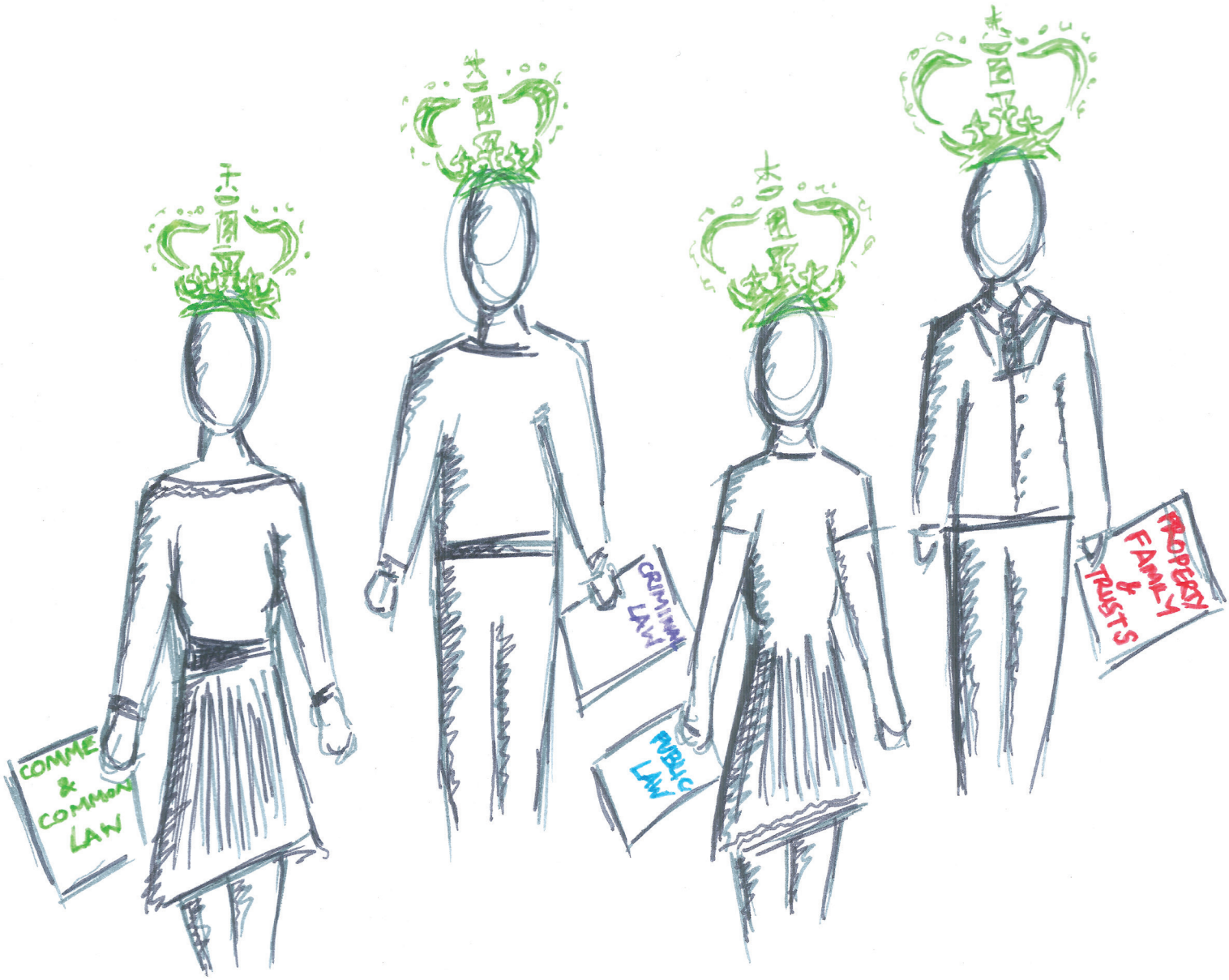
Big Voice London 2013
Model Law Commission



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Foreword note by the Big Voice London Project Coordinators

This year marks the third anniversary of the Big Voice London project, and it has been a pleasure for us to see the project go from strength to strength. With the launch of the Model Law Commission in October, Big Voice London embarked on an ambitious journey to bring the voices of young people to legal policy making and demystify our legal system in a unique way.

Our students were given the opportunity to share with the world their opinions - and those of their peers - on some of the most challenging social and legal issues we face in the UK today, and the opportunity to suggest recommendations for reforming the law in these areas. Given that the voices of young people are so often excluded from the mainstream law reform process, we felt it was particularly important to find a way to engage young people in the process of shaping laws that may impact them in the near future, and we have been delighted to witness the maturity and sophistication with which our students have taken up this challenge.

One of the things that has always been special about the Big Voice London project is its ability to foster relationships between the legal profession and our students, and the key to this has always been the willingness of the legal community to volunteer their time and talents to support our students. We have been fortunate that so many leading professionals have acted as speakers during the course of the project, and we are constantly inspired by the passion and commitment that each of them have demonstrated as they guide our students towards a better understanding of the law and its role in our society.

Finally, it has given us great pride to see the Big Voice London volunteers working so closely with students, and helping them discover the many ways that they can be a catalyst for positive change within our legal system. Without the hard work of our volunteers the project could not function, and we cannot thank them enough for their commitment over the past months.

Rosie Bayley, Rory Young & Liam McClure
Project Coordinators, Big Voice London

Introduction

Big Voice London

Big Voice London was founded in January 2011 with the goal of empowering young people by fostering engagement with the legal system and giving a voice to those who are often overlooked in the world of legal policy. Big Voice London's approach to fostering youth access to the legal system has been to bring together young people and legal policy makers, including practitioners, judges or legislators. To this end, the project works with students from state schools in London, targeting those schools in areas with the highest child poverty rates and whose voices might be particularly unrepresented.

Big Voice London is an entirely volunteer-led organisation, and our team of volunteers are generally post-graduate law students joined together by their dedication to increasing youth engagement with the legal system. We have been fortunate to receive support from a number of organisations and individuals, including continued advice and support from the administration of the Supreme Court.

Model Law Commission 2013

In 2013 we launched a new component to the Big Voice London project; The Model Law Commission. This is a simulated law reform project, whereby students were split into teams to explore four different areas of law, before going on to offer their own recommendations for how the law in each area may need to be reformed.

Our students have worked in four teams mirroring those of the real-life Law Commission: Criminal; Public; Commercial; Property, Family & Trusts. The process that students have followed also reflects that used by the Law Commission, with five distinct phases of their work. These phases have been researching; formulating recommendations; consulting their peers; reporting on their findings; and drafting statutory amendments.

The Model Law Commission also hosted a two-day conference in October, where a number of legal and policy experts introduced students to their area of law and some of the issues within it. Following this, students formulated their own recommendations for how the law should be reformed, and distributed these recommendations to their peer groups for consultation.

This report presents our students' findings and highlights their recommendations for how the law should be reformed.

Our Students

Our students undergo an application process to join the project and taking part in Big Voice London represents a significant commitment of attendance at weekly session from October to December 2013. Additionally, our students also attended a two-day conference during the October half term. Our students have consistently shown an ability to balance demanding academic commitments with their enthusiasm for the Big Voice London, and have demonstrated great professionalism in balancing the two.

The continued support of the schools and colleges we work with is essential. The project's success depends on students feeling supported by their academic institutions, and we are extremely grateful for the assistance provided by individual teachers and staff members. This year our students primarily attended Nower Hill School; City & Islington College; Channing School; St. Dominic's Sixth Form College; Tower Hamlets College; Hackney Community College; Quintin Kynaston Academy; Mulberry Sixth Form; and Newlands Girl's School.

