NPF SUBMISSION

CRIME RESPONSE
POLICY CONSULTATION: SAFE AND SECURE COMMUNITIES
SUBMITTED BY: THE SOCIETY OF LABOUR LAWYERS CRIME GROUP
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1. How should Labour tackle anti-social behaviour and ensure people feel safe in their homes, workplaces and local communities?

Incidences of anti-social behaviour and low-level crime are exacerbated by the huge reduction in community centres, youth centres, drug and alcohol rehabilitation facilities (particularly residential facilities), and the hollowing out of the probation service.

Funding of these services, along with increased funding for mental health support (including CAMHS) must be part of Labour's strategy to tackle anti-social behaviour and ensure people feel safe in their homes, workplaces and local communities.

Other measures should include:

- Increased visibility and proximity of officers that are familiar with and known within the community
- Provision of mediation across all local councils, to ensure that disputes (particularly between neighbours) can be resolved informally wherever possible and appropriate.
- Commitment to a home visit from police for every burglary.
- Harmonisation and updating of some of the tools that are available to investigate crimes e.g. access to/opt in scheme for the find my phone app, digital paint, markings on bikes etc.
- Level of prosecutions of theft and burglary offences extremely low (numbers of crimes reported compared to number of crimes investigated, number of prosecutions, numbers of convictions) - burglary, bike theft, car theft
- Clearer delineation between the responsibility of law enforcement and other agencies - examples of what falls either side of the line.

<u>Violence Against Women and Girls</u>

Public trust in the police has markedly declined, most particularly among women.[1]

Following the conviction of Carrick and Couzens, one particular theme which has emerged is the use by police officers of the authority which their position gives them to intimidate and coerce victims/survivors into engaging in sexual activity.

[1] 'Almost Half of Women Have Less Trust in Police Following Sarah Everard Murder' (*End Violence Against Women*, 18 November 2021) <https://www.endviolenceagainstwomen.org.uk/almost-half-of-women-have-less-trust-in-police-following-sarah-everard-murder/>

This should shine a light on a more common and pervasive problem, of police officers and certain others employed in the criminal justice system having sexual contact, including sexual activity, with complainants and witnesses in cases which they are currently investigating or have recently investigated. 80 officers in 22 forces in England and Wales have faced disciplinary action for inappropriate sexual relationships or sexual contact with victims, witnesses and suspects since 2018.[2] This represents less than half of all forces, and only those officers who faced disciplinary action, so will be a substantial underestimate.

Where police officers are charged after abusing their position to engage in sexual relationships with women they are overwhelmingly charged with misconduct in public office and/or corrupt or other improper exercise of police powers and privilege.

The Law as it is Currently

In order to prove the crime of rape, sexual assault or assault by penetration in the Sexual Offences Act 2003 it must be proven by the prosecution that the complainant did not consent to the sexual acts, and the defendant did not reasonably believe that the complainant was consenting. However, the Sexual Offences Act recognises certain circumstances, such as when the complainant is asleep, where consent is intrinsically more unlikely, and therefore there are in place evidential presumptions for certain situations, in which the complainant is not considered to have consented unless there is evidence that demonstrates they have consented. Therefore the lack of consent is not conclusively established, because it is always open to the defence to adduce evidence that the complainant did consent. The burden however is shifted from the prosecution proving an absence of consent to the defence proving the presence of consent.

Proposed Legal Change

Introduce a further evidential presumption under s.75 Sexual Offences Act namely

(2) The circumstances are that-…

(g) the defendant was a police officer or employed by the police services and in the previous twelve months the defendant had made contact with the complainant, whether verbally, by attending an address at which she was present or by any form of written communication, for the purposes of investigating an alleged offence in which the complainant was a complainant, defendant or witness

Rationale

This proposal goes both to ensuring that police and enforcement agencies can keep streets safe (no.1) and improving justice for women in particular (no.2 and 6). The police cannot be an effective force for keeping streets safe where trust is eroded and women fear that the intimate information they hand over and vulnerable position in which they put themselves

[2] Norris S, 'Dozens of UK Police Officers Disciplined over Sexual Contact with Crime Victims and Witnesses' The Guardian (4 March 2023) <https://www.theguardian.com/uk-news/2023/mar/04/dozens-of-uk-police-officers-disciplined-over-relationships-with-victims-witnesses>

when calling police, often in relation to domestic violence, will be used by the unscrupulous to pressure them into sexual activity.[3] As described by the chief executive of the Fawcett Society "Women come into contact with the police at moments of incredible vulnerability and trauma – exploiting those moments and abusing power heaps further pain on to those experiences."[4] Testimony from victims/ survivors of such exploitative relationships supports this.

