

## **Refuge response: Human Rights Act Reform – A Modern Bill of Rights**

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### **About Refuge:**

(1) Refuge is the largest specialist provider of gender-based violence services in the country, supporting thousands of women and children on any given day. We provide a national network of 41 refuges, community outreach programmes, child support services and independent advocacy services for those experiencing domestic, sexual, and gender-based violence. We also run specialist services for survivors of tech abuse, modern slavery, 'honour'-based violence, and female genital mutilation. Refuge runs the 24-hour National Domestic Abuse Helpline which receives hundreds of calls from women experiencing domestic abuse every day.

### **Summary:**

(2) Refuge welcomes the opportunity to submit evidence to this consultation. As the largest provider of specialist gender-based violence services in England, we are in a unique position to represent the voices of survivors. Our policy work is informed by the views and experience of women accessing our services. We have limited our submission to this consultation to the areas in which we have specific expertise and therefore will respond only to questions 9 and 29.

- Through our response to the consultation, we seek to highlight the significant role the Human Rights Act (HRA) plays in tackling VAWG.
- We argue that these proposals, in particular curbing positive obligations on public authorities, will adversely impact survivors of VAWG.
- We recommend that, instead of restricting the circumstances in which authorities can be held accountable for failures, greater focus should be placed on improving the prevention of and response to VAWG by public authorities.

(3) We are responding in a context of persistently high rates of violence against women girls (VAWG) and growing awareness of an inadequate criminal justice response to VAWG-related crimes. Violence against women and girls takes many different forms, including domestic abuse, rape and other forms of sexual violence, stalking and harassment, modern slavery, forced marriage, honour-based abuse, and female genital mutilation. Domestic abuse can include physical, sexual, psychological, emotional, economic and tech abuse, and has a devastating impact on survivors. More than one in four women in England and Wales aged 16-74 experience domestic abuse at some point in their lives, and an average of two women are killed every week by their partner or ex-partner – a statistic which has not changed in decades.<sup>12</sup>

(4) Survivors' experience of the criminal justice system continues to be incredibly challenging and traumatic. Survivors face significant barriers in access to justice including court delays, a culture of

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<sup>1</sup> ONS (2020), 'Domestic abuse prevalence and trends, England and Wales: year ending March 2020,' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseprevalenceandtrendsenglandandwales/yearendingmarch2020>

<sup>2</sup> ONS (2020), 'Homicide in England and Wales: year ending March 2019,' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/latest#how-were-victims-and-suspects-related>

disbelief and persistently low levels of conviction. In December 2021, the Ministry of Justice published the government's first set of rape scorecards, which paint a picture of a broken justice system failing survivors with just 0.6% of rapes resulting in a charge<sup>3</sup>. This means that more than 98% of reported rape cases do not reach court, which is having profound consequences for survivors and their belief that reporting will result in justice. Prosecution rates for domestic abuse decreased for the fifth year in a row to 54,525 in the year ending March 2021<sup>4</sup>.

(5) This consultation also comes at a time of sharp decline in public confidence in our criminal justice system and police, following a number of high-profile cases of police misconduct such as in the cases of Nicole Smallman, Bibaa Henry and the murder of Sarah Everard by a serving Metropolitan Police Officer. After mounting pressure to explain how police will prevent violence against women and girls, the recent HMICFRS report investigating the effectiveness of police engagement concluded that VAWG must be given greater priority by the government, equivalent to the importance placed on tackling terrorism<sup>5</sup>. The Home Office's VAWG strategy<sup>6</sup>, Ministry of Justice's End-to-End Rape Review<sup>7</sup> and the recent Victims Law Consultation<sup>8</sup> have all been developed with clear ambitions to reduce the prevalence of VAWG in the long term, by increasing support for victims and survivors and increasing the number of perpetrators brought to justice.

(6) Against this backdrop, the Human Rights Act provides an essential route to justice for survivors of VAWG. It supports survivors to live with equal dignity and respect and, when needed, to hold public bodies and the government to account. In particular, The Convention requires the state to discharge various 'positive obligations' to protect people's human rights. Article 3 of the HRA - "freedom from torture and inhuman or degrading treatment" - creates a positive obligation to conduct an inquiry into behaviour amounting to a breach of a survivors' right to a proper investigation of a VAWG-related crime and is therefore vital to survivors challenging poor police practice.

