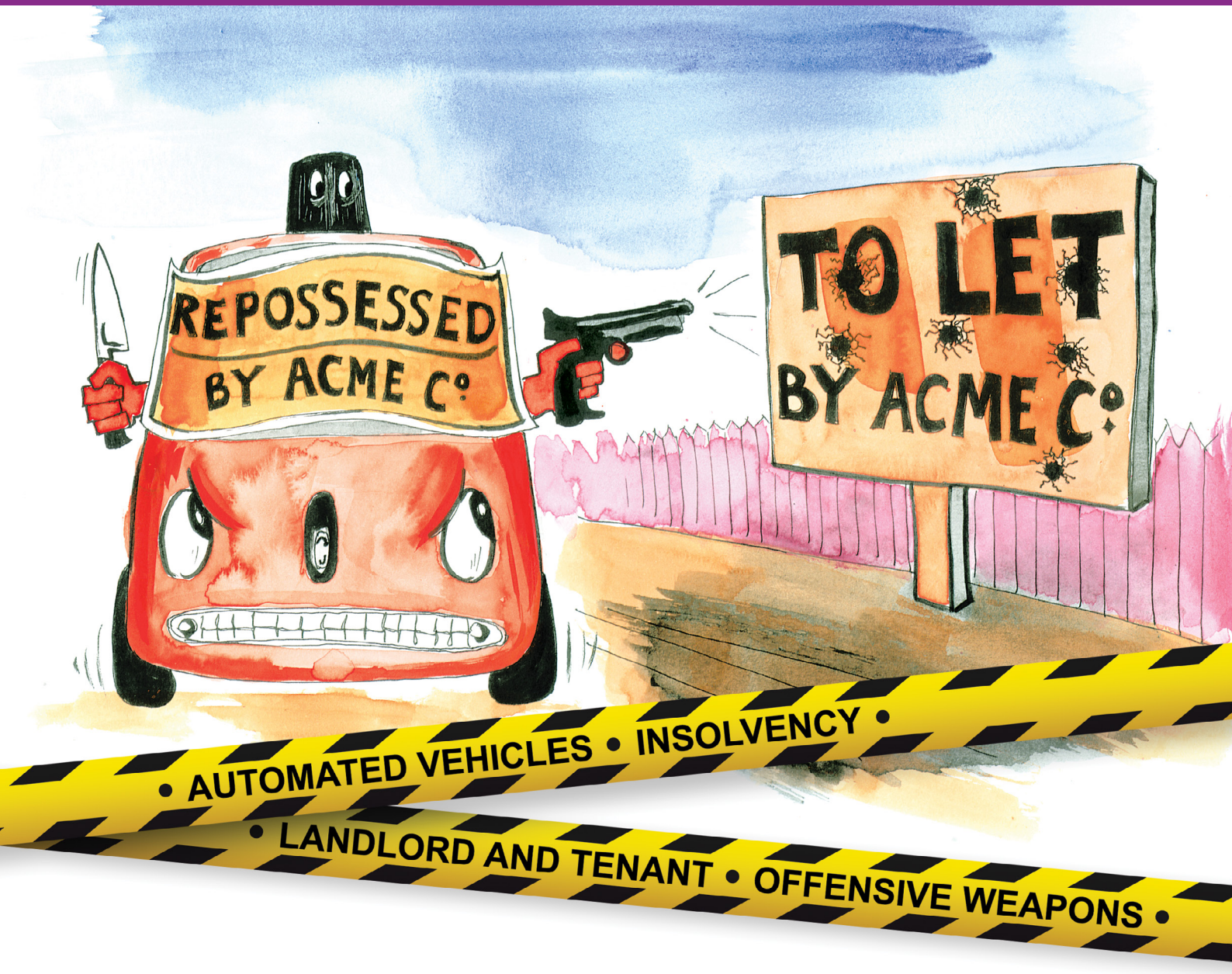
Law Commission
Reforming the law

Model Law Commission Report 2018

BIG VOICE LONDON



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Foreword note by the Big Voice London Chief Executive Officer

The Model Law Commission first began in 2013; an ambitious programme designed to give young people between the ages of 16 and 18 an opportunity to engage with and contribute to the law reform conversation. Over the past six years, our students have put forward proposals in relation to controversial and complex topics including: cohabitation, prostitution, social media, consumer law, environmental law, insanity law, fake online reviews, divorce law, extradition and most notably revenge porn, which became a criminal offence the year after our students' proposals were published. It is of little surprise to me that their ideas are ahead of the curve, given the thoughtful, open-minded and intelligent manner with which they approach the task of assessing and solving the problems faced within each area of law.

The importance of seeking a contribution from the younger generation is felt most strongly this year in the report of the criminal law group on the reform of offensive weapons laws. As an issue which affects young people most, the students' ideas have benefitted from their unique perspective and experiences. For example, the students considered that one of the greatest issues with regard to the carrying of offensive weapons was the hostility felt between young black men and the police. In the students' words: *"The issue is that those stopped by police felt like criminals before they have been formally charged with holding or using a weapon."* Their discussion of this issue over the past three months has culminated in a proposal that workshops should be introduced in secondary schools to educate students about the purpose of stop and search and how best to approach the situation if they find themselves being searched. Given prevalence of this issue in the society, I hope that law makers take note of their thoughts and of the other similarly valuable proposals in this report.

Beyond the influence of their reform ideas, I am often asked what impact Big Voice London has. As a social mobility and youth legal engagement charity, the question is largely framed with an expectation that the charity will have already single-handedly created a perfectly diverse legal profession. While the difference the charity has made to social mobility in the legal profession has yet to be fully seen, on a personal level, I know that Big Voice London has made a big impact on a number of students' lives. This year alone, Big Voice London has celebrated the enrolment of at least three Big Voice London alumni to Oxford and Cambridge University. One particularly proud moment this year was in discovering that not only had a previous Big Voice London student recently enrolled at Cambridge University to study law, but that he had also reached down and assisted a current Big Voice London student ahead of his interview at the same university. Hearing of the difference this assistance had made to our current student, both in terms of confidence and insight into the application process, proved to me that the impact of our programmes is felt far beyond the walls of our weekly sessions at the University of Law.

Such success stories would not of course be possible without the input and generosity of our supporters and volunteers. In 2018, Big Voice London has benefitted from the insight of countless legal professionals and academics, from the resources and facilities of various organisations, and from endless hours of volunteer time. Thank you to everyone that has contributed in some way to our work, together you have made this the most successful year for Big Voice London to date.

It is now my pleasure to present you with the report of the Model Law Commission 2018 and I hope that if there is any question over the part which young people can and should play in the creation of law and legal policy, that the proposals put forward in this report confirm that their contribution is invaluable and should be sought out.

Victoria Anderson, CEO

Model Law Commission 2018

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Introduction

Big Voice London

Big Voice London is a social mobility and legal education charity, which seeks to engage young people from non-traditional backgrounds between the ages of 16 and 18 years old with law and legal policy, with the aim of assisting them in entering the legal profession should they choose to pursue a career in law. To further this aim, we take students from non-fee paying schools and provide them with opportunities to give them insight into the law, such as the Model Law Commission.

Since Big Voice London's inception in 2011, Big Voice London has gone from a small student run organisation, to a registered charity and continues to grow, reaching out to more students each year. We now run a total of six main programmes, namely: a Mooting Competition with the UK Supreme Court, an Introduction to the Legal System project, also in association with the UK Supreme Court, a Summer School in association with Linklaters LLP, the Model Law Commission, a series of guest lectures at Middle Temple and for the first time in 2018, a Bar work experience programme with Radcliffe Chambers.

We are delighted to be able to name Carter-Ruck and BCL Solicitors LLP as sponsors of the charity, in addition to ongoing support from LexisNexis, Linklaters LLP, Middle Temple, Radcliffe Chambers, the Law Commission, the University of East London, and the University of Law. We also extend our appreciation to the UK Supreme Court for their continued support of our objectives.

Model Law Commission 2018

The Model Law Commission is a three-month long project that provides A-Level students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. From October to December, the young people undertook a five-stage process: research, formulating recommendations, consulting with their peers, reporting on their proposals and devising their legislation.

Each year, the Model Law Commission begins with a two-day conference, which this year, for the third year in a row, was kindly hosted by the University of East London. It is over the course of these two days that our students are introduced to their respective topics by experts in the field who come from all over the country to speak to them. The young people then take that information and over the following weeks discuss reform ideas with each other, their Group Leaders and their peers. This year the sessions were kindly hosted by the University of Law, Moorgate. Finally, in late November, individuals from the Law Commission itself visit our students and advise on the difficulties in reforming the law and how to write a law reform report.

The results of these weeks of hard work are contained within this report. This is a reflection of what these young people believe should be the law governing these particular issues and is written entirely in their own words.

Our Students

When recruiting students, our only requirement is that applicants come from non-fee paying schools, we do not set grade boundaries or have entrance exams, we only ask that students be keen to learn and commit to the project.

All the students that participate in the Model Law Commission apply to this project off their own backs. It is not a school run activity; these are students who want to learn about and have their voices heard in the law. With

sessions run every week in the evenings after school, this is not a small commitment to undertake alongside studying for all-important A-Level exams. We hope that as we expand, we will be able to provide this valuable opportunity to more ambitious young people.

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We are extremely grateful to the LexisNexis team for kindly sponsoring this publication and for their continued support of the Big Voice London project. Additionally we would like to thank Carter-Ruck, for their sponsorship of this project, the University of East London for hosting the weekend conference and the University of Law Moorgate for graciously hosting our students, volunteers and guest speakers for the duration of this project.

Finally, we would also like to thank the Big Voice Management Board for their assistance in bringing the Model Law Commission to life.

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Disclaimer

The work, recommendations and opinions contained in this report are solely those of the student authors listed. The views expressed do not represent those of any other external organisation or individuals, including guest speakers listed in this report and the UK Supreme Court and the Law Commission. Big Voice London is an entirely independent organisation, and while we value the ongoing support and guidance of many organisations all views expressed are our own.

Part 1: Property, Family & Trusts

Recommendations on the laws governing landlord and tenant.

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Introduction

Since the introduction of the legislation that currently governs tenancies, the rental sector has developed in significant ways. More people in the UK are renting because they cannot afford to buy, assured shorthold has become the predominant form of tenancy, and household family set-ups have diversified. The law must now evolve to better serve this new climate. In this report we focus on reforms to the law governing assured shorthold tenancies concerning succession, service charge and Section 21 evictions. To support this, we surveyed 75 people including landlords, tenants and legal professionals.