It is widely recognised, for instance in the 2021 VAWG Green Paper, that the treatment of women alleging sexual violence fails in many respects. Some of the most traumatic elements come in the interrogation both by police and in the court of whether a victim/ survivor actually consented. Those who are bringing complaints in this particular situation face multiple additional hurdles- the accused have the insider status of being police officers; and the complainants may have additional vulnerabilities which lead to her contact with police in the first place. Most problematically, they must at present demonstrate that their consent was not freely given due to the imbalance of power with the defendant, and this requires a nuanced understanding of consent which is often absent from the CJS.

As a result, where charges have been successfully brought they are typically brought under s.26 of the Criminal Justice and Courts Act 2015- corrupt or other improper exercise of police powers and privileges. This does not reflect the severity of the crime, or accurately describe the wrong which has been done, which is against the victim/survivor.

This change must not be represented as criminalising all of those employed by police who engage in sexual contact with those they meet in a professional capacity. It is time-limited and it leaves open the possibility for true consent to be proven, and so an acquittal, but that burden rests on the defence.

[3] As noted by HHJ Kershaw in R v Estridge: Elvin S, 'Police Officer Jailed after Having Sex with Crime Victim While on Duty' *Metro* (12 January 2021) <https://metro.co.uk/2021/01/12/police-officer-jailed-after-having-sex-with-crime-victim-while-on-duty-13888685/>

[4] 'Dozens of UK Police Officers Disciplined over Sexual Contact with Crime Victims and Witnesses'

3. How can prevention and diversion schemes be improved to reduce crime and reoffending?

Prisons

The crisis in the prison system is at a critical juncture. The collapsing estate, high levels of violence and the prevalence of drugs and self-harm in the system has left the system unable to deliver the basic functions required of it to protect the public by rehabilitating. An increasingly large population, especially of older prisoners, places significant strain on a system that cannot manage the basics successfully.

The Labour Party should embark on a capital spending programme to revitalise the Prison Estate. Strengthening the estate will allow rehabilitative activity to take place in a conductive environment and allow prisoners and prison staff to focus on their rehabilitation rather than maintenance. This could include:

- In-sourcing facilities contracts to move away from large outsourcing companies and allowing prisons more ability to control their own maintenance.
- A new for old programme of prison building, turning old city centre prisons into prime development opportunities, as Manchester Council have asked for with HMP Manchester.
- Training prisoners in carrying out low-level maintenance to develop skills and maintain their own environment, building on success of similar schemes such as at HMP Leeds.

The Labour Party should continue to improve the professionalisation of the prison workforce.

This should include:

- Providing an enhanced pay-scale to raise Prison Service pay parity with comparable public sector employers.
- Creating training, accreditation and development programmes to nurture talent and lateral progression, mirroring comparable programmes in the Police and Ambulance Services. This could build on the Prison Service College at Newbold Revel, the successful Cambridge/HMPPS MSc programme and specialised recruitment like Unlocked Graduates.
- Increasing pay and bespoke training opportunities for specialist staff in the Prison Service, including drug and alcohol practitioners, teachers and workshop instructors, building on the success of the rollout of specialised roles in the Prison Accelerator Scheme
- Improving Governor autonomy, providing Governing Governors with the ability of speaking independently and to create best practice with performance linked pay, and their own uniforms, mirroring Chief Constables in the Police.
- Greater data should be gathered, including publicly available, live data, on key issues such as drug testing results, serious violence, adjudications and staffing levels, alongside HMIP Reports and PPO Action Plans into a single dashboard.

The Party should focus on bringing order and safety to prisons by:

- Working collaboratively with the NCA and local police forces to investigate and break up prison organised crime groups
- Building support with the CPS to prosecute in-prison crime to ensure offences in custody are punished properly.
- Bringing greater clinical supervision into prisons to support bespoke roles and wider training to manage self-harm and mental distress.
- Introducing body scanners and greater staff scrutiny in prisons, alongside enhanced staff corruption checks to limit the supply of phones and drugs into prisons.

Supporting prison leavers into employment will be vital to ensuring a rehabilitative environment, with work being one of the best ways to reduce crime. This could be accomplished by:

- Working with DWP to create a single, bespoke programme for supporting prison leavers into work, providing bespoke job coaches in the community and providing wraparound support with probation, drug and housing services.
- Usage of the apprenticeship levy and various adult and lifelong learning entitlement programmes should be used to provide an incentive for employers to take on prison leavers, and to commence training within prisons prior to release.

Appendix

Response to the VAWG Green Paper

Authors: Deeba Syed, Hannah Gomersall, Natasha Lloyd-Owen and Chiara Maddocks

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Introduction

1. We are pleased that the Labour frontbench has committed to developing a comprehensive strategy to eliminating violence against women and girls (VAWG). We view this green paper as an opportunity to combine ideas as part of a coherent and holistic plan for a sea change in the approach to VAWG. This cannot be achieved without looking at policy in a cross-departmental approach and focusing on improving mental health support, which is trauma-informed to better support survivors of VAWG.