(7) Violence against women and girls is a breach of human rights. The right to live free from fear, to not be treated in an inhumane and degrading way, to respect for private and family life (including the right to physical and psychological integrity), and the right to life are all fundamental human rights reflected in a number of articles in The Convention. The full range of forms that VAWG can take, including domestic abuse, rape, and other forms of sexual violence, stalking and harassment, modern slavery, forced marriage, honour-based abuse, and FGM, are a clear breach of these rights.

(8) At Refuge, we are concerned about the overhaul of the HRA that the proposals in this consultation represent. The courts, Human Rights Act and broader rights-based culture have played a significant role in enabling women and girls to challenge police misconduct, realise their rights in

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<sup>3</sup> Ministry of Justice (2021) <https://data.justice.gov.uk/cjs-scorecard-adult-rape>

<sup>4</sup> (ONS) 2021

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2021>

<sup>5</sup> HMICFRS (2021) <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/police-response-to-violence-against-women-and-girls-final-inspection-report.pdf>

<sup>6</sup>HM Government (2021)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1033934/Tackling\\_Violence\\_Against\\_Women\\_and\\_Girls\\_Strategy\\_-\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033934/Tackling_Violence_Against_Women_and_Girls_Strategy_-_July_2021.pdf)

<sup>7</sup>HM Government (2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001417/end-to-end-rape-review-report-with-correction-slip.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001417/end-to-end-rape-review-report-with-correction-slip.pdf)

<sup>8</sup> Ministry of Justice (2021) <https://www.gov.uk/government/consultations/delivering-justice-for-victims-a-consultation-on-improving-victims-experiences-of-the-justice-system/delivering-justice-for-victims-a-consultation-on-improving-victims-experiences-of-the-justice-system>

practice and ensure that public authorities take action to intervene for their protection. Refuge is therefore opposed to proposals to curb the positive obligations of public authorities.

(9) Furthermore, the framing of the issues in the consultation document represents a significant departure from the Independent Human Rights Act Review (IHRAR), which does not support such an overhaul. The Review’s report itself acknowledges, “*The vast majority of submissions received by IHRAR spoke strongly in support of the HRA. They pointed to its impact in improving public administration for individuals, through developing a human rights culture. Thus, the HRA was not, or not just, to be viewed through the prism of a few high-profile cases or indeed with a focus on litigation at all.*” (Page 16, para 46)<sup>9</sup>. Importantly, at the same time as the IHRAR, Parliament’s Joint Committee on Human Rights had a parallel inquiry. The JCHR published its report in June 2021, stating that the “*evidence we have heard has led us to conclude that there is no case for changing the Human Rights Act*”.<sup>10</sup>

(10) Instead, these proposals risk undermining the government’s commitment to tackling VAWG. For example, the Home Office’s VAWG strategy<sup>11</sup> sets a clear ambition to increase support for victims and survivors, increase the number of perpetrators brought to justice and reduce the prevalence of VAWG in the long term. Home Secretary Priti Patel MP has frequently affirmed that the safety of women and girls across the country is an “absolute priority” for her<sup>12</sup>. The proposals in this consultation also run counter to commitments made to survivors of VAWG through Ministry of Justice’s Victims Law Consultation which aims to make significant improvements to victims’ experience of, and confidence in, the criminal justice system. Secretary of State for Justice, Dominic Raab MP has given assurances that these plans will “give victim-survivors a louder voice in the criminal justice system”<sup>13</sup>. Whilst these commitments were made primarily in relation to the criminal justice system, the Human Rights Act provides survivors of VAWG with an important avenue for holding criminal justice agencies to account.

