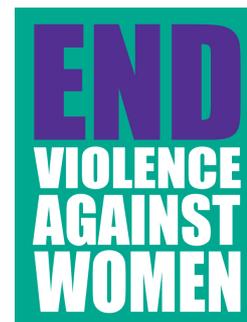


Survivors' Rights: The UK's new legal responsibilities to provide specialist support for women and girls who have experienced violence

**EVAW Coalition Briefing Paper
September 2015**



Executive Summary

New legal duties in the EU Victims Directive are due to come into force in November 2015 and the Westminster government has indicated that it intends to ratify the Istanbul Convention (European Convention on Violence Against Women and Domestic Violence from the Council of Europe). Both establish rights to specialist support services for victim-survivors of violence against women and girls (VAWG). There has also been a change in EU rules on procurement which provide commissioners with increased room to take VAWG services out of competitive tendering processes. It is vital that policy makers, commissioners and other decision makers are fully aware of these legal changes and mindful of the rights of victim-survivors. The EVAW Coalition makes recommendations towards making these rights a reality in this briefing paper.

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About the End Violence Against Women Coalition

The End Violence Against Women Coalition is a group of experts, researchers, frontline service providers, women's and human rights organisations working together to promote a strategic response to all forms of violence against women and girls (VAWG), including domestic violence, rape and sexual violence, sexual harassment, female genital mutilation, forced marriage, 'honour-based' violence, trafficking and sexual exploitation.

1. Background

Whilst the extent and range of VAWG support services in the UK have long been envied by other EU member states, we have never reached the minimum standards set by the Council of Europe, which are now embedded in the Istanbul Convention. Specialist services are increasingly under pressure through the twin challenges of public spending cutbacks and competitive tendering.

Across the nations and regions of the UK women's organisations in the voluntary sector have pioneered the development of innovative forms of support for women and girls who have experienced violence and abuse.¹ Over several decades a network of dedicated specialist services has been built, whose primary purpose is provide support to victim-survivors to ensure their protection and enable them to deal with the legacies of abuse, alongside prevention work to end VAWG. These services include Rape Crisis Centres, refuges and specialist domestic violence projects and services designed for, led and run by, women from the communities they serve, including black and minority ethnic women and disabled women. They provide independent, local advice and advocacy, counselling and sanctuary for women and girls who are affected by domestic violence, rape and sexual assault, trafficking, female genital mutilation and forced marriage, child sexual abuse and exploitation.

The Westminster government has signed up to new legal responsibilities under the **EU Directive on Victim's Rights**² (which comes into force in November 2015) and the **European Convention on Violence Against Women**³ (which it has signed, and is expected to ratify). Ensuring that the obligations set out in these two legal frameworks are fulfilled is the responsibility of central government, Local Authorities, Police and Crime Commissioners and Health Commissioners. Details of the relevant articles of both the EU Directive and European Convention can be found at the end of this document.

2. The unacceptable scale of violence against women and girls

Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.⁴

- In 2011/2012 an estimated 1.2 million women experienced domestic violence⁵, 330,000 were sexually assaulted, 85,000 were raped and thousands more were stalked, according to latest data from the Crime Survey for England and Wales.⁶
- 23,772 sexual crimes against children under 16 (largely girls) were recorded in England and Wales in 2013/14.⁷ Around 65% of women who contact Rape Crisis Centres are adult survivors of childhood sexual abuse.
- Most violence against women is invisible. Only 15% of rapes are reported to the police and appear in the recorded crime statistics.⁸ It is important to use survey data (e.g. the Crime Survey for England and Wales) rather than recorded crime statistics, when estimating the scale of VAWG. But even the crime survey is not enough, since it does not ask questions about some forms of VAWG, such as forced marriage.

