

**Written Evidence from the Justice Lab,
a special initiative of The Legal Education Foundation**

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1 Summary of evidence

1. This is a response from Justice Lab to the Justice Select Committee’s call for evidence on the draft Victims Bill. Justice Lab is a special initiative of The Legal Education Foundation, led by Dr Natalie Byrom. Between 2018 and 2020 Dr Byrom was expert advisor on open and shared data to Her Majesty’s Courts and Tribunal Service (“HMCTS”).
2. The Committee requested evidence regarding whether the Bill meets the government’s stated aim of delivering: “a cultural shift in victims’ experiences by putting their interests at the heart of the justice system”. Our response focusses primarily on the draft Bill’s proposals to place new duties on criminal justice agencies to collect and share data.
3. We join other organisations in welcoming the emphasis given to data collection and sharing as a mechanism for improving the experience of victims. We believe that data has a vital role to play in improving performance across the justice system, as well as improving transparency and accountability.

4. However, we are concerned that the proposals contained within the draft Bill underestimate the issues with the data that is collected on the system at present, under-cost potential solutions and fail to include adequate provisions to ensure that the data collected and shared reflects the priorities of victims. As a consequence, we are concerned that the draft Bill will not deliver the government's aim.

5. In particular we are concerned that:
 - a. The draft Bill fails to sufficiently address the drivers of victims' poor experience of the criminal justice system, and the role that the absence of data and evidence plays in perpetuating these drivers.
 - b. The costs outlined in the impact assessment provided alongside the Bill are based on assumptions that relevant data is collected and of sufficient quality to be useful. As such, they are likely to underestimate the level of resource required to deliver the government's aim.
 - c. The measures contained within the Bill on consultation are insufficient to ensure that victims organisations will be meaningfully consulted. As a consequence, we share the view of the Centre for Public Data that the data is likely to reflect the concerns of criminal justice agencies rather than the interests of victims.
 - d. The draft Bill does not require data to be published, limiting opportunities to build wider public trust.
 - e. The decision to specify the detail of the data in regulations limits opportunities for scrutiny.

2 Response

6. We welcome the focus in the draft Bill on the role of data in improving victims understanding and experience of the criminal justice system. We believe that data has a vital role to play in improving performance across the justice system, as well as improving transparency and accountability all users.

7. However, we are concerned that the proposals contained within the draft Bill underestimate persistent and longstanding issues with the data that is collected across the system at present. As a consequence, we are concerned that the measures proposed in the draft Bill are under costed and insufficient to achieve the Bill's aims.

8. We are also concerned that proposals for developing the detail of the data to be collected and shared do not include sufficient guarantees to ensure that the needs and priorities of victims will be adequately reflected. The deficiencies with the approach taken to developing Victim Scorecards, highlighted by the Centre for Public Data, are illustrative of the issues created by this approach.
9. The following sections set out our concerns in further detail. Recommendations are highlighted in bold.

3 The Bill's proposals on data

10. Clause 5 of the draft Bill creates a duty on police forces, the Crown Prosecution Service (CPS), HMCTS and Youth Offending Teams to collect and share data to support compliance with the Victims Code. The details of the data to be collected are to be specified in regulations. The Bill confers responsibility on the Secretary of State to define the data that is to be collected and shared. In defining the data to be collected and shared, the draft Bill creates a duty on the Secretary of State to consult with “such persons as they think appropriate”.
11. The impact assessment published alongside the Bill specifies a low cost estimate of £0 and a high cost estimate of £3.5 million, with a best estimate of £1.7m. The high-cost estimate is: “driven by the assumption that each Police and Crime Commissioner (“PCC”) would require an additional Senior Data Analyst for two of the measures in this option. The low-cost estimate assumes no additional cost under the assumption that the costs of the measures in this option are covered by current processes.”¹ As such, the costing assumes that relevant data is already collected and of sufficient relevance and quality to demonstrate compliance with the Victims Code.

3.1 Failure to collect data to address the drivers of victims' poor experience

12. Successive research has demonstrated that delays in the court system are a key driver of victim anxiety and attrition. Court backlogs exacerbated by the COVID-19 pandemic have resulted in significant increases in reported delays- the National Audit

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1078046/draft-victims-bill-impact-assessment.pdf

Office reported in October 2021 that cases in the backlog on the 30th June 2021 had been waiting an average of 230 days- 57% longer than cases in the backlog on 31st March 2020². Data has a vital role in streamlining processes and supporting evidence-based approaches to reducing case backlogs. As such, data is critical to tackling the drivers of victims' poor experience. However, to date, the government has failed to implement measures to improve the collection and use of data for this purpose.

13. The government has invested over a quarter of a billion pounds in measures to support court recovery and tackle the backlog- from Nightingale Courts, to extending the sentencing powers of magistrates to scaling the use of remote hearings³. In spite of the scale of this investment, the government has failed to collect the data needed to assess which of these measures are most effective in reducing the backlog. In October 2021 the National Audit Office (“NAO”) reported on the failure of the government to collect data and evidence needed to “understand what supports better case quality, court effectiveness and improved handovers between agencies”⁴. The NAO report concluded that: “key operational risks to the recovery in criminal courts include... limitations in data”.
14. Unsafe trials result in appeals, which add to delays and can extend the trauma experienced by victims. For this reason it is vital that the government collects data to demonstrate that measures adopted to deal with backlogs do not threaten effective hearings – despite numerous calls to act to collect this data, the government has failed to do so⁵.
15. In 2019 HMCTS accepted recommendations to harness the ongoing £1billion programme of digital court reform to improve the quality and utility of the data it holds about the court system. Progress on implementation has been slow. Placing: “the interests of victims at the heart of the justice system” requires collecting the data and evidence needed to tackle the issues that impact on their experience. Failure to situate the proposals on data in the draft Bill within a broader strategy to harness data to tackle delays threatens the ability of the Bill to deliver the government’s aims.