Summary: Proposals

- Succession: that the category of persons who can succeed a tenancy be expanded and that up to two statutory successions be permitted.
- Service charge: that transparency be increased as to the cost and use of service charge and that a means by which service charge can be challenged be introduced.
- Section 21 evictions: that Section 21 of the Housing Act 1988 be abolished such that eviction notices must take place under Section 8.

Succession

Current Law

Where the sole tenant of an assured tenancy dies, the current law provides that a person may succeed to take over the tenancy only if they:

1. Are the spouse or civil partner of the tenant[1] or were living with the tenant as a spouse or civil partner[2];
2. Were occupying the property as their only or principal home immediately before the death of the tenant[3].

The current law states that there can only be one statutory succession[4]. If more than one person qualifies to succeed the tenancy, then they have four weeks from the date of the tenants' death to decide who will succeed otherwise it will be determined by the county court[5].

1 Housing Act 1988 s.17(1)(b)
2 Housing Act 1988 s.17(4)
3 Housing Act 1988 s.17(1)(b)
4 Housing Act 1988 s.17 (1D)
5 Housing Act 1988 s.17(5)

Need for Change

The current law prevents someone who is not a spouse or civil partner (or has not been living with the tenant as a spouse or civil partner) from succeeding, regardless of how long they have been living in the property. In November 2016 the Office for National Statistics reported an increase in unmarried cohabiting families and a growth in percentages of young adults living with their parents[6]. In 2017 it reported that multi-family households, households containing two or more families, have grown the fastest since 2007, by 6% to 27.2 million[7]. These statistics suggest that household composition is moving away from the married and cohabiting model, indicating that a change is needed to the current law of succession to reflect this. This is supported by 80% of respondents to our survey who agreed that someone other than a spouse or civil partner should be able to succeed the tenancy.

The survey also revealed that over 55% of respondents agreed that more than one succession should be possible. Increasing the number of potential successions would lower the risk of homelessness for persons living with a sole tenant and would also allow the landlord to keep the property occupied.

Recommendations for change

We propose the category of people who can succeed a tenancy be expanded by means of a two-tier hierarchy. The priority-tier will include spouses, civil partners, cohabitees living as spouses or civil partners and children (biological or adopted) who were occupying the property as their only or principal home immediately before the death of the tenant. Priority persons will succeed by the tenancy vesting in them upon the death of the tenant, as under the current law.

The lower-tier persons will include, but not be limited to, all other immediate family members, friends and carers who had been occupying the property as their only or principal home for two years immediately prior to the death of the tenant. The tenancy would not vest in lower-tier persons automatically, but they have the option to succeed by either obtaining the written consent of the landlord or applying for a 'Grant of Succession' from the First-Tier Tribunal (Property Chamber – Residential Property). If the landlord refuses to give consent to a lower-tier person, that person may subsequently apply for a Grant of Succession however the landlord's refusal will be taken into account.

We also propose to increase the number of possible statutory successions by introducing a second statutory succession during the fixed term of the tenancy. This option could, however, be excluded by the landlord in the tenancy agreement.

Impact on tenants

By limiting the expansion of automatic succession to the addition of children, this retains simplicity in the law such that tenants will be able to understand it. The introduction of the lower-tier of persons creates a catchall whereby the law can allow succession to a non-priority person where it would be just and reasonable to do so. This accommodates the increasing diversity of household composition. The option of the second succession also adds additional security for tenants and those occupying with them, especially for those tenants who are themselves successors. These reforms will enable individuals to remain in the same community for longer which is especially important given that they will have jobs, GPs, schools, friends and family in that community.

We have considered that the two-tier hierarchy may still be confusing to tenants and also that a lower-tier person may find it difficult to prove that they have been living in the property for two years prior to the

6 Office for National Statistics, *'Families and Households in the UK: 2016'* [Online] Available: https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2016#percentages-of-young-adults-living-with-their-parents-have-been-growing [Accessed 17 December 2018]

7 Office for National Statistics, *'Families and Households in the UK: 2017'* [Online] Available: https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2017 [Accessed 17 December 2018]

tenant's death. These could be overcome by the landlord explaining the system at the outset of the tenancy and also a simple explanation being given in the How to Rent guide. Similarly, the tenant should also be informed by the landlord if the option for a second succession has been excluded and this should be stated clearly in the tenancy agreement.

That the onus is on lower-tier persons to obtain the consent of the landlord or apply for a Grant of Succession and that the landlord may simply exclude the option of a second succession may be considered barriers to the effectiveness of these reforms. However, these factors do not detract from the position of the current law but simply minimise any disadvantage to landlords. The option to obtain the consent of the landlord is a cheap route and that the Grant of Succession can be applied for from a tribunal is much more cost-effective than requiring it to be issued by a court.

Impact on landlords

That lower-tier persons have to obtain the written consent of the landlord means that the landlord will retain his position of control over the tenancy. Any refusal would also be taken into account in a subsequent application for a Grant of Succession. The landlord's control is also evident in that he can choose to exclude the option for a succession.

Even if the option for a second succession could not be excluded by the landlord, this would not be of a vast disadvantage to the landlord. This is because, under the current law, the landlord has the automatic right to repossess the property at the end of the fixed term of the tenancy, regardless of any person having the right to succeed. As the fixed term of assured shorthold tenancies is often relatively short, it is likely that a second succession will arise before its end, allowing the landlord to prevent the second succession by repossession.

Therefore, although we have lowered the power of the landlord, we have not made the landlord completely powerless; at best we have aimed to even out the power between landlord and tenant by maintaining control for the landlord while adding flexibility for the tenant.

Social & economic impact

The legislation we proposed increases how easy it is to succeed a property. This could mean that families stay in the same house for many years, leaving less properties available for rent. Although this will be problematic for those looking for properties to rent and increase their chance of homelessness, it protects those from homelessness who have been living in the property and in the community for a significant amount of time.

Individuals who have already been living in the property for a length of time will have built up social and economic relationships in that area and it would prove equally, if not more, detrimental to force them to move out of that community than to prevent a different tenant coming in.

Costs to the Government

The two main areas of cost to the government are legal costs in terms of aid and advice for lower-tier persons applying for a Grant of Succession and to subsidise for any decrease in available housing. Legal costs will be minimised by the option of obtaining written consent of the landlord. It is the subsidisation of available housing that will be the greater cost. This will be an extra margin that the government has to budget for, but it will ensure that more people are secured a place to live that the government would otherwise be responsible for housing.

In 2017, a Chartered Institute of Housing report showed that only 21% of government spending on housing support was for affordable housing, with the largest proportion being invested in 'help to buy' equity loans[8]. This shows that there is already a need for more government investment in the affordable housing market and this is one area in which it would be highly beneficial.

8 Chartered Institute of Housing, '2017 UK Housing Review Briefing Paper' p.6 [Online] Available: http://www.cih.org/resources/PDF/1UKHR%20briefing%202017.pdf [Accessed 22 December 2018]

Service Charge

Current Law

The Landlord and Tenant Act 1985[9] defines service charge as the amount payable by the tenant as part of or in addition to rent either directly or indirectly for services, maintenance repairs or insurance for the landlord's cost and management. This may vary according to the relevant costs. The charge may cover the exterior of the property, including drains, gutters and external pipes, and interior elements such as the supply of gas, electricity, water and sanitary conveniences. However, this excludes any fixtures or fittings. There is currently no fixed amount or statutory limit for service charge, it merely has to be a reasonable estimation by the landlord[10].

Need for reform

The current law represents a lack of regulation around service charge, insufficient clarity of what service charge covers and a lack of assurance that the tenant fully understands what they can be required to pay. Over 90% of respondents to our survey agreed that there should be a limit on service charge, many of which suggested that this should be in the form of a percentage of the total cost to the landlord. Furthermore, the aftermath of the 2017 Grenfell Tower disaster has shown the controversy surrounding what service charge should encompass with tenants being asked to pay the cost of replacing Grenfell-style cladding in their buildings[11].

Suggestions for reform

We considered the tenant paying 60% of the cost of the works and the landlord covering the remaining 40%. This reflects that it is the landlord's property, but the tenant receives the benefit of the cost. However, it lacked the flexibility to account for the diversity of circumstances in which service charge may be required.

Instead, we propose, that there should be a consultation between the landlord and tenant on what the service charge includes and whether it is a fixed fee or a percentage charge, at the outset of the tenancy. Secondly, there should be an annual summary given to the tenant to show how much they have paid for service charge and where that money has been used. Furthermore, there should be a regulatory body to which tenants can bring disputes about the amount of service charge they have paid or what it has been used for. This would function similar to a rent officer as in Rent Act tenancies.

We also believe that fixtures and some fittings ought to be included under the service charge as these are generally the things that need repairing in the home most often, for example, washing machines and ovens.

Impact on tenants

More transparency about what tenants should expect to pay, what they are paying and what they are paying for will improve attitudes towards service charge and allow tenants to budget for it. Allowing fixtures and fittings to be covered by service charge will also be beneficial for tenants as they will not have to pay extra on top of their rent and service charge to replace these items. The introduction of a regulatory body to which tenants can express their concerns about service charge will give tenants more rights to challenge the service charge without the stress and expense of going to court.

Impact on Landlords

More The increased transparency will force landlords to be more reasonable about what they charge and what they spend the money on. The landlord would also have to bear the cost of providing documents such as the annual summary. It may however increase tenant's willingness to pay service charge and better the relationship between landlord and tenant.

9 Landlord and Tenant Act 1985 s.18

10 Landlord and Tenant Act 1985 s.19

11 Evening Standard, *'£4,000-a-resident bill to replace Grenfell-style cladding on London high-rise'* [Online] Available: https://www.standard.co.uk/news/london/4000aresident-bill-to-replace-grenfellstyle-cladding-on-london-highrise-a3959296.html [Accessed 22 December 2018]

Allowing a regulatory body to challenge the service charge will diminish landlords' power, but only to the extent that what they have charged is unreasonable.

Social impact

The tenant will be properly informed about the service charge allowing them to plan out their finances and ensure that they can pay the charge. A properly informed tenant will also be able to better discuss any problems that they are having paying the service charge with their landlord, so that they may come to an agreement without resorting to court action.

The increased transparency will also improve public attitudes surrounding service charge. The ability to challenge an unreasonable service charge will balance the power between the landlord and tenant and adds protection for the tenant against unfair treatment.

Costs to the Government

The main cost to the Government will be the introduction of the regulatory body to control service charge, however this can be set off against the fact that it will minimise more costly court cases.