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Acknowledgement

We are extremely grateful to the **LexisNexis team** for kindly sponsoring this publication and launch event, and for their continued support of the Big Voice London project. 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 individual, including guest speakers listed in this report and the UK Supreme Court. 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 instances of domestic violence, their procedures in and around the court room & the awareness of the provisions available for the victims of domestic violence

Compiled with thanks to:

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Challenging attitudes in society

Outlining the problem

Although victims of domestic violence are not only women (and not all perpetrators of domestic violence are men) it is important to note that the majority of reported victims of domestic violence are women. This is illustrated by the staggering number of female victims of domestic violence. Women make up 81% of victims of domestic violence.[1] 1 in 4 women will be a victim of domestic violence in their lifetime[2] and on average 2 women a week are killed by a current and former male partner.[3]

We, as a group, feel that gender inequality in our society fuels the prevalence of this male against female violence. The gender bias men and women experience throughout their lives fuels the (mistaken) idea that men are superior to women and is therefore likely to encourage domestic violence as it reinforces structures of gender oppression.[4]

We maintain the belief that society's dominance by males is an indirect, yet crucial, cause of gender-based violence; a patriarchal culture that encourages violence against women.

The following recommendation looks at challenging these social attitudes. This recommendation seeks to educate and challenge current pervasive social attitudes, reinforcing ideas of equality and inclusion for the benefit of victims of domestic violence.

1 Women's Aid. (May 2013) "*Domestic Violence Statistics.*" Available: http://www.womensaid.org.uk/domestic_violence_topic.asp?section=00010001002200036sionTitle=statistics. Last accessed: 6th Nov 2013

2 Women's Aid. (May 2013) "*Domestic Violence Statistics.*"

3 Women's Aid. (May 2013) "*Domestic Violence Statistics.*"

4 Asian and Pacific Institute of Domestic Violence. (2013) "*Patriarchy & Power.*" Available: http://www.apiidv.org/violence/patriarchy-power.php Last accessed: 6th Nov 2013

Recommendation

- Through *education* we hope to decrease the likelihood of future domestic violence. This is a preventative action point and a policy recommendation, rather than a recommendation to change a current law.
- We recommend *implementing feminist studies as a compulsory secondary school subject* (i.e. as a subject included in KS3 curriculum) up to year 9, with the option to take the subject at GCSE (/O-Level when introduced) and A-Level.

Core subjects as they stand now (at KS3 level) include English, Maths, Science, History, Geography, Modern Foreign Languages, Design and Technology, Art and Design, Music, PE, Citizenship and ICT. Alongside these subjects are 'other compulsory subjects' including Sex Education and Religious Studies[5] We propose to add Feminist studies to this second category of compulsory subjects.

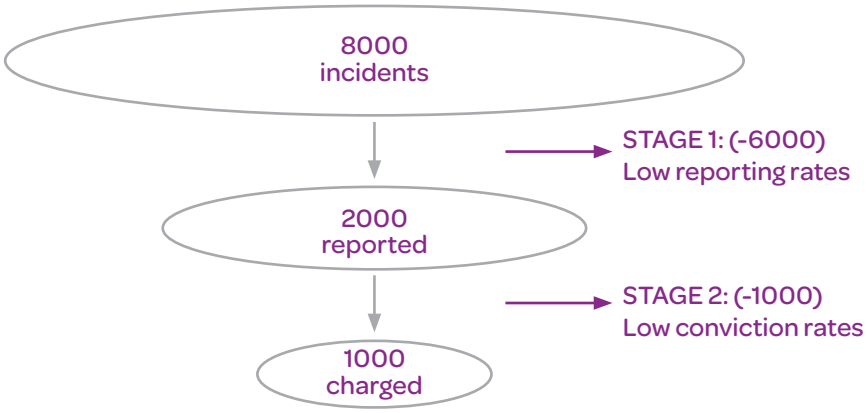
Benefits

Including feminist studies as a core subject of the national curriculum is an overt act of a willingness to challenging social attitudes. By tackling norms of gender inequality in our schools, the government might prevent such attitudes progressing into more serious forms, such as domestic violence. Furthermore, including it as a core subject would mean that subject matter missed in other subjects will be covered in feminist studies. For example if a school decides not to teach the suffragette movement in history, this important piece of subject matter will be covered in feminist studies.

Low reporting rates

Outlining the problem

A team at 'Standing Together' carried out an investigation in one London borough. The findings of which stated that there are around 8000 victims of domestic violence every year (in this one borough), of which only around 2000 are reported and only 1000 are charged. These means that around 6000 incidents of domestic violence go unreported every year and a further 1000 are reported but not taken further. On average a victim of domestic violence will have experienced 30 incidents of domestic violence before they report it. The diagram below illustrates this:



5 Provided by gov.uk (18th Sep 2013) *"The guide to the national curriculum."*.
Available: http://www.gov.uk/national-curriculum/other-compulsorysubjects Last accessed: 6th Nov 2013

There is a significant drop in the number of incidents reported every year. We have identified two stages a victim will potentially have to pass through before their perpetrator is charged. The first stage, and the one which we will deal with in this section, relates to the low reporting rates.

Victims of domestic violence are unlikely to report for reasons including:

- Fear and intimidation. They may feel the violence will get worse if they report it
- Manipulation by the perpetrator
- Children: If the victim has children with the perpetrator it is more likely that they will not report because they want their children to grow up in a family home or do not want them to go through a messy court process
- Financial Aid: Many victims fear not having the financial aid to help them through any legal process
- Personal Feeling: Victims may be in love with their perpetrators and are therefore unlikely to report instances of domestic violence
- Victims are unaware of the provisions available to them

Our recommendations look at ways in which we can help victims to report instances of domestic violence.

Recommendations

- **Funded advertising**
- **Awareness of available provisions** – We also discovered that there are low reporting rates because victims of domestic violence are unaware of the provisions they are entitled to or can access. Some of these provisions include:

    1. Legal Aid
    2. Court provisions i.e. use of a screen during trials
    3. Access to a legal advocate & independent domestic violence advocate (IDVAs)
    4. Shelters

    We recommend a change to Magistrates, Crown and County court practice guidelines requiring alleged victims to be sent a stock letter informing them of the availability of the above provisions.

- **A compulsory workplace policy** – The workplace will be an effective way to raise awareness about provisions available to domestic violence, and would help employers take action against domestic violence. Domestic abuse currently costs UK businesses over £1.9 billion a year[6]. In the UK more than 20% employed women take time off because of domestic abuse and 2% lose their jobs as a direct result of that abuse[7]. 75% of women who experience domestic violence are targeted in the workplace[8]. We recommend creating a legal requirement, through the relevant Health and Safety Act, that workplaces implement a policy for supporting victims of domestic violence, right through from initial report to the conclusion of legal proceedings. Having a legal requirement for a workplace policy for domestic violence would not only increase awareness but will also satisfy statutory obligations under the ***Human Rights Act***

6 Equality and Human Rights Commission (2013) "*The proposed violence against women, domestic abuse and sexual violence duty.*" Available: www.equalityhumanrights.com/uploaded_files/Wales/vaw_workplace_guide_2013.pdf Assessed: 6th Nov 2013

7 *"The proposed violence against women, domestic abuse and sexual violence duty."*

8 *"The proposed violence against women, domestic abuse and sexual violence duty."*

1998[9], the *Equality Act 2010*[10], the *Health and Safety at Work etc Act 1974*[11], the *Management of Health and Safety at Work Regulations 1992*[12], the *Reporting of Injuries, Disease and Dangerous Occurrence Regulations 1995*[13] and the *Health and Safety (Consultation with Employees) Regulations 1996*.

The Court Process

Outlining the problem

The second stage as described in the previous diagram details low conviction rates. This is a very big issue and in part derives from non-attendance of victims in criminal prosecutions. Victimless prosecutions are likely to fail due to lack of evidence (there are likely only two people who witness such an event/s – the victim and accused). There are a number of reasons victims may want to either withdraw their statements, not attend court or both. Some of these include:

1. A lack of financial provision for victims
2. Between the report and the court proceedings the victim and perpetrators have gotten back together and therefore are unwilling to attend court proceedings
3. Victims are too afraid to face their perpetrators in court
4. Victims are afraid for their children's safety
5. Victims feel alone and a lack of support through the court process

This is an on-going issue and therefore needs to be addressed. Our recommendations look at ways in which we can support victims throughout the court process, subsequently leading to less non-attendance by victims.

