

Written evidence submitted by Southall Black Sisters (VIC0055)

We write in response to call for evidence by the Justice Committee on the draft Victims' Bill.

We have not sought to answer specific questions, but provide an overview of the key issues affecting black, minority and migrant women as victims of gender based violence (including domestic and sexual abuse, and harmful traditional practices), which are relevant to a number of questions on the definition of a victim, the Victim's Code, victim's support services as well as new criminal laws.

About SBS

SBS is a leading 'by and for' black and ethnic minority (BEM) women's organisation addressing violence against women and girls (VAWG) within BEM communities. It was founded in 1979 and its vision is to empower BEM women and girls to assert their human rights to freedom, equality and justice by leading independent, autonomous lives, free from VAWG. SBS operates within a VAWG, secular¹ human rights and intersectional² framework, particularly in relation to overlapping inequalities based on race, gender and class/poverty.

SBS deals with nearly 8,000 cases and enquiries per year (which rose to approx. 10,000 in the first year of the pandemic) through its' holistic women's resource centre, community based services. It provides helpline and online advice services, advocacy, counselling, and peer support group and educational activities. Its advocacy casework and strategic litigation informs the organisation's campaigning, educational, policy and research work, which has had a national impact in changing social, cultural and religious norms, and influencing policy and practice as well as legal reform.

About 60% of SBS' services users are migrant women. SBS were instrumental in introducing the Domestic Violence Rule (DVR) which allows victims on spousal/partner visas the right to remain indefinitely in the UK and the Destitution Domestic Violence Concession (DDVC), which gives those with no recourse to public funds (NRPF) rights to benefits and housing while they apply to regularise their status under the DVR. SBS has carried out two Tampon Tax Fund funded projects on NRPF, one of which was an England wide pilot scheme subject to an independent evaluation. It is currently leading a UK wide partnership Home Office funded pilot, Supporting Migrant Victims (SMV) Scheme for those with NRPF, which is subject to an independent evaluation, and due to end March 2023 (although the evaluation will only assess year 1 of the pilot, which was from April 2021-March 2022).

SBS is also a leading organisation addressing harmful traditional practices, particularly forced marriage, dowry related abuse and honour based abuse (HBA). It helped to introduce the Forced Marriage (Civil Protection) Act 2007 and multi-agency statutory and best practice guidance on forced marriage and HBA for the police, Crown Prosecution Service and other professionals. It has been involved in gaining justice in many high profile so called 'honour' killings and suicides as well as domestic homicides and suicide driven by domestic abuse. This includes the case of Banaz Mahmod, who reported rape, violence, harassment and threats and an attempt to kill by her extended family and community to the police five times before her death in 2006.

Draft Victims' Bill

Overall, we welcome the Victims' Bill.

¹ Secularism respects personal religious beliefs and the right to not to believe without privileging one belief system above another by the state or public institutions.

² Intersectionality refers to overlapping or multiple forms of structural inequalities where discrimination is magnified at the intersection of more than one inequality.

The following are some key issues which need to be addressed by the Victims' Bill:

Definition of Victim and Victim's Code

The definition of victim must include women and children facing abuse within BEM and migrant communities. The Victim's Code must also ensure that the needs of all victims are met and that they are protected and treated with respect and dignity. Intersectional discrimination must be addressed in relation to gender and race, but also where it intersects with other forms of inequality such as socio-economic status/poverty and destitution, disability etc.

Although the Government often states migrant victims of abuse are 'victims first and foremost', this policy is contradicted by the policy on the 'hostile environment'. Migrant victims of abuse face a stark choice between domestic abuse and deportation and destitution due to their insecure immigration status and the NRP requirement. Also due to a lack of safe reporting mechanisms when reporting abuse or seeking help from the police for fear of being deported as a result of data sharing with Immigration Enforcement.