Section 21

Current Law

Section 21 of the Housing Association 1988 (HA), is a notice served by a landlord to recover possession of a residential property from a tenant[12]:

1. Upon the Assured Shorthold Tenancy (AST) ending or after[13]
2. In the case of joint landlords, at least one of them has to give the tenant no less than a 2 months' notice in writing[14]

Landlords cannot obtain possession earlier than 6 months after the commencement of the tenancy[15] and may be required by the court to provide 6 months' notice to a tenant before granting a possession order[16].

However, the landlord does not need to rely on any grounds for possession, unlike the Section 8 possession notice which requires a landlord to provide a tenant with either a mandatory ground e.g. rent arrears[17] or discretionary ground for wanting their eviction.[18]

Need for change

There are several shortcomings of Section 21. Firstly, it merely gives tenants 2 months' notice prior to the eviction date. This appears unreasonably short for tenants to financially and emotionally prepare themselves to find alternative accommodation and in most cases, leads to homelessness.[19] Homelessness is a big problem in England and Wales with approximately 13,000 households being statutorily homeless in 2018, with a 94% rise being attributed to Section 21 evictions.[20] Specifically, Generation Rent found that these no fault evictions lead to 216 households being made homeless per week.[21]

12 Housing Act 1988 s.21(1)
13 Housing Act 1988 s.21(1)(a)
14 Housing Act 1988 s.21(1)(b)
15 Housing Act 1988 s.8, Ground 8
16 Housing Act 1988 s.21(1b)
17 HA (n 15)
18 Housing Act 1988
19 Generation Rent, *'Section 21: Terrible For Tenants And Lengthy For Landlords In Court'* [Online] Available: https://www.generationrent.org/section_21_evictions_what_do_we_know [Accessed 17 December 2018]
20 Chartered Institute of Housing (n 8)
21 Generation Rent (n 19)

Further, no fault evictions omit the need for a Landlord or court to provide a reason for evicting their tenant. This has caused 'retaliatory evictions' which can create tense landlord and tenant relations e.g. student tenants being reluctant to report disrepair. Also, upon eviction, the burden shifts from the private landlords to public bodies as the victims then often seek social housing. In turn, this cycle highlights the wider social need for further housing and indicates that amendment or abolishment of Section 21 is needed to prevent this.

This is supported by our survey results that found that 77% of respondents disagreed with a Section 21 notice being served in a given scenario. Respondents acknowledged that the Section 21 procedure is preferable as it is a generally quicker and less expensive process, however, noted the disproportionate advantage to landlords and the alternative tactical advantages of serving a Section 8 notice on the grounds of tenant default.

Additionally, a variety of charities, local authorities and newspapers also support the notion of abolishing Section 21, including Age UK London, The Salvation Army, Shelter, Centrepoint, UNISON, Resolution Foundation, The Times and the Labour Party[22].

Reform proposals

We propose abolishing Section 21 as a whole and solely using Section 8 which would subsequently stop no-fault and retaliatory evictions.

Legal impact

There will be clear, legal grounds presented to the tenant as to why they are being evicted, rather than no reason at all. The tenant is given more certainty and peace of mind during their tenancy, irrespective of rising inflation etc. Court involvement will also prevent unjust treatment of either party. Further, there is procedural predictability for both, as a tenant knows if they break a ground, they may be evicted, and a landlord will know the legal scope of behaviour that they and the court do or do not have to tolerate. This is fairer because the parties have more equal rights and the decision will correlate with the blameworthiness of the tenant. However, a negative implication would be that it could open the floodgates of tenants and landlord eviction cases in court. This could infiltrate the housing courts and substantially slow down the process of a landlord repossessing their property. Although this is a problem to consider, it certainly does not outweigh Section 21's consequences of evicting a tenant after two months, with threats of homelessness.

Costs to the Government

In addition, paying the court fees are a major problem within abolishing section 21 as tenants would need to address their cases in court. This is mainly applicable to tenants who wish to have legal representation which can be costly, or if a party loses a case and must cover the fee. However, this problem could give rise to more legal aid funding but will more likely encourage better relations during the contract to avoid court battles.

Economic & social impact

A social impact of this reform essentially could be the prevention of homelessness itself. As mentioned, because no-fault evictions are the single biggest cause of homelessness, getting rid of section 21 will allow more people to stay within the private sector. This means that tenants will be less likely to struggle to find accommodation. This has wider positive, social impacts because London's homelessness reputation will decrease and generally tenants will have more assurance that they will not be evicted unfairly under Section 8.

Although having a minimum of 2 weeks' notice under section 8 is much less than under section 21, most grounds that a landlord can raise are discretionary, and so it is much harder for a tenant to be evicted so quickly unless a court deems it reasonable. Further, even in cases of rent arears, the tenant will be aware of the fact that they are in breach of the tenancy contract and so their eviction notice will not come as a shock, which is a crucial reform to the current procedure under section 21.

Additionally, an economic impact of this reform would be that there could be less pressure on social housing with fewer private homes being repossessed, so the extra funding could encourage the government to spend more money on houses. However, removing Section 21 could appear to deny landlords the right to reclaim

22 Ibid.

their property at will, or take immediate advantage of rising inflation in the form of higher rent because they cannot easily evict tenants from their property. However, ground 8 under Section 8 allows landlords to evict a tenant with rent arrears, which is often the case during inflation, so repossession is still possible.

Alternative reform

If Section 21 is to be kept, the notice period should be extended to at least 6 months in every case. This would provide tenants with a longer period of time to look for another property as the 2 month's period is statistically unrealistic and arbitrary as 63% of private renters who were forced to move in 2016 were evicted not due to any fault of their own but because the landlord wanted to sell or use the property[23]. In addition, tenants could struggle with the financial strain of finding alternative accommodation at short notice under section 21 HA 1988, therefore if they were given an extended notice of 6-8 months, it would give the tenants enough time to seek financial help, or raise enough money to afford to move. This could particularly reduce the anxiety and insecurity for the 1.8million[24] renting households with children.

There are fears that the abolition of Section 21 could reduce the supply of rental accommodation and in fact make homelessness worse because it could drive landlords out of the market reducing rental accommodation while the population continues to increase. This would make rent rise even more which would make it detrimental for the tenants. It would also cause an increase in evictions as landlords leave.[25]

Increasing the section 21 notice period would benefit both tenants and landlords by preventing the negative impact of retaliatory evictions, leading to homelessness of the tenant. For example, a student whilst simultaneously allowing for landlords to more reasonably evict a tenant e.g. if they need the property back with less potential and immediate challenges for the tenant.

In conclusion, our proposals aptly answer the main problems with section 21, being the insufficient notice period and the lack of reason involved in the eviction. This can clearly be addressed by extending the notice to 6 months minimum, which still encourages landlords to rent their property with less regulation. Alternatively, we suggest abolishing the whole of section 21 and solely using section 8 to ensure that all AST tenants are afforded more legal protection via the courts, as well as encouraging better, more just relations between landlords and tenants via the reasonable grounds of section 8.

23 Generation Rent, 'What Is Section 21 and Why Does It Need To Be Scrapped?' [Online] Available: www.generationrent.org/s21explainer [Accessed 19 December 2018]

24 Ibid.

25 Ibid.

Part 2: Commercial & Common Law

Recommendations on the laws governing insolvency.

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Introduction

This report identifies and analyses specific challenges within Insolvency Law. The aim of this report is to suggest a number of recommendations that will provide a solution to the challenges. It is also hoped that this report will create awareness of insolvency law particularly amongst young people. This is because our research showed that 79% of 16-18 year olds had no understanding of the area.

Parts 1-5 introduce the area and make the following recommendations; greater protection for creditors, compulsory director training, the introduction of pre-packs in statute, and greater government intervention. Part 6 briefly explains the future of insolvency law in the context of Brexit. Part 7 contains case studies for a reader to understand why insolvency occurs in practice and its impacts.

What is insolvency?

Insolvency can be explained as a company's inability to pay its debts. This differs from bankruptcy where an individual is unable to their debts. In law, insolvency can occur in two ways:

(i). when a company does not have enough assets to cover its debts, also known as the balance sheet test.

(ii). when a company is unable to pay its debts when they are due, also known as the cash-flow test.

Current insolvency law

The main legislation governing insolvency is the Insolvency Act 1986[26]. It has been modified on multiple occasions for instance, by the Enterprise Act 2006. The government's intention with amendments has been to promote greater emphasis on promoting the rescue and rehabilitation of businesses going through insolvency.

To achieve this, the 1986 Act introduced measures to deal with company debt that provide different options for company's experiencing insolvency. They are; Administration, Company Voluntary Agreement, Scheme of Arrangement, Receivership and Liquidation. The definitions for each of these can be found here.[27]

26 1986 c 45

27 https://www.gov.uk/government/publications/options-when-a-company-is-insolvent/options-when-a-company-is-insolvent#ways-to-deal-with-your-companys-insolvency

Greater Protection for Unsecured Creditors

Creditor: *a person or company to whom money is owing.*

An official 'hierarchy' laid down by the Act determines which group of creditors is paid first during liquidation. When a company enters liquidation, each class of creditors must be paid in full before funds are allocated to the next.

Problems with the ranking of creditors

Creditors are ranked as follows
Secured creditors with a fixed charge
Preferential creditors
Secured creditors with a floating charge
Unsecured creditors
Shareholders

This ranking is contentious because unsecured creditors like consumers have little protection. Though there is a remedy under section 98 of the Act which enables unsecured creditors to form a creditors meeting, we argue that this does not offer sufficient protection.

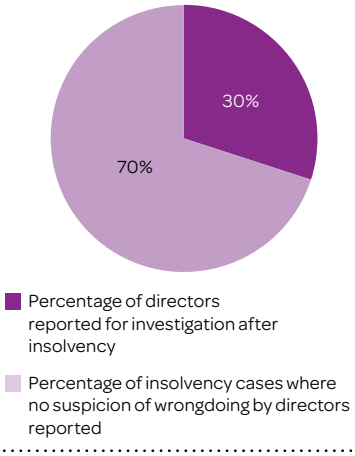
Insolvency is often caused by a number of factors such as excessive expenditure, debtor failure to follow through with payments, financial mismanagement and more. Unsecured creditors such as consumers are arguably not 'at fault' in insolvency proceedings and yet have little say or protection throughout the process. This is furthered by the high costs involved in the appointment of an insolvency practitioner and other professionals.

Recommendation

We therefore propose an increase in the money available to unsecured creditors under s176A of the Act. Currently, the Act enables a sum of money to be ring fenced for unsecured creditors also known as the 'prescribed part'. In practice an insolvency practitioner calculates it. This prescribed part can be saved via 50% of the first £10000 of assets and 20% of balance (saving) up to £600,000. An increase in these percentages will provide greater resources to protect unsecured creditors.