Recommendations

- **Financial provision for victims** – In order to qualify for legal aid, especially in civil cases, the victim must show that they are incapable of paying for legal costs[14]. In order to qualify for legal aid your gross income must not be more that £31,884 a year including your partner's income[15]. For victims of domestic violence, they are often financially manipulated and therefore do not have access to the household's gross income. We therefore recommend looking at legal aid from a more subjective viewpoint, looking particularly not at the gross income, but how much money the victim has access to. Furthermore, we recommend that legal aid should be assessed with regards to amenity costs that a potential victim has to pay (including the burden of re-housing oneself after leaving an abusive relationship) and dependents when assessing a person's ability to pay legal costs.

9 *"The proposed violence against women, domestic abuse and sexual violence duty."*

10 *"The proposed violence against women, domestic abuse and sexual violence duty."*

11 *"The proposed violence against women, domestic abuse and sexual violence duty."*

12 *"The proposed violence against women, domestic abuse and sexual violence duty."*

13 *"The proposed violence against women, domestic abuse and sexual violence duty."*

14 GOV.UK (July 2013) "*Legal Aid.*" Available: https://www.gov.uk/legal-aid/eligibility Accessed: 7th Nov 2013

15 MacEarlean, Neasa, The Guardian (25th Sep 2010) *"Legal aid: who qualifies and how much help can you get?"* Available: http://www.theguardian.com/money/2010/sep/25/legal-aid-reforms-public-sector-job-cuts Accessed: 7th Nov 2013

- **Specialist Domestic Violence Courts** – This group recommends implementing this type of court nationally, and expanding the provisions that such a court arrangement provides into both civil courts and the crown court (where efficient). Whereas now this system works effectively in certain magistrate's courts, the benefit of the specialist training given to those who work in such a court would certainly benefit the carriage of justice in cases involving domestic violence.

- **Waiting rooms** – victims and perpetrators are often made to wait in the same room before court starts (especially in civil cases). This is potentially traumatic for the victim who may have to give evidence at the trial. Contact between the two prior to the trail may be detrimental to the quality of evidence given. We recommend two changes to the county and crown court procedure acts, requiring that there be a separate waiting room available for vulnerable witnesses and trial participants. Secondly, we recommend that judges (especially in civil matters) must give directions as to the practicality of participants leaving the court building after such proceedings (e.g. telling a proven abuser to wait half an hour before leaving, giving the victim time to leave the court and get home so as not to run into him at the front door of the court). This is a simple and low-costing recommendation that would hugely benefit the court process.

Preventing the cycle

Outlining the problem

It is not enough to simply tackle domestic violence after it has occurred. More must be done to stop if from occurring, and in cases where it has already occurred to stop it from reoccurring.

Recommendations

- **Fines should not be used as a punishment** in any domestic violence related case because such punishment is wholly inappropriate.

- Rather **rehabilitative community service orders** ought to be used more frequently, or where appropriate prison.

- Any sentencing must include an **order for the guilty to undertake rehabilitation** of some kind, to decrease the likelihood of reoffending.

Proposed Legislation

Legislation reform to the *Health & Safety at Work etc Act 1974* in accordance with the 'workplace policy' recommendation given in the Domestic Violence Report.

Preliminary

(2) *...Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular:*

(f) Securing the health and safety and welfare of persons at work who have been a victim of domestic violence, violence against women and other types in accordance with the Home Office's definition.

General Duties

(4) It shall be to the duty of every employer to prepare... of his general policy of protecting victims and survivors of Domestic Violence, violence against women and other cases in accordance with the Home Office definition and bring the statement to the knowledge of all of his employees.

The statement of intent must encompass a form promoting the awareness of Domestic Violence, for example posters, media and any other form. The statement of intent must also include a provision for the employer to support the employee though the process, by suggesting an appropriate cause of action.

The statement of intent must encompass a form of training, subject to the discretion of the employer, on the awareness of domestic violence, violence against women and other types.

General Duties to others

It should be the duty of every employer to provide support equal to that of their employees for the dependent of victims of domestic violence, violence against women and other types of violence.

It should be the duty of every employer to provide, as far as it is reasonably possible to do so, promote the awareness of Domestic Violence, violence against women and other types to their surrounding areas.

Offences

It is an offence for an employee to discriminate against victims of domestic violence, violence against women and other types of violence. There must be equal treatment for survivors and victims

Restriction on disclosure of information

The statement of intent concerning the survivors/victims of Domestic Violence, violence against women and other types should express the confidentiality of the matter unless the employee is given explicit permission or the information of the matter is to be used in court proceedings.

General Interpretation of Part 1

Here 'Domestic Violence' means any incident or pattern of incidents of controlling or coercive, threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender of sexuality. The abuse can encompass but is not limited to:

- Psychological
- Physical
- Sexual
- Financial
- Emotional

The term 'statement of intent' means a sentence to be contained in the workplace policy concerning the employers position pertaining to the matter discussed.

Legislative reform to the *County Courts Act 1984* in accordance with the 'separate waiting room' & 'Judge Directions' recommendation given in the Domestic violence Report.

County Court district

S.3. Where there is a reasonable chance of intimidation to occur, in Domestic Violence cases and other cases, the Lord Chancellor must provide directions as to the exit and entrance times of the parties.

County Counts to be held for district

S.2. Every County Court should provide separate waiting rooms to prevent intimidation in the Courts.

Rehabilitation

Reform to the ***Offence Guidelines*** of the Magistrates' Court Sentencing Guidelines.

The following offences must include rehabilitation for offenders, subject to the Magistrate's discretion, to decrease the likelihood of re-offending within a domestic setting:

- Assault occasioning to body harm
- Common assault
- Cruelty to a child
- Disorderly behaviour
- Harassment, putting people in fear of violence
- Harassment (without violence)
- Protective order
- Sexual assault
- Threatening behaviour
- Threats to kill
- Witness intimidation

Part 2: Commercial & Common Law

Recommendations on social media and the law

Compiled with thanks to:

David Allen Green

Yair Cohen

Christopher Hutchings

Michael Hick

Introduction

Since the emergence of the commercial Internet in the 1990s[16], the law has struggled to keep up with the problems that such rapid developments in technology have brought. Such issues have included problems within copyright law; which has been turned upside down with the creation of peer-to-peer software, contempt of court; which has become increasingly difficult to monitor, and privacy; which is now much harder to protect.

Of particular concern to us in this report however, are the various difficulties that have emerged as a result of the introduction of modern social media in the early millennium. The use of social media has rapidly grown since then and as of September 2013, Facebook had over 1.19 billion active users and as of November 2013[17], Twitter had over 232 million active users[18]. These figures broadly reflect the numbers that emerged during consultation, that all but one of the people who responded uses some form of social media. It is our belief that with such a large online population, adequate legal protection needs to be afforded to these users, in the same way that they would be protected by the law offline.

During the process of exploring the issues that can arise online, we became aware of some particularly appalling cases that highlighted the real life impact that can be felt by people when things go wrong on social media. Whilst being harassed online may initially seem insignificant, it can lead to depression or even suicide[19]. Online defamation can lead to the complete ruin of a person's reputation, which can in turn destroy a person's career or business.

It is with this in mind that this report looks at the issues that arise within social media, specifically in relation to harassment, offensive communications, defamation and privacy.