2. Essential to any successful strategy will be sustainable long-term funding for existing specialist 'by and for' services supporting Black and minoritised women and girls, migrant women and girls, LBGTQ+ women and girls and disabled women and girls. This will pay for itself in the long run, as it was estimated by the Home Office that the cost of the physical and emotional harm of domestic abuse suffered by the victims is £47million. A Women' Aid report from 2019 estimates £393 million a year is needed to fund domestic abuse services in England alone.[5]

3. The Labour Party should also rectify one of the key failings of the recently passed Domestic Abuse Act and include migrant women and those with no recourse to public funds into scope of the provision and further seek the dismantlement of the 'hostile environment' that makes it so difficult for some of the most vulnerable women to access support services.

4. VAWG cannot be tackled without addressing inequality more broadly, as it is both a cause and consequence of gender inequality, racial and socioeconomic inequalities must be addressed to recognise women's intersectional experiences of violence. Labour's VAWG strategy must recognise the key to tackling VAWG lies in eliminating gender inequality and must recognise that it is black and minoritised women living in poverty most at risk of experiencing domestic abuse and sexual violence and must make special provision accordingly.

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5 https://www.womensaid.org.uk/womens-aid-report-says-393-million-a-year-is-needed-to-fund-domestic-abuse-services-in-england/

5. One of the key failures of this Conversative Government has been to split the current VAWG strategy into two parts with a separate strategy for Domestic Abuse and VAWG, despite leading specialist VAWG organisations opposing this move, warning of a piece-meal response that will lack cohesion. This move has signalled the Government's reluctance to understand domestic abuse as gendered in nature and seeks to deny the reality that VAWG is overwhelmingly committed by men to women. This must be reversed upon Labour gaining power and brought back into an integrated strategy to tackle all forms of VAWG.

6. The VAWG strategy would also benefit from addressing all types of VAWG, such as female genital mutilation (FGM), forced marriage and sexual servitude.

Criminal Justice System

7. The approach to addressing the problems in the criminal justice system needs clear focus and direction. We would propose the following overall policy aims:
   - A complete change in the treatment of victims with a focus on dedicated advice services, support, and protection, along with a culture of ongoing improvement
   - A relentless drive to embed VAWG expertise and professionalise the approach of the police and CPS approach to investigations, charging, and prosecution
   - Fix the glaring gaps in the criminal law and sentencing guidelines and do this at the earliest possible opportunity.
   - Ensure that sentences reflect the seriousness of the crimes and that perpetrators are subject to integrated post-release monitoring.
   - Modernise the approach to VAWG trials using specialist courts and highly trained judges, juries, lawyers, and support staff.

8. The current treatment of women and girls alleging violence in the criminal justice systems is clearly an abject failure. The treatment, protection of victims of VAWG throughout their engagement with the criminal justice system is horrendous. The system as a whole is patchy, severely underfunded, and hampered throughout by a severe lack of resources and expertise. The majority of victims are unwilling to come forward, charging rates are very low, and conviction rates are appalling, allowing too many perpetrators to escape justice. Police investigations are often deeply flawed, with victims being treated unfairly and often traumatised by their experience of the system. Perpetrators are rarely rehabilitated, often not monitored properly on release, and reoffending rates are totally unacceptable.

Funding

9. The Criminal Justice system is in crisis. The Ministry of Justice budget was 25% less in the year 2019/2020 than in the year 2009/10, with cuts being felt across every area falling under the MOJ umbrella: Prisons, Probation, Courts and Legal

Aid. Any efforts to affect change to the existing legal system, have to begin with a frank discussion about the impact that the cuts to funding have had on the ability to achieve justice for both the victims and the said perpetrators of crime.

10. A report commissioned by the Bar Council in July 2020[6] made the following key findings:

- In 2019, justice spending in England and Wales was £144 per person, or 39 pence per person per day, which is low when compared with the justice budgets of other countries in Europe (England and Wales has experienced by far the largest percentage reduction in justice spending compared with other European countries).
- Overall funding for justice was reduced by 24% in real terms between 2010 and 2019. This resulted in a 29% reduction in spending per person in real terms between 2010-2019.
- The Crown Prosecution Service saw a 39% reduction in spending per person in real terms 2010-2019.
- The Legal Aid Agency saw a 37% reduction in spending per person in real terms 2010-2019.
- Central government funding for the police was reduced by 22% in real terms between 2010 and 2019.
- This resulted in the government spending 27% less per person in real terms on the police between 2010 and 2019.
- Police personnel numbers were reduced by 18% between 2010 and 2019 which is a fall of 23% in police per 1,000 of population.

11. Clearly a reduction in funding will see a commensurate decline in quality of service.

Delays in bringing prosecutions

12. Police cuts and the drop in number of police personnel are leading to delays in investigating allegations of crime, and necessary investigative steps being taken to meet the charging threshold. There is little point adding to the number of offences available to the police to charge if they do not have the resources to adequately investigate them. The number of individuals released under investigation remains at an alarmingly high rate, despite growing concerns, and leave many suspects of violent crimes at large and without proper bail conditions in place. This fails to adequately protect the vulnerable victim of crime, and ultimately leads to a significant number of witnesses jaded with the system and unwilling to support future prosecutions.