Current insolvency law for Directors

Directors of a company have a fiduciary relationship with the company whereby they act as an agent of a company. The Companies Act 2006[28] sets out the duties of directors such as to *'exercise reasonable care, skill and diligence'*. The directors of an insolvent business are required to act in the best interest of the company's creditors as a whole. Failure to do so could result in a director being held personally liable, or lead to a civil offence through wrongful or fraudulent trading.



28 2006 c 46

According to the Insolvency Act, wrongful trading refers to companies that continued to carry on in their daily business trading insolvent with no intent to defraud the company's creditors. This would be a case of poor judgement. Fraudulent trading is when a company carries on with business operations with the intent of purposefully deceiving and defrauding its creditors.

Problem with the insolvency law for directors

There is no legal definition of 'mismanagement'. As a result, the concept is only established on a case by case basis. Case law shows that decisions by the courts that action against mismanagement cover more than punishing genuine abuses such as the misuse of funds for personal uses *(Re Sarflax Ltd)*[29]. The courts have deemed a wide range of decisions to be acts of mismanagement.

Furthermore, to establish whether directors should be held personally liable during insolvency, the liquidator of an insolvent company must investigate the actions of the directors in the time leading up to the insolvency. If they find a director has been involved in any of these examples of wrongful trading, they can then ask for a court order to make the director personally liable to contribute to the company's assets. However, this all depends on whether the court is able to identify the director's actions such as mismanagement or incompetence.

Compulsory Director Training

The only factors which can disqualify someone from becoming a company director is whether the individual has been disqualified from being a company director, bankruptcy, or if the person is under 16. Amongst the factors for disqualification, there isn't one aligned to director training.

Recommendation

We propose compulsory training for directors. There is currently no such requirement in UK law and in our view, this is problematic as a company's leadership team may lack the fundamental skills to sustainably manage a company. This raises the question as to the effectiveness of individuals who aren't trained to be in such positions and whose selection is based on the strong opinions (agreement) of shareholders (majority of the time). If the government brings in a training scheme it would enable directors to better meet their duties.

Directors should be equipped with the essential skills and expertise; especially those required during the insolvency process. With quality training, insolvency could be avoided in the first place or better managed. For example, the director will be able to better negotiate during the Company Voluntary Arrangement (CVS); which is a crucial part of the insolvency process. Another example is that a director may be able to respond effectively to pivotal changes and challenges for example, a loss in cash flow (resulting into a large sum of debts owed to creditors).

Costs of Director Training

The training course would cost a company £1,200 per individual. This amount may negatively impact small to medium sized companies and so greater research is needed to establish the appropriate amount. Though this is a considerable short-term sum for large companies, we argue that the long-term benefits of a director training program override any such challenges.

Prepacks: Should they be introduced in a statute?

When a company enters administration, its assets are usually sold on the open market or they are auctioned. In a pre-packaged administration, the sale of assets is pre-arranged and sometimes a connected party, who can be one or more of the directors of the business going through insolvency; will be able to purchase some

29 *Re Sarflax* Ltd [1979] Ch 592; [1979] 1 All E.R. 529

of the assets and transfer them to a newly formed company. This is generally referred to as, "phoenixing" because the new "phoenix" company "rises from the ashes" of the old business, a process which is related to the mythical firebird.

Problems with Pre-Packs

There is no statute that makes pre-packs illegal, so in theory they are legal. However, there is no statute that governs pre-packs which leads to it being an uncertain remedy. In a pre-pack administration, owners and directors of a company can buy assets of the old company for their newly formed company. This is contentious because it can be used as an escape method. Pre-packs can be seen as 'secretive' since there are no established processes outlining how they are conducted.

Current solutions available

There are tools to make the process more transparent. The Pre-Pack Pool is an independent body of experienced businessmen and businesswomen, who can offer an opinion on the purchase of a business or/ and its assets by connected parties to a company where pre-pack sale is proposed. This was amongst the several measures that was recommended by the 2014 Graham Review[30]. It was identified that only 28% of the 188 connected-party-pre-packs that took place between 1st November 2015, and 31st December 2016 were referred to the Pool, as reported by the inaugural report.

In addition, case law has shown that there are criteria businesses must meet to use this method. For instance, they must demonstrate that all other options were considered before pre-pack administration, and explain why a pre-pack was the best course of action for the business and its creditors. These criteria amongst others arguably show that there is no major reform needed in the area.

Furthermore, in spite of the lack of transparency, an advantage of pre-packs is that they can provide good value for money since the business can get more money out of the sale to pay its creditors rather than going through an expensive insolvency process. In fact, pre-packs can enable companies to sell the company at an advantageous deal that will enable them to pay their creditors at a better amount than they would have for instance through liquidation.

Recommendation

From the above, we support the existence of pre-packs. We do however call for their introduction into statute, greater transparency on their use and, greater encouragement of the use of independent bodies such as The Pre-Pack Pool that can advise businesses on their use.

Current Insolvency Law on Greater Government Intervention

Since the bulk of insolvency law encourages business rescue, this raises the question as to whether greater government intervention is needed to achieve this. A survey done by R3 found that government departments should engage more in business rescue. 65% of respondents found government intervention as the option for having the most significant and positive impact on business rescue in the UK.

Recommendation

We propose that legislation be introduced to enable companies to have a "saving account" for the purposes of an insolvency.

This "saving account" will help companies better protect the future of the company since there would be assets available in the event of administration or liquidation. An added advantage is that further assets

30 GOV.UK. (2018). Graham review into Pre-pack Administration. [online] Available at: https://www.gov.uk/government/publications/graham-review-into-pre-pack-administration

available would better help protect unsecured creditors (discussed in section 2). The amount of cash or assets a company will invest into this account will depend on the financial position of the company.

In practice, this may require government incentives such as tax relief for participating companies. There is a concern that this may be misused and so we further propose that this amount is protected via a contract.

Furthermore, there exists a mechanism that may already support the rescue of businesses called a moratorium.

A moratorium is considered to be a delay or suspension of an activity or law. In the context of insolvency, it prevents creditors from enforcing their rights for a specified period (normally 28 days) allowing a company to come up with a restructuring plan before any legal challenges are carried out. They are advantageous as companies have time to work out the best strategy without the pressures of legal claims.

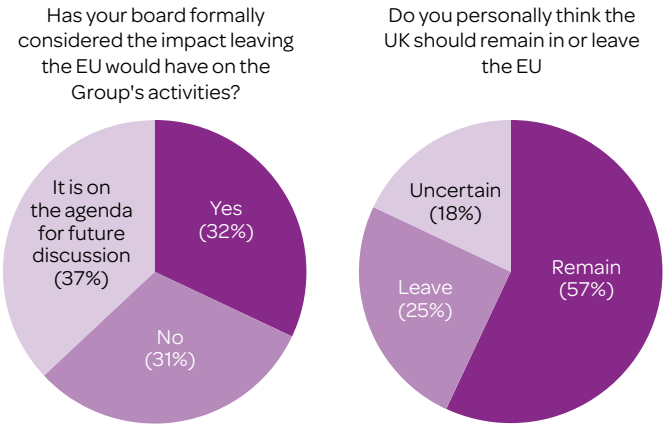
However, similar to pre-packs, there is a lack of transparency during this process as the activities carried out by the company are not defined. In fact, the outcome of a moratorium could be a pre-pack sale which questions how far this mechanism supports the rescue of businesses. Therefore, although we support the existence of moratoriums, we propose government intervention though the "savings account" as an additional mechanism for business rescue.

The Future: Brexit

Brexit is the term used to describe the likely scenario in which the United Kingdom will depart from the European Union on the 29 March 2019. This decision has uncertain consequences for Britain's future and economy.

Global financial institutions such as The International Monetary Fund have stated that Brexit is likely to bring financial risks to the UK's economy including the risk of a recession. In the context of insolvency like many other areas of law, this extract from Allen & Overy suggests:

"Notwithstanding the clear outcome of the referendum, the ultimate exit model remains uncertain. The detailed legislative changes that result from Brexit will be driven by the exit model that is agreed with the EU."



The Paper further suggests room for optimism since English restructuring and insolvency proceedings are well regarded on the global stage so there is an opportunity for advantageous negotiations. We are of the view that there will be no immediate changes to the way insolvency law is approached. However, businesses should continue to prepare robust strategies to be prepared for a variety of outcomes.

Insolvency Law Case Studies

Below are 3 examples of insolvency:

Carillion: The Devastating Impacts of Insolvency

Carillion relied on large contracts, some of which proved much less lucrative than expected. Last year it slashed the value by £845m, of which £375m was related to public-private partnerships (PPPs) such as Royal Liverpool university hospital. As its contracts underperformed, its debts soared to £900m. Carillion was in serious debt and needed to be bailed out as prices of stocks fell dramatically. On 15 January 2018,

Carillion announced that it was going into liquidation and not administration. At the time of liquidation Carillion employed around 18,200 people in the UK and hence had begun staff consultations over planned redundancies and transfers to new employers. Later the Official Receiver announced an initial 377 redundancies; a further 994 redundancies were announced during February, 337 in March, 554 in April, 75 in May, 43 in June, 399 in July, and 9 in August bringing the redundancy total to 2,787 - 15% of the pre-liquidation workforce. In parallel, 13,945 jobs had been safeguarded through transfers while 1,272 employees left the business through finding new work, retirement or for other reasons. It was reported that around £50m in redundancy payments had been paid up to September 2018, with the final bill likely to reach £65m. The government offered £2 billion in contracts.

Toy "R" Us: The Business Environment

Earlier this year, CEO David Brandon announced the closure of all Toys "R" Us stores after he failed in his mission to upgrade online sales despite being in the market with the likes of Amazon. Toy "R" Us sketched out a reinvestment plan which was to close only about hundred stores to help rest and get healthy causing the company that started from reorganisation going straight to liquidation. There are many factors which led to this unfortunate decision. One being the company saddling with heavy debts. Bain Capital and other firms took the company to private in 2005. By the time the company was approaching insolvency in September 2017, it had a worth of $5 billion in liabilities. A negative impact occurred from their terrible timing, as Toys "R" Us filed for bankruptcy in September instead of shortly after the holiday shopping season turned out to be disastrous. Meanwhile intense competition heavily impacted them. In the liquidation filing, Toys "R" Us blamed its poor holiday performance on companies such as Amazon, Walmart and Target who had all changed up toy discounts "at low-margins or as loss-leaders" during the holidays and offered aggressive online shipping options. Those discounts destroyed Toys R US at a time when it badly needed to pile up profits. Toys "R" Us has gone into administration for 3 years, putting 3,000 UK jobs at risk.