- In 2014, the Forced Marriage Unit gave advice or support in relation to forced marriage in 1,267 cases. 79% of cases involved female victims.⁹
- Over 20,000 girls under the age of 15 are potentially at risk of FGM in England and Wales¹⁰, and the Health and Social Care Information Centre reported 3,963 newly identified cases of FGM reported nationally between September 2014 and March 2015.¹¹
- Sexual bullying and harassment are routine in UK schools. Almost one in three 16-18 year-old girls has experienced unwanted sexual touching at school.¹² This continues into higher and further education, with full-time female students being at nearly three times the risk of sexual violence.¹³

3. Why specialist services are important

The UN describes VAWG as “any act of gender-based violence that is directed against a woman because she is a woman or that affects women disproportionately”¹⁴: a definition that has underpinned Westminster government policy. Perpetrators of violence against women and men are, in the vast majority of cases, men. This does not mean that men are never victims of violence, or that women are not sometimes perpetrators. However, national and international prevalence surveys reveal a clear disproportionality along gender lines. The UN definition makes it clear that VAWG is a gender equality issue, with inequality between women and men identified as both a cause and consequence of such violence. VAWG is therefore a fundamental barrier to achieving equality between women and men.

Providing support that is sensitive to the gendered dynamics of violence is a crucial component of specialist VAWG services. Putting this into practice can take a range of forms, including offering a service that is delivered by women-only staff and providing a safe women-only space. The importance of these options to women was highlighted in a 2007 poll¹⁵ of 1,000 randomly selected women, of whom 97% thought that women should have the choice of attending a women-only service if they had experienced a sexual assault, and 90% that women should have the choice to report domestic or sexual violence to a female professional.

It is also crucial to recognise the diverse ways in which women experience violence and the need for safe BME women-led services. Such services are uniquely run by BME women who have an in-depth understanding and expertise on the specific barriers that can prevent women from accessing support for sexual and domestic violence, forced marriage and female genital mutilation. BME services are able to support women with the individual, family and community contexts of the violence as well as other factors such as immigration and asylum restrictions, access to language support, racism, sexism and other forms of discrimination which women can experience as part of their victimisation. The importance of BME-led women’s services was reinforced by women during a recent consultation, where women stated that they were more likely to approach these services for help as these are the spaces they trust and feel safe, understood and less alone.¹⁶

Specialist women’s services have led the way in creating an empowerment approach, which seeks to restore the control to women and girls that is stolen by violence. The support they provide aims to not replace the control of perpetrators with control by experts/professionals, through creating an environment in which survivors can exercise self-determination. This is essential part of rebuilding the self in the aftermath of abuse and fulfils the right to support and rehabilitation that are encoded in the two sets of law referred to in this briefing.

The independence of these services is essential. It matters to women who may lack the trust statutory agencies, including the criminal justice system. We know this, because women tell us, the services they prefer to use are: independent, confidential, with safe women-only space. Consultations with women show how much they value specialist women's services.

There should be guaranteed local funding for women's support services, they are all fighting for funding when they are providing so many good services, not just for women but for the family and the community.¹⁷

More BME refuges need to be available for women; some women will stay in violent situations rather than go to a generic service. BME women's services are really important; you need someone who understands your culture who is female.¹⁸

If I didn't have here [rape crisis] to come to, I don't think I would have been strong enough to go to court, and I don't think I'd be sitting here today because I used to be very suicidal. Organisations like this that provide counselling and support are saving lives, they rehabilitated me.¹⁹

Specialist women's services work to accredited quality standards²⁰ and represent an investment in preventing and reducing the costs that arise as a result of VAWG.

4. The UK's legal obligations

In this section we summarise current government commitment and introduce the new legal frameworks.

Current UK policy commitments

The UK government has committed itself to the policy goal of ending violence against women and girls. Since 2009 there has been a strategy in place which addresses all forms of VAWG. Providing adequate support for victim-survivors is a key guiding principle of the current government strategy.²¹

Current legal obligations

We already have laws that create obligations for the state to tackle VAWG, including: criminal law; civil law (e.g. protection orders); human rights law; and laws regulating public authorities, including the Social Value Act (which requires authorities to consider the wider social, economic and environmental benefits for the community in buying services) and the Public Sector Equality Duty²². The latter requires public bodies to consider the needs of people with protected characteristics when they commission services, including the need for women-only services, which may be necessary in order to ensure women are able to receive appropriate specialist advice and support.