Poorly funded RASSO units

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6 https://www.barcouncil.org.uk/uploads/assets/c84a796e-ad5b-4398-bbe4b5a04063bee2/Small-Change-for-Justice-report-2020.pdf

13. There have been a significant number of high-profile sexual offence trials that have collapsed in recent years due to a lack of proper disclosure or late disclosure by the prosecution. This could be remedied by an increase in dedicated case workers within the RASSO units working on disclosure or using the assistance of independent outside Counsel.

14. There has also been discussion of increasing the number of RASSO units in a bid to increase conviction rates, surely the better starting point would be to adequately fund and staff the units currently available? For the first time in recent history cases do not have prosecutors available to prosecute them. There are simply not enough experienced prosecutors available to try the most serious of crimes

15. The current s28 provisions for the recorded cross-examination of vulnerable witnesses are severely hampered by slow investigation and disclosure of relevant material. The shortened timetable requires a significant amount of pre-loading of work that usually is left to the last minute, or the weeks before trial. This can no longer be the norm, as delays in getting material over to the defence means that the tight timetables for case management are missed, resulting in dates being pushed back and greater uncertainty for witnesses.

Lack of Court sitting days

16. There are a significant number of Courts sat empty, and Judges and Recorders not afforded sitting days, all leading to an ever-increasing backlog of cases. Lack of funding is directly impacting on the Court's abilities to try cases effectively and within a reasonable period of time, with all the consequences that flow from that (lack of witness engagement, injustice caused to defendants). For example, last week only 2 out of 18 Courts at Snaresbrook were being used as trial Courts.

Witness attendance at Court

17. A significant number of trials do not proceed on their first listing due to difficulties in securing witness attendance, this is very often the case in domestic cases where a witness may have an additional reluctance in attending and giving evidence against a former or current partner.

18. It is essential that Witness Services are provided with more funding to ensure that there are enough caseworkers to provide a level of care to each and every witness in the Court process. This will make sure that witnesses are kept aware of developments in the case, trial listing changes and dates to attend. This not only avoids ineffective trials due to witness unavailability but ensures that people feel supported in the process.

Cuts to probation services have led to a significant reduction in the number of services available to assist in the rehabilitation of offenders.

19. This government had sought to remedy the obvious shortfall in government spending by outsourcing a number of cases to various Agencies leading to a lack of a cohesive support system for offenders. It is clear that this has failed as the recent U-Turn shows, the current Lord Chancellor recently unveiling a "newly unified Probation Service". This is too little, far too late.

20. The majority of individuals that come before the CJS have mental health or drug addiction issues and require a significant level of support. Without access to such support, it is inevitable that offenders will find themselves back in a cycle of offending behaviour, particularly relevant to those convicted of domestic violence and sexual offences. Equally, cuts to prison services have meant that even those serving significant custodial sentences are now less likely to access the necessary courses and support before release.

21. There is also a striking lack of support for the families of offenders, raising significant safeguarding issues for those returning to family homes, residing alongside their victims of crime.

Backlog in cases

22. It goes without saying that the significant disruption caused over the last few years by finding cuts has been magnified by the current pandemic. The Courts are overwhelmed by an ever-growing backlog, made unmanageable by the ongoing difficulties experienced by the police service in properly investigating allegations of crime. This is felt at every stage of the investigative and charging process.

23. There is a worrying trend of a rise in the number of cases where the victim withdraws pre-charge. In the last 5 years it has gone up from 9% (2014/15) to 26% currently. The problem is worst for the most serious, offences like violence against the person, which has leapt from 24% in 2014/15 to 45% in 2019/20,[7] a large proportion of which are likely to be committed in a domestic setting. The case backlog before the pandemic stood at over 37,000, rising to over 60,000 now.

24. A knock-on effect of significant delays in securing convictions result in defendants remaining on bail for longer periods of time, and a lowering of imprisonment rates as Judges have to consider the length of time since the commission of the offence in determining whether a custodial sentence is appropriate. This often results in victims of domestic violence (including sexual offences) returning to their abuser, no longer being afforded the buffer of some enforced time away from their circumstances and uncertain about what the point of reporting the crime was anyway.

[7] https://victimscommissioner.org.uk/news/annual-report-courts-backlog/

25. The benefit of the pandemic is that the Court service has begun to better understand how to use technology to help in meeting the needs of Court users, although there is a reluctance to keep using these tools in the future. Remote hearings and the use of live links for witnesses could help to remedy a significant issue posed in ensuring cases are dealt with expeditiously and on time.

New offences of public sexual harassment and making misogyny a hate crime

26. The reality is that there already exist a significant number of offences already on the statute books that could help to tackle public sexual harassment. Given the significant cost, time and resources that would be given over to drafting and implementing a new offence, it is the view of the SLL that this money would much better be spent on helping the CJS successfully use the tools currently available to them, in ensuring better investigation of offences, leading to more cases being charged and prosecuted.

