

## Written evidence from the End Violence Against Women coalition

1. The End Violence Against Women coalition is a leading coalition of over 120 women's support services, NGOs, researchers, survivors and activists.
2. We make this submission with regards to violence against women and girls (VAWG), given EVAW's role in campaigning to draw attention to and address the injustices faced by victims and survivors of domestic abuse, rape and sexual violence, including scrutiny of the police and Crown Prosecution Service (CPS) response. In November 2020, EVAW produced a joint report entitled *Decriminalisation of Rape: Why the justice system is failing survivors and what needs to change*,<sup>1</sup> in anticipation of the Government's *End to End Rape Review*. On 24 September 2019, we commenced legal proceedings against the CPS at the High Court on the basis that it had covertly changed its policy and practice in relation to decision-making on rape cases; switching from building cases based on 'merits' to second-guessing jury prejudices.<sup>2</sup> EVAW now sits on multiple stakeholder and consultative groups to ensure there is independent scrutiny and development in this area, including the National Rape Working Group, the Rape Review Implementation Advisory Group, the CPS External Consultant Group, the HMICFRS External Reference Group, as well as the Mayor's Office for Policing And Crime (MOPAC)-specific scrutiny groups.
3. Overall, we suggest that against the backdrop of a persistently high prevalence of VAWG, historically low conviction, charging and prosecution rates for domestic abuse, rape and sexual violence, and significant unmet demand for services and support, the Government's scale of ambition as set out in this Bill is not proportionate to the failures identified. As highlighted in further detail in response to the Ministry of Justice consultation, its scope is incredibly limited given the scale of harm. In particular, its proposals are heavily skewed towards provisions for victims and survivors engaged with the criminal justice system, which while important and necessary, should not be at the expense of recognising the diverse needs and priorities of victims and survivors as a heterogeneous group and with varied visions of what justice entails for them. The draft Bill does not reflect any robust equalities analysis and subsequent provisions to address the persistent inequalities in access to support and outcomes for Black and minoritised and migrant or disabled survivors, and provides little to no remedy for the conditions which give rise to violence against women and girls in the first instance. For these reasons, whilst EVAW welcomes the Bill as providing some long-awaited and important proposals for victims of VAWG, it does not currently meet the mark of delivering a "cultural shift in victim's experiences".
4. We would also ask the Committee to consider the Ministry of Justice's concurrent proposals to overhaul the Human Rights Act alongside this Bill, including constraining the positive obligations of public authorities. There is a consensus

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<sup>1</sup> <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/C-Decriminalisation-of-Rape-Report-CWJ-EVAW-IMKAAN-RCEW-NOV-2020.pdf>

<sup>2</sup> Though the legal challenge was ultimately unsuccessful, it brought huge public awareness and political attention to the failures in the criminal justice system regarding the treatment of rape and led to changes to prosecution guidance.

amongst expert VAWG organisations that the Bill of Rights proposals would have a hugely detrimental impact on victims and survivors of violence against women and girls and risk undermining many of the commitments to victims outlined in this Bill.

### **The Bill's definition of victim**

5. We agree with the definition of victim within the Bill, and stress the fact that it apply to all victims without discrimination.
6. We note however, that the definition currently refers to specific circumstances and examples which are 'immaterial', and suggest that this could create some uncertainty or an implication that certain circumstances **are** material and may compromise the designation of 'victim'. As such, we would recommend the removal of section (4) or alternatively an expansion of this clause to include explicit recognition that someone can be a victim without a person being identified in respect of the conduct. A significant proportion of VAWG offences do not result in a suspect being identified; our understanding is that this occurs in 10% of rape cases reported to the police. It is also important to make explicit that it is immaterial whether a person chooses to report to the police or not in order to constitute a victim for the purposes of the Bill (evidence suggests that 5 in 6 survivors of rape do not report it to the police).<sup>3</sup> A victim should be entitled to support whether or not they choose or are able to report to the police. This takes on even greater significance in a context where there is declining trust in policing<sup>4</sup> and persistent barriers to reporting, for migrant survivors for example. A large proportion of victims and survivors of violence against women and girls (VAWG) do not engage with the criminal justice system, for understandable reasons, but do seek access to specialist, holistic support through community-based services.
7. We object to Section 2, Clause 3 (a) of the draft Bill which reduces the Code's application. The Bill does not provide any detail on the specified descriptions of victims who may be restricted from the provisions of the Code, as this is intended to be addressed in secondary legislation. There should not be any such exemptions to the application of the Victim's Code, but in the event that these are deemed necessary, these should at minimum be made explicit in the Bill and not deferred to secondary legislation.
8. Finally, we emphasise the application of the definition of victim to *all* victims due to the UK's track record of excluding migrant victims and survivors of VAWG from protection on the basis of their immigration status (please see the Domestic Abuse Act 2021 and the *Step Up Migrant Women campaign*). The government's recent commitment to ratify the gold-standard Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention), with a reservation attached to Article 59 that specifically provides for survivors of abuse with insecure immigration status, demonstrates the need to ensure