**Question 9: How can the Bill of Rights address the imposition and expansion of positive obligations to prevent public service priorities from being impacted by costly human rights litigation? Please provide reasons.**

(11) **Positive obligations require the state to take proactive steps to protect people’s human rights.** They are a key part of the rights protected in the European Court of Human Rights (ECHR) to which the UK has been a signatory since 1951; and they are not contrary to, but instrumental to, the provision of public services. Positive obligations include, for example, taking action when someone’s life is known to be at serious and immediate risk (or the public body ought to know of the risk), such as a woman experiencing domestic abuse from a perpetrator who has threatened to kill her. Positive obligations are an essential and inherent part of effective human rights protection. The legal precedent for positive obligations has been developed by key rulings of the ECHR in Strasbourg, which include:

- The landmark case of *Osman v UK* in 1998 established a positive obligation upon the state to prevent loss of life where the authorities “knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified

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<sup>9</sup>IHRAR (2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1040525/ihrar-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1040525/ihrar-final-report.pdf)

<sup>10</sup> JCHR (2021) <https://committees.parliament.uk/publications/6592/documents/71259/default/>

<sup>11</sup>Home Office (2021)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1033934/Tackling\\_Violence\\_Against\\_Women\\_and\\_Girls\\_Strategy\\_-\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033934/Tackling_Violence_Against_Women_and_Girls_Strategy_-_July_2021.pdf)

<sup>12</sup> <https://www.gov.uk/government/news/tackling-violence-against-women-and-girls-strategy-launched>

<sup>13</sup> The Times (2021) <https://www.thetimes.co.uk/article/dominic-raab-crime-victims-promised-louder-voice-vd7c2qvqd#:~:text=Prosecutors%20will%20have%20to%20meet,their%20voices%20are%20properly%20heard%E2%80%9D>.

individual from the criminal acts of a third party and failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.” The case concerned the shooting of a schoolboy’s father by his teacher. This ‘operational duty’ is clearly highly relevant to the protection of women at risk from violent men.<sup>14</sup>

- The case of *MC v Bulgaria* (2003) involved the state’s actions in response to the rape of a 14-year-old girl by two men. The European Court found a breach of Articles 3 and 8 arising from investigative and prosecutorial failures.<sup>15</sup>
- In *Opuz v Turkey* (2009) the police and prosecution authorities failed to prevent the applicant’s violent ex-husband from assaulting her and eventually killing her mother. The European Court identified inadequacies in the Turkish criminal law system and failures to take practical steps to provide protection, finding breaches of Articles 2 and 3. The Court also found a breach of Article 14 arising from discrimination against women in that the passivity of the authorities created a climate conducive to domestic violence.<sup>16</sup>

(12) **As these cases demonstrate, positive obligations provide survivors with a vital legal route to bring claims against public authorities in UK courts and Refuge strongly opposes the proposal to scale them back.** Article 3 of the HRA - “freedom from torture and inhuman or degrading treatment” - creates a positive obligation on the state to conduct a proper inquiry into behaviour amounting to a breach of a survivors’ right to a proper investigation of a VAWG-related crime. The positive obligations arising from Articles 2, 3, 4 and 8 are a vitally important feature of the ECHR and the HRA for survivors of VAWG. Claims brought under the HRA reflect failings across a broad range of forms of violence against women including rape, sexual harassment, trafficking, and honour-based violence. For example, with the support of VAWG organisations, the victims of the ‘black cab rapist’ John Worboys, were able to use Article 3 to hold the police to account for failing to properly investigate his past serious crimes of violence against women at the Supreme Court<sup>17,18</sup>.

(13) **Scaling back positive obligations will put survivors’ access to justice at risk.** Positive obligations on public authorities are the foundation of safeguarding for survivors of VAWG. Given the bar on negligence claims, if this legal avenue is removed there will be no route to bring claims in UK law. Without the clear duty provided by positive obligations, public services will have to navigate a complex maze of other laws, policies and guidance. At a time when there are significant questions being asked about the extent of police failures of VAWG, this proposal to limit survivors’ access to justice is particularly concerning. Significantly, such positive obligations not only give rise to the ability to

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<sup>14</sup> European Court of Human Rights (23452/94), (2000) 29 E.H.R.R. 245