27. Harassment, Offences under the Sexual Offences Act and the Public Order Act, if properly and effectively considered, could cover a whole gambit of offending behaviour.

Increasing Sentences and Introducing Mandatory Minimum Terms

28. The Green Paper proposes mandatory minimum sentences for offences of rape and stalking. Whilst there may be an intuitive appeal to longer sentences for serious offences, there are very real disadvantages to this approach. In particular:

Mandatory sentencing may well reduce guilty pleas

29. Working with the guidelines allows for a Judge to apply credit of up to 33% if a timely guilty plea is entered by a defendant. This ensures that a victim of crime is spared the distress and ongoing trauma that is unfortunately associated with the trial process. That might be thought especially important when prosecuting sex offences, where it is especially distressing for a victim to be forced to relive the offence. Under the mandatory minimum for firearms sentencing procedure, a Judge is denied the opportunity to apply any reduction to account for a defendant pleading guilty, where it takes the sentence below the minimum. For other offences that attract a mandatory minimum, a Judge is entitled to apply a reduction, but the end total sentence must never fall below 80% of the minimum term. This may mean that a defendant will be more inclined to take the matter to trial. In certain cases, the defendant might be no worse off having been convicted than if they had pleaded at the first hearing.

Tougher sentences may reduce conviction rates

30. There is a risk that jurors - aware that there is no flexibility in sentencing and that defendants must receive at least 7 years - may be more reluctant to convict,

further driving down conviction rates. It is difficult to assess this risk, due to a lack of research, but evidence from other jurisdictions, and arguably common sense, suggests juries would be more reluctant to convict in marginal cases where they are aware there must be a very high sentence. Police officers specialising in rape investigation have also complained that victims are sometimes reluctant to co-operate where they fear severe sentencing, especially in cases where the accused is an ex-partner.

31. In any event, it should not be thought that there is a solid evidence base that introducing a mandatory minimum sentence would prevent offences of rape and stalking from being committed.

32. With regards to rape in particular, we note that the Rape Sentencing Guidelines contain 6 different starting tariffs dependent on the judge's assessment of the appropriate category of harm and culpability.[8]These starting points range from 5 to 15 years, with a sentencing range of 4 to 19 years and the Guidelines expressly state that "offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate." We further note that the sentences faced by many convicted of rape will be considerably longer because of the new ⅔ rule (under which those sentenced to 7 years or more to serve will be released at the two-thirds point).

33. There are sensible concerns that a change to mandatory minimum sentencing may make it harder to secure convictions in rape cases. It may also lead to injustice in individual cases. Currently prosecuting more rape offences through to conviction is the most pressing problem, anything that might make that harder should be rigorously scrutinised.

34. It would be a much better deterrent to know that you are more likely to be caught and prosecuted, if accused of committing a sexual offence, than the low statistics currently suggest is likely. There needs to be a significant focus on this issue that goes wider than the criminal justice system and involves education and a wider changing of attitudes.

35. Instead, we emphasis an approach that holds the police as more accountable, invests in cultural change as currently too much focus on put on the 'credibility' of victims.[9] We refer you to the recommendations of the 'Discrimination of Rape' report by Centre for Women's Justice, End Violence Against Women coalition, Imkaan, and Rape Crisis England & Wales in response to the England & Wales

[8] https://www.sentencingcouncil.org.uk/offences/crown-court/item/rape/
[9] https://www.refuge.org.uk/blog-vawg-strategy-2021/

Government's 'End to End' Review of the Criminal Justice System's Response to Rape.[10]

A statutory defence for survivors

36. In our experience, courts struggle to take proper account of the true impact and effects of domestic abuse on victims and survivors who appear before them as defendants. However, it is right to acknowledge that improvements have been made in this regard. For example, the introduction of guidelines for 'Sentencing offenders with mental disorders, developmental disorders, or neurological impairments'[11] which specifically addresses the potential impact of post-traumatic stress disorders on defendants and requires judges to take this into account where it is connected to the offending behaviour.

37. This guideline followed a recommendation made by JUSTICE in their 2017 'Mental Health and Fair Trial' report.[12] A further recommendation in the same JUSTICE report was that consideration be given to whether the defence of diminished responsibility by substantial lack of capacity (a partial defence available to murder) should be available for all specific intent crimes and not just murder. In our view, this recommendation could provide an important tool by which to equip the criminal justice system to better recognise the true impact and effects of domestic abuse on victims and survivors.

Protecting the identities of victims of sexual offences

38. On increasing the maximum sentence under Section 5 of the Sexual Offences (Amendment) Act 1992, we wholly endorse the Green Paper's efforts to strengthen provisions to protect the identities of complainants of sexual offences.

39. The last time that this was considered by Parliament was in 1999. Clearly the world has changed since then. Online publishing has grown dramatically and online articles have greater potential exposure and longevity. Every person with a mobile phone also has the ability to self-publish information instantly. As we know, that information can go viral and spread rapidly. This is far beyond what Parliament could have ever envisaged in 1999.