16 *"Brief History of the Internet."* B. Leiner, V. Cerf, D. Clark, R. Kahn, L. Kleinrock, D. Lynch, J. Postel, L. Roberts, S. Wolff, available at: http://www.internetsociety.org/sites/default/files/Brief_History_of_the_Internet.pdf. Accessed 22nd November 2013

17 http://www.prnewswire.com/news-releases/facebook-reports-third-quarter-2013-results-229923821.html. Accessed 22nd November 2013

18 http://www.sec.gov/Archives/edgar/data/1418091/000119312513424260/d564001ds1a.htm. Accessed 22nd November 2013

19 For example the suicide of Hannah Smith, which was allegedly the result of harassment on the website Ask fm. For details see: http://www.bbc.co.uk/news/uk-england-leicestershire-23584769. Accessed 22nd November 2013

We propose the following reforms to the law:

- The implementation of an online judicial body
- The imposition of more responsibility on social media platforms
- Changes to improve education on the issues surrounding social media and the law
- Changes to the law on online impersonation
- The creation of a limited 'right to be forgotten'
- An amendment that sharing defamatory statements amounts to 'publication'
- An amendment to the law regarding apologising for defamatory statements

i. The Implementation of an Online Judicial Body

Of the issues that have emerged during the reform process, one of the most significant problems with social media and the law is that it is extremely difficult to prosecute or bring a claim against an individual on the internet, as it is hard to identify those who choose to be anonymous. Currently the only way to obtain such information is to go through an expensive and time-consuming court process to eventually obtain a court order called a Norwich Pharmacal Order[20]. The cost of this process can run into the thousands of pounds, preventing many individuals from being able to bring an action where issues arise on social media.

We propose that there should be a newly formed Judicial Body, which will specifically deal with cases where such orders are required. We believe that the body should operate online, with a live chat function and a telephone service that will enable more personal communication. The landline telephone service would naturally add to the cost of the system and therefore the alternative would be the availability of live chat contact with the body.

It is proposed that individuals will be able to go to this website, where they will have to submit a simple form with evidence, which will then be used to implement a more informal Norwich Pharmacal order.

The evidence required will be at least one screen shot of the offending statement, image or video, a link to the statement, image or video and two statements from two separate witnesses, who will confirm the issue complained of. It is hoped that by requiring such a high threshold of evidence that this will prevent abuse of the system, which could lead to harm to online privacy. Additionally, by requiring the inclusion of witness statements, it is hoped that it will be sufficiently difficult for people to use fake evidence in applications. Prevention of time wasting will also be aided by a small application fee of £50 to help with the cost of the system.

All of these decisions in relation to the judicial body were supported by the responses gathered during consultation, where a group of twenty-two, sixteen to eighteen year olds were invited to give their opinions on the creation of such a body. Sixteen people confirmed that they would approve of such a body and that there should be a £50 charge for this service. In relation to the amount of evidence that should be required, the responses to an open question included that there should be 'enough evidence for use in court' and that 'a picture' or 'screenshot' of the offending statement should be required, in line with our initial recommendation.

20 *Norwich Pharmacal Co. & Others v Customs and Excise Commissioners* [1974] AC 133

The power of the body will also be limited to cases involving defamation[21], harassment[22] and malicious communications[23], so as to reduce the amount of applications in the first few months after creation. This could of course be expanded later into other areas of law where appropriate, for example for issues relating to copyright law. In addition, we felt that the identities and IP addresses of alleged offending individuals when obtained should be passed on to the courts or the police, rather than the applicant, so as to prevent vigilante behaviour.

The greatest concern in relation to this reform is that it may affect freedom of expression on the Internet, due to fear of being identified, however we feel that this change in the law is limited enough that this should not be a problem. The actual process would be a simpler, faster and most importantly cheaper method by which to seek the identity of anonymous individuals, so as to bring civil claims and prosecutions.

A secondary concern arose in relation to the jurisdiction of this judicial body, as in light of the Internet's international nature; it had to be decided what jurisdiction the body would have. We were presented with two options, either a territorial jurisdiction or a passive personality jurisdiction. The territorial principle is a principle whereby the state can only prosecute offences that are committed within its territory[24]. The passive personality principle is where a state asserts its jurisdiction on the basis that the victim of an offence is its national[25]. In other words, where a statement is published in the US, which damages the reputation of a UK national, it would still liable for action in the UK. Upon further consideration, we elected to apply the territorial principle to the proposed judicial body, for primarily practical reasons. Whilst the passive personality principle would allow for more injustices to be corrected, it would lead to more difficulties for the body and additional costs.

In relation to the temporal jurisdiction of the body, it would be non-retroactive and as such would only apply to statements made after the passing of the legislation. Again, this would be for primarily practical reasons, so as to limit the number of initial claims and therefore the burden on the judicial body.

The final concern related to the cost and time required in setting up the judicial body However given the significant gap currently left in the law in relation to social media and the Internet more generally, it is a necessity. Currently certain individuals are left vulnerable to harassment, offence and defamation on the Internet, where it appears they would be adequately protected if the same happened to them offline. We believe that leaving this gap in the law is simply not acceptable. It is also important to note in relation to cost, that the costs are limited by virtue of the body's online nature and the application fee.

ii. The Imposition of More Responsibility on Social Media Platforms

We feel surprised by the lack of cooperation from the social media platforms when given real-life examples from our guest speakers. Furthermore, through sharing our own experiences and through the research conducted amongst our peers, we identified that not only was it impossible to find contact details of these social media sites to raise concerns, but it was also apparent that no one knew the outcome of a situation when they have had to use the 'report abuse' button.

21 Under the Defamation Act 2013, which comes into force on 1st January 2014

22 Under the Protection from Harassment Act 1997

23 Under the Malicious Communications Act 1988

24 S.S. Lotus (1927) PCIJ Series A, No 10, at 18-19

25 "*Cutting Case*" (1886), Moore, "*Digest*" (1906) Vol. II, at 229

Therefore we decided it necessary to improve the link between the users of these social media sites and the companies themselves. We strongly believe that an increased sense of responsibility placed on these social media platforms would also increase the relationship with the Crown Prosecution Service (CPS), with them finding cases much easier to pursue.

In relation to the greater level of responsibility, we believe there should be a minimum level of customer service from all of the social media platforms where malicious communications, defamation and harassment could be addressed. We believe that this should come in the form of a email address at least and a telephone service or live chat where the site in question has more than one thousand hits a month.

The obligation of providing customer services itself is not to follow up requests of having items on the website removed, but instead we envisage it as a process where social media sites would be able to identify possible offences much easier. It will also make social media platforms much more accountable for the content on their site. Although there will be no compulsory removal, the service will be used to allow a better co-operation between the CPS and the social media platforms, as it will not be left to the CPS to chase the sites. Instead, individuals will be able to mention that the site has been informed and have stated that they are willing to co-operate with any proceedings. This will prevent any reluctance on the CPS' behalf due to the difficult nature of attaining information relating to such offences.

We believe there should be uniformity to the 'report abuse' buttons found on all social media sites. Through the current situation, many people are left with no response when they do click on this button and often don't find out the outcome of the case. We therefore concluded that where ten per cent of visiting traffic has pressed the 'report abuse' button, the social media site should be forced to investigate the content.

We feel that the increase in customer service level and the uniformity of the 'report abuse' will give a higher sense of security to users of these sites and also make the sites accountable for the content on them. Furthermore, by placing the power in the hands of the individuals to pursue an issue, the CPS will have more support from the individual as well as the sites.

iii. Changes to Improve Education on the Issues Surrounding Social Media and the Law

During this process, we have acknowledged that whilst part of the problem can be solved through regulating people's actions, it may be better to also attack the problem from the source, which is that much of society does not acknowledge that the same behaviour is required online as it is offline. During consultation, over half of the responses acknowledged that they have never been taught about how they are expected to behave on the Internet; with one response stating that they just 'try to use common sense.' On this basis, we propose that there should be more education in schools relating to how you are expected to behave on the Internet and on social media in particular, with a focus on potential legal liability.

The form this education could take was a point of discussion within our sessions, with suggestions including using talks from external speakers coming into the school, as often occurs for issues such as sexual health or online safety. This could be incorporated simply through PSHE (Personal, Social, Health Education) lessons, which are designed to inform young people about issues which do not fall naturally within other areas of the curriculum. Equally, this could be done through ICT (Information and Communications Technology) lessons. This idea was popular during consultation with just under half of the responses agreeing that this form of education would be beneficial.

