to September 2021: see Victims Commissioner, "Victims' Experience: Annual Survey" at https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/6/2021/12/VC-2021-survey-of-victims-_amended-27_9_21-1.pdf.

[5] Ibid, p.1.

[6] See https://www.gov.uk/government/publications/victims-and-prisoners-bill/updates-in-the-draft-new-victims-code#draft-code-of-practice-for-victims-of-crime-in-england-and-wales (4 December 2023).

backlogs and resource restrictions that afflict the criminal courts and the Crown Prosecution Service (the "**CPS**") in particular.

10. In a similar vein, if the entitlements of people affected by crime are to be meaningful, then they must also be enforceable – another call echoed by many in oral evidence before the Public Bill Committee. The Code itself is not contained in primary legislation so is not directly enforceable, while Clause 5 of the Bill expressly removes the possibility of civil or criminal liability for a breach of the Victims' Code in any event.

11. Nor are any other sanctions available against public bodies who fail to comply with their duties. Instead, it is simply for "*criminal justice bodies*" – that is, chief officers of police, the Crown Prosecution Service, and the Secretary of State, among others – to collect and review information about the services that they provide. Pursuant to Clause 10(1), this information is then to be published to the extent that the Secretary of State "*considers will enable members of the public to assess the code compliance*" of local criminal justice bodies. Data collection and review is an important means of monitoring compliance. However, it is no substitute for a substantive route of recourse where an individual's entitlements have been neglected or denied.

12. The one avenue open to individuals in this position is to make a complaint to the Parliamentary Commissioner for Administration. This may be pursued on the individual's behalf by the Victims' Commissioner – and we welcome Baroness Newlove's recent reappointment, after this significant post was left vacant for over a year. What flows from such a complaint, however, is an investigation and a report which, although potentially useful in preventing future failures, do nothing to secure the rights of the individual concerned, who may still be struggling to engage with the criminal justice process.

13. There have been challenges in identifying what an appropriate enforcement mechanism might look like. One possibility is to have a general victims' rights ombudsman, or at least one identified and responsible individual in every organisation providing services to victims, to whom a person affected by crime can turn immediately in the event that their rights are not being afforded. An ombudsman could also be empowered to conduct 'spot checks' on individual cases to ensure that rights have been explained and provided for, or that this will be done if it has not. Another option is to have monitoring of performance and assessment of victims' service providers against performance indicators, with the outcome published – something akin to an Ofsted grading. A combination of these proposals could be created. But whatever it is, the Government must introduce a mechanism which would render rights real, tangible and enforceable, otherwise the new Victims' Code will suffer from the same deficiencies as the current regime.

14. JUSTICE equally endorses the submission to the House of Commons Public Bill Committee on behalf of Victim Support that people affected by crime must be able to access support which is independent of police and statutory services. Many people affected by crime can be reluctant to come forward owing to concern that other state agencies, such as the Home Office, may become involved. It is for this reason that JUSTICE recommended to the Justice Committee that there should be a 'firewall' between criminal justice and victim support agencies on one hand, and the Home Office and immigration enforcement on the other.

15. This recommendation, taken forward by the Justice Committee, was rejected in the Government's response. The view expressed was that existing police guidance on sharing information with the Home Office, and a protocol and code of practice applicable to migrant victims being developed by the Home Office, were sufficient to address concerns. In reality, however, those measures are unlikely to reassure people affected by crime with irregular immigration status, leaving them vulnerable to exploitation and unlikely to engage with the criminal justice process. We note that the importance of a firewall was highlighted in oral evidence given to the Public Bill Committee by Nicole Jacobs (Domestic Abuse Commissioner), Dr Hannana Siddiqui (Southall Black Sisters), and Ruth Davison (Refuge).[7] We would therefore urge that the existing position be reconsidered, in the interests of supporting all people affected by crime. For similar reasons, JUSTICE endorses Victim Support's position that the independence of IDVAs and ISVAs from police and the criminal justice system be guaranteed.