40. The recent case of Philip Leece illustrates the psychological damage that an offence under the Sexual Offences (Amendment) Act 1992 can occasion. We

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10 https://www.centreforwomensjustice.org.uk/s/Decriminalisation-of-Rape-Report-CWJ-EVAW-IMKAAN-RCEW-NOV-2020.pdf

11 https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-offenders-with-mental-disorders-developmental-disorders-or-neurological-impairments/#Section%20two:%20Assessing%20culpability

12 https://justice.org.uk/our-work/criminal-justice-system/mental-health-fair-trial/

consider that the current maximum sentence of an unlimited fine does not reflect the serious impact that naming a complainant can have on the individual concerned nor does it afford the Sentencing Judge in such cases sufficient punitive powers or provide adequate deterrence.

41. Anecdotal experience suggests that such offences are prosecuted as a criminal contempt where possible so that the sentencing Judge has sufficient sentencing powers. However, the facts do not always establish a contempt and in any event, we consider that it would be better if the sentencing powers under Section 5 of the Sexual Offences (Amendment) Act 1992 were simply increased so that such offences were always dealt with under the framework specifically provided for by the Act.

42. In our opinion reconsideration of these provisions is merited. In terms of an appropriate maximum sentence, we consider that 2 years imprisonment would be appropriate (in line with that applicable for a contempt of court).

Extending the provision to protect the identities of complainants of sexual offences

43. Whilst the Sexual Offences (Amendment) Act 1992 provides an automatic restriction on reporting the identity of any victim of a sexual offence, it does not restrict reporting of the victim's identity in the event of criminal proceedings other than the actual trial or appeal in relation to the sexual offence. This means that where a complainant in a sexual offences case is subsequently prosecuted for perjury or wasting police time in separate proceedings reporting can take place. However, a further consequence of this exception is that - where an individual is subject to a prosecution for a separate matter - but, in presenting their defence, is required to give evidence about any sexual offence perpetrated against them, they are not protected from being identified in connection with the sexual offence committed against them.

44. In our experience, cases in which a defendant's experience as a victim of sexual assault forms a part of their defence are relatively rare. This may occur, for example, where the person's experience of sexual assault is central to explaining what led them to behave in a certain way/believe a particular thing. When such cases do arise, the accused will find that to defend themselves, not only do they have to give an account of the sexual assault they experienced as part of the trial but also to contend with the fact that their experience may be publicly reported after the trial has concluded.

45. Whilst acknowledging that open justice is a hallmark of the rule of law and that it is an essential requisite of the criminal justice system that it should be administered in public and subject to public scrutiny, Labour may wish to consider whether extending the automatic restriction on reporting the identity of any victim of a sexual offence so that there is a presumption in favour of restricting any reporting of a defendant's identity in connection with a sexual offence committed against

them. This would not preclude the identification of the individual defendant in relation to the crime alleged but would mean that they could maintain their anonymity as a victim of a sexual offence.

A new statutory minimum sentence of seven years

46. There is an intuitive appeal to longer sentences for serious offences, but there are very real disadvantages to this approach. It should not be thought that there is a solid evidence base that raising the mandatory minimum sentence for rape would prevent rapes occurring. The evidence suggests that rapists already receive tough sentences, which will be getting tougher under the new 2/3 rules. There are sensible concerns this change may actually make it harder to secure convictions in rape cases. It may lead to injustice in individual cases. Currently prosecuting more rape offences through to conviction is the most pressing problem, anything that might make that harder should be rigorously scrutinised.

47. It would be a much better deterrent to know that you are more likely to be caught and prosecuted, if accused of committing a sexual offence, than the low statistics currently suggest is likely. There needs to be a significant focus on this issue that goes wider than the criminal justice system and involves education and a wider changing of attitudes.

A new minimum custodial sentence for 'stalking involving fear of violence or serious alarm or distress'

48. We remind the Shadow Cabinet that alternate powers exist to protect the public, such as the recently introduced Stalking Protection Orders. Police officers also have the power to issue Harassment Notices and Stalking Notices to deter potential offending before the criminality threshold has been crossed.

49. As ever, tackling crime is of course about much more than legislating, even within the criminal justice system it is about resourcing the whole pipeline including the prosecution (who are often neglected and have had very serious cuts) and the police who are under enormous operational pressures. Stalking cases are rarely simple and often require a lot of time to properly investigate and prosecute. Of course, driving down these sorts of crime means ultimately focusing on and resourcing lots of things outside of the criminal justice system too, such as mental health services and the education system. This should be the priority.

50. While we can speak anecdotally about conversations with officers in Public Protection Units, we urge Shadow Cabinet/Advisors to speak with the police and CPS about how existing legislation can be better enforced and devote time to better prevention and enforcement of existing legislation.