BEM women may also face a non-interventionist or racist response from the police and other criminal justice agencies when reporting abuse, which reduces their trust and confidence in the system. This includes refusal to intervene to protect women in BEM communities or 'under-policing' in order to be 'culturally or religiously sensitivity', leaving communities to 'self-police' where gendered violence is not challenged and women are expected to comply to traditional expectations and tolerate abuse through informal or formal practices of mediation, reconciliation and religious arbitration by male and conservative elders, community and faith leaders. Alternatively or additionally, victims may be deterred by or subjected to 'over-policing' based on their perceptions or experience of racial harassment and discrimination against themselves or their families and communities by the police and the wider system. For migrants, this also includes the hostile environment which makes them vulnerable to arrest, detention and deportation.

There is also a need to end the culture of disbelief, victim blaming, racism (including racial stereotyping for example making the cultural assumption that marital rape is not perceived as rape in some cultures and so is not defined as rape by the criminal justice system and thus treated as a 'no crime'), homophobia and misogyny. It also includes improving the police response to false counter-allegations by perpetrators, thus preventing the arrest and charging of victims; the dropping of charges due to 'insufficient evidence' through lack of proper evidence gathering or support (including in suicide cases) and defining victims as 'victims' when women who, though rare, retaliate against or defend themselves or others against the perpetrator's abuse out of desperation and fear. Also, criminal justice solutions such as restorative justice is not recommended as they reinforce family and community pressures on BEM women to reconcile to abusive husbands or family members. In any case, restorative justice should not be used for all domestic or HBA situations due to the power and control wielded by the perpetrator over the victim, even post separation.

These problems need to be addressed in order for the Victims' Bill to be effective for all victims. As such the Bill must also aim to reduce VAWG through an improved experience of victims when they do or should use the criminal justice system. It must be understood within a context where BEM and migrant women have a disproportionately higher rate of domestic homicide³ and suicide.⁴ These

³ Mayor of London (2010) *The Way Forward: Taking Action to End Violence against Women and Girls. Final Strategy 2010-13*, London: Mayor of London. [Online]: Available from: https://www.london.gov.uk/sites/default/files/the_way_forward_-_strategy.pdf.

deaths are preventable through improved responses and greater financial investment in a whole systems approach by the criminal, civil and welfare system, and a more compassionate and humane policy by the Home Office on immigration control.

Migrant Victims

Many migrant victims do not report abuse to the police for fear of their data being shared with Immigration Enforcement.⁵ Again, this denies safety to victims and gives impunity to perpetrators. This data sharing policy was subject to a successful super complaint by Liberty and SBS⁶ where three independent police watchdogs found that in domestic abuse cases, this type of data sharing did not constitute safeguarding. The watchdogs recommended an immediate end to data sharing and a review of the scheme with the aim of “establishing safe reporting pathways, informed by the realities of victims’ experiences, that reflect existing laws on everyone’s right to data protection”.

To improve reporting and support to victims, we support the Step Up Migrant Women UK campaign led by the Latin American Women’s Rights Service (LAWRS) calling for a firewall between agencies and Immigration Enforcement, and to have a policy of referring victims to specialist services as well as an end to the hostile environment towards migrants. We are extremely disappointed that the latest Home Office review on the current policy, published in Dec 2021,⁷ ignores the watchdog’s findings and argues that data sharing is essential to protecting victims. It rejects the sector’s call for a complete firewall. Instead, it proposes to establish an Immigration Enforcement Migrant Victims Protocol to prevent immigration enforcement action while criminal proceedings are pending and the victim is being supported. We do not think such a protocol will reassure migrant victims and encourage them to report crime to the police. Indeed, we believe this institutionalises the practice of data sharing between the police and Immigration Enforcement, and race and gender discrimination within the police force against migrant victims of abuse. As a result, we are not co-operating with the development of the Protocol and continue to call for a complete firewall. Our views are outlined in the joint response to the Home Office review coordinated by LAWRS.⁸ We would also argue that as Immigration Enforcement does not have a safeguarding function but that of immigration control, all agencies should have a firewall to prevent personal data sharing with Immigration Enforcement to encourage migrant victims to seek protection from abuse.