16. The other point which must not be overlooked in all this is that every criminal defendant remains innocent until proven guilty. Without wishing to detract from the experience of people affected by crime, there is a careful balance to be struck between providing for those who come forward with allegations, and protecting the right of criminal defendants to a fair trial in which their guilt is not pre-judged. Moreover, unlike in civil law jurisdictions, complainants have no formal role in the UK's criminal justice processes: although in the very earliest days of the English criminal law, victims were responsible for bringing criminal proceedings themselves, that role has long since been taken over by the State, which consequently bears the burden of prosecution. It is of course heavily reliant in this on the

[7] See https://publications.parliament.uk/pa/bills/cbill/58-03/0286/PBC286_VictimsandPrisoners_1st4th_Compilation_22_06_2023.pdf, pp.12, 14, 15, 20-21, 106-7. See also written evidence submitted to the Public Bill Committee by the Latin American Women's Rights Service (LAWRS), the Anti-trafficking and Labour Exploitation Unit (ATLEU), Focus on Labour Exploitation (FLEX) and Kanlungan https://publications.parliament.uk/pa/cm5803/cmpublic/VictimsPrisoners/memo/VPB30.htm.

co-operation of complainants and witnesses; the *quid pro quo* is that the State must provide adequate support and information to them.

17. People affected by crime must be assisted to understand their position in the overall criminal justice process, as well as its shortcomings. That process relies on the State having sufficient evidence to satisfy a jury beyond reasonable doubt – so that they are sure – of a defendant's guilt, before they may convict. That is a high bar and one that, despite best intentions and the full code test[8] being met, will not be satisfied in every case. It is just as important that services provided to victims, complainants, and witnesses aim to support them in this respect as much as to keep them engaged with the criminal justice system, so that they are able to move forward regardless of the outcomes.

18. For all of these reasons, it is JUSTICE's view that Part 1 does not go far enough in providing for adequate and appropriate support for victims of criminal conduct. **We emphasise that greater thought, budgetary commitments, and enforceability mechanisms are required if any meaningful change is to be achieved.**

Part 2 – Victims of Major Incidents

19. Part 2 of the Bill contains provisions that would introduce advocates to act on behalf of victims of major incidents. A "*major incident"* is defined in the Bill as an incident which occurs in England or Wales, appears to the Secretary of State for Justice to have caused the death of, or serious harm to, a significant number of individuals, and is declared in writing by the Secretary of State to be a major incident.[9] "*Victims"* under this Part include both individuals who have been harmed by a major incident, as well as close family or friends of individuals who have died or suffered serious harm.[10]

20. The Bill would establish two types of advocate role: a *"standing advocate*"[11] and an "*advocate appointed in respect of a major incident*."[12]

[8] See Crown Prosecution Service, "The Code for Crown Prosecutors" (26 October 2018), available online at https://www.cps.gov.uk/publication/code-crown-prosecutors.

[9] Clause 28(2).

[10] Clause 28(4).

[11] Clause 29.

[12] Clause 30.

21. Under the Bill, the Secretary of State is required to appoint a standing advocate for victims of major incidents.[13] The standing advocate would be a permanent position.[14] The functions of the standing advocate would include advising the Secretary of State as to the interests of victims and their treatment by public authorities; advising other advocates; and making reports to the Secretary of State on how they have discharged their functions.[15]

22. In addition to this, the Bill gives the Secretary of State the power to appoint an advocate to act in respect of a particular major incident.[16] The individual appointed may be the standing advocate, or another individual considered by the Secretary of State to be "*qualified*" and "*appropriate to appoint in respect of that incident*."[17] The role an advocate appointed in respect of a major incident would be to help victims of major incidents understand the actions of public authorities, direct victims to sources of support, communicate with public authorities on behalf of victims, and assist victims in accessing documents.[18]

23. Part 2 of the Bill would also amend the Coroners and Justice Act 2009 to make advocates an Interested Person at an inquest into a death following a major incident,[19] meaning that they would be able to ask questions of witnesses and receive copies of evidence relevant to the inquest. This includes advocates appointed in respect of the incident, and the standing advocate.[20]

24. According to the Government, the introduction of advocates for victims of major incidents reflects its recognition of the difficulties faced by those affected by the Hillsborough Disaster, and its commitment to ensuring that "*families and communities never again have to struggle in anguish against a system created to help them*".[21] The establishment of the standing advocate role, introduced by the government at Report Stage, is intended to

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[13] Clause 29(1).