51. If there is a determination to increase sentencing in this area, we suggest looking at the lower maximum sentence for breach of a protective order, but no assumption should be made of an evidential link between higher sentences and lower crime.

VAWG in the workplace

52. A more integrated approach needs to be taken to better support women affected by domestic abuse as the impact is not only limited to the home. In 2019, the Home Office estimated the cost for victim's lost output relating to time taken off work and reduced productivity to be £14 billion.[13] We recommend that Labour introduces a duty of care on employers to spot the signs of domestic abuse, and introduce binding guidance for employers to raise awareness, operate a policy and provide support to employees who are victims of domestic abuse.

53. The Green Paper notes that the extent recording of sexism and sexual harassment is critical understanding the scale of the problem, a commitment to recording statistics should be extended to schools, colleges but also higher education, further education institutions, and workplaces. A key barrier to preventing this from being possible is the widespread use for confidentiality clauses or non-disclosure agreements used to cover up sexual harassment or abuse in these settings. We recommend that Labour commits to preventing the use of NDAs in sexual harassment and discrimination cases too.

54. We also suggest the Labour Party adopt the TUC' recommendations for protecting women in the workplace from their recent research on how sexual harassment impacts disabled[14] women and LGBTQ[15] workers.

Family Courts

55. In recent years the Family Courts have become overwhelmed and are no longer functioning in an effective or timely manner when it comes to cases concerning child arrangements, including where there are allegations of domestic abuse.

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13 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918897/horr107.pdf

14 https://www.tuc.org.uk/research-analysis/reports/sexual-harassment-disabled-women-workplace

15 https://www.tuc.org.uk/research-analysis/reports/sexual-harassment-lgbt-people-workplace

Whilst the Green Paper touches on some changes to family proceedings, it is fair to say the strategy appears to be most focused on criminal justice and sentencing reform. The significant delays in the family courts (a backlog not simply caused by the pandemic as family courts continued to run remotely through this time), the lack of judges and courts, the funding and effectiveness of Cafcass, the inadequate legal aid scheme are all aspects that contribute to family proceedings being a distressing and unacceptably prolonged experience for survivors of domestic abuse and their children. These structural problems (mostly the result of lack of funding) would in our view need urgent attention and redress by a Labour Government.

Removing the legal aid means test for domestic abuse survivors

56. We welcome this important step and assume this is intended to assist survivors of domestic abuse in accessing legal aid for the family courts. However, women do not only experience VAWG in the family law setting alone, provision of legal aid of survivors of sexual violence and/or where relevant domestic abuse must be accessible for women in all Courts and Tribunals including the Employment Tribunal.

57. It is very important that access to legally aided representation is improved. However, even in widening access, legally aided survivors of domestic abuse are on a highly underfunded scheme, meaning there is a very limited pool of solicitors and barristers prepared to work at the poor rates offered through this scheme. The fee scheme is extremely out of sync with the privately funded market, meaning that unfortunately it is often only pupils or very junior barristers prepared to take on private children FAS work (even though this work can include substantial fact-finding hearings with serious allegations of domestic abuse being pursued). It is also worth noting that the fee scheme is significantly lower than legal aid lawyers working in public children law.

58. By way of example, a barrister attending an interim case management hearing before magistrates which may involve being at court for 2.5 hours (though in reality the only case a barrister has that day, with no payment for: travel time, the half a day's preparation required, drafting of the position statement, drafting of the order, or a conference before the day of the hearing) would be paid a gross fee of £157.95 (from which their chambers rent, expenses, tax must be paid). A junior barrister of mid-level call undertaking this work privately would be expected to receive a fee of approximately ten times this amount, leading to a huge discrepancy in the experience and willingness of lawyers prepared to take on this work.

Removal of the presumption of contact when there has been domestic abuse

54. There are of course a variety of views on whether a "presumption of contact" in fact exists. Section 2A of the Children Act 1989 provides that the court "presumes unless the contrary is shown, that involvement of that parent in the life of the child

concerned will further the child's welfare" [my emphasis added]. Involvement is defined as being direct or indirect. As referenced, paragraph 25 of PD12J FPR 2010 also provides that where there are "disputed allegations of domestic abuse" that are undetermined, "the court should not made an interim child arrangements order unless it is satisfied that it is in the interests of the child to do so and that the order would not expose the child or the other parent to an unmanageable risk of harm (bearing in mind the impact which domestic abuse against a parent can have on the emotional well-being of the child, the safety of the other parent and the need to protect against domestic abuse including controlling or coercive behaviour").

55. It may be that placing that wording of practice direction 12J on a statutory footing would be a sensible step. Perhaps of most importance to survivors of domestic abuse and their children, would be for a family courts system where the process is not extraordinarily slow. This delay means that (i) children are left in a state of ongoing uncertainty (ii) the stress and re-traumatisation of survivors of abuse is prolonged and feels never-ending, impacting on their mental health and their parenting capacity (iii) where the allegations are ultimately not made out and contact found to be in their interests, the child has not then had a relationship with that parent for an extensive and formative period of their life.