One issue we did consider is that with imposing this upon schools is that now with the creation of free schools it may not be possible, as they use no strict curriculum, however we believe that even a limited application of this would be beneficial.

Another way in which we believe education could be implemented is through the Internet itself, by making the information more obvious and readily available on certain websites. For example, we propose that it in addition to the other responsibilities imposed upon social media platforms, they should also be expected to display the information prior to signing up to the websites and as a pop-up for current users, as they would do for changes to privacy settings. This could either be done through a passage of text, or if possible a compulsory video which would highlight the potential for legal liability on social media.

We believe that with the application of this additional education within schools at all levels; children will be better prepared for the challenges that may arise whilst using social media and the Internet.

iv. Changes To The Law On Online Impersonation

Currently the law specifically provides that in some situations it is a criminal offence to impersonate someone. For instance, it is illegal to impersonate a police officer. There are currently other offences that could be used when someone impersonates a person online, for instance: misuse of private information; where an individual has been impersonated online and has had their information revealed which was previously private. Furthermore, we also have the offence of fraudulent impersonation and deceit where a person is impersonated for fraudulent reasons such as obtaining money, goods or services.

Although these offences work adequately within those respective situations, we don't believe they cover all situations of online impersonation that could cause harm. We therefore concluded that there should be a general law prohibiting impersonation online. We believe this to be vital in light of the opaque nature of online interaction. This offence will be a criminal offence. The importance of such a law was proven in our survey, where over one third of the group's peers had either been impersonated online or knew someone who had.

The impersonation legislation that we are recommending differs from the *Fraud Act 2006*, as we believe impersonation should be an offence requiring 'some harm' rather than an offence only where there is a loss in money or property, either temporary or permanent. We came to this conclusion as we saw no justifiable reason why someone should be allowed to impersonate another.

It is worth noting that 'parody' accounts would not fall under this offence where they explicitly state they are a 'parody' account, as this is not legitimate impersonation. Furthermore, impersonation would have to be of a person, alive, dead or fictional.

We believe that the following two American examples illustrate the need for an impersonation law:

(a) In November 2012, a woman received several telephone calls from men attempting to buy sex from her[26]. When she asked one of the callers how he obtained her number, he told her it was on an ad posted on Craigslist which was found to have been posted by a jealous acquaintance who was charged with a count of online impersonation rather than identify theft, both a crime under Texan law[27].

(b) A Mississippi woman created a MySpace account in the name of a young boy; she then used the account to torment a 13-year-old girl who was one of her daughter's classmates. The young victim ended up killing herself[28].

26 For more details see: http://www.decodedscience.com/online-impersonation-identity-theft/21033. Accessed 24th November 2013

27 Section 33.07 of the Texas Penal Code

28 For more details see: http://www.decodedscience.com/online-impersonation-identity-theft/21033. Accessed 24th November 2013

In relation to the examples given, both would fall under our proposed *Impersonation Act*. From example (b) we can see that this legislation would be a helpful tool to protect minors on the Internet, whilst example (a) also shows certain unique situations that our law currently fails to acknowledge as an offence.

We feel that such legislation would have little effect on most people's behaviour on the Internet and as such it would be a worthwhile change. Furthermore, in a practical sense, prosecutions under this Act would only occur where some harm was caused.

v. The Creation Of A Limited 'Right To Be Forgotten'

The right to be forgotten is not a new issue, as it has been in the spotlight for many years. We have looked at both Article 17 of the General Data Protection Regulation of the EU[29] and a recently passed Californian Law[30]. The Californian Law in particular gives people under the age of 18 the ability to remove posts they have written, but not including posts written about them by other people. After reviewing these two pieces of legislation, alongside the fact that ninety five per cent of responses from our survey believed they should have the power to remove their information online, we decided it was appropriate to format a right to be forgotten in the UK.

From these two pieces of legislation we began to format our own idea of what the right to be forgotten should encompass. Whilst we agreed with the Californian law that there should be a right to be forgotten, we do not believe that the right should be restricted to minors. We acknowledge that this right should not be without limits, for instance you cannot remove data that is written about you by others, however we believe that our other reforms cover this issue appropriately, for instance the judicial body and the adaption of the role of the social media platforms.

In relation to the practicalities of such a right, a simple removal button on all social media platforms would suffice. We then began to consider the consequences of having the power to remove data you write on these platforms and identified that often the information on these sites are used in court proceedings. We therefore recommend an interim period where the data would stay on the server for twelve months pending any potential enquiries where the information will be needed. After the twelve-month period, were there to be no enquiries in relation the information, the information would be taken off the server indefinitely. During that twelve-month interim period, the information would not be found on the website itself, but only on the servers.

We believe that an interim period works more effectively than the provision under Article 17 of the General Data Protection Regulation from the EU, which presents social media platforms with an objective task of taking 'reasonable steps' to inform third parties which are processing the data that will be removed that a request to erase the information has been submitted. We agreed that a uniform time limit of twelve months would prevent any misunderstanding and differing application that could arise from Article 17.

We believe that in today's world where companies often search the names of prospective new employees on the Internet, one must be able to remove any information that could cause someone to misinterpret the person that they are today. A right to be forgotten is an important right to implement in modern society, which has become increasingly transparent and where technology has advanced to a place where people could publish premature opinions to the whole world.

We also intend to make particular reference to the *Rehabilitation of Offenders Act*[31] and its applicability with the right to be forgotten.

29 EU Data Protection Directive 95/46/EC

30 SB-568 Privacy: Internet: minors. (2013-2014)

31 *Rehabilitation of Offenders Act 1974*

vi. An Amendment to the Law that Sharing Defamatory Statements Amounts to 'Publication'

The current law establishes that 're-tweeting' a statement or sharing another's statement generally online, is sufficient to be deemed publication for the purposes of defamation[32]. Whilst this law makes sense, as publishing a statement will still cause damage to a person's reputation whether they originally wrote the statement or not, we believe it becomes rather harsh when applied to the online world, where sharing of information is given less thought.

On Facebook a person is able to 'share' other peoples comments, on Twitter, they are able to 're-tweet' and on Tumblr a person can 'reblog'. These are just a few examples of how a person can repeat a statement, with simply the click of a button. The issue with making such an act liable to a claim in defamation is that it could significantly affect the freedom of expression currently prevalent on the Internet. If a person has to sit back and think about every statement they share, which may upon first glance not seem to be defamatory, it will significantly limit the sharing of information on the Internet.

We acknowledge that the problem with reforming this law to reflect this issue is that whilst behaviour online is different, the consequences are the same and in some cases can potentially be worse due to the viral nature of the Internet. Take for example the *McAlpine v Bercow* case[33], where Lord McAlpine's reputation was damaged as a result of the viral spreading of the defamatory statement suggesting that he was linked to child sex abuse. Whilst Lord McAlpine did not bring claims against all individuals who re-tweeted the statement, and instead chose to focus on those with the largest readership,[34] he would have been entitled to bring a claim against every individuals who simply clicked the 're-tweet' button.

It is on this basis that we believe there should be a different rule in situations of sharing defamatory comments. The application of this exception would have to be limited to only online publications, however at first we were unsure as to how far this limitation should go.

One idea which caused considerable contention within the group was that only the original publisher should be liable for the damage, but they should also bear the additional liability for any sharing of their statement. On this basis, in the Lord McAlpine case[35], only the original publisher would have been liable, but for a larger sum of damages reflecting the amount that the statement was shared. Yet upon further discussion, we concluded that this would allow too many individuals to escape liability for defamation where they could potentially be doing more damage than the original publisher.

In light of this contention and confusion as to what would be the best reform, we included our concerns within the consultation survey and asked the question: "Do you think you should be liable for any offences that emerge from your shared statement?". From this a strong majority responded "No." This response was then qualified with individuals also responding that they believed that there should only be no liability for those who share, but do not add a comment. For example, under this change in law, you would be able to share a link to a website, or share another person's statement without liability, but you would be potentially liable where you share a link and add a further comment.