<sup>15</sup> European Court of Human Rights (39272/98), (2005) 40 E.H.R.R. 20

<sup>16</sup> European Court of Human Rights (33401/02), (2010) 50 E.H.R.R. 28

<sup>17</sup> End Violence Against Women Coalition & Southall Black Sisters, Human Rights Act an “essential tool” for women’s protection, 2 November 2017, <https://www.endviolenceagainstwomen.org.uk/human-rights-act-an-essential-tool-for-womens-protection/>

<sup>18</sup> Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents): Between 2003 and 2008, John Worboys, the driver of a black cab in London, is believed to have committed over 105 rapes and sexual assaults upon women. DSD was one of his first victims, attacked in 2003 and NBV in July 2007. DSD and NBV were successful in bringing proceedings against the Commissioner of the Metropolitan Police Service (MPS) for the failure of the police to conduct effective investigations into Worboys’ crimes, under sections 7 and 8 of the HRA. DSD and NBV’s claims were that the police failures in the investigation of the crimes committed by Worboys constituted a violation of their rights under article 3 of ECHR which provides that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

challenge failures when they take place, but also seek to prevent them. Any attempt to diminish or remove such obligations will put victims at greater risk.

(14) **We disagree with the consultation’s positioning of the fulfilment of human rights through positive obligations as a financial burden, rather than an essential avenue of redress for individuals.** It is Refuge’s view that providing survivors with a legal route to bring claims against public authorities in the UK courts, where there are proven failures in conduct, far outweighs the ‘costly human rights litigation’<sup>19</sup>, as cited in the consultation. Such litigation can instead be avoided by driving up standards and ensuring authorities act to protect women’s right to live free from violence and abuse.

(15) **The evidence base for limiting positive obligations is weak.** The IHRAR did not look at the issue of positive obligations, and the examples cited in the consultation do not, in our view, show that positive obligations have created ‘significant problems’ or that they ‘create uncertainty as to the scope of the government’s (and other public authorities’) legal duties’<sup>20</sup>. If lack of clarity is a concern, this can be addressed through training on the scope of human rights law and how the HRA supports the delivery of good public services. In addition, when imposing positive obligations, both Strasbourg and UK courts already carefully consider the needs of public authorities and serious failures are required before a breach is established and positive obligations acted upon.

(16) **Refuge is concerned about the impact of this proposal at a time when significant questions are being asked about the extent of police failures on VAWG,** including a culture of misogyny and ongoing investigations into police misconduct. Nearly 2,000 officers faced accusations of sexual wrongdoing since 2017 and over 60 per cent did not result in disciplinary action<sup>21</sup>. Research by the Centre for Women’s Justice found that one woman a week has come forward to report a serving police officer for domestic or sexual violence<sup>22</sup>. There are also multiple ongoing investigations to identify the extent to which the Metropolitan Police Force might have acted to intervene in the case of Wayne Couzens before he went onto kidnap, rape, and murder Sarah Everard. In 2021 a HMICFRS report into police response to VAWG concluded that ‘radical action is needed to tackle VAWG’ and highlighting that an estimated 1.6 million women in England and Wales experienced domestic abuse in the 12 months to March 2020<sup>23</sup>. Instead of restricting the circumstances in which authorities can be held accountable for failures, we strongly recommend that focus be placed on improving the response of public authorities to VAWG

**Question 29: We would like your views and any evidence or data you might hold on any potential impacts that could arise as a result of the proposed Bill of Rights? In particular:**

- a. What do you consider to be the likely costs and benefits of the proposed Bill of Rights? Please give reasons and supply evidence as appropriate.**
- b. What do you consider to be the equalities impacts on individuals with particular protected characteristics of each of the proposed options for reform? Please give reasons and supply evidence as appropriate.**

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<sup>19</sup> Ministry of Justice (2021) <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights/human-rights-act-reform-a-modern-bill-of-rights-consultation>

<sup>20</sup> Ministry of Justice (2021) <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights/human-rights-act-reform-a-modern-bill-of-rights-consultation>

<sup>21</sup> The Times (2021) <https://www.thetimes.co.uk/article/sex-claims-against-2-000-police-officers-fnt9blkd7>

<sup>22</sup> CWJ (2020) <https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/5e690390c104fd669e8c1bbe/1583940498025/super-complaint2+report.FINAL.2.pdf>

<sup>23</sup> HMICFRS (2021) <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/police-response-to-violence-against-women-and-girls/>

c. How might any negative impacts be mitigated? Please give reasons and supply evidence as appropriate.