56. Unfortunately, neither Cafcass nor HMCTS has published any recent statistics on the average length of private children proceedings. Anecdotally, the writer has the following recent experience of private children delay:

- A case which took over 8 months from issuing to first hearing;
- A case where Cafcass sought 29 weeks to complete a s.7 report on the children's wishes and feelings (only 5 years ago the then president of the family division set an aim that private proceedings should be completed within 20 weeks);
- A case where, despite serious allegations of domestic abuse being found by the court (those findings having taken nearly a year from the first application), the time taken for a consequential s.7 report, directions hearing and then waiting for a final hearing has taken over a year;
- Private children cases involving domestic abuse which have been before the courts for 4+ years.

57. In public children proceedings, set into statute is a timescale of 26-weeks. In reality, this is also not being adhered to due to the overwhelmed family courts system. However, it is proposed that a similar expected timescale being on a statutory footing for domestic abuse private children cases (with practical structural support and funding to implement) would significantly improve the experiences of survivors and children.

Contact centres

58. Mandatory accreditation (such as NACCC) is a welcome move. However, this would have to be implemented in such a way as to not significantly increase the financial overheads of the centres and cost to users (some supervised contact can cost as much as £90 per hour, making this prohibitive to the majority of parents). It is important to remember that these services support vulnerable families, including those that have lost children to the care system due to mental health/substance misuse problems. It is a highly underfunded sector and informal volunteer-run services in community centres are often the only way children can see parents on a regular basis. There does need to be some serious thought and research into the structuring and funding of this sector.

Support Services

59. As with contact centres, Perpetrator Programmes also suffer from a lack of regulation (and research into effectiveness). They are often heavily relied upon in the family court as evidence of change. If these were of a high quality, they would be a way to prevent cycles of abuse in other relationships as well as improving insight into the needs of children. Research and informed reform is required of these programmes including the structure, referral process and funding. Recently, Cafcass has warned of a significant backlog in accessing these programmes leading to a worrying emphasis to find 'an alternative plan'.[16]

Duty to commission sufficient specialist domestic abuse services for all victims of domestic abuse

60. You will be aware that the recently passed Domestic Abuse Act requires local authorities to "assess, make arrangements for the assessment of, the need for accommodation-based support" and to publish a strategy to monitor this support. The regulations (which are to set out what is required of the strategy process) are yet to be published. This act does not therefore go as far as providing a duty on local authorities to accommodate victims of domestic abuse and it is therefore welcome that a Labour Government would seek to impose such duties.

61. There are two significant obstacles to this approach which demonstrate the need for an improvement in resources to public services:

- The limited funds and housing stock of local authorities;
- The currently poor provision of mental health services for both children and adults through CAMHS/NHS.

Mental health support

16 https://www.cafcass.gov.uk/2021/05/12/current-provision-of-domestic-abuse-perpetrator-programmes/

62. Effective and efficient mental health services are crucial to preventing intergenerational cycles of trauma and abuse, addressing the trauma of survivors to enable them to positively parent, addressing the trauma of children who have witnessed abuse and assisting perpetrators to prevent re-offending. Key to this is embedding routine enquiry into domestic abuse in maternity and mental health services.

63. Often, survivors of abuse do not wish to access therapeutic intervention straight away. For this reason, any duty on local authorities (or on the NHS) to commission mental health support in the wake of domestic abuse, should not be time limited. Equally, if support is sought soon after a traumatic event, there should not be 18-month delays to access help.

64. It is worth noting that in family proceedings – public and private – expensive psychological/psychiatric reports (costing on average approximately £3,000) are commissioned frequently. These reports invariably recommend therapeutic intervention that is either impossible or very difficult to access through universal services. Timely and comprehensive treatment of conditions such as post-traumatic stress disorder generally has a good prognosis and can result in much improved outcomes. Provision of required therapy is often seen as a 'health' issue but in our view should be seen as central to improving the criminal and family justice systems.

A pledge to women and girls from the Labour Party

65. Labour should have a very clear and positive message about what it will deliver and should be held to account for delivering it. For example:

- All victims feel able to come forward knowing they will be taken seriously and their allegations will be handled fairly, professionally and quickly.
- They will be properly supported, advised, and protected from the moment they contact the police, throughout the criminal process, and beyond.
- Police investigations and CPS charging process will be led by real specialists with expertise in violence against women and girls
- The criminal law will be updated to reflect the violence and harassment experienced by women and girls every day.
- Trials will be serious efforts to get to the truth conducted by properly trained judges, juries, and lawyers.
- Perpetrators will receive sentences that reflect the seriousness of their crimes and be subject to integrated post-release monitoring.

A Minister for rape and sexual violence survivors

66. We agree this proposal and we encourage the Labour Party to go further and introduce a ministerial lead for VAWG eliminating and prevention in the Home Office, with multi-agency and cross-departmental responsibility.