BHS: Director Liability

BHS (British Home Stores) was a British department store which primarily sold clothes and household items, and later expanded into selling furniture, electronics, entertainment, convenience groceries and fragrance and beauty products. However, BHS was placed into liquidation following the pressures from the Pension Protection Fund. They argued that closing down the business would produce the best outcome for the failed retailer's pensioners. It had also emerged that lawyers picking over the carcass of the BHS collapse were looking at the validity of £35 million floating charge in the name of the owner, Sir Phillip Green. With 20,000 pension holders, 11,000 jobs being at risk and a deficit of £571 million, the size of the deficit outweighed its assets making the outfit unattractive to investors and buyers; which then had led to BHS being bought for £1. One way the crisis could have been prevented is by having the directors of the company on their pension scheme (with a deficit) not receive pay rises unless they had reached a binding deficit reduction agreement with the Pension Regulator. Also, directors cynically dumping pension scheme liabilities should have be made personally liable for the debts.

Summary

From the above discussions, it is evident that the aim of insolvency legislation has been to encourage the rescue of businesses demonstrated through mechanisms such as moratoriums. It is also evident that suggesting reform in the area is made complex by the numerous causes of insolvency, ranging from the 'health' of a business environment (demonstrated in the Toy "R" Us case study), to company leadership and more. This means that no one proposal is adequate for addressing the challenges in insolvency law especially as Britain heads into uncertain times (see Part 7 on Brexit).

However, we are of the view that the proposals contained in this report provide an effective response to some challenges. In summary we have proposed; greater protection for creditors, compulsory director training, the introduction of pre-packs in statute, and greater government intervention. We have also called for greater research into the implementation of our recommendations such as in the amount a business will contribute to a saving account (see part 5). Additionally, we hope that the case studies further the understanding of the reader in this area of law.

Part 3: Public Law

Recommendations on the laws governing automated vehicles.

Compiled with thanks to:

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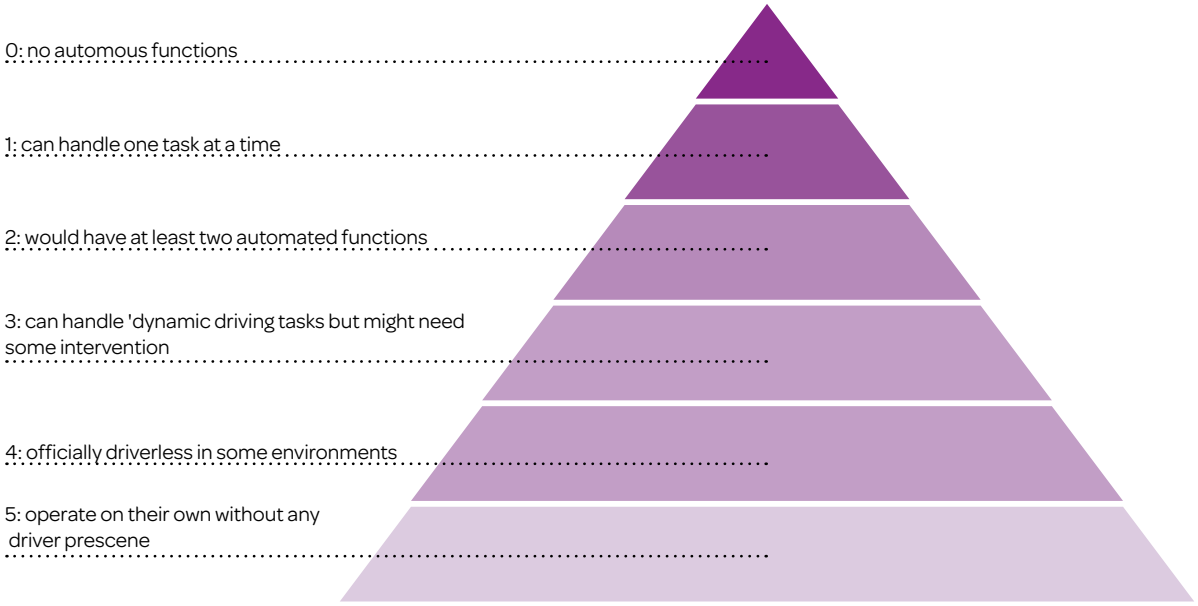
Introduction

Following three months at Big Voice London, our group have focused on the reform of automated vehicles.

Automated vehicles are an inevitable development. Manufacturers are in the process of developing the technology, leading the innovation of different levels of automation. Ensuring safety is crucial, which is why existing laws need to be reformed in order to facilitate a smooth introduction of automated vehicles onto the roads in England and Wales.

There are 5 levels of automation for vehicles. The level varies depending on how much automation the vehicle has (see chart). In level 5 automated vehicles, there is technically no driver due to the nature of the technology. Therefore, for level 5, the traditional driver will be referred to as 'user-in-charge'[31] for the purposes of this report.



We have focused on three areas of reform: public confidence, liability and data protection. Our pre-consultation involved analysing the current laws and meeting with legal experts to expand our knowledge of the current laws and their application. We conducted a survey of 100 respondents, collecting quantitative and qualitative data, in order to evidence our proposals.

31 Law Commission, Automated Vehicles (Law Comm CP No 240, 2018) para 1.42

Public confidence

Background

One of the primary objectives is the safe use of automated vehicles. Achieving this will help facilitate our secondary objective: improving public confidence in the use of automated vehicles. In 2016, the Department of Transport announced that there were 181,384 total casualties on Britain's roads.[32] Automated vehicles will aim to eliminate mistakes whilst driving, and in turn, minimise the amount of risk for the passengers.[33]

The results from our survey illustrated that public confidence is low with regards to getting into and operating automated vehicles. Many issues and concerns were raised by the participants, such as their lack of 'trust in the technology' or the fact they feel like they are 'not in control of the vehicle'. Our proposals focus, not only to boost public confidence for automated vehicles, but also ensure the public's safety on the road.

Current Law

We have focused on addressing areas where there could be possible conflict with current legislation, or where new legislation can be added to fulfil our proposals.

Under *s1(1)(a) of the Automated and Electric Vehicles Act 2018,* 'the Secretary of State must prepare, and keep up to date, a list of all motor vehicles that... are in the Secretary of State's opinion designed or adapted to be capable, in at least some circumstances or situations, of safely driving themselves.'[34] Under *S1(4)* of the Act, "automated vehicle" means a vehicle listed under the section.[35]

Under *s87(1) of the Road Traffic Act 1988,* 'it is an offence for a person to drive on a road, a motor vehicle of any class [otherwise than in accordance with] a license authorising him to drive a motor vehicle of that class'.[36] Although in an autonomous vehicle, the user is not driving the vehicle, this is an area of the law which needs clarification in relation to automated vehicles.

Under the current law, designated lanes can be created for buses through Traffic Regulation Orders.[37] If an unauthorised driver uses them, they will be subject to a penalty charge.[38] A separate system, based on the bus lane model, can be used to collect fines on motorway lanes and in urban areas, designated for automated vehicles.

The legal age to obtain a driving licence is 17.[39] The age of the user-in-charge is a point of contention that needs to be addressed, to ensure there is no conflict with existing regulations. Further, a qualified individual will instruct the user how to use the vehicle and a theory and practical test has to be undertaken and paid by for the individual. Clarification needs to be given as to the process to obtain the licence.[40]

Issues

Through dissection of our survey results, public confidence has been identified as an issue. 53% of our respondents would be prepared to get into an automated vehicle. This represents a problem because members of the public lack confidence to use an autonomous vehicle available, so their usage would be greatly reduced when they are introduced.

32 GOV.UK, 'Reported road casualties Great Britain, annual report: 2016' (27 September 2017) <https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-annual-report-2016> p 8, Accessed 27th December 2018

33 RAC Foundation, 'Safety' (2018) <https://www.racfoundation.org/motoring-faqs/safety#a9> Accessed 27th December 2018

34 The Automated and Electric Vehicles Act 2018, s1(1)(a)

35 The Automated and Electric Vehicles Act 2018, s1(1)(b)

36 Road Traffic Act 1988, s87(1)

37 Traffic Regulation Act 1984, s2(1)

38 The Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005, s3(1)

39 The Motor Vehicles (Driving Licenses) Regulations 1999, s9(4)

40 The Motor Vehicles (Driving Licenses) Regulations 1999

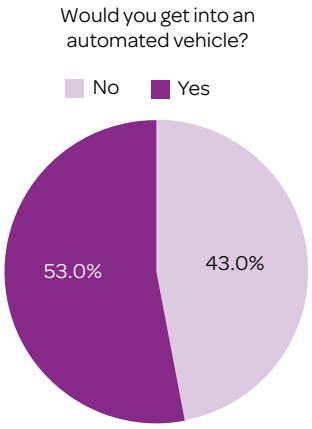
The lack of clear definition under the Automated and Electric Vehicles Act 2018 creates issues of clarity. The state of Georgia (USA) defines the operator as, 'any person...who causes a fully autonomous vehicle to move or travel'.[41] This definition justifies our own need to have a clear definition on what it means to use an automated vehicle, removing the confusion.

Ensuring safety is crucial, and it is essential to make the roads safe. In 2016, the Department of Transport announced that a total of 24,101 accidents were recorded, largely because of human error.[42] Therefore, autonomous vehicles would reduce the possibility of human error, thus decreasing the number of injuries and fatalities.

Automated vehicles aim to reduce traffic congestion which is currently a major issue for the England and Wales. On average, drivers wasted 31 hours in rush-hour traffic last year, costing each motorist £1168.[43] Traffic has increased year on year in central London since 2014, and automated vehicles would be a potential solution for this issue.[44]

Proposals

Our survey found that only 53% of participants would use an automated vehicle. This demonstrates that public confidence is relatively low.



1. *Need for clearer definitions*

Under the current law, there is no clear definition of what an automated vehicle is and who is the controller of such vehicle. The Law Commission's current report stresses how the 'user-in-charge is not a driver', and therefore, should not fall under the same obligations.[45] Hence, there is the need for a clearer definition for what a 'user-in-charge' is.

The legislation in the state of Georgia makes it clear as to what the role of a user of the autonomous vehicle is, and thus explains the parameters needed for a vehicle to be autonomous. Therefore, it is necessary in England and Wales to have one, clear definition for automated vehicles. This will aim to reduce confusion and misunderstanding of the public's view of autonomous vehicles.

2. *Public confidence scheme: compulsory education in schools and advertisements on television and social media*

To reduce the speculation and theories surrounding automated vehicles, we must implement strategies with the aim of informing and educating the public. We propose a policy should be introduced whereby the manufacturer would explain their car and design safety features to a wider audience using social media and television advertisements.