(17) **Replacing the HRA with a Bill of rights represents a regressive step in progress towards tackling violence against women and girls.** Over the last two decades, the HRA, human rights framework and broader 'rights culture, have played a vital role in progress to ensuring that women and girls can live free from violence and abuse. The HRA is vital for compelling the police, and other public authorities, to take action and responsibility for their failures and therefore drives improvement in policy and practice in response to abuse. Human Rights Act is important for survivors of VAWG – it provides a legal route to bring claims against public authorities in cases where their rights have been breached.

(18) **The proposal to scale back positive obligations will undermine the ability of survivors to secure protections against poor state responses to their cases.** The positive obligations on the state to conduct an inquiry into behaviour amounting to a breach of a survivors' right to an investigation of a VAWG-related crime is vital for survivors' access to justice. Particularly in a climate in which our criminal justice system too often fails women who report VAWG crimes to the police. At Refuge, we are concerned about the lack of, or limited, investigation of many reports of domestic abuse. For example, the police are more likely to assign evidential difficulty outcomes for domestic abuse violent offences than non-domestic abuse related offences (78% of cases compared to 55% of cases)<sup>24</sup>. Data shows that Crown Prosecution Service (CPS) decisions to prosecute are declining and we are worried that stereotypes about 'un/believable' victims are impacting charging decisions with the CPS<sup>25</sup>. In the year ending March 2021, referrals of suspects in domestic abuse cases from the police to the CPS decreased by 3% to 77,812, from 79,965 the previous year<sup>26</sup>. Given the challenges that survivors already face in accessing justice, we strongly recommend that the channels through which victims and survivors of VAWG can hold the public authorities to account are not constrained.

(19) **The proposals in the consultation risk undermining the government's work to address and prevent VAWG.** Running in parallel to this consultation was the Victims Law consultation, through which the Ministry of Justice are seeking to enhance the rights of survivors and improve their experience of the criminal justice system. In contrast, the proposals in this consultation seek to restrict legal avenues for holding criminal justice, and other public agencies, to account. In our view, the proposal to curtail positive obligations risks undermining the important work underway to address VAWG, including the VAWG strategy 2021<sup>27</sup>, End-to-End Rape Review<sup>28</sup>, and focus on policing and prosecution of domestic abuse and rape by the Inspectorates of police and CPS. We are concerned that the proposals in this consultation – in particular, curbing positive obligations of authorities – will signal to

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<sup>24</sup> ONS (2020), 'Domestic abuse and the criminal justice system, England and Wales: November 2020,' <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabuseandthecriminaljusticesystemenglandandwales/november2020#police-responses-to-domestic-abuse>

<sup>25</sup> ONS (2021) <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2021>

<sup>27</sup> Home Office (2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1033934/Tackling\\_Violence\\_Against\\_Women\\_and\\_Girls\\_Strategy\\_-\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033934/Tackling_Violence_Against_Women_and_Girls_Strategy_-_July_2021.pdf)

<sup>28</sup> HM Government (2021) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1001417/end-to-end-rape-review-report-with-correction-slip](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001417/end-to-end-rape-review-report-with-correction-slip)

institutions that they will not ultimately be held responsible for any significant failures, at a time when HMICFRS are calling for 'urgent' and 'radical' transformation in the response to VAWG<sup>29</sup>.

## **Conclusion**

(20) **At Refuge, we are extremely concerned about the overall of the Human Rights Act which the proposals in this consultation represent.** The Human Rights Act is a vital tool for survivors of VAWG to hold public authorities to account and improve everyday policy and practice in response to abuse. Replacing the HRA with a Bill of Rights, as proposed in this consultation, would further restrict survivors' from accessing justice in a climate of growing public mistrust of police and awareness of the inadequate criminal justice response survivors of VAWG often face.

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<sup>29</sup> HMICFRS (2021) <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/police-response-to-violence-against-women-and-girls-final-inspection-report.pdf>