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<sup>3</sup> <https://rapecrisis.org.uk/get-informed/statistics-sexual-violence/>

<sup>4</sup> <https://www.endviolenceagainstwomen.org.uk/almost-half-of-women-have-less-trust-in-police-following-sarah-everard-murder/>

that the code explicitly supports provision for migrant and other minoritised groups of women and girls.

**The Government's proposal to put the overarching principles of the Victims' Code in primary legislation and set out key entitlements in secondary legislation, consulting on changes to the Code once the Bill is in force.**

9. We object to the proposal to set out entitlements of the Victims Code in secondary legislation because this does not allow for the full scrutiny afforded to primary legislation, and instead provides greater discretion to the Secretary of State. The Code should be introduced and consulted on alongside the Bill in order to provide transparency and expert scrutiny as to the content and provisions of the Code, and clarity for Parliamentarians as to what the Bill seeks to introduce to law.
10. We strongly recommend that the overarching principles be amended to include a principle of non-discrimination, as reflected in Article 4(3) of the Istanbul Convention, which the government has recently committed to ratify. E This would provide a more robust basis for ensuring that a non-discriminatory approach is threaded throughout the Code and its application, with reference to equalities duties. This emphasis is borne from that fact that Black and minoritised, migrant and disabled women and girls have an increased likelihood of adverse experiences in engaging with the criminal justice system (see for example, Imkaan's report [Reclaiming Voice: Minoritised women and sexual violence](#)). The inequalities in access to support and outcomes for minoritised victims of VAWG have not been adequately addressed since the *End to End Rape Review*. If the aim of the Bill is to deliver a cultural shift in victims experiences, it must be provided for that in the pursuit of support and justice, victims do not suffer discrimination and prejudices that reinforce and reflect wider societal inequalities on the basis of ethnicity, sexual orientation, disability, immigration status etc. As such, ERAW recommends that a principle of non-discrimination is added to the Bill.

**The key changes the Government should consider making to the Victims' Code, including consideration of those already proposed by the Government in its response to the consultation**

11. In regards to the government's intention to: *develop a communications plan to ensure all criminal justice practitioners and all victims understand the level of service victims should receive at every step of their criminal justice journey*, we welcome the development of a communications plan but emphasise that this must be matched by resources for significant improvement and long-term impact. This plan must include the provision of information in the preferred format of victims and appropriate communications support (British Sign Language, spoken community language, speech to text reporter etc).
12. In regards to the government stated intention to: *'Introduce a duty in the Victims' Code requiring the Crown Prosecution Service (CPS) to meet with victims in certain cases before a hearing takes place, where the victim is willing to do so.'* We are hesitant about the use of the word 'willing' in this context, as this risks absolving the CPS of responsibility to improve its communication and methods of engagement on the basis that a victim is 'unwilling' to meet. In our experience, victims and survivors'

hesitancy about engaging with the CPS and other authorities is often based on well-founded anxieties and adverse experiences. This language may allow for complacency or inaction on the part of the CPS where there is any indication of reluctance from a victim, concluded as ‘unwilling’. We would suggest further consideration is given to what expectations will be placed on the CPS to demonstrate how they are transforming their conduct and practice in such a way that victim engagement is improved.

