FROM THE OFFICE OF THE JUSTICE MINISTER

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Kathy O'Hanlon
Clerk to the Committee for Justice
Room 345
Parliament Buildings
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20 October 2026

Dear Kathy,

Thank you for sharing the written submission from the Information Commissioner's Office in response to the Committee for Justice' call for evidence on the Victims and Witnesses of Crime Bill.

Clarification of and further information on the issues raised, with brief background, is provided below.

Background

Ahead of the public consultation on policy proposals and later, when drafting the Bill's provisions, data protection screenings and data protection impact assessments were conducted by the Department and shared with the ICO. The Department is very grateful for the ICO's helpful feedback and advice and will work to ensure that information and privacy rights are protected.

The Department acknowledges that many of the provisions provide broad powers to collect, request, retain and disclose information in order for the Commissioner to effectively exercise their functions. When we met with ICO officials we discussed that when the Commissioner's statutory office is being established, the Department will advise the Commissioner that they should ensure that development of all policies, procedures,

guidance and regulations are compatible with data protection requirements, appropriately safeguard individuals' information rights and refer to principles of necessity, proportionality and data minimisation.

In communications with ICO, the Department suggested, based on legal advice, that regulations, court rules and guidance are better placed than the face of the Bill to set out practical, administrative and operational arrangements. Regulations and court rules will also be subject to scrutiny by the ICO, Justice Committee and Assembly.

Establishment of a statutory Commissioner for Victims and Witnesses of Crime

(i) General powers

Clause 4 of the Bill provides that the Commissioner may commission assistance for research activities *"concerning the interests of victims and witnesses or the exercise of the Commissioner's functions"*.

Where the Commissioner engages external organisations to undertake research on their behalf, it will be a matter for the Commissioner to put in place operational measures (internal policies) to oversee that responsibilities for data protection are complied with and that personal data is only processed where necessary and proportionate for the relevant purpose. They should set out in contractual terms and conditions with external organisations the required safeguards and confirm agreement before work commences.

(ii) Compliance with Victim's Charter

Clause 10 requires the Commissioner to monitor compliance with the Victim Charter by any charter service provider specified in it and, for that purpose, the Commissioner may request a charter service provider to disclose to the Commissioner any information that the Commissioner considers necessary.

The Department agrees with the ICO's suggestion of an explicit requirement that requests for information are both 'necessary and proportionate.'

The Department intends to instruct OLC to draft an amendment to clause 10(2) of the Bill to include the words 'and proportionate'.

(iii) Disclosure of information

Clause 15 provides that a charter service provider may disclose any information to the Commissioner if the disclosure is made for the purposes of enabling or assisting the Commissioner to exercise any function. Its purpose is to provide legal clarity and reassurance to service providers about lawful disclosure. 15(2)(b) confirms that a disclosure to the Commissioner which is authorised by clause 15 does not breach any obligation of confidence owed by the person making the disclosure in relation to that information, or any other restriction on the disclosure of information (however imposed). However, clause 15(3), explicitly preserves restrictions relating to:

- patient information;
- data protection legislation; and
- restrictions under the Investigatory Powers Act 2016.

Clause 15 disclosure provisions are not intended to override existing DPA and GDPR requirements and restrictions (see clause 15(3)(b)).

The ICO has asked for clarification on the types of restrictions that 15(2)(b) is intended to disapply. The policy intention is to make it clear to charter service providers that sharing information with the Commissioner under this section would not breach any restrictions in any contract, agreement or policy which provides for non-disclosure or confidentiality, for example, memoranda of understanding, service level agreements, or information-sharing protocols.

The ICO has also asked what safeguards will apply in practice when disclosures are made under this provision. It will be the responsibility of each charter service provider and the Commissioner to ensure that appropriate safeguards are in place and that any disclosure is handled securely, proportionately and in accordance with the relevant legal

and governance requirements. The Commissioner may wish to set out disclosure responsibilities with each charter service provider in data sharing agreements.

The Commissioner's role will be to provide system-wide oversight with the benefit of anonymised data collected and shared with them by charter service providers. They will be unable to become involved in individual cases (see clause 8), unless it is to draw out common themes, patterns or systemic issues. However, where the Commissioner has a concern for a person's wellbeing and safety, the clause aims to provides reassurance to charter service providers that disclosures made for the purposes of supporting the Commissioner's functions are lawful and will not breach data protection duties or other restrictions, subject to the safeguards set out in the clause.