32 Under the ***Defamation Act 2013***, section 15, which comes into force on 1st January 2014

33 *McAlpine v Bercow* (No.2) [2013] EWHC 1342 (QB)

34 For more details see: http://www.telegraph.co.uk/news/politics/9885381/Lord-McAlpine-to-sue-Sally-Bercow-as-he-drops-other-Twitter-claims.html.
Accessed on 22nd November 2013

35 *McAlpine v Bercow* (No.2) [2013] EWHC 1342 (QB)

We feel that this limits the law sufficiently, whilst also ensuring that where damage is caused by discussion of a statement, suitable action can be brought. Therefore, we propose that only where a new statement is made, should this be viewed as a publication under current defamation laws.

vii. An Amendment to the Law Regarding Apologising for Defamatory Statements

We looked closely at the requirement of apologising for a defamatory statement and also the defence of removing a comment. Currently, under the European E-Commerce Directive[36], an operator or person has the defence of removing a defamatory statement. Apologising is currently offered as part of a remedy or, under the new *Defamation Act 2013*, it is suggested that apologising will decrease the serious harm caused[37]. Apologising could also mean that no remedy is necessary.

Due to the powerful nature of removing a comment or offering an apology we believe that there should be a stricter protocol in relation to its format, with particular reference to online publication. We found that the system of apologies for newspapers (where often the apology for a leading story could be found deep inside the paper) could not be copied for online publications. Firstly we believed that an apology should be displayed in a similar position on the website in which the comment is published. For instance, if there is a 'world news' section and the comment was at the top of this page then the apology should be found in the same place. The idea here is that those interested in the information will have a larger chance of seeing the apology. Responses to our question "In what way do you think someone should apologise for defaming people on the Internet?" included making sure the same target audience is reached and making sure that it is done in the same form the defamatory statement was made in.

Proposed Legislation

Social Media and Internet Abuse Act 2013

Schedule 1 – The Online Judicial Body

Section 1. The Online Judicial Body.

(1) There is to be a body corporate known as the Online Judicial Body.

(2) The Online Judicial Body is to have such functions as are conferred on it by or as a result of this Act.

(3) The purpose of the Online Judicial Body is to deal with cases whereby individuals require a court order to obtain information or information relating to an individual's identity, which will later assist in a prosecution or civil action. This will provide an alternative to the common law application for a Norwich Pharmacal Order.

(4) The Online Judicial Body will be limited to accepting applications only relating to prohibited online behaviour. This will be further limited to cases involving potential harassment and malicious communications prosecutions or defamation claims.

Section 2. Jurisdiction.

36 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (*"Directive on electronic commerce."*)

37 For more details see: http://www.taylorwessing.com/fileadmin/files/docs/The-Defamation-Act-2013.pdf. Accessed on 24th November 2013

(1) The Online Judicial Body will have a territorial jurisdiction and as such will only deal with applications relating to offences or actions arising within the UK.

(2) The Online Judicial Body will have a non-retroactive temporal jurisdiction and as such will not apply to applications relating to offences or actions arising prior to the enactment of this Act.

Section 3. Operation.

(1) The Online Judicial Body will operate solely online. It will have the following capabilities: -

- (a) a live chat service.
- (b) a telephone service.
- (c) an online application form.

(2) The evidence required for a successful application include: -

- (a) at least one screen shot of the offending statement, image or video.
- (b) a link to the offending statement, image or video.
  - (i) Although this requirement will be waived where the statement, image or video no longer exists
- (c) two statements from two separate witnesses, who can confirm the issue complained of.

(3) Each application will require a £50 fee.

Section 4. Successful Applications.

(1) If an application is successful, the relevant information will be passed on to the: -

- (a) relevant Police force and Crown Prosecution Service in relation to criminal matters.
- (b) and/or the relevant Courts for civil matters.

Schedule 2 – The Role of Social Media Platforms

Part 1. Interpretation.

Section 1. In this Schedule –

'Social Media Platform' refers to any website or application which allows interaction between individuals, including sharing information, views, images or videos.

Part 2. Obligations of Social Media Platforms.

Section 1. Minimum level of Customer Service.

(1) All Social Media Platforms are required to have a minimum level of customer service including: -

- (a) an email address, which is checked at least once a week.
- (b) a telephone service, which will be required where the website in question has a level of traffic which exceeds 1000 views per month.

Section 2. Uniform 'Report Abuse' Function.

(1) For the purposes of this Act, each Social Media Platform will be required to implement a uniform and clear 'report abuse' button.

(2) Where ten per cent of the visiting traffic has used this button, the Social Media Platform will be obliged to review the material.

Schedule 3 – Prohibition of Online Impersonation.

Part 1. Interpretation.

Section 1. In this Schedule –

'Impersonation' refers to the act of portraying yourself as another person.

'Parody accounts' include depictions of individuals created for the purpose of humour or commentary.

Part 2.

Section 1. The Offence of Impersonation.

(1) A person who without lawful excuse impersonates another, intending to cause serious harm shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding eight years.

(2) An impersonation is not an offence unless it has caused or is likely to cause serious harm to an individual, including individuals who are alive, dead or fictional.

(3) The victim of the offence need not be the individual being impersonated.

Section 2. Parody Accounts.

(1) For the purpose of this Act, impersonation does not include, the use of a parody account, which will constitute a lawful excuse.

Schedule 4 – The Right to Be Forgotten.

Section 1.

(1) An operator of an Internet Web Site, online service, online application, or mobile application shall be obliged to do the following:

(a) permit an individual who is a registered user to remove or, if the operator prefers, to request and obtain removal of, content or information by the user

(b) provide clear instructions to individuals who are a registered user on how the user may remove or, if the operator prefers, request and obtain the removal of content or information posted

(c) provide notice to the registered user when the removal has taken place

(2) An operator is required to hold the information on their server for twelve months prior to complete removal, in order to provide the information if requested for during that time.

(3) The removal of information will be assisted with the uniform application of a 'remove button' on each Internet Web Site, online service, online application, or mobile application.

Education Act 2002 (Amended Version)

Amendments are in bold.

Section 84. Curriculum requirements for first, second and third key stages.

(1) For the first, second and third key stages, the National Curriculum for England shall comprise the core and other foundation subjects specified in subsections (2) and (3), and shall specify attainment targets, programmes of study and assessment arrangements in relation to each of those subjects for each of those stages.

(2) The following are the core subjects for the first, second and third key stages –

(a) mathematics,

(b) English, and

(c) science.

(3) The following are the other foundation subjects for the first, second and third key stages –

(a) design and technology,

(b) information and communication technology,

(i) including behaviour required on social media and the internet

(c) physical education,

(d) history,

(e) geography,

(f) art and design,

(g) music, and

(h) in relation to the third key stage –

(i) citizenship, and

(ii) a modern foreign language.

Section 85. Curriculum requirements for fourth key stage.

(1) For the fourth key stage, the National Curriculum for England shall comprise the core and other foundation subjects and specify attainment targets, programmes of study and assessment arrangements in relation to each of them.

(2) The following are the core subjects for the fourth key stage –

(a) mathematics,

(b) English, and

(c) science,

(3) The following are the other foundation subjects for the fourth key stage –

(a) design and technology,

(b) information and communication technology,

(i) including behaviour required on social media and the internet

(c) physical education,

(d) citizenship, and

(e) a modern foreign language.

(4) In this section "modern foreign language" means a modern foreign language specified in an order made by the Secretary of State or, if the order so provides, any modern foreign language.

(5) An order under subsection (4) may

(a) specify circumstances in which a language is not to be treated as a foundation subject, and

(b) provide for the determination under the order of any question arising as to whether a particular language is a modern foreign language.

Defamation Act 2013 (Amended Version)

Amendments are in bold.

Section 15. Meaning of "publish" and "statement".

In this Act –

"publish" and "publication", in relation to a statement, have the meaning they have for the purposes of the law of defamation generally; **with the exception of sharing online publications, where further comment is not made**.

"statement" means words, pictures, visual images, gestures or any other method of signifying meaning.