² <https://www.nao.org.uk/wp-content/uploads/2021/10/Reducing-the-backlog-in-criminal-courts.pdf> pp7

³ <https://www.gov.uk/government/news/nightingale-courts-extended-to-support-justice-recovery>

⁴ Supra n2 per page 41 para 3.6

⁵ Ibid

16. **Proposals on data in the draft Bill should be situated within a broader strategy to harness data to tackle delays across the Criminal Justice System. The government should be asked to confirm the level of funding that has been dedicated to implementing existing commitments around data collection and governance. They should also be asked to provide the committee with a detailed updated on progress against these commitments and timetable for implementing outstanding recommendations, including those contained within the 2019 Digital Justice report⁶.**

3.2 Failure to accurately cost proposals to tackle data deficits

17. The costs outlined in the impact assessment provided alongside the Bill are derived from estimates of data analyst time. These costs assume that relevant data is collected and of sufficient quality to be useful. The findings of successive recent reports, including those undertaken by the National Audit Office, do not indicate that this is a safe or fair assumption. We are concerned that the costs provided are based solely on the cost of recruiting analyst posts and do not include costs associated with identifying key data gaps or developing data standards which are the vital prerequisites of reliable, comparable data.
18. Deficiencies in the data available to Police and Crime Commissioners have been reported in evidence submitted to the Police and Crime Commissioners (PCC) Review Part Two by the Association of Police and Crime Commissioners⁷. The Home Secretary's response, and the recommendations of the PCC Review Part 2 acknowledge that: "data sharing between PCC's and criminal justice agencies can be difficult and inconsistent, acting as a barrier to... assessing the performance of their local force within the criminal justice landscape", however the measures suggested fall short of work to improve the quality of data across the entirety of the criminal justice process.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF

⁷ <https://www.apccs.police.uk/media/7216/apcc-a-long-term-vision-final.pdf> pp15

19. In addition, in October 2021, the National Audit Office reported that both the Ministry of Justice and HMCTS recognise that: “structural improvements to data infrastructure and management across the criminal justice system require substantial effort, funding and analytical capability”⁸. It is not clear whether this effort and funding has been forthcoming.
20. Further to this, the NAO identified missing data gaps and disjointed data as critical threats to understanding flows through the criminal justice system. Investment in work to reconcile and provide a joined-up view was promised to support the delivery of new public scorecards- however, the information published in scorecards is basic (for example, scorecards only show the average time to process a case, not the absolute number of victims whose cases are severely delayed). Delivering on the proposals outlined in Clause 5 of the Bill may require additional underlying investment in data standards, systems and collection, which has not been costed for.
21. **The committee should request a data audit showing the data that is already available that is relevant to monitoring compliance with the Victims Code. The data audit should also include information on the quality and coverage of the data. Where relevant data is missing, the committee should ask to be provided with costings for addressing these gaps, and secure assurances that this work will be prioritised and resourced.**

3.3 No duty to consult victims’ organisations on data

22. We share concerns raised by the Centre for Public Data in relation to the level of consultation guaranteed within the draft bill. The Explanatory Notes say that the nature and extent of consultation required on the data to be collected is left to the discretion of the Secretary of State. The only consultees specified are criminal justice bodies and PCC’s.
23. We are concerned that in these circumstances, the priorities and concerns of victims may be neglected, and the utility of resulting data undermined. To date, it does not appear that victims’ organisations have been consulted on the development of Victims

⁸ Supra n2 pp43 para 3.18

Scorecards- this has led to gaps particularly around the ethnicity of victims, which have undermined the utility of the scorecards as accountability tools.

24. **We therefore recommend that Clause 5 should be extended to include a duty on the Secretary of State to consult the Victims Commissioner and organisations representing a diverse range of victims about the information that should be collected and shared.**

3.4 No duty to publish data

25. Clause 5 of the draft Bill only requires that information from police forces and HMCTS is shared with PCCs- there is no requirement to publish the data more widely. This is a missed opportunity to improve the transparency and accountability of the criminal justice system as a whole and build public trust and confidence.
26. **We therefore recommend that Clause 5 should be extended to contain a duty on the Secretary of State to publish specified data, agreed in consultation with the Victims Commissioner and a diverse range of victims' groups- to ensure that this data is available to the public who elect PCCs and to victims.**

3.5 Limited scrutiny for crucial data specifications

27. We agree that the content of metrics referred to in Clause 5 should be specified in regulations, however, we agree with the assessment of the Centre for Public Data that by being in regulations, there is a risk that metrics will receive little parliamentary scrutiny. Scrutiny is vital to ensure that the content of the metrics addresses victims' concerns and priorities.
28. If data is not relevant to victims or does not allow disparities between institutions to be assessed meaningfully, the Bill will not succeed on its own terms.
29. **We therefore suggest that there is an opportunity for the Justice Select Committee to invite evidence on these recommendations when they appear. We also suggest there is a role for the Justice Select Committee to take an ongoing**

role in examining whether data collections could be improved to understand how well criminal justice agencies are complying with the Victims' Code.

4 About us

30. This response was prepared by Dr Natalie Byrom in her role as Director of Justice Lab, a special initiative of The Legal Education Foundation. Justice Lab is a non-partisan policy and evidence centre that conducts, commissions, and catalyses robust research. It aims to bring about a cultural shift in the way justice systems are studied and understood.
31. Justice Lab is fully funded by The Legal Education Foundation, an independent grant making trust that awards grants to organisations who help people and organisations to understand and use the law.
32. We are happy to be contacted about the contents of this submission.

10 June 2022