We understand this type of provision, as set out in clause 15, is standard in legislation to support effective information sharing (see section 18 of the Domestic Abuse Act 2021).

Mandatory publication of victim-related statistics

Clause 11 of the Bill requires charter service providers to collect and retain *"any data that is reasonably required"* for the purpose of producing statistical information.

The duty to collect and retain 'data' will rest with the charter service provider and the charter service provider will need to be satisfied that their processing is data protection compliant. The Commissioner will receive "'statistics relating to the provision of relevant services" (clause 11(1)(a))''. The Department considers that this would exclude data that is not aggregated or anonymised.

The Department considers s.183A of the Data Protection Act 2018, which provides that the Bill (and any regulations made under it) "*does not override a requirement under the main data protection legislation relating to the processing of personal data*" as a safeguard. In addition, clause 15(3)(b) of the Bill would provide a further safeguard, given disclosure by a charter service provider is not permitted when it contravenes data protection legislation.

The clause also requires that regulations will be made by the Department, specifying how and what categories of statistics will be provided etc. It is anticipated that the categories will directly align with the entitlements and charter service provider obligations set out in the Victim Charter. The Department must consult the Commissioner and charter service providers before making regulations. The regulations will be subject to scrutiny by the ICO and be laid before, and approved by a resolution, of the Assembly.

The Department intends that regulations and supporting guidance will reference data protection principles and make it clear that data should be anonymised or aggregated.

Regulation of access to complainants' private information in serious sexual offence cases

Clause 26 makes provision for the protection of complainants in proceedings for sexual offences.

The Department is aware of the Information Commissioner's 2022 Opinion and has met with the Commissioner Designate for Victims of Crime, who has also reported on the impact on complainants of requests for disclosure of their personal information and made recommendations for changes.

As provided for in clause 26, court rules will set out the new procedural arrangements in relation to applications for access to third-party material and applications concerning a complainant's previous sexual history. Court rules, rather than primary legislation, are best placed to set out procedural arrangements and as secondary legislation are required to be abided by and consistently applied in practice.

When drafting the rules, the Department will work to ensure that the forms and guidance require applicants to provide detail of why disclosure of the information is necessary and material evidence to deter applicants from making applications for all notes and records relating to the complainant and are often not necessary or proportionate.

Rules will also require that the applicant serves notice of the application on the complainant, together with any accompanying documents. The complainant will then

have the opportunity to avail of free, independent legal advice on their rights. Should they wish to make oral or written representations to the court ahead of a decision being made (as provided for in the clause) they will be able to do so with the benefit of legal representation and attend the hearing. These are important new provisions to ensure that victims are appropriately involved in decisions concerning access to their personal information.

Pre-trial legal representation in serious sexual offence cases

The Department is pleased to note that the ICO welcomes clause 26 providing complainants with the right to legal representation in hearings concerning applications seeking disclosure of third-party material and applications relating to previous sexual history evidence. This is a major positive step towards better supporting complainants and helping them understand the criminal justice process, to avail of informed legal advice about their rights and, should they wish to do so, to make representations to the court to object to or seek to limit disclosure and use of personal information about them and feel able to contribute to the decision making process in their case.

Special measures and protection from direct cross-examination in hate crime cases

The ICO recognises the potential benefits of clause 25 of the Bill which introduces additional protections for complainants in proceedings involving aggravation by hostility, including the prohibition on direct cross-examination by defendants and the extension of eligibility for special measures.

As above, the Department is aware of the Information Commissioner's 2022 Opinion and is pleased that the provisions are consistent with its broader themes.

I trust the Committee finds this helpful and the Department will be pleased to answer any further queries members might have.

Yours sincerely,

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5 October 2026

Dear [redacted]

Victims and Witnesses Crime Bill – Information Commissioner's Office

At its meeting on 1 October 2026, the Committee for Justice considered a written submission from the Information Commissioner's Office in response to its call for evidence on the Victims and Witnesses of Crime Bill.

The submission raises a number of points in relation to appropriate data protection safeguards and the protection of individuals' privacy rights, which the ICO have suggested that the Committee may wish to clarify with the Department.

The Committee, therefore, agreed to forward the ICO's submission to the Department for a response on the issues raised. A copy of the ICO's submission is attached.

I would be grateful if the Committee could receive a response by 19 October 2026.

Yours sincerely

[redacted]

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