[14] Victim and Prisoners Bill Explanatory Notes, p. 46.

[15] Clause 29(2). Victim and Prisoners Bill Explanatory Notes, p. 46.

[16] Clause 30.

[17] Clause 30(2).

[18] Clause 33(3).

[19] Clause 34.

[20] ibid.

[21] HC Deb 1 March 2023, vol 728, cols. 791-792.

increase independence, and ensure victims receive help and advice quickly, and have their views relayed directly to government.[22]

Concerns with the advocate provisions

25. JUSTICE is in favour of measures to increase support for and elevate the voices of survivors of major incidents. As we highlighted in our report *When Things Go Wrong: the response of the justice system* (2020), to avoid retraumatising those affected by catastrophic events, the inquest and inquiries processes must be responsive to their needs.[23] This sentiment has been echoed by the Government, which has vowed to "*put victims and bereaved at the heart of* [its] *response to large-scale public disasters*".[24]

26. However, it is our view that the provisions of Part 2, like those of Part 1, do not go far enough or live up to previous commitments made by bereaved families and survivors of major incidents. In particular, we are concerned that:

a) The definition of major incidents is too narrow.

27. JUSTICE considers that there may be incidents which, whilst not meeting the definition of major incidents in the Bill, it would be in the public interest to declare as major incident for the purpose of Part 2.

28. This could include cases where a relatively small number of people have died or suffered serious harm in circumstances that suggest serious systemic failing on the part of a public body, or where there appears to be a serious risk that such circumstances may recur, or cause harm to a significant number of people in the future. Whilst not limited to terror related events, this could include incidents like the Fishmongers' Hall terror attack, during which 3 people including the attacker died.

29. In such cases, effective investigations are crucial so that lessons can be learnt, and further harm can be avoided. Given this, and to the extent that advocates are intended to promote accountability and lesson learning, there may be a strong public interest in the standing

[22] Ministry of Justice, 'Press release: Permanent Independent Public Advocate to better support disaster victims' (2023).

[23] JUSTICE, When Things Go Wrong: The response of the justice system (2020); see also INQUEST, 'Family reflections on Grenfell: No voice left unheard (INQUEST report of the Grenfell Family Consultation Day)' (May 2019) p. 6.

[24] HC Deb, above n 21.

advocate, or an advocate appointed in respect of an incident, exercising their functions in relation to such incidents.

30. We therefore consider that, in addition to the definition of major incidents provided by the Bill, the Secretary of State should have discretion to declare instances such as those described above as major incidents, and to appoint an advocate in respect of them, where this would be in the public interest.

b) The appointment of advocates in respect of a major incident is a discretionary rather than mandatory appointment.

31. Under clause 30, the appointment of an advocate in respect of a major incident would not be mandatory. Instead, the Secretary of State "*may*" appoint one. Victims of a major incident for whom an advocate has been appointed would have access to support as per the functions of advocates appointed in respect of major incidents set out in clause 33. This would include being signposted to support and advice services and being assisted in communication with public authorities and accessing documents.

32. In contrast, victims of major incidents in relation to which an advocate is not appointed could only benefit from the functions of the standing advocate as set out in clause 29 – namely, to have their interests communicated to the Secretary of State. This would mean that some victims of major incidents would receive additional support that others are not entitled to, further exacerbating existing inequalities in the post-death investigation system.

33. There is no principled reason for this two-tiered system. Neither the Bill nor its Explanatory Notes provide any indication of why and in what circumstances the Secretary of State might chose not to appoint an advocate in relation to a major incident once it is declared as such. To ensure the support received by victims is fair and effective, once a major incident has been declared by the Secretary of State under clause 28 of the Bill, the appointment of an advocate in relation to that incident should be mandatory.

c) Advocates are not sufficiently independent of government.

34. JUSTICE acknowledges that the introduction of a standing advocate, with powers to produce reports without a request from the Secretary of State, does increase the independence of the role. We are also pleased that following Report Stage, the Bill now requires reports by advocates to be laid before Parliament, and that the grounds under which a report can be redacted by the Secretary of State before being published have

been narrowed.[25] It is our view that this will go some way to increasing accountability and transparency.