Furthermore, we propose that a policy for vocational education in schools should be introduced. Our survey identified that over 70% of under 17s would use an automated vehicle, suggesting that the under 17 age group has high confidence into the use of autonomous vehicles. Targeting this age group will allow the next generation to adapt swiftly to the changes. This would be organised and financed by schools voluntarily, but also by the manufacturer and the government as they have an interest in improving public confidence. Questionnaires may be used afterwards to assess the benefits of the training schemes.

41 Georgia Code section 40-1-1 (2017), para 38

42 GOV.UK, 'Reported road casualties Great Britain, annual report: 2016' (27 September 2017) <https://www.gov.uk/government/statistics/reported-road-casualties-great-britain-annual-report-2016> accessed 27th December 2018

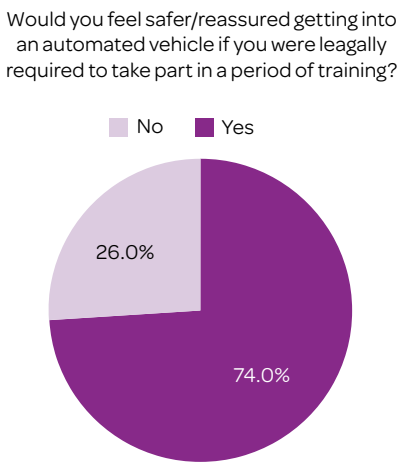
43 BBC News, 'UK must tackle 'astonishing' cost of congestions, study says' (6th February 2018) <https://www.bbc.co.uk/news/uk-42948259> Accessed: 27th December 2018

44 Transport for London, 'TLRN Performance Report' (Quarter 1, 2017/18) <http://content.tfl.gov.uk/tlrn-performance-report-q1-2017-18.pdf> Accessed: 27th December 2018

45 Law Commission, Automated Vehicles (Law Comm CP No 240, 2018) para 1.42

3. *Compulsory training for those operating automated vehicles.*

74% of respondents said that they would feel safer/reassured getting into an automated vehicle if they were legally required to take part in a period of training.



As safety is one of our key objectives, we propose to introduce compulsory training for those who want to buy, own or use an automated vehicle. This will be a legal requirement, and subject to a fine if not adhered to. This is to ensure that the public is not only educated, but the user is qualified and fit to operate the vehicle – similar to obtaining a driving license for a motor vehicle.

We propose that a new driving certification be introduced. This will teach the user how to use the autonomous vehicle and to understand what to do if the car needs to hand over control to the driver, for example in lower-level automation, and how to install updates etc. There must be a qualification that is universal, meaning that once a user has this, they may operate any fully automated vehicle by any manufacturer.

Driving schools will be required to ensure that the driver has passed the test if they wish to operate an automated vehicle in the future. Those learning how to use the automated vehicle will do so in the same way under current law – they will be instructed by a qualified individual and a theory and practical test will be undertaken through the DVLA, still paid for by the individual. However, initial funding may come from the government to incentivise people to use the vehicles. The new driving license that we propose would not teach users how to manually operate a vehicle as this is unnecessary.

4. *Lanes created on motorways designated for automated vehicles and automated vehicle only zones in urban areas.*

Designated lanes are designed to control and guide users and reduce traffic conflicts. Legislation will be needed allow for a lane on motorways to be created. The current law can be amended or built upon to create zones in cities just for automated vehicles.

We propose that introducing 'automated vehicle only zones' is important because it will help reduce traffic flow especially in congested areas. In response to overwhelming traffic in London,[46] it is our proposition that this is where the lanes are first introduced. It is necessary to monitor these lanes to ensure human driven vehicles do not cross into these lanes, as this could increase the risk of accidents. It is appreciated that the addition of these lanes may be difficult to implement due to the structure of existing road layouts.

5. *Legal Driving Age*

After analysis of the survey results, the majority wanted to keep the current legal age to drive at 17. We consider that there is no reason to change the law. We propose to keep the current legal age to drive at 17, adding a provision to The *Motor Vehicles (Driving Licenses) Regulations 1999,* to make it appropriate for automated vehicles.

Criminal and Civil Liability

Background

Our primary objective is to ascertain where the liability lies in certain situations for autonomous vehicles, criminally and civilly.

46 Evening Standard, 'London's most congested roads revealed... and this is how much they are costing you' (10th February 2018) <https://www.standard.co.uk/news/transport/londons-most-congested-roads-revealed-and-this-is-how-much-they-are-costing-you-a3762826.html> Accessed: 27th December 2018

We solely address level 5 automated cars. We believe the operation of this level, in comparison to other levels of automation, differs significantly. Therefore, the existing law requires reform. We propose that the laws for level 1-4 automated vehicles will remain the same as the laws for manually-operated cars. Our focus on criminal liability reform will be intoxication. Our focus on civil liability will be on liability in the event of a crash and insurance.

Civil Liability

In the event of a crash

Due to the complexity of both criminal and civil liability in the event of the crash, we have decided to focus only on civil liability. This has allowed us to go into the level of detail necessary and address other important issues outside of the problem of who is liable in the event of crash.

Current law

Section 2 of the Automated and Electric Vehicles Act 2018 states that: 'where an accident is caused by an automated vehicle... and the vehicle is insured at the time of the accident, and an insured person or any other person suffers damage as a result of the accident, the insurer is liable for that damage'.[47]

Section 4 of the Automated and Electric Vehicles Act 2018 states that 'an insurance policy in respect of an automated vehicle may exclude or limit the insurer's liability under *section 2(1)* for damage suffered by an insured person arising from an accident occurring as a direct result of— (a) software alterations made by the insured person, or with the insured person's knowledge, that are prohibited under the policy, or (b) a failure to install safety-critical software updates that the insured person knows, or ought reasonably to know, are safety-critical'.[48]

Issues

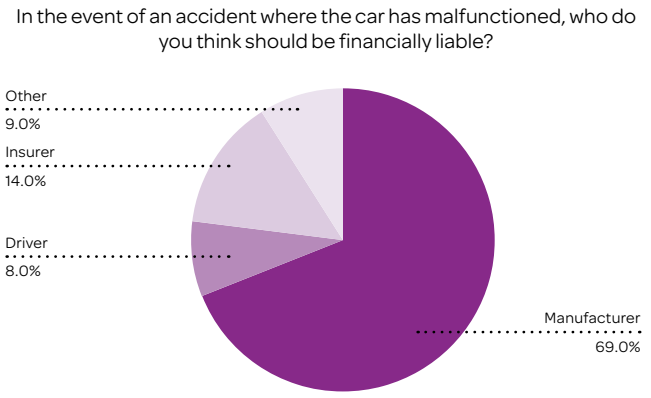
Under the current law, strict liability attaches to the insurer. Therefore, the insurer is automatically liable if there is a crash, without having to be at fault. This can ensure that the victim is compensated quickly. However, if there is a situation where there is more than one insured person in the car at the time of the crash, it is not clear which insurance policy is to pay. Furthermore, if the insurer is strictly liable, the manufacturer may avoid precaution against small risks. This is because the profit may take priority over spending money to militate against the risk.

Proposals

Our proposals relate to crashes caused by fault with the automated vehicle only. We do not address a scenario where a crash is caused by factors outside of the vehicle; for example, adverse weather conditions or terrain. Instead, we recommend below that a user is insured in the event of such instances.

Manufacturer

The manufacturer is responsible for installing the necessary technology and safety requirements to prevent the automated vehicle be involved in a collision. We propose that liability should be mainly apportioned to the manufacturer. The manufacturer will be liable where they have been negligent in producing the automated vehicle, or in the event of a collision caused by an error with the car. Our proposal was met by support from the public. Our questionnaire identified that 69% of the respondents believed the manufacturer should be liable in the case of an accident. This demonstrates a clear majority support for manufacturer liability.



47 The Automated and Electric Vehicles Act 2018, s2(1)

48 The Automated and Electric Vehicles Act 2018, s4(1)

This should not deter the manufacturer from producing automated vehicles, as very few accidents should occur unless there is a problem with the hardware or software. However, it is unjust for the manufacturer to be fully liable for something that is outside of their control. To protect against the financial risk of claims made against them, the manufacturer could take out insurance. This would cover errors with the technology that occur outside of the manufacturers control; for example, if the vehicle is not produced negligently, but then malfunctions once in use and causes a crash.

User/Insurer

The user-in-charge is responsible for carrying out updates before a journey. In the situation where there are updates to be completed by the user, and there has been a failure to install such updates, liability may shift to the user. We do not recommend a change to the current law in this scenario. In this situation, if the vehicle is involved in an incident, liability will fall on the user, unless the liability is not excluded by the user's insurance policy. If so, liability will lie with the insurer. If a crash occurs because of a failure to install updates, it needs to be clear who the user was when entering the car. We propose that on every journey there must be a designated user. This will be inputted into a log kept in the car.

Insurance

Current law

Under Section 143 of the Road Traffic Act 1988, 'a person must not use a motor vehicle on a road or other public place unless there is in force... a policy of insurance...'.[49]

Issue

The purpose of insurance is to cover human error and driver liability. 4 out of 5 major reasons for crashes involve some type of driver error.[50] However, since a level 5 automated vehicle is not operated by the user in traditional terms, the risk that is involved is significantly minimised. This raises the question of whether insurance is needed to protect the user in an incident.

Proposals

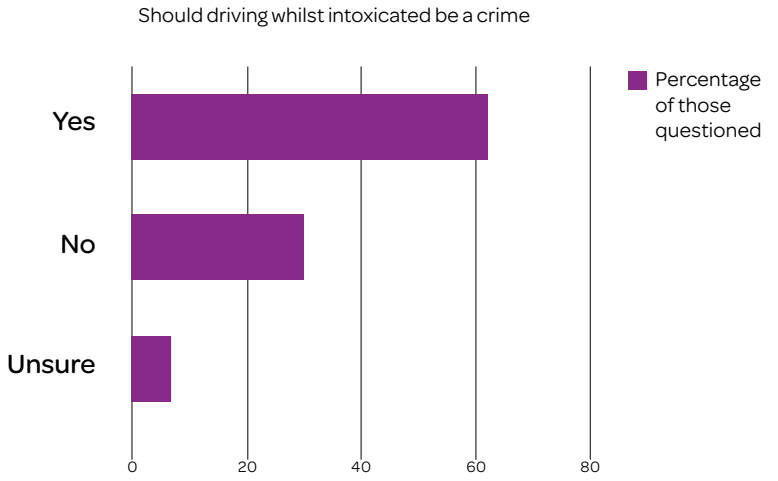
We propose that insurance remains compulsory. There are instances where the user still needs to either compensate another or be compensated themselves. In the event that an accident is caused by something other than the malfunctioning of the vehicle, the user or another party involved in the accident may need compensation. Nonetheless, the premiums of insurance are based on risk. Due to the reduced risk that automated vehicles produce, premiums for the consumer will be greatly reduced.