13. Concerning the government's intention to “*review the information in the Code about the Victims’ Right to Review [VRR] schemes*”, this commitment should be significantly strengthened, given that 94% of respondents to the consultation argued that changes should be made to the Code to strengthen communication about the Victims Right to Review scheme. We recommend that much greater emphasis is placed on the responsibility of criminal justice agencies to inform victims about the Right to Review decisions made, and how to go about it. Information and resources should be provided to specialist support agencies so they are better placed to discuss and support victims who choose to engage with this option. We also recommend that the police and CPS publish regular data updates on this process to track progress - i.e. concerning the number of requests made and the number of decisions overturned. The poor take-up of VRRs also points to the need for independent legal advocacy for victims and survivors, please see our recommendations from paragraph 33 onwards for more information.
14. Drawing on our earlier reflections in response to question 1, we recommend that an additional right is introduced which reflects the “right to receive equal treatment without discrimination”. Specialist led by and for services supporting Black and minoritised and migrant survivors report poor compliance with right 1, “To understand and be understood”, demonstrating the need for greater commitment from the Government to making the Code and its rights accessible to different communities, particularly the most marginalised. This is also highlighted by Stay Safe East, who have highlighted the numerous barriers to justice for disabled survivors, and we support the call for the right of access to be in enshrined in law through the Bill.

### **The Government’s proposals to amend the role of the Victims’ Commissioner**

15. We support changes made to the Victims’ Commissioner role in the Bill, though we note that these are more minimal than we had proposed and anticipated. We are in favour of the role’s responsibility to produce reports that are laid before Parliament and the duty on authorities to comment on the report, with actions in respect of recommendations.
16. We object to the removal of the duty to keep the Victim’s Code under review, and in fact suggest that the Commissioner should be further empowered and resourced to do so. We believe it is an important function of the Victims’ Commissioner role to maintain oversight of the Code and its implementation. Without such scrutiny, the Code will rely on criminal justice agencies' own assessment of their delivery, and potentially on the Parliamentary Commissioner for Administration and Health Services Ombudsman (PHSO) to monitor failings of compliance with the Code that are brought to its attention.

**The Government proposals to place a duty on the relevant criminal justice agencies (the police, the Crown Prosecution Service, HM Courts & Tribunals Service, Youth Offending Teams and HM Prison and Probation Service) to collect data and keep under review their delivery of the Code.**

17. We welcome the intention for better data collection from relevant criminal justice agencies, but recommend the Bill goes further in placing specific requirements for the mandatory collection of equalities data. This will help identify and address systemic issues within agencies that may be impacting on particular demographics. We call for age, ethnicity, sexual orientation, disability, gender identity to be consistently collected and collated by individual agencies and published on an annual basis. This will assist in identifying the minoritised and marginalised demographics of victims the agencies are serving, and just as importantly, not serving. This data can form a basis for improving the responses these individuals receive, and developing strategies for improvements to those underserved and underrepresented by the current system. Such calls for disaggregated victim data are echoed in the recent National Police Chiefs' Council (NPCC) and College of Policing VAWG Outcomes and Performance Framework, where it is suggested ethnicity and gender data should be recorded and accurate to make the experiences of Black and minoritised women and girls more visible. Until this data is routinely collected from all police forces and a benchmark is established, the NPCC and COP find it is not possible to report on desired outcomes against the framework.
18. We agree that individual agencies should keep their delivery of the Code under review, and suggest that the Bill recommends reviews be carried out on a regular basis and published. Crucially, such reviews must also include the feedback of the victims engaging with the services. While we recognise the importance of agencies having responsibility for their delivery of the Code, this will not go far enough in ensuring compliance. Agencies should not be left to mark their own homework. Further oversight and scrutiny is required, as well as consideration of what measures are put in place where there are consistent failures to deliver the Code.

***Data Collecting and Sharing Safeguards***

19. Across the Bill as a whole, there must be a prioritisation of safeguards within any data collection agreements to ensure that this does not compromise victims and survivors' confidentiality or jeopardise their ability to consent to access services and support. In addition to the anonymisation of data, a notable example of such a safeguard is a complete firewall between statutory services (such as the police) and Immigration Enforcement.