35. However, the Secretary of State still would have broad discretion over when and who to appoint as an advocate in respect of a major incident, and how they would be resourced. The Bill would also give the Secretary of State the power to issues guidance for advocates appointed in respect of a major incident in relation to the exercise of their functions.

36. We appreciate that there may be practical reasons for the power to appoint an advocate in respect of a major incident being vested in the Secretary of State, as opposed to the standing advocate – for instance, to ensure that an advocate can still be appointed in circumstances where the standing advocate role is vacant. However, there remains a risk that this could undermine the independence of advocates, as they are instructed by, and answerable to, the Secretary of State.

37. To guard against this, the terms of appointment for advocates set out in clause 31 should make explicit that while advocates would sit within the Ministry of Justice for administrative purposes, they would be independent with respect to its functioning and decision making. The power of the Secretary of State to issue guidance to advocates appointed in respect of major incidents should also be removed so as to not constrain or impugn their independence. To ensure consistency the standing advocate should produce guidance for other advocates in relation to the exercise of their functions under the Bill.

a) The Bill does not provide for views of victims to be properly considered.

38. The press release introducing the standing advocate position states that the role will "*give victims a voice when decisions are made about the type of review or inquiry to be held into a disaster*".[26] However, there is no requirement for the standing advocate to directly consider the views of victims of a major incident when advising the Secretary of State. The Bill provides for an individual other than the standing advocate to be appointed as the advocate in respect of a major incident. In these circumstances in particular it is not clear from the Bill how and whether the views of the victims will be communicated to either the standing advocate, or the Secretary of State.

[25] Clause 36 (3) and (4).

[26] Ministry of Justice, 'Press release: Permanent Independent Public Advocate to better support disaster victims' (2023).; Victim and Prisoners Bill Explanatory Notes, p. 46.

39. Moreover, whilst the Government has said that the appointment of advocates for individual major incidents will allow for expert insight from, for instance, community leaders who hold the confidence of victims,[27] there is again no requirement to consider the views of the community affected by the incident when deciding whether and who to appoint as a specialist advocate in relation to a specific incident.

40. We appreciate that the need for rapid deployment of an advocate following a major incident may make it difficult to seek the views of victims before appointing an advocate in respect of that incident. However, once an advocate has been appointed, the Secretary of State should seek the views of victims as to whether to appoint an additional "specialist" advocate, and who to appoint. The Secretary of State should also be required to consider the views of the victims of an incident before making a decision to terminate the appointment of an advocate appointed in respect of that incident.[28]

a) The advocate provisions of the Bill are not sufficient to promote transparency and accountability.

41. The Bill does not give either the standing advocate, or advocates appointed in respect of a major incident any powers to require the production of documentation, and there is no duty on public authorities to assist the advocate in any way. This lack of power to compel the provision of information calls into question to extent to which the advocate will be able to combat the institutional defensiveness that these provisions ostensibly seek to address.[29]

42. To promote transparency and accountability, a statutory duty of candour should be introduced. This would place a codified requirement on public servants, public authorities and other adjacent corporations to assist investigations, inquests and inquiries proactively and truthfully, at the earliest possible opportunity. This could occur through the early provision of position statements and the disclosure of all relevant documentation.[30]

43. As our 2020 report highlighted, a statutory duty of candour would significantly enhance the participation of bereaved people and survivors, by guarding against institutional

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[27] Ministry of Justice, 'Press release: Permanent Independent Public Advocate to better support disaster victims' (2023).

[28] Under clause 31.

[29] HC Deb, above n 21.

[30] JUSTICE, When Things Go Wrong: The response of the justice system (2020).

defensiveness and fostering a 'cards on the table' approach.[31] Further, by directing the investigation to the most important matters at the outset, a statutory duty of candour would facilitate earlier findings and, in turn, reduce costs.[32]

44. Failing this, and as a minimum, advocates appointed in respect of a major incident should be required to report to the Secretary of State on whether public bodies have acted openly and transparently in relation to the major incident. This could include reporting on whether public bodies signed up to the Hillsborough Charter,[33] have fulfilled their commitments under that charter. The Secretary of State should be required to make this information public.