Defamation Act 1996 (Amended Version)

Amendments are in bold.

Section 2. Offer to make amends.

(1) A person who has published a statement alleged to be defamatory of another may offer to make amends under this section.

(2) The offer may be in relation to the statement generally or in relation to a specific defamatory meaning which the person making the offer accepts that the statement conveys ("a qualified offer").

(3) An offer to make amends –

(a) must be in writing,

(b) must be expressed to be an offer to make amends under section 2 of the *Defamation Act 1996*,

(c) must state whether it is a qualified offer and, if so, set out the defamatory meaning in relation to which it is made and,

(d) in relation to online defamatory statements, the offer must hold a parallel position on the Internet Web Site, online service, online application, or mobile application.

(4) An offer to make amends under this section is an offer –

(a) to make a suitable correction of the statement complained of and a sufficient apology to the aggrieved party,

(b) to publish the correction and apology in a manner that is reasonable and practicable in the circumstances, and

(c) to pay to the aggrieved party such compensation (if any), and such costs, as may be agreed or determined to be payable.

The fact that the offer is accompanied by an offer to take specific steps does not affect the fact that an offer to make amends under this section is an offer to do all the things mentioned in paragraphs (a) to (c).

(5) An offer to make amends under this section may not be made by a person after serving a defence in defamation proceedings brought against him by the aggrieved party in respect of the publication in question.

(6) An offer to make amends under this section may be withdrawn before it is accepted; and a renewal of an offer which has been withdrawn shall be treated as a new offer.

Part 3: Public Law Group

Recommendations on Local Authorities and Child Migrants with No Recourse to Public Funds.

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i. Introduction

The topic investigated by the Public Law group focused on the difficulties faced by migrant children as a result of the conflict that exists between the *Children Act 1989* and immigration legislation. We considered one primary issue, that of accompanied children whose parent(s) or guardian(s) have no recourse to public funds and two secondary issues; the effect of immigration legislation on unaccompanied migrant children leaving local authority care, and the procedures in place to identify and support victims of human trafficking.

The *Children Act* places local authorities under a statutory duty to protect the best interests, welfare and well-being of vulnerable children. ***Section 17*** makes support available to a child's parent(s) and sections ***23C***, ***24A*** or ***24B*** provide leaving care provisions for unaccompanied children leaving local authority care. ***Schedule 3 paragraph 1 (g)*** to the *Nationality Immigration and Asylum Act 2002* denies these forms of support to those subject to immigration control. While children are exempt from these restrictions, they are effectively denied this vital support because of the immigration status of their parents.

As a result of this legal confusion local authorities are unable to apply the law consistently, creating systematic uncertainty and, in our view, unfairness. Our recommendations therefore target two related concerns. First, how to reform the law to ensure that adequate support is provided to those who are properly entitled to it, and second, how to improve the current practise of local authorities so as to increase fairness and consistency.

Unaccompanied children are able to make effective use of the exception in ***schedule 3***; While they are below the age of 18 they will be fully supported by local authorities. However, upon turning 18 the law considers them an adult and they are immediately caught by schedule three, which stops local authorities from providing care leavers support under sections ***23C***, ***24A*** or ***24B***.

This report will consider what is necessary to uphold the fundamental rights of vulnerable migrant children, as enshrined by the ***United Nations Convention on the Rights of the Child***, taking into consideration the Government's legitimate need to protect public spending and maintain a secure immigration system.

Having looked at the existing legislation and case law, as well as other written evidence, we received further information from six experts. We analysed the problems and identified the key areas which concerned them and then considered existing proposals for reform in this area of law. Our final recommendations, detailed in this report, represent an appraisal of those proposals and make further recommendations which we consider appropriately reflected their values.

ii. The current law

In order to reduce 'pull factors' that allegedly encourage illegal immigration to the UK, ***s.115*** of the *Immigration and Asylum Act 1999* places heavy restrictions on entitlement to public funds for those subject to immigration control. In this context, these people have been designated as having no recourse to public funds (NRPF). NRPF status is either stamped in a persons' visa, or takes effect because they have no valid visa. Such individuals have henceforth been referred to as 'persons subject to immigration control', as we took issue with the use of the word 'illegal' in relation to people, especially children.

The majority of people with NRPF are those individuals still residing in the UK whose visas have expired. There are estimated to be as many as 618,000 irregular migrants currently living in the UK[38]. An estimated 120,000 of those are children, of which around 60,000 have been born here. The majority will have come here at an early age, been educated here, and will speak English as their main language[39].

Those subject to immigration control are further prevented from accessing local authority support (not public funds under ***s.115 IIA***) under ***schedule 3*** of the *Nationality Immigration and Asylum Act 2002*. This includes (at paragraph G) sections ***15***, ***23c***, ***24A*** or ***24B*** of the *Children Act 1989* (welfare and other powers which can be exercised in relation to adults).

These sections of the *Children Act* place local authorities under a statutory obligation to provide support to the families of children who are identified as being in need. A child is assessed to be 'in need' if they are unable to meet their basic living needs. The sections of that act included in ***schedule 3*** (above) are those that permit the provision of support directly to parent(s) or guardian(s) of the child and care leaving provisions for children in local authority care.

Exceptions:

Paragraphs 2 and 3 of the schedule introduce a number of exceptions. First, in paragraph ***2 1(b***) children of any nationality are expressly excluded. This allows unaccompanied children to receive support and care from the local authority.

However, for accompanied children the support must be provided to the parents under ***s.17***. Thus while children are expressly excluded from the effects of ***schedule 3***, if their parent(s) or guardian(s) are caught by the schedule they are effectively denied support.

Paragraph 3 provides the more general exception that the schedule does not prevent the performance of a duty (including as s.17 support) if, and to the extent that, its performance is necessary for the purpose of avoiding a breach of – (a) a person's Convention rights, or (b) a person's rights under the EU treaties.

38 Mr Blinder S (2013) "*Briefing, Migration to the UK: Asylum.*" The Migration Observatory at the University of Oxford

39 Sigona N, Hughes V (2012) "*No Way Out, No Way In: Irregular Migrant Children and Families In the UK.*" Oxford, Oxford University Press

As a result, where a person responsible for children presents themselves to a local authority for support, the authority must conduct a human rights assessment (HRA) to determine if the family's human rights will be breached if they refuse support.

If the family is unable to return home due to legal or practical constraints then leaving them in destitution is considered enforced destitution and is in breach of their ***Article 3*** right not to be subject to cruel, inhumane or degrading treatment. Where it is found that the family is able to return home it will not be considered enforced destitution and their human rights claim will generally be unsuccessful.

Therefore the majority of cases that pass a HRA will do so because there is a legal or practical obstacle to the family leaving the UK. For example, if they are 1) waiting for the outcome of an immigration application or 2) unable to leave the UK in the long or short term because of conflict in their home country or a lack of adequate support there.

In rarer cases a HRA would show that a family has such strong ties to the UK that requiring them to leave would breach their ***Article 8*** right to a private and family life. Under the current system migrant children can only gain support from the local authority if their family is unable to return home, and so destitute that it is a breach of their ***Article 3*** rights to be denied support.

Unaccompanied children are able to claim support up until they turn 18, at which point they must satisfy the same human rights criteria as all adults in order to continue to receive care-leavers support. If they cannot do so, for example, if they could return home, then the care and support they had been relying on will fall away. In addition, as adults they are much more likely to receive removal directions from the UK border agency.

In short, irregular migrant children "stand at the intersection of diverging and to some extent contradictory policy agendas" and "the unresolved tension between these two policy objectives can be detected in the dialectics between different levels of government (i.e. local, national and supranational) and is one of the main factors that determines the relationship of irregular migrant children with the state and public services[40].

iii. Problems with the current legal framework and its implementation

We are satisfied that the legal framework achieved broadly the right balance between providing support and ensuring a fair and secure immigration system, subject to the following two provisos:

First, the effect of ***schedule 3*** on families is only justifiable if the human rights assessments are carried out correctly, consistently and the findings closely scrutinised. This requires that sufficient staff hours, with sufficient training be provided and that all support is fully funded.