**The Government's proposals on the role of the inspectorates, including an improved focus on victims, and a new power for the Government to direct aspects of their work.**

20. We welcome an improved focus on victims by the inspectorates, as we have previously raised concerns about the failures of certain inspectorates to centre the experiences of victims. For example, the 2019 HMCPSI Rape Inspection examined CPS case files and spoke to CPS staff but did not explore any victims' experiences or feedback as part of the methodology - a glaring omission.

21. We suggest that these proposals could go further, incorporating recommendations previously made to the Ministry of Justice such as:
- that Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS), HM Inspectors of Probation (HMIP) and HMCrown Prosecution Inspectorate (HMCPSI), as the bodies which inspect the CJS, are legally required to consult the Victims' Commissioner annually concerning how victim's experiences are incorporated into their ongoing programme of inspections.
  - For every relevant inspection, a reference or advisory group made up of victims and/or representatives from the victim services sector is appointed in consultation with the Victims Commissioner.
  - That there is an additional rolling programme of joint inspections specifically on the whole of the CJS's delivery of the Victims' Code.
  - That the Victims' Commissioner can request that the inspectors inspect a geographical area or theme where compliance is shown to be weaker or failing

**Whether the legislative steps proposed by the Government will lead to an improvement in the commissioning of support services?**

22. Whilst we welcome the intentions of a duty to collaborate, we do not think that the preparation and implementation of a strategy would bring about a sufficient improvement in the commissioning of support services. We recommend instead that the Bill create a statutory duty on relevant public bodies to collaborate *and* commission community-based services, incorporating a principle of non-discrimination drawing on Article 4(3) of the Istanbul Convention. This should be accompanied by a single dedicated cross-government funding stream for specialist by and for services working with victims and survivors of VAWG.
23. We would caution that any arrangements for the disclosure of information include robust safeguards around data-sharing to avoid introducing risks to survivors, undermining confidentiality and victims' ability to engage with services altogether. Any such collaboration between agencies must provide clarity about how and why data will be processed and stored and with what agencies. As a prerequisite, any data-sharing processes should mandate a separation between a victim's data and immigration control (the Home Office), to avoid this being processed for immigration enforcement purposes. We would object to any collaboration arrangements which mirror the Serious Violence Duty, specifically police powers to monitor public bodies' implementation of the duty (clause 13 (2)) and to demand information disclosure from other bodies (including local authorities, education authorities, youth custody authorities), even if this would undermine existing duties of confidentiality and restrictions on information disclosure.

**Whether the steps outlined by the Government will lead to increased awareness and effectiveness of the ISVAs and IDVAs?**

24. The central component to achieving increased awareness and effectiveness of ISVAs and IDVAs is the provision of adequate, long-term funding for these specialist roles based in community-based services, and particularly to redress inequalities in funding

provision for those based in led 'by and for' services.

25. Historic and chronic underfunding of community-based specialist organisations results in victim/survivors having to endure lengthy delays in access to counselling or ISVA support as there simply aren't enough rape support centres, therapists or advocates to meet the level of need. Survivors are regularly held on waiting lists, and are sometimes unable to receive the required support at all because waiting lists have grown so long. Rape Crisis England & Wales reported that in March 2018 there were 6,355 victim/survivors of sexual violence on waiting lists, that were as long as 14 months. As of April 2021, nationally there were nearly 10,000 victim/survivors waiting for a service at an accredited Rape Crisis Centre, with some waiting lists of up to two years.
26. There are only 39 autonomous accredited Rape Crisis Centres in England and Wales. According to recommendations set out in the Explanatory Report of the Istanbul Convention, there should be at least 150 centres in order to cater to the needs of the population. Our major concern is that the Bill does not provide for funding for these services, despite the fact that the government's own Victim's Funding Strategy sets out the requirement for multi-year settlements for specialist services. The Victim's Bill provides a much-needed opportunity to embed this in legislation.