Extending the Victims' Code to victims of major incidents

45. We consider that the Bill represents a missed opportunity to extend entitlements of the Victims Code to victims of major incidents. Victims of major incidents will have suffered serious harm, often at the hands of State or corporate bodies. However, they do not receive the same recognition from Government as victims of crime and so are not entitled to the same minimum level of support and services. Instead, they are often expected to navigate complex legal processes with little recognition of the harm they have suffered or the trauma they have faced.[34]

46. Whilst the position of victims in the criminal justice system is far from perfect, as outlined above, organisations working with bereaved families have flagged a distinct lack of support for victims in the context of inquests and inquiries. In written submissions to the Angiolini Review, INQUEST noted that:

> "*as soon as police officers were charged with criminal offences the families of Azelle Rodney and Thomas Orchard were assisted by Victim Support with*

[31] *ibid,* p.2.

[32] *ibid,* para. 4.49.

[33] The Hillsborough Charter, also known as the Charter for Families Bereaved through Public Tragedy, was proposed by Bishop James Jones' in his 2017 review of the experiences Hillsborough families. The Government, Police, and other public bodies have since signed the Charter. See The Rt Hon Reverand James Jones KBE, 'The patronising disposition of unaccountable power': A report to ensure the pain and suffering of the Hillsborough families is not repeated (2017); HC Deb 6 December UIN WS99; National Police Chiefs' Council, Charter for Families Bereaved through Public Tragedy (2021); College of Policing, Bereaved families supported by new charter (2021).

[34] JUSTICE, When Things Go Wrong: The response of the justice system (2020).

transportation and accommodation around the trial. This is in sharp contrast to how families in death in custody cases are generally treated."[35]

47. A further example cited by INQUEST concerned a suicide in custody. In the week before the death, the mother of the bereaved had had her car stolen; within 24 hours she had received a telephone call and been provided with a leaflet from Victim Support. She received no such support the following week from the coronial system.[36]

48. As recognised by the Government and underscored in relation to Part 1, the criminal justice system has a long way to go in providing proper support to victims of criminal conduct. However, what the above examples show is that the inquests and inquiries system has, in certain respects, even further to go. There is no principled reason to focus on improving the experience of victims in one context, whilst failing properly to recognise the needs and experiences of victims in another.

49. It is also worth recalling that inquests and inquiries, particularly those relating to the major incidents as defined by the Bill, often run concurrently with or prior to criminal investigations. Allowing certain minimum entitlements in one process and not the other risks undermining the confidence of victims in both. There is little use in trying to ensure that individuals are supported through and engaged with the criminal process, when they are at risk of being, or have already been, let down by a separate legal process addressing the same events. This provides an additional justification for affording victims in the inquests and inquiries context similar minimum entitlements to those in a criminal justice setting. Failing to do so is not only unfair, but also runs counter to the Government's stated aim of ensuring victims have confidence that they will be treated "*in the way they should rightly expect*".[37]

50. Some secondary legislation and guidance does exist which sets out, to an extent, the entitlements of bereaved people and survivors in inquests and inquiries. However, as the examples above demonstrate, these provisions are insufficient to secure effective participation, and do little to ensure survivors and the bereaved are properly supported. Indeed, many of those that JUSTICE consulted for our 2020 report expressed feeling alienated and retraumatised by the inquest and/or inquiry process, and found that little was

[35] The Rt Hon Dame Elish Angiolini DBE KC, Report of the Independent Review of Deaths and Serious Incidents in Police Custody (2017), para 15.5 as quoted in JUSTICE, When Things Go Wrong: The response of the justice system (2020), para. 3.3.

[36] ibid.

[37] Ministry of Justice, Victims and Prisoners Bill Policy Paper (April 2023).

done to address their needs.[38] It is our view that extending the provisions of the Victims' Code to victims of major incidents and bereaved interested persons at inquests would go some way to mitigating this.

51. Under clause 2 of the Bill, the Victims' Code as applicable to the criminal justice context would reflect the principles that victims should:

    a) be provided with information;
    b) be able to access support services;
    c) have the opportunity to make their views heard; and
    d) be able to challenge decisions which have a direct impact on them.

