

ICO submission for the Justice Committee on the Victims and Witnesses of Crime Bill

1. About the Information Commissioner's Office (ICO)

- 1.1 The ICO is the UK's independent public authority created to uphold information rights and has responsibility for enforcing and overseeing a range of legislation including the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018) and the Freedom of Information Act 2000, among others.
- 1.2 The Information Commissioner is independent of the Government and upholds information rights in the public interest, promotes openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action when the law is broken.

2. Introduction and Background

- 2.1 The ICO welcomes the opportunity to provide written evidence to the Committee for Justice (the Committee) on the Victims and Witnesses of Crime Bill, in particular the following proposals:
 - the establishment of a statutory Commissioner for Victims and Witnesses of Crime within the current Assembly mandate;
 - requirements on criminal justice organisations (CJOs) to provide or publish statistical information relating to victims, to support

the Commissioner in monitoring compliance with the Victims' Charter;

- measures to ensure that complainants in serious sexual offence cases have access to independent legal representation at pre-trial hearings, enabling them to challenge applications for the disclosure of their personal information or previous sexual history;
- the introduction of statutory controls governing defence requests for access to third-party material, supported by court procedures and a standardised application process; and
- strengthened protections for those affected by hate crime through the extension of special measures and the prohibition of cross-examination by defendants.

2.2 We welcome the Committee's commitment to provide detailed scrutiny of the proposals contained in the Bill. We have provided our written submissions below, focusing on the parts of the Bill which fall under our regulatory remit. We hope this will aid the Committee in their scrutiny.

3. Summary

3.1 Our submission highlights two overarching data protection considerations for the Committee's attention.

3.2 First, several provisions within the Bill provide broad powers to collect, request, retain and disclose information. These include powers relating to information requests by the Commissioner, the collection of victim-related statistics and disclosures made by CJOs. While we recognise the importance of these powers in supporting the Bill's objectives, the Committee may wish to satisfy itself that appropriate limits and safeguards are in place, and that the principles of necessity, proportionality and data minimisation are reflected both in the legislation and its practical operation.

3.3 Second, many of the practical arrangements governing the handling of personal information under the Bill will be set out in regulations,

court rules, guidance and administrative processes rather than on the face of the legislation itself. The Committee may therefore wish to seek assurance that these arrangements provide clear and consistent safeguards, including appropriate governance, accountability and protections for sensitive personal information, particularly where victims' and complainants' information is involved.

- 3.4 Taken together, these considerations are intended to assist the Committee in ensuring that the Bill's objectives are delivered in a manner that is compatible with data protection requirements and appropriately safeguards individuals' information rights.

4. Establishment of a statutory Commissioner for Victims and Witnesses of Crime

General powers

- 4.1 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*". In addition, it also states that the Commissioner may also publish any matter concerning the interests of victims and witnesses, including the outcome of any research.
- 4.2 Where research activities involve the processing of personal information, it will be important that appropriate governance and data protection safeguards are in place. This includes ensuring that responsibilities for the handling of personal data are clearly defined, that any information sharing arrangements are supported by appropriate contractual and organisational measures, and that personal data is only processed where necessary and proportionate for the relevant purpose.
- 4.3 In this context, the Committee may wish to seek clarification from the Department on the arrangements that will apply where external organisations are engaged to undertake research on behalf of the

Commissioner, including how responsibilities for data protection compliance will be overseen in practice.

Compliance with Victim's Charter

- 4.4 Clause 10 of the Bill enables the Commissioner to request the disclosure of "*any information that the Commissioner considers necessary*". While we recognise the importance of ensuring that the Commissioner can obtain information required to carry out their statutory functions effectively, this provision is broadly framed and appears to rely on a subjective assessment of necessity.
- 4.5 In this context, consideration could be given to whether the Bill should include an explicit requirement that requests for information are both '*necessary and proportionate*' to the exercise of the Commissioner's statutory functions.
- 4.6 Including such a requirement would provide greater clarity for organisations responding to requests, help ensure that any disclosure of personal information is appropriately limited, and better reflect the data minimisation principle that personal data should be adequate, relevant and limited to what is necessary for the purpose for which it is processed.