We would also add that lack of a complete firewall will also undermine the effectiveness of any long-term solution following the SMV pilot for those with NRPF. Victims are unlikely to be encouraged to come forward and access safe housing and financial support if they fear that the police or other

⁴ Siddiqui, H. and Patel, M. (2010) *Safe and Sane: A Model of Intervention on Domestic Violence and Mental Health, Suicide and Self-harm Amongst Black and Minority Ethnic Women*, London: Southall Black Sisters Trust.

⁵ McIlwaine, C. et. al.(2019) The Right to be Believed Migrant women facing Violence Against Women and Girls (VAWG) in the ‘hostile immigration environment’ in London. [Online]: Available from: <https://stepupmigrantwomenuk.files.wordpress.com/2019/05/the-right-to-be-believed-key-findings-final-1.pdf>

⁶ <https://www.libertyhumanrights.org.uk/issue/liberty-and-southall-black-sisters-super-complaint-on-data-sharing-between-the-police-and-home-office-regarding-victims-and-witnesses-to-crime/>

⁷ <https://www.gov.uk/government/publications/review-of-data-sharing-migrant-victims-and-witnesses-of-crime/review-of-data-sharing-migrant-victims-and-witnesses-of-crime-accessible-version>

⁸ See https://lawrs.org.uk/wp-content/uploads/2022/02/Joint-Response-to-Home-Office-Review_-data-sharing.pdf

agencies will report them to Immigration Enforcement where they may be liable for deportation after an initial period of support. In addition, although we welcome the Government's announcement to ratify the Istanbul Convention, we remain concerned that they intend to add a reservation on residency rights for those subjected to abuse by a spouse or partner under Article 59 which could limit or prevent the extension of the DVR and the DDVC to all migrant victims such as those on non-spousal visas and undocumented victims. Without right to residency or a firewall, many migrant victims will not use the criminal justice system for protection or to access support.

We recommend:

- 1. Establishing a full 'firewall' between the police and Immigration Enforcement.**
- 2. Lift the NRPF condition by extending the DVR and DDVC to all migrant victims of abuse.**
- 3. Remove the reservation on Article 59 when ratifying the Istanbul Convention.**

Community Based and Specialist 'by and for' Services

We are extremely disappointed that there is no duty to fund community based services or central ring fenced funding stream for historically under-funded specialist 'by and for' organisations to support victims in BEM and migrant communities or those with other or intersecting protected characteristics such as the deaf and disabled. Yet it is these services which tend to be community based, and provide frontline, often holistic services for victims not available in the wider community or by the state. BEM women's services, for instance, give women alternatives to mediation and reconciliation or religious arbitration and help victims to access the criminal justice and other legal and welfare systems by overcoming a number of barriers, including language, isolation, lack of knowledge, racism, gender inequality, and fears of deportation and destitution. Victims themselves often describe these services as the most accessible and supportive, and as their 'home' and 'family', particularly as many are disowned by their own communities if they challenge abuse and for bringing 'shame' and 'dishonour'. These services may be in the form of refuge or community based centres, and while both are welcome, it is the later which tend to support larger numbers and have fewer sources of funding.

In 2021, Imkaan argued that there was a funding shortfall of 39% for the BEM VAWG sector, and that over £97 million was needed annually to fill the gap.⁹ The Government have acknowledged the need for specialist tailored VAWG services, including for BEM women and girls. However, in 2021, they only topped up a tokenistic £2 million Specialist Fund for smaller 'by and for' organisations for those with different ethnic backgrounds, disabled victims and those who are LGBT.¹⁰ In 2022, the Government announced more funding and measures to tackle domestic abuse in the *Domestic Abuse Plan*. It recognised the need to support specialist 'by and for' services and for a holistic and tailored package of support for domestic abuse victims.¹¹ However, there was still no commitment

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033934/Tackling_Violence_Against_Women_and_Girls_Strategy_-_July_2021.pdf