52. Applying these principles to victims of major incidents and interested persons in inquests would have significant practical and symbolic benefits, consistently with the Government's pledge to place victims at the "*heart of its response*" to public tragedies.[39]

53. From a practical perspective, the introduction of a statutory code guided by the above principles would require investigators, coroners and inquiry teams to reconsider their protocols in line with certain minimum entitlements. This could include making provisions to conduct needs assessments to identify what support is required; interviewing without unjustified delay and limiting the number of interviews to those that are strictly necessary; arranging court familiarisation visits; providing expenses for travel to inquests, subsistence and counselling; and affording a route for administrative complaints, with a full response to any complaints made.[40]

54. Beyond these substantive benefits, extending the Victims' Code to the inquiries and inquests context would also raise the status of victims within these processes. Affording victims of major incidents and Interested Persons entitlements under the Victims' Code would represent a recognition of their status as victims of significant, and often wrongful, harm who should be treated in a manner that is dignified and promotes participation.

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[38] JUSTICE, When Things Go Wrong: The response of the justice system (2020); see also INQUEST, 'Family reflections on Grenfell: No voice left unheard (INQUEST report of the Grenfell Family Consultation Day)' (May 2019) p. 6.

[39] HC Deb, above n 20.

[40] JUSTICE, When Things Go Wrong: The response of the justice system (2020), para. 3.5.

55. We therefore consider that these principles be extended to the treatment of victims of major incidents and interested persons at inquests, bearing in mind the recommendations in relation to Part 1 about how those measures should be strengthened**.** This could be achieved by introducing a requirement in the Bill for the Secretary of State to issue a separate Victims' Code relating specifically to victims in the inquests and inquiries context. Such a code would be guided by the same principles and have the same weight and legal status as its criminal justice counterpart. Before issuing a draft of the code, the Secretary of State should be required to consult with survivors of major incidents and the bereaved. Further consultation should be required before any changes to a Victims' Code, or provisions of a Victims' Code relating to victims in the inquests and inquiries context, are made.

Part 3 – Infected Blood Compensation Body

19. JUSTICE welcomes Part 3 of the Bill, which creates a body to administer compensation for victims of the infected blood scandal. We consider that the chairing of the body by a High Court or Court of Sessions judge with status as sole decision maker will secure the independence of the body from Government. Moreover, we are pleased to see that the need to ensure accessibility for applicants has been recognised on the face of the Bill, and that the Bill envisages a role for those potentially eligible for compensation to be involved in the review and improvement of the scheme.

20. However, in order to that victims can access compensation fairly and efficiently, the Government must make provisions for access to free independent legal help and representation for applicants where necessary.[41]

Part 4 – Prisoners

21. Through the parole system, the State exercises one of its most important functions – the protection of the public from serious criminal offending – as well as its most coercive power – the deprivation of individual liberty. It is therefore vital that the process operates effectively and that the decision-making body responsible for deciding upon release or continued detention can carry out its role fairly and independently.

22. JUSTICE is pleased to see that the Government has decided to remove the most concerning aspect of the Bill when originally introduced to Parliament – a ministerial veto

[41] See Sir Brian Langstaff, Second Interim Report of the Infected Blood Inquiry (2023), Recommendation 15.

over parole decision in "*top tier*" cases – to the benefit of both prisoners and victims. Nonetheless, there are still areas for improvement.

23. New Clauses 44 and 45 deal with the arrangements which are proposed in place of the ministerial veto. JUSTICE welcomes the fact that the referral proposed will now go directly to a court, namely the Upper Tribunal or the High Court, and that clarity has been provided around the Secretary's discretion to refer a case. It is also appropriate that the original decision is not quashed on referral, albeit that its enforcement is suspended while the referral is determined. There remains room for argument that this further level of review is both costly and unnecessary in view of the existence of the reconsideration mechanism and for Parole Board decisions to be judicially reviewed. However, this arrangement removes JUSTICE's original concerns that the rule of law and human rights were being blatantly trampled, to the detriment of victims and prisoners alike. Even so, it will be necessary to give extensive consideration to the practical arrangements around resourcing and procedure within the Upper Tribunal if this arrangement is ultimately to prove workable.