The UK Government is also committed to a range of international agreements, including the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the European Convention on Human Rights, and the UN Beijing Platform for Action. Given the number of women offenders who are also victims of violence, the Bangkok Rules²³ referring to women in prison are also relevant.

The EU Directive on Victims' Rights

This Directive, which must be transposed into national law by November 2015, states explicitly that women and children who experience VAWG are in particular need of specialised services.

Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation... Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or for her right to residence.²⁴

This is, in effect a new legal standard and it applies to all victims regardless of nationality or citizenship status, and whether they have reported abuse or not. The right to support is one of the core rights within the Directive (Art 8) and it covers information, advice, practical, emotional and psychological support.

These rights are amplified by the Council of Europe convention which more explicitly recognises the key role of women's NGOs, with recognition of refuges (Article 23) and helplines (Article 24) and sexual violence services (Article 25), as well as minimum levels of support to be provided (Article 9). Parties are required to 'recognise, encourage and support' the voluntary sector.

The legal obligations should be placed in the context of new EU rules on 'procurement' or the 'competitive tendering' of services. The EU agreed the Procurement Directive in January 2014. And regulations implementing this took effect in UK law from February 2015.²⁵ and will produce guidance on how the new rules are to be implemented. The Directive changes the rules about what services must be tendered via open competition and which need not be, and introduces some nuancing of existing measures. An example of the change is the increase in the value of the piece of work before it must be tendered through competition, including 750,000 Euros for 'social services'. These changes are expected to decrease the pressure on commissioners to put specialist services to competitive tender.

The combination of these obligations and recent reforms provides commissioners at all levels with the powers to take dedicated specialised support services focused on VAWG out of competitive tendering processes. The reduced transaction costs will be a cost saving in itself.

5. End Violence Against Women Coalition recommendations: making rights a reality

New and existing legal obligations on the UK to ensure that victim-survivors of abuse can receive specialist support mean that a new standard of support for all women and girls is being created. These obligations are significant and will need to be reported on by member states. To ensure that these multiple obligations are made clear and easy to meet for those in a variety of settings who currently commission specialist services, the End Violence Against Women Coalition makes the following recommendations.

(i) The Westminster and devolved Governments should make the requirement to provide specialist VAWG support services statutory. This would end the uncertainty in

some parts of Government and statutory agencies as to the fact or extent of their obligations.

(ii) The Westminster and devolved Governments should highlight the fact that the EU has changed procurement rules and does not require 'social services' below the value of €750,000 to be competitively tendered. The Governments should then go further and recommend as policy to commissioners that where a local specialist service has provided a good service, on budget and to the satisfaction of its users, then it should not be put out to competitive tender. This would be compliant with EU law, would save the cost of regular tender processes, and would recognise the value of specialist services which need financial sustainability to retain experienced staff and to become a known and trusted part of communities.

(iii) The Westminster and devolved Governments should urgently issue guidance to commissioners on the requirements of the PSED alongside clear statistical information on the known, hugely disproportionately gendered nature of these crimes. Some commissioners have a poor appreciation of the prevalence and nature of VAWG, and some are looking unfavourably on high quality specialist women's services when they do not provide a parallel service for men and boys. Similarly, BME services commonly find that the specialist nature of their tailored provision is not understood by commissioners, to the extent that this vital sector's very existence is now extremely fragile. Clarity in this area is urgently needed.

(iv) Our members understand that publicly funded services need to provide both high quality support and value for money. The specialist VAWG sector has already developed detailed service standards²⁶ which we believe offer an objective measure of quality, and enable commissioners to understand which levels of service are adequate, and which are not adequate, to ensure women's safety and provide the resources women need to rebuild their lives. We urge the Westminster and devolved Governments to examine and adopt these standards such that commissioners at local level can be instructed to run commissioning processes to them.