¹¹ Home Office, *Tackling Domestic Abuse Plan*, March 2022. Online:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1064432

for a central funding stream or ringfenced money for specialist BME women's services to meet the funding gap. Furthermore, while local commissioners are advised to consider funding holistic provision and specialist services for BME victims, there is no compulsion or sufficient financial resources to do so.¹² Without an overall increase in resources and ring fencing, we do not see how a duty to collaborate by commissioners would improve the funding of the specialist 'by and for' sector. In addition to lack of funding, complex commissioning processes and restricted conditions or financial thresholds also prevent smaller specialist organisations to compete for the available funding with generic and larger providers.

While we welcome the intention to improve standards and support for IDVA and ISVA services in the draft Victims' Bill, SBS has pioneered an intersectional advocacy holistic model in BEM communities similar to IDVA and ISVA, but which exist outside of the current Ministry of Justice (MoJ) funded model. The MoJ funded model of these services tends to priorities criminal justice interventions in high risk cases. In some areas, these services are not even independent of local government; or perceived as not independent by BEM victims if they are co-located in police stations.

The SBS Model has evolved over 40 years, and is community based with holistic wrap-around provision including advocacy, financial support for those with NRPF (when funding is available) counselling, and support and educational services. The advocacy meets intersecting need in crisis situations and over the long-term; and is not focused on criminal justice interventions and high risk cases alone. It addresses all risks and needs for BEM women such as those posed by an insecure immigration status, NRPF, culture and religion; and tailors the advocacy to ensure access to the whole legal and welfare system. Other risk assessment models do not reflect all risks for BEM women, and even fewer tools address need. SBS is in the process of writing its holistic model of intervention, which will be published soon.

We recommend:

- 1. A duty to fund community based services, including those for BEM and migrant communities and with other protected characteristics.**
- 2. At least £97m annually to be provided in 3-5 years multiple year central government ring fenced funding for specialist 'by and for' BEM led women's VAWG services paid directly to these services and not via local government or other commissioners. The funding should be grants and needs based with simpler processes and fairer criteria, which includes that the 'by and for' service have a track record and expertise in providing VAWG services within a human rights framework.**
- 3. The definition of and guidance to IDVA and IDVA to be flexible to reflect practice in BEM and migrant women's VAWG services which entail supporting women holistically at all risk levels and with complex need by accessing all legal and welfare services.**

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¹² See

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1064571/National_Statement_of_Expectations_2022_Final.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1064572/VAWG_Commissioning_Toolkit_2022_Final.pdf

4. Each local authority area with a high BEM population must provide a sustainable, fully funded holistic community based BEM women's VAWG service based on the SBS Model.

Banaz's Law

It is proposed that the Victims' Bill introduce a new offence and/or sentencing reform that regards cultural defences based on justifications of 'honour' or other misogynistic cultural or religious norms in cases of gender based violence, including murder and suicide.¹³ This law is at an early stage of formulation, but would make a significant difference to tackling VAWG crimes and increasing confidence in the criminal justice system among BEM victims.

The law is named in honour of memory of Banaz Mahmood, and was originally proposed by Dr Hannana Siddiqui and Banaz's sister, Bekhal Mahmood.¹⁴ Bekhal bravely gave evidence against her father, uncle and five male cousins for the 'honour' killing of Banaz in 2006. Before her death, Banaz's pleas for help from the police were ignored, even though she named the men who later killed her. In one incident, an attempted murder by her father was dismissed by the police as her being 'manipulative' and 'melodramatic'. Instead, Banaz was charged for criminal damage for breaking a neighbour's window when escaping her father. Bekhal was also subjected to an attempted 'honour' killing by her brother, which the police failed to investigate. Social services also failed Bekhal by mediating between her abusive parents and placing pressure on her to 'listen to her parents' and return home after she had left due to a planned forced marriage to a cousin when she was only fifteen.¹⁵

Before their convictions, the killers boasted about the rape and murder of Banaz, and were hailed as heroes in the Iraqi Kurdish community in the UK and overseas. They were celebrated for having 'restored' the honour of the family and community. The uncle, who is a powerful community leader and who instigated the crime, and others also said they had no shame, as they had 'done justice'. The police estimate there were fifty men who were involved in the conspiracy. They explicitly justified their actions as legitimate in the community, and although the killers denied the murder in the criminal courts, they implicitly set about influencing the juries' verdict and the judge's sentencing decision by creating a context when it would be culturally insensitive of them to not to perceive their honour motive as mitigation.