24. JUSTICE's greatest ongoing concern is with Clauses 49, 50 and 51 of the Bill, which would disapply section 3 of the Human Rights Act 1998 ("**HRA**") from all provisions (and subsequent legislation) relating to the release, licences, supervision, and recall of indeterminate and determinate sentence offenders. Section 3 requires primary and secondary legislation to be read and given effect in a way that is compatible with the European Convention on Human Rights ("**ECHR**") "*so far as it is possible to do so*". The Government has said the disapplication of section 3 is necessary to ensure that the intention of Parliament with respect to prisoners who may be or have been released is maintained. It has explained that section 3 has previously required courts to adopt interpretations which depart from "*the unambiguous meaning of […] legislation*".[42]

25. It bears noting at the outset that, on introduction of the Bill into both the House of Commons and the House of Lords, statements have been made pursuant to section 19(1)(a) of the HRA that the provisions of the Bill are compatible with rights secured under the ECHR. The proposed disapplication of section 3 appears to be wholly contrary to such a view, indicating instead that a preference for legislation to be interpreted in a manner that gives priority to the Government's desired outcomes, regardless of the human rights implications. If that is the case, there should be candour about that fact.

[42] Victims and Prisoners Bill Explanatory Notes, available at https://bills.parliament.uk/publications/53289/documents/4128, paras. 351-53.

26. More substantively, if section 3 is disapplied, it will remain possible for the courts, pursuant to section 4 of the HRA, to make declarations of incompatibility with respect to provisions of primary or subordinate legislation found to be incompatible with the ECHR. However, a declaration of incompatibility does not affect the validity, operation, or enforcement of incompatible law. Instead, it merely prompts Parliament to decide whether to amend the law. Given the tone and intention of the Bill, JUSTICE is concerned that the Government would not legislate to rectify such incompatibility. In any event, the Parliamentary process takes time, and in the intervening period, a rights-infringing instrument would remain on the statute book and in effect.

27. Clauses 49 to 51 of the Bill therefore represent a troubling development. Prisoner release, supervision and recall is perhaps a 'very specific and limited' area of disapplication of section 3. However, the strength of human rights protections lies in their universality and setting of minimum standards. Any form of exceptionalism which excludes certain individuals or groups from the protection of human rights is both impermissible and, owing to its unprincipled nature, opens the door to further derogations. JUSTICE is therefore concerned that these provisions would effectively strip an entire group of people – that is, prisoners who have been or will be subject to a parole decision – of their human rights protections. Prisoners in custody are very vulnerable in this context, insofar as they are entirely dependent on the State to secure their rights. It must also be recalled that to reach this position, prisoners will have been sentenced by a court and so have received the lawful penalty for their offending. There is no justification for a further, punitive approach to parole decision-making, which ought to be focussed on future risk and public safety.

28. By disapplying section 3 and the domestic remedy it provides, the Bill also raises the possibility that the UK will be faced with further, costly litigation before the European Court of Human Rights – which may well also increase uncertainty for victims of crime. Not only does this raise financial implications, but such litigation only serves to jeopardise the UK's international standing as a protector of human rights – which, in JUSTICE's view, should remain a national concern.

29. Finally, JUSTICE is troubled by attempts in Clauses 53 to 54 to control the composition of the Parole Board and allow the Secretary to remove the chair on the basis of a broad public confidence test. Both measures pose a serious challenge to the independence of the Parole Board and its ability to function properly.

30. In relation to Clause 54(4), it is not clear what benefit is to be derived from adding individuals with law enforcement experience to the list of mandatory Parole Board

members. The role of the Parole Board is to assess suitability for release based on risk of future reoffending and harm. That is not typically within a law enforcement skill set, as is made clear in Clause 54(5): by new sub-paragraph (2A), "*'law enforcement' means the prevention, detection or investigation of offences*". Accordingly, this amendment is unnecessary and potentially unhelpful.

31. With respect to new sub-paragraph (2C) to be introduced by Clause 54(5), a protocol is already in place to address the removal of the chair of the Parole Board; there is no evidence to suggest that this is not operating adequately. Moreover, it is hard to square the proposal to remove the chair on public confidence grounds with new sub-paragraphs 2A(2) and (3), which would expressly prohibit the chair from participating in parole decisions. To remove the chair in such circumstances would not amount to accountability but rather signal disapproval, which is not appropriate in relation to an independent decision-making body and is likely (if not intended) to have a chilling effect on subsequent decisions.

JUSTICE
14 December 2023