Criminal liability

Intoxication

Current law

Section 5 of the Road Traffic Act 1988 states that 'if a person drives or attempts to drive a motor vehicle on a road or other public place, or is in charge of a motor vehicle on a road or other public place, after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he is guilty of an offence.'[51]



49 The Road Traffic Act 1988, s 143

50 BBC News, "Most road accidents 'driver's fault'" (27th September 2012) <https://www.bbc.co.uk/news/business-19746515> Accessed 28th December 2018

51 The Road Traffic Act 1988, s 5

Issue

The criminality of intoxication remains contentious. In an automated vehicle there may be no human involvement necessary. However, if the user-in-charge is intoxicated when entering the vehicle, they may not discharge the necessary responsibilities, or fail to do so properly. This could cause significant issues that could be avoided.

Proposals

We propose for intoxication to remain a crime for the user-in-charge of an autonomous vehicle. This is supported the public with 62% agreeing that it should remain a crime. When a user is in charge, they are being nominated as responsible. Being under the influence reduces the user's capability to be responsible and deal with a situation if a malfunction does occur and the user needs to be involved. Through introducing this proposal, the public should also have greater confidence in the use of automated vehicles. This is because the safety of these vehicles will be increased, and the risk of a crash will be reduced.

Data Protection

Background

With the introduction of automated vehicles, there is a need for effective laws to address data protection. Our proposals therefore recommend changes to the *Data Protection Act 2018*.

We aim to increase the safety and public confidence surrounding automated vehicles. This is particularly important considering the negative portrayal of automated vehicles in the media, and general lack of knowledge concerning the technology. It is clear from our survey that there is an apprehension of this new technology, which can be partly attributed to uncertainty about privacy.

Our reform addresses the disclosure of data, applying to all levels of automation.

Current Law

The Data Protection Act 2018 states that ''personal data' means any information relating to an identified or identifiable living individual...'.[52] The Act prescribes that ''processing', in relation to information, means an operation... such as (a) collection, recording, organisation, structuring or storage, (b) adaptation or alteration, (c) retrieval, consultation or use, (d) disclosure... (e) alignment or combination, or (f) restriction, erasure or destruction'.[53]

The *General Data Protection Regulation* (GDPR) states that 'processing shall be lawful only if and to the extent that at least one of the following applies: processing is necessary for the performance of a contract... compliance with a legal obligation... to protect vital interests... for the performance of a task carried out in the public interest...for the purposes of legitimate interests.'[54]

Issue

We aim to ensure that the law on data protection is suitable for automated vehicles, and that the public's privacy is adequately protected. The recent publicisation of instances involving personal data breaches illustrate how significant data protection is. If data accumulated from automated vehicles is not handled correctly, it could impact the safety of users and inhibit the progress of automated vehicle technology.

Under the current law, data can be processed lawfully for the public interest or for legitimate interests. As stated above, processing includes the disclosure of data. Automated vehicles are likely to hold significant amounts of data on individuals. The law as currently enacted would give companies that own the data from automated vehicles considerable scope to justify disclosing data to third parties. It is necessary for this to be addressed in order to improve public confidence and safety.

52 Data Protection Act 2018, s3(2)
53 Data Protection Act 2019, s 4
54 General Data Protection Regulation 2016/679, Art 6

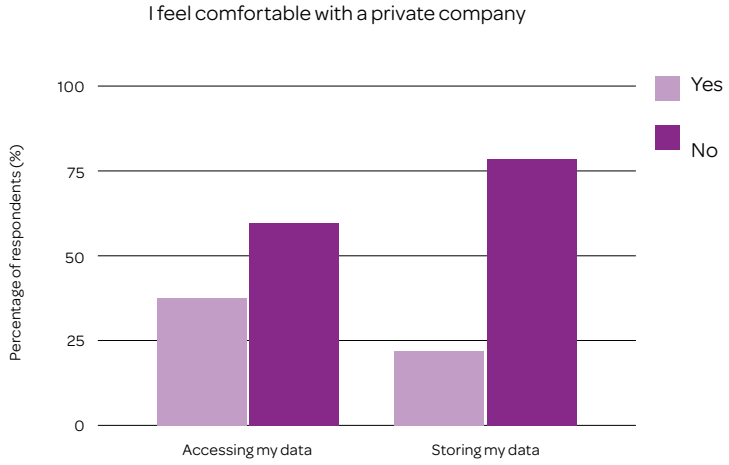
Proposals

We propose that if an individual's data from an automated vehicle is disclosed to a third-party, in the absence of the user's consent, it should be a criminal offence.

Our recommendation introduces stringent sanctions for disclosing data to third parties. It removes the categories for lawful disclosure under the GDPA, except for consent. We believe that there are limited policy reasons for disclosing data to third parties. They are not parties who necessarily need, or should be allowed, access to an individual's private data. Thus, it would be reasonable to eliminate this risk as a whole unless the consent of the user is given.

This is in line with the results from the questionnaire. 61% of the public stated that they would not feel comfortable with a private company accessing their data, and 77% stated that they would not feel comfortable with a private company storing their data. Originally, we considered that the proposal should relate only to a private company, as this would be sufficient to protect the privacy of individuals. However, on further consideration, we decided to broaden this proposal, so it applied to all third parties. This is to ensure that all potential parties are who could have access to personal data are covered.

We propose that there should be an exception to the rule. Data can only be disclosed to: the manufacturer, the government, and the police. In relation to the government and the police, accessing personal data ensures public safety. With regards to the manufacturer, it is necessary for them to have access to an automated vehicle user's data in order to further develop their product.



Part 4: Criminal Law

Recommendations on the laws governing offensive weapons.

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Stop and Search

The police in the United Kingdom have the power to stop and search anyone if an officer has reasonable grounds to believe an individual could potentially be classed as involved in committing a crime under the Police and Criminal Evidence Act 1984. Most searches are performed when police are wearing uniform, but if they stop and search someone without uniform, they must show their warrant card. The purpose is to reduce street crime and deter people from carrying illegal items such as offensive weapons.

The police can use their authority to:

- Ask questions about your name, where you are going and why you are going there IF you are just being stopped.[55]
- Arrest or search if the stopped individual refuses to answer questions.[56]

Recently, the police force in the UK has faced numerous criticisms, which will be explained.

Problems with the current system

The stop and search system is currently seen as discriminatory as it has been described as specifically targeting young black men. Whilst it must be considered that black men are more likely to commit crime, according to statistics from England and Wales[57] the stop and search method creates hostility through racial discrimination. Thus, taking away from its effectiveness.

According to the statistics:

- With every 1,000 arrests, 38 black people are arrested in comparison to 12 white people
- With every 1,000 arrests, 71 black males are arrested in comparison to 20 white males, e.g. the arrest of J Hus in December 2018 for carrying a lock knife.

Whilst these statistics stand, it isn't fair to judge a certain group of people - a majority cannot be held responsible for the actions of a minority. The police should go through some kind of training to appropriately deal with these situations. After all, it is not surprising that young black males are frustrated as they are continually targeted by stop and searches, even when they are innocent. Furthermore, if the police continue to target certain demographics, the likelihood of crime as an act of rebellion increases. Only 15% of stop and searches result in arrest, showing that racial profiling is unfair and incorrect[58].

Despite the fact that statistically young black men are more likely to commit crime, this does not mean that all young black men commit crime. The issue is that those stopped by police feel like criminals before they have been formally charged with holding or using a weapon.

55 Police Reform Act 2002, section 50(1)

56 Police and Criminal Evidence Act 1984, section 2(1)(b)(i)

57 'Arrests' (*GOV.UK*, 2 October 2018) <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/number-of-arrests/latest> accessed 12 December 2018

Our solution

We propose that workshops and talks should take place in secondary schools informing students about the process of a stop and search and how it benefits to display compliance. An issue at the moment is asymmetric information: in schools it has become a trend for young people to tell each other that it isn't necessary to respond to questions during a search. This means that incorrect information is being passed around and more people are detained because of the incorrect strategies they heard through the grape vine. Therefore, the correct age-group needs to be educated on what a stop and search actually entails, their rights and how it is not an accusation but a process for decreasing crime, in particular crime related to offensive weapons.

We also propose that metal detectors should be put in schools temporarily in order to prevent unnecessary confrontations by police in the street. Whilst we acknowledge that this may cause outrage in certain schools or areas, the government has a duty to maximise and ensure the well-being and safety of the people.

Upon researching stop and searches in the country, we came across this online system called the Y-Stop. Young people have developed a program in order to inform more young people about their rights. The organisation offers tips and advice on how to handle a situation if you are stopped, one being a simple acronym: **S.E.A.R.C.H**

Stay Calm – keep yourself calm at all times to help ensure a clear and quick resolution.
Eye Contact – be polite so that it makes it harder for anger or fear to better you.
Ask Questions – this not a confrontation. Ask questions about the process as the police need to account for themselves.
Receipt - get written proof of the search and ensure that this has been completed truthfully.
Record – you have a right to record the search, but you must ask permission to do so before reaching for a video recording device. Filming protects everyone's interests.
Confidence – know your rights.
Hold to account – following the above steps can encourage the police to behave properly." [59]

If this is taught in schools, more young people that are stopped and searched will become more aware about their rights and the limitations of the police force. They will also know how to report a stop and search if they believe it was motivated by a discriminatory factor, such as race. This will prevent more young people spending unnecessary time being detained because they didn't behave in an appropriate manner during their stop and search.

In addition, community centres should be built up to not only to inform young people, but people of all ages in order to protect themselves. The best way for people to learn about something like this is to be taught by others, including those in the police force.

If the police develop a better relationship with the youth, it will reduce the need for stops as a deterrent mechanism. This requires a change in attitude from both the police force and from citizens, especially youths. Only then will this allow stop and searches to work effectively; as they target only individuals that are a threat; a healthy relationship between citizens and the police will inherently deter the carrying of offensive weapons as both parties work in each other's favour. automated vehicles.

58 Femi Oyeniran 'Stop and search in the UK is fundamentally flawed, and disproportionally affects people of colour' The Independent (London, 13 August 2017) <https://www.independent.co.uk/voices/stop-and-search-uk-police-amber-rudd-body-cameras-discrimination-a7890821.html> accessed 20 December 2018

59 "Stop and Search" < https://www.release.org.uk/law/stop-and-search >

Acid Attacks

The number of acid attacks has increased by 500% between 2012 and 2016 and last year, 2017, there were reported to be around 2 acid attacks per day[60].