Disclosure of information

- 4.7 Clause 15 of the Bill provides a broad disclosure gateway, enabling information to be shared with the Commissioner and stating that disclosures by CJOs "*do **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.*"
- 4.8 While any disclosure made under this provision must still comply with data protection legislation (as referenced in Section 15(3)(b)), the gateway is broadly framed. In particular, it is not clear from the Bill what categories of restriction are intended to be disapplied by

the reference in Clause 15(2)(b) to "*any other restriction on the disclosure of information*", or how this provision is intended to operate alongside existing information-sharing safeguards.

- 4.9 In this context, the Committee should seek clarification from the Department on the intended scope and operation of Clause 15, including the types of restrictions that 15(2)(b) is intended to disapply and the safeguards that will apply in practice when disclosures are made under this provision. This could include clarification on how CJOs will ensure that disclosures remain compliant with applicable data protection requirements, including the principles of necessity, proportionality and data minimisation.

5. Mandatory publication of victim-related statistics

- 5.1 Clause 11 of the Bill requires CJOs to collect and retain "*any data that is reasonably required*" for the purpose of producing statistical information. While we recognise the operational need to gather data to support the Commissioner's functions, this requirement is broadly framed and does not explicitly limit the nature or volume of data that may be collected.
- 5.2 Although we recognise that further detail is intended to be set out in regulations under Clause 11(4), it is not currently clear to what extent those regulations will constrain the scope of the data required in practice.
- 5.3 In addition, the Bill does not expressly require that information shared for these purposes be anonymised or aggregated. We note, however, that the accompanying Data Protection Impact Assessments indicate that the statistical outputs provided to the Commissioner are intended to be anonymised and thematic in nature, which is welcome.

- 5.4 In this context, the Committee may wish to seek further clarification from the Department on the categories of data that CJOs may be required to collect and retain, the safeguards that will apply to any personal information processed for these purposes, and the extent to which the regulations will incorporate measures to support compliance with data protection principles, including data minimisation.
- 5.5 The Committee may also wish to explore whether the intended use of anonymised or aggregated information could be reflected in the regulations or accompanying guidance.

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

- 6.1 We welcome the provisions in Clause 26 relating to applications for access to third-party material and applications concerning a complainant's previous sexual history. These measures introduce important safeguards by recognising complainants' privacy interests and affording complainants an opportunity to participate in relevant hearings.
- 6.2 We note that further detail on the handling and disclosure of sensitive material, notification requirements and related procedural safeguards will be set out in court rules and supported by guidance, rather than in primary legislation. It will be important to ensure that these arrangements are clearly defined and applied consistently in practice, to support the effective operation of appropriate data protection safeguards and the protection of individuals' privacy rights.
- 6.3 In this context, we would draw the Committee's and the Department's attention to the Information Commissioner's 2022

Opinion, *Who's Under Investigation?*¹, which highlighted the importance of ensuring that requests for victims' personal information are necessary and proportionate, and that victims are appropriately involved in decisions concerning access to that information. As many of the practical safeguards associated with Clause 26 will be set out in court rules and supporting guidance, it will be important that these instruments clearly reflect these principles.

7. Pre-trial legal representation in serious sexual offence cases

- 7.1 We also welcome the provisions in Clause 26 which provide complainants with the right to legal representation in hearings concerning applications for witness summonses and applications relating to previous sexual history evidence.
- 7.2 These measures recognise the significant privacy interests that may be engaged in such proceedings and provide an important safeguard by enabling complainants to make representations before decisions are taken regarding the disclosure or use of sensitive personal information.

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

- 8.1 Clause 25 of the Bill 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. We recognise

¹ [Information Commissioners Opinion – Who's Under Investigation? 31 May 2022](#)

the potential benefits of these measures in supporting victims and witnesses during criminal proceedings.

- 8.2 While not directly concerned with data protection matters, these provisions are consistent with the broader themes identified in the Information Commissioner's 2022 Opinion *Who's Under Investigation?*¹, including the importance of maintaining victims' confidence in the criminal justice system and ensuring that their rights and interests are appropriately recognised throughout the process.

**Should you have any queries on this submission,
please do not hesitate to contact our office by emailing**