### ***ISVA/IDVA definition and guidance***

27. We recognise the intention behind proposals for ISVA/IDVA definition and guidance, however we would emphasise that such guidance must provide for and acknowledge vital advocacy roles that which may fall outside of the ISVA/IDVA designation, particularly the holistic model of specialist support within led by and for services. The specialist models used in such services have been developed to cater specifically to the holistic needs of their service users. For this reason, we strongly recommend that any guidance does not push for the standardisation of such roles.
28. We recognise the importance of ISVA and IDVA delivery being of the highest standards, but are concerned about the potential impacts of standardisation and training requirements. We would advise that any reference to appropriate training and qualifications for such advisors in guidance is drafted in such a way that does not discredit the specialism of other advocacy models, where training and provision may differ to reflect the diverse needs of their clients.
29. Overall, we would caution against any developments towards 'consistency' which engender a 'one size fits all' or generic forms of support. We recommend that the Bill be guided towards recognising the specialism and necessity of ISVA, IDVA and specialist advocacy VAWG roles which all play an important part in the eco-system of support for victims and survivors of VAWG and their wide-ranging and intersecting needs, including outreach and community engagement. This should draw on existing models of good practice within the 'by and for' sector (see Reclaiming Voice, Imkaan, 2020). Victim/survivors should have the choice to access therapeutic approaches that are independent and localised, tailored to the needs of young, disabled, LBGT+ and Black and minoritised women and girls and may not always fit into standard models of support and recovery, including access to therapists that

reflect the victim/survivor's social identities.

30. Provision for this highly specialist forms of support must be provided for, both by way of adequate funding, and in recognition within any guidance published. Any guidance must be created with input and engagement from the VAWG sector and the specialist by and for sector.

### **What implementation, resourcing and accountability challenges exist with respect to the Victims Bill?**

#### ***Accountability / Implementation / Enforceability***

31. We note with concern that the Bill intends to omit subsection (1)(c), the duty to keep victims' code under review, and would ask the Committee to consider whether this will remove a route to oversight of the code. This also raises questions about whose responsibility it is to scrutinise its delivery and ensure proper implementation.
32. This leads us to a broader point about the importance of the Human Rights Act (HRA) in providing greater accountability and improvements in practice instances where victims and survivors are failed. The rights provided by the HRA are incredibly important to ensuring that victims and survivors of VAWG receive an appropriate response and support because the Code is not enforceable - and will remain unenforceable even when made statutory. The Rights under the Human Rights Act also reach significantly further than the Code and provide victims and survivors with fundamental rights, without which their position would be significantly weakened. Please see EVAW's 2017 report on the Human Rights Act and VAWG for further information. For these reasons, we would ask the Committee to reflect on how these two pieces of legislation might have contradictory effects on victim and survivors' experiences.

### **Whether there should be any further measures included in the Bill?**

33. As highlighted in our introductory comments, we believe the Bill needs to go much further to deliver any 'cultural shift' for victims and survivors of VAWG. EVAW submitted a detailed response to the Ministry of Justice consultation with a number of recommendations, many of which we have grouped together in the list below.

#### ***Equal access to justice***

34. An overarching principle of non-discrimination for the Code and the addition of a Right to Equal Treatment within the Code itself, including enshrining the right to access within the Bill. This would draw on the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Istanbul Convention, to ensure that survivors have access to protection and support without discrimination (including on the basis of immigration or refugee status)
35. The introduction of a firewall which separates statutory services from immigration control, in order to counter the harmful effects of Home Office's 'hostile environment policies, which undermine work to tackle VAWG and the Ministry of Justice's ambitions for all victims to access support. This would provide a safe reporting

mechanism for all victims and survivors, irrespective of immigration status.

36. The introduction of a right to independent legal advice which takes the form of a National Scheme of Legal Advocates for victim/complainants in rape and sexual abuse cases. Further information can be found in *'Evaluation of the Sexual Violence Complainants' Advocate Scheme' Report (2020)* by Dr Olivia Smith and Ellen Daly.