APPENDIX: Summaries of new legal frameworks

EU Victims' Rights Directive²⁷

Article 1 - The Directive applies to all victims regardless of citizenship or nationality status

Services must therefore be available to undocumented migrant women and girls who are particularly exposed to various forms of gender-based violence (such as physical violence, sexual exploitation and abuse, female genital mutilation, forced marriages and so-called 'honour crimes') and trafficking in human beings.

Article 8 - Right to Access Victim Support Services

The right to support services is one of the core rights in the Directive. The purpose of this Article is to ensure that victims, and their family members, have access to confidential support services *free of charge* for information and advice, emotional and psychological support and practical assistance. Research shows that providing support at an early stage after a person has suffered a crime can considerably reduce the medium and long-term consequences for the individual and for society as a whole (in terms of human suffering, burden for health care and social services, loss of earnings, absence from work). Victims and their family members must have access to victim support in accordance with their needs. The assessment [of need] would normally be carried out by victim support services. States must facilitate referrals to victim support organisations (VSOs) by the competent authority that received the complaint or by other relevant entities. Some victims require specialist support (most commonly victims of sexual/domestic violence, victims of hate crime or trafficking).

Article 9 — Support From Victim Support Services

This Article is to be read in conjunction with Article 8. *It provides a specific list of general and specialist support services as a minimum requirement.*

In many Member States, the overwhelming majority of services for victims are run by civil society organisations. This particularly applies to services for victims of different types of gender-based violence (in particular domestic and sexual violence, harmful practices and trafficking). NGOs have a long tradition of providing shelters and other forms of safe, accessible alternative accommodation, legal advice, medical and psychological counselling as well as of running hotlines and other essential services for victims and their families. These various types of specialised services reflect optimally the individual approach to every victim, taking into account the nature and severity of crime.

The list of minimum services to be provided

Unless otherwise provided, specialist support services shall, as a minimum, develop and provide:

1. (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
2. (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

The need for a VAWG strategy

The Directive requires a coordinated approach at national level for targeted and integrated support for victims with specific needs, including a regular policy dialogue with voluntary sector organisations (NGOs) regarding the national availability and provision of support services, any challenges met during service delivery, gap analysis to identify any victims currently not offered automated access to support services and how such gaps can be addressed and resolved. Quality victim support services, including, as a minimum the services listed in Article 9, should routinely be offered to all victims of crime and their families *throughout their territories*. **Article 28** requires States to set up a robust system for statistics collection to provide the EU Commission with data showing how victims have accessed the rights set out in the Directive. Data can include judicial, police and administrative data (collected by health and social services, victim support organisations). First returns are required by 16 November 2017, and every three years thereafter.

Council of Europe Convention on Violence Against Women (Istanbul Convention)²⁸ – relevant articles

Article 8 – Financial resources

Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.

Article 9 – Non-governmental organisations and civil society

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

Article 18 The provision of services shall not depend on the victim's willingness to press charges or testify.

Article 20 Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.

Article 22 – Specialist support services

1. Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by this Convention.

2. Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.

Article 23 – Shelters (Refuges)

Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation and reach out proactively to victims, especially women and their children.

Article 24 – Telephone helplines

Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially/with due regard for their anonymity, in relation to all forms of violence covered by this Convention.

Article 25 – Support for victims of sexual violence

Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.