According to current law guidelines, there are no background checks on those who want to buy acids. Currently, there is only certain criteria as to how much acid can be in a product for it to be considered safe. The Poisons Act of 1972 enforces businesses to commit not to sell products that exceed the limit of the minimal amount of acid in a product to those under the age of 18[61]. Some examples that the policy paper has included are: products that contain sulphuric acid such as drain cleaners/unblockers and products that contain sodium hydroxide (12% and over) such as paint strippers.[62]

We want to put forward the notion that background checks should apply to those over the age of 18. We also propose that acids should not be sold online, as it more difficult to perform accurate background checks on online purchases. Enforcing this will reduce accessibility of acids, increasing the cost of attaining the acid and thus reduce the use of acid as a weapon.

The Port Arthur massacre of 1996, in which 35 people were killed, completely transformed gun regulation and laws in Australia[63], requiring firearm licensing and registration. Since this reform, there has not been a gun-related large-scale massacre. This could perhaps be a solution that the UK can take notes on when it comes to using acid as a weapon as it is so easily and readily available.

Problems with the current system

There is no legal age limit on any kind of acid, for example bleach or cleaning liquids. This has led to an increase in younger people committing acid attacks or acting as a medium for potential attackers. Additionally, the effects of an acid attack are extremely long-lasting and most likely for life, victims therefore continue to live in fear when their attackers are released. Asides from immediate medical attention, extensive support of how to live life after an acid attack is not visibly available. In this way, the victims are left unprotected, and have no choice but to live with the fear that they could be targeted again.

Additionally, the prison system in the UK does not reform the attackers, therefore, they may be just as likely to commit another attack when they leave. In this way, the purpose of prison has to change, to actually reform people, not just keep them locked away from the rest of society for a certain period of time.

Our solution

There should be a mandatory credit payment method when purchasing corrosive substances as it is easier to track people. There should also be a limit to how much a person can buy at once.

It is quite far-fetched and impossible to eradicate all acid attacks due to its common use in our daily lives, but our solution aims to reduce the number of attacks.

As mentioned previously, we believe that training must take place for prison workers in order to change the meaning of prisons from the inside, rather than just an implementation of change from the government level.

In addition, we propose the implementation of background checks on over 18s, to ensure that those buying corrosive substances are not doing so to repeat an offence and they have a sufficient reason to purchase the substance.

60 'Everything you know about acid attacks is wrong' BBC News (London, 17 November 2017) <https://www.bbc.co.uk/bbcthree/article/5d38c003-c54a-4513-a369-f9eae0d52f91> accessed 11 November 2018

61 'Policy paper: Responsible sales of acid and corrosive substances: voluntary commitments' (GOV.UK 25 July 2018) <https://www.gov.uk/government/publications/sales-of-acid-voluntary-commitments-for-retailers/responsible-sales-of-acid-and-corrosive-substances-voluntary-commitments> accessed 2 December 2018

62 Ibid.

63 Calla Wahlquist 'It took one massacre: how Australia embraced gun control after Port Arthur' *The Guardian* (London, 14 March 2016) <https://www.theguardian.com/world/2016/mar/15/it-took-one-massacre-how-australia-made-gun-control-happen-after-port-arthur> accessed 6 November 2018

We have considered the implications of banning acids online (i.e. the rise and domination of black markets), but introducing checks and licensing would deter people from purchasing acids as a weapon rather than for their actual use. The registration and licensing system would discourage buyers of acid as a weapon by increasing the time and cost, thus deterring them from using acid as an offensive weapon and hopefully crime in general.

The Economic Effect

One of our propositions is the implementation of a licensing scheme on acids, where background checks are done on and licenses distributed. In this way, the Government would receive revenue (from the fee paid when considering buying a licence for acid), and the money could be used to treat acid attack victims. It could be used to help victims with psychological factors, for example Katie Piper, who is struggling to come to terms with the fact that her acid attacker is getting released: *"This is a really difficult time for me, and is something I need to deal with"*.[64] Ultimately, the licence will act as a form of tax, creating a burden for the consumer, thus reducing and limiting purchases of corrosive substances.

Sentencing

Problems with the current system

Juvenile offenders have a proven reoffending rate of 40.4%. Our group believe that this is unacceptable, and that efforts should be made to encourage young offenders to re-evaluate their choices and integrate back into society. When young offenders are put into prison rather than given the opportunity to turn their lives around, the chances of them being able to successfully live normal lives (i.e being able to pursue higher education (for example, the University of Oxford has a Criminal Conviction Panel to debate whether applicants with unspent criminal convictions are suitable for entry into the university[65]), or being able to find employment) are minimal.

Therefore it seems to us that the most logical way to allow young people who are charged with possession of or threatening with an offensive weapon is to find alternative forms of punishment to use in place of prison time.

Our solution

We suggest replacing the current sentencing for first time juvenile offenders charged with the aforementioned crimes with a set minimum period of community service, so as to allow them to learn skills which can be applied to positive future endeavors (such as work) while also paying for the crimes they have committed by helping their local communities. Penal intervention in the lives of children is unhealthy and injust; it interferes with their education and hinders regular social and mental development - rather than developing with family and friends in a positive and loving environment, young people in prison develop around criminals, and thus end up with the mindset of a criminal.

Even from a monetarist standpoint reducing the amount of young people entering the prison system is a rational thing to do; the less people are in prison, the less money will have to be spent on prisons. It costs more than £50,000 to send a petty criminal to prison, compared to £2,800 to issue a community service sentence.[66] The £47,200 saved could be used to invest in community services (such as youth centers) and thus to keep other young people from being sucked into crime. It could also be argued that in allowing young offenders to continue their educations as normal, a demographic that would otherwise have been rendered unemployable are now viable members of the workforce. In surveys conducted by our group, the public were majorly against prison time for juvenile first offenders, with 52% believing they should receive community service and 22% believing they should only receive a warning.

64 'Katie Piper: Acid attacker release is 'really difficult time for me'' *Sky News* (London, 24 August 2018) <https://news.sky.com/story/tv-presenter-katie-pipers-acid-attacker-to-be-released-from-prison-11480569> accessed 17 December 2018

65 https://www.ox.ac.uk/admissions/graduate/applying-to-oxford/university-policies/criminal-convictions?wssl=1

66 https://www.bbc.co.uk/news/magazine-10725163

The topic of resources for young people came up frequently in our group's discussions. We suggest that money saved from sending young offenders to prison should go into youth centres/groups and into government endorsed alternative careers advice, for young people who do not feel that the traditional route of going into higher education is for them. Drill music is thought of by many as responsible for increased knife crime in the UK, with Met Police Commissioner Cressida Dick calling for drill music videos to be removed from online platforms. Rather than suppressing the creativity of young people involved and feeding the misguided stereotype of young people being dangerous criminals, we suggest the encouragement of young people involved with the drill music scene to pursue stable careers within the wider music industry.

Fancy dress defence

Current law and its problems

According to the current laws one of the acceptable defences for carrying an offensive weapon is that it's part of a fancy dress in which you would be allowed to carry an offensive weapon as part of a costume. A common example used to explain this defence is used in the instance of certain traditional celebrations, such as Halloween, where one might dress up like a policeman and carry a baton. In this case the baton would be accepted but alone on an ordinary day this would not be accepted. The government's official definition of an offensive weapon is 'a tool made, adapted or intended for the purpose of using'. The government's current sentencing if caught in possession of an offensive weapon is four months and below for a second-time offender under 16, and six months for a someone over 18. However, sentences differ in terms of threatening someone with an offensive weapon in which a minimum of 2 years is given.

Proposed reforms and how to achieve them

However, in order to reduce the number of offenders and people carrying an offensive weapon we propose the idea of getting rid of the fancy dress defence as instead it blurs the lines in which the government stands with weapons, it means that there are ways to undermine the laws put in place and use it for negative advantages. Because of these blurred lines there are more people carrying offensive weapons and it is statistically proven that in the year ending March 2015, there were 7,866 offences in which firearms were involved, a 2% increase compared with the previous year. This is the first increase in offences involving firearms in 10 years. Offences involving knives or sharp instruments also rose by 2% over the same period (to 26,374). Alongside this evidence, ending the fancy dress defence means the government presents a zero-tolerance front and shows how offensive weapons have no lee way. Also ending traces of offensive weapons the government diverts from the government's aim of just increasing sentences as these in fact do not benefit anyone as not only does it isolate people from society in which they view have wronged them (especially amongst the youth) it also acts as a safe house as its statistically proven that many people reoffend. Likewise, the idea of sentencing is not the main solution as even 60% of short-sentenced prisoners reoffend within the same period. In both England and Wales 46% of adult prisoners were proven to have re-offended within a year of release.

Placing a ban on the fancy dress defence and shorter sentences will have a greater impact on society as the government can redistribute their attention to other things such as youth centres, which would help decrease the number of youths committing crimes and feeling worthless. Instead, with the government investing into youth clubs it provides alternative spaces for young people and could potentially keep them off the streets. By investing into more youth centres, it promotes a better relationship between the youth and the police as it allows them to see the police as a body to protect them rather than a body against them. In terms of making the youth clubs function economically, perhaps released offenders can work at youth clubs, advising children not to commit crimes and perhaps share their experiences with them. Also, local areas could perhaps have local members working alongside the government to support the youth clubs. In addition, youth clubs could partner with schools and share resources and perhaps schools in local areas could pay of percentage of money into local youth clubs to help them run. Having youth clubs provides alternative paths for children as there they could find their passion such as music and even becoming a youth worker themselves.

Conclusion

To summarise our report, we suggest the certain proposals and reforms:

Funding and Investments

We strongly support an increase of funding and investments towards youth clubs and other projects that increase awareness of the risks of carrying offensive weapons. Youth clubs in the community provide a safe environment after school or during the weekend, therefore investments that provide and support alternatives for younger people ultimately will decrease the amount of offensive weapons being carried. As well as, funding projects that provide workshops for the youth during school time will increase awareness of the topic.

Reduce Severity of Punishments for Under 18s

Those that are under the age of 18 should face less severe punishments than what is currently being practised. Our proposal is that more emphasis should be focused on rehabilitation and education, even for repeat offenders.

Fancy Dress Defence

Lastly, we propose a removal of the fancy dress defence. There are certain loopholes that provide a defence during periods of the year, such as Halloween. This will act as a deterrent for any individual who attempts to benefit from this.

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1. *https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/number-of-arrests/latest*
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