It is unknown how many cultural defences based on honour are successful in the criminal justice system, but our experience shows it is often an underlying factor in non-intervention such as cases which are dropped or labelled as 'no crime'. Also, some 'honour' killings are not brought to justice due to conspiracies to cover up or where murder is staged as an accident or suicide, which the police often do not fully investigate. In transnational cases, British victims are killed overseas and even perpetrators who normally live in the UK escape justice.¹⁶ In all these type of cases, bereaved family

¹³ Monckton Smith, J., Siddiqui, H., Haile, S. and Sandham, A. (2022b) *Building a temporal sequence for developing prevention strategies, risk assessment, and perpetrator interventions in domestic abuse related suicide, honour killing, and intimate partner homicide*. Home Office research paper. Online: <https://eprints.glos.ac.uk/10579/> University of Gloucestershire.

¹⁴ See: Siddiqui, H. and Mahmood, B. (2021) 'Far and Beyond: addressing failures in state and community protection and accountability in the 'honour' killing of Banaz Mahmood', *Progressive Review*, Institute of Public Policy and Research, Volume 27 (4), Spring 2021; and Mahmood, B. and Siddiqui, H. (2022, forthcoming) *No Safe Place*, Ad Lib Publishers.

¹⁵ Mahmood, B. and Siddiqui, H. (2022, forthcoming) *No Safe Place*, Ad Lib Publishers.

and friends seeking justice and as victims often feel unsupported by the UK criminal justice and Inquest system, and the Foreign Office.

More widely, the problem of cultural justifications is common and acceptable or tolerated by many in BEM communities and in agencies. Furthermore, cultural reasons for VAWG based on the misogynistic assumption that women are men's property and should be controlled by them through gender based violence is prevalent in all communities. These norms need to be addressed in order to challenge perpetrator's attitude and behaviour and to hold them accountable in the criminal justice system.

Banaz's Law will:

- 1. Prevent the use of honour or other misogynous cultural or religious justifications for VAWG in the criminal justice system as it would be regarded as an offence or an aggravating factor.**
- 2. Help to change norms and values within BEM communities, encouraging victims to come forward to the police and other agencies for help.**
- 3. Prevent non-intervention by the police and other agencies for fear of being culturally or religiously insensitive, and instead providing support and protection to victims.**

Other changes which will increase confidence for BEM victims to come forward to prevent homicide and suicide, and for bereaved victims is that:

- 4. Cases of British victims (British nationals and those resident in the UK) killed overseas should be fully investigated by the British police. Perpetrators who are British nationals or habitually resident in the UK should be prosecuted in the UK.**
- 5. Accidents and suicides should be fully investigated by the police where there is a history of domestic abuse or HBA. Suicide driven by abuse should be treated as a crime or introduced as a new offence. Bereaved victims should also be entitled to non-means tested legal aid for Inquest cases.**
- 6. Bereaved victims should be fully supported as victims and/or witnesses by the British police (and the Foreign Office if the crime takes place abroad), including by providing police family liaison (and Consular in overseas cases) support.**

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¹⁶ Monckton Smith, J., Siddiqui, H., Haile, S. and Sandham, A. (2022b) *Building a temporal sequence for developing prevention strategies, risk assessment, and perpetrator interventions in domestic abuse related suicide, honour killing, and intimate partner homicide*. Home Office research paper. Online: <https://eprints.glos.ac.uk/10579/> University of Gloucestershire.