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- ¹ Kelly, L. & Dubois, L. (2007) *Combating violence against women: minimum standards for support services* Strasbourg: Council of Europe.
- ² As defined in Article 9 of the EU Victims' Directive
- ³ See http://www.coe.int/t/dghl/standardsetting/convention-violence/default_en.asp for the full text.
- ⁴ United Nations (1992) General Recommendation No. 19 on Violence against Women, Committee on the Elimination of Discrimination against Women (CEDAW) 11th session, 1992, New York
- ⁵ Office of National Statistics (2014) *Chapter 4 - Intimate Personal Violence and Partner Abuse* London: ONS http://www.ons.gov.uk/ons/dcp171776_352362.pdf
- ⁶ Ministry of Justice, Home Office and Office of National Statistics (2013) *An Overview of Sexual Offending in England and Wales* London: MoJ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf
- ⁷ Jütte, S, Bentley, H, Tallis, D, Mayes, J, Jetha, N, O'Hagan, O, Brookes, H, McConnell, N. (2015) *How safe are our children? The most comprehensive overview of child protection in the UK* London: NSPCC <http://www.nspcc.org.uk/globalassets/documents/research-reports/how-safe-children-2015-report.pdf>
- ⁸ Ministry of Justice, Home Office and Office of National Statistics (2013) *An Overview of Sexual Offending in England and Wales* London: MoJ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf
- ⁹ Forced Marriage Unit (2015) *Statistics on Forced Marriage for 2014* London: Home Office/FCO https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/412667/FMU_Stats_2014.pdf
- ¹⁰ FORWARD (2007) *A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales* London: FORWARD
- ¹¹ Health and Social Care Information Centre (2015) *Female Genital Mutilation (FGM) March 2015, experimental statistics* Leeds: HSCIC <http://www.hscic.gov.uk/catalogue/PUB17463/fgm-mar-2015-exp-rep.pdf>
- ¹² YouGov poll for EVAW, 2010. See <http://www.endviolenceagainstawomen.org.uk/2010-poll-on-sexual-harassment-in-schools> for more information.
- ¹³ Ministry of Justice, Home Office and Office of National Statistics (2013) *An Overview of Sexual Offending in England and Wales* London: MoJ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf
- ¹⁴ United Nations (2006) *Secretary-General's In-depth Study on Violence Against Women A/61/122/Add.1* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement> p12
- ¹⁵ Women's Resource Centre (2007) *Why Women-Only? The value and benefit of by women, for women services* London: WRC <http://thewomensresourcecentre.org.uk/wp-content/uploads/whywomenonly.pdf>
- ¹⁶ See *Beyond the Labels: Women and girls' views on the 2013 mayoral strategy on violence against women and girls*, Imkaan 2013 <http://imkaan.org.uk/post/68253878914/beyondthelabels2013>
- ¹⁷ From a participant in a focus group, cited in Women's National Commission (2009) *Women's National Commission (2009) Still We Rise: Report from WNC Focus Groups to inform the Cross-Government Consultation "Together We Can End Violence Against Women and Girls"* London: WNC. P51 http://www.ccrm.org.uk/images/docs/11.7_wnc_stillwerise.pdf
- ¹⁸ Ibid. P50
- ¹⁹ Ibid. P49
- ²⁰ For example, Rape Crisis England and Wales <http://www.rapecrisis.org.uk/nationalservicestandards2.php> Women's Aid Federation, England <http://www.womensaid.org.uk/page.asp?section=0001000100350002§ionTitle=National+Service+Standards>
- ²¹ Home Office (2014) *A Call to End Violence Against Women and Girls Action Plan 2014* London: Home Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287758/VAWG_Action_Plan.pdf
- ²² EHRC (2011) *Equality Act 2010: Public Sector Equality Duty: What Do I Need To Know?* London: EHRC https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85041/equality-duty.pdf
- ²³ The Bangkok Rules refer to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. Rule 7 states that a woman prisoner who have been subject to violence/sexual abuse should be offered immediate access to specialist psychological support/counselling whether or not she chooses to accept assistance to take legal action.
- ²⁴ Para 17, EU Victims Rights Directive
- ²⁵ See <https://www.gov.uk/guidance/transposing-eu-procurement-directives> for more information.
- ²⁶ See service standards developed by Imkaan <http://imkaan.org.uk/iaqs> , Rape Crisis England and Wales http://rapecrisis.org.uk/nationalservicestandards_1.php , Respect http://www.womensaid.org.uk/core/core_picker/download.asp?id=339 and Women's Aid <http://www.womensaid.org.uk/page.asp?section=0001000100350002>
- ²⁷ DG JUSTICE Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, December 2013 http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf
- ²⁸ See <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>