This sets out the need for:

- A dedicated, salaried role carried out by someone who is legally qualified and experienced at practising law involving sensitive evidence.
  - Lawyers should be independent of the criminal justice system and ideally housed within existing specialist support services. This is so victims assured that their interests are centred in any advice provided.
  - Training for the role should incorporate knowledge and experience from police, CPS prosecutors, defence lawyers, human rights lawyers, and third sector specialist services.
  - The remit should cover all sexual offences, including child sexual offences.
  - There should be a reduced role before ABE interview, but support on sexual history applications should be reinstated
  - It is essential that complainants' lawyers can make submissions to the court, E.g. at case management hearings. This does not mean giving the complainant party status or making submissions before a jury at trial.
  - Referrals should be on an 'opt-out' rather than 'opt-in' basis, but only at the point of requests for digital or third-party materials, or upon application to adduce sexual history evidence.
- Retain the positive obligations of public authorities towards victims and survivors of VAWG, as enshrined in the Human Rights Act.

37. ***In regards to the Criminal Justice System:***

- Legal privilege afforded to counselling notes, meaning they will be confidential and only disclosable to the criminal justice system in very specific circumstances
  - Legal constraints on the indiscriminate use of third-party materials in rape investigations. Safeguards must be in place to guarantee victims protections against over-intrusive and excessive police requests for third-party material, such as victims' medical notes, school reports and therapy notes.
  - Cease the misapplication of the law on corroboration in rape cases
  - Victim and Survivors to be exempt from means testing of legal aid to ensure they access legal support in family courts
- for children born as a result of rape to be recognised as 'secondary victims' of crime ("Daisy's Law")
- or the Victims' Bill to provide recognition, protection and policy improvements for inappropriate criminalisation where offending is linked to women's experiences of domestic abuse

38. ***Criminal Justice Agencies:***

- Mandate that criminal justice agencies collect, review and publish disaggregated data on all of their outcome statistics

- A commitment to training and upskilling, with a drive towards specialism in the police, CPS, Counsel and judiciary to better understand the continuum of violence against women and girls and its wide ranging impacts

39. ***Government:***

- Independent research to be commissioned into the characteristics of those who do and do not report rape to the police and why, co-produced with specialist ‘by and for’ VAWG services and sexual violence and abuse services
- Parallel research of what rape and sexual abuse victims and survivors want and need to support their recovery, including their priorities within any criminal justice response
- Require that the Public Sector Equality Duty is properly applied
- Commit to consultation in an accessible way, in accordance with the Equality Act (this was absent in the Victims Bill Consultation)

40. ***In regards the Victims Commissioner:***

- Additional powers and resource attached to the Victim Commissioner role so as to provide monitoring and oversight of Victims Code compliance, in accordance with the Equality Act

41. ***Prevention***

- A high-level political commitment to long-term funding to develop the evidence base for the prevention of VAWG, including how to prevent rape and sexual abuse
  - A review of the gendered impact of Government social security policies with a view to re-designing provision to promote economic and social equality
  - Long-term sustainable funding for specialist VAWG ‘by and for’ services, recognising their integral role including prevention and community work.\*

**Are there any relevant international examples the Committee should consider?**

42. We would draw the Committee’s attention to the Sexual Assault Communications Privilege law, which significantly restricts the circumstances when a disclosure made in the course of therapy or medical setting can enter into the criminal justice system. Counselling and medical notes should be afforded legal privilege, thereby restricting the circumstances when a disclosure made in the course of therapy or in a medical setting can enter into the criminal justice system. Counselling for the impacts of trauma after sexual violence and rape can be life-changing and life-saving. To be effective, the counselling relationship needs to be built on confidentiality, privacy and trust. The knowledge that counselling records are routinely requested as part of the criminal justice process undermines this and results in clients choosing not to engage in counselling. After experiencing the invasiveness of sexual violence, a victim does not then want a perpetrator to gain access to their innermost thoughts and feelings, and have it be potentially used against them by a skilled barrister in a court of law. The primary purpose of counselling is therapeutic not investigative, and counselling is not, nor should it ever feel like an extension of the courtroom. We believe the law should be drafted which still allows for disclosure into the CJS where the probative value merits it, but it is a high threshold which provides sufficient reassurance to

sustain victim confidence.

43. The Sexual Assault Communications Privilege law in New South Wales See: NSW Legislative Council debate from 1997:  
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardFull.aspx#/DateDisplay/HANSARD-1820781676-13549/HANSARD-1820781676-13510>. Sections 295-306 of the Criminal Procedure Act 1986 [http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol\\_act/cpa1986188/](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/cpa1986188/)

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