Second, the effect of ***schedule 3*** on unaccompanied children in local authority care as they turn 18 is disproportionate and does not accord with our view of child development and support needs.

Families caught by *schedule 3 NIAA*

As a result of our consultation process, we are concerned that families and children are being systematically denied the support they are entitled to because of a failure of local authorities to apply the right tests and

40 Sigona N, Hughes V (2012) "*No Way Out, No Way In: Irregular Migrant Children and Families In the UK.*" Oxford, Oxford University Press. p.xii

assessments, due to the complex and conflicting legislation and the need for a human rights assessment. This is exacerbated by a lack of statutory guidance as to how to carry out assessments and by a lack of adequate resources on the part of local authorities to perform assessments and provide support.

The need for a human rights assessment, which we found to be a highly individualised and subjective process, resulted in highly divergent practises. In addition, the legal confusion described above means that families are turned away for the wrong reasons, including for example, that they have no recourse to public funds, without a human rights assessment being carried out.

We were shocked to find a high divergence in the practises of local authorities. Some take what was described as a 'conservative approach', and rarely deny support, while others would often refuse support because of a lack of understanding of the law on the part of social services staff.

Given the significant risks of error and the importance of the welfare right of children, we are concerned that the existing level of scrutiny and moderation of local authority decisions are inadequate, and that the families would not have access to effective remedies against incorrect decisions.

We are also concerned that the inclusion of the words 'and to the extent that' in ***paragraph 3*** of the schedule, allows authorities to provide only the very basic support necessary to prevent a breach of convention rights. While we have no opinion as to whether this was appropriate where only adults were concerned, we feel that children should be entitled to all the support available to British children in need under ***s.17*** of the *Children Act*. Crucially, the cheapest alternative should not be sought in order to preserve public funds. Instead the needs of the child should be prioritised above all else.

We concluded that reforms should seek to ensure that, as far as possible, where a family is destitute and subject to immigration control, a lack of resources on the part of the local authority should never result in a denial of support if it is legitimate given the existing legal requirements.

We feel strongly that a child's immigration status, being entirely the result of decisions taken by their parents, should not have any bearing on the support they are entitled to.

Care leavers caught by schedule 3

The immigration status of an unaccompanied child does not affect their entitlements to care under ***s.17*** of the *Children Act 1989*. However, after they turn 18 their entitlements will depend on their immigration status as a result of ***schedule 3 NIAA***. Care leaving support is an essential part of a child's development into adulthood and, for migrant children, comes at an important junction in their lives where they must face many other serious realities, such as seeking leave to remain.

Where an unaccompanied child is living in the UK because of a fear of violence, abuse or persecution in their home country they, they will face enforced destitution if they are discharged from care aged 18[41]. While case law has determined that a young person in this situation should not be moved onto UKBA support, practise amongst different local authorities varies widely due to confusion around the effect and priority of the different strands of legislation[42].

41 The Children's Society (2012) *"I don't feel human: Experiences of destitution among young refugees and migrants."*

42 Coram Children's Legal Centre (2012) *"Navigating the system: Access to advice for young refugees and migrants."*

iii. Consultation

In addition to consulting with legal experts working in this area, we also sought to include the wider views of our peers, aged 16-18.

Challenges:

As this topic combines issues of ordinary values, human rights, public policy and legal technicalities we experienced numerous difficulties in consulting with young people. Foremost was the need to explain the issue in sufficient detail to generate informed responses, without being too influential over the views and opinions of those consulted. For example, the panel found that many of the ideas they put forward were copied into responses.

In addition, we found that ordinary young people found it difficult to put themselves in the position of a child migrant or family with NRPF and could not, therefore, specify what level of support they felt was appropriate.

Positive outcomes:

We were however highly impressed by the enthusiasm of the participants who showed a willingness to involve themselves in the topic and ask questions. Many participants wanted to learn more about the current system and standards expected of local authorities in providing support to children subject to immigration control.

We also found that those consulted were more willing to engage with the moral and ethical perspectives as to what they thought a child should be entitled to, and that this opened up further debate.

Consultation Results:

There was a strong consensus amongst those consulted that the needs of children facing destitution should always be met regardless of other concerns, such as recourses or immigration policy. Though it was not clear how those consulted would define those essential needs.

As was to be expected, some of the responses indicated a lack of understanding of the framing political and economic constraints. For example, some consultees thought it would be more appropriate for the embassies of the destitute families to pay for their support and enforce deportation where necessary.

However, there was near unanimous agreement to the idea that it was unfair to deny support to children in need because of their immigration status, or that of their parent(s) or guardian(s).

Below are a selection of answers given by young people which in our view reflected the general consensus in their consultation:

- “Yes, because without improvements, we are allowing children to suffer while living in our country. It doesn’t matter where they were born, children should never be left to suffer without proper resources. Improvements to assessing systems could also benefit UK families.”
- “Yes, otherwise the children are being held accountable for their parents’ actions and such a lack of support could be detrimental to the rest of their lives; however, assessments should be improved so that those who would be better off in their home countries should safely return.”
- “Yes, the circumstances by which many children/families end up as illegal immigrants are not always the fault of the parents, and therefore they deserve the money to support their children. Children are often innocent and their lives are governed by the actions of their parents. Therefore, the children should not have to suffer.”

- "Yes, I think that human rights and especially the rights of children should be highly important and is something that is worth the money to protect. Also, if we train the people now then the problems in the future won't arise."

The wider results of the consultation were integrated into the reforms suggested in part four by the commissioners who considered them whilst drafting the recommendations.

iv. Recommendations

Having considered a range of written and testimonial evidence, we made initial recommendations after discussion with the consultees and a number of experts. We then then produced a series of integrated recommendations and discussed in detail below:

- **Schedule 3 paragraph 3** should be amended to remove the words 'and to the extent that'
- and (following recommendations made by the Children's Society) **Paragraph 6(1)** and **7(1)** should be amended thus: after "person" it should be inserted "who entered the United Kingdom as an adult"
- Guidelines expressly detailing how local authorities should assess migrant families claiming support should be codified into a statute
- Local authority assessments and resulting decisions should be subject to more stringent and detailed review by an independent body
- A referral mechanism should be established to allow Councils receiving a significantly higher number of claimants to refer some to other less strained Councils
- Introduction of a Guardianship scheme for unaccompanied child migrants
- Extending the scope of the national referral mechanism

Amendment to schedule 3

We considered removing **paragraph 1(g)**, restricting access to **section 17**, **23C**, (**23CA**), **24A** or **24B** of the *Children Act 1989* **(c 41)** (welfare and other powers which can be exercised in relation to adults)'. However, it was apparent that this would place an undue burden on local authorities and generate the wrong incentives for those who do have support structures in place either domestically or from abroad. Instead, we thought that the construction of the wording in **schedule 3, paragraph 3** of the **NIAA 2002** should be amended.

Paragraph 3 currently reads:

> 'Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of –
>
> (a) a person's Convention rights, or
>
> (b) a person's rights under the [EU] Treaties.'

We are concerned that some local authorities have interpreted the proviso "and to the extent that" as a justification to provide the bare minimum level of support to a family. Taking into consideration a child's primary and secondary socialisation, the most basic support is likely to be inadequate and would not always cater to a child's needs. Repealing this phrase would allow families to receive full **s.17** support when it is shown that failure to provide some support would be a breach of their human rights. In this way the human rights exception becomes what was described as a 'gateway' provision for destitute families and children.

The second amendment we consider necessary addresses the issue of care leavers. The quality of the existing care-leavers support provided to children is beyond the scope of this report; it is sufficient that children are not discriminated against because of their immigration status when they turn 18.

Essentially, we feel that as soon as they've reached their independence (i.e. 18th birthday), they should not immediately have all their support revoked. This is a hugely traumatic experience for a young person at a time when they are especially vulnerable and facing many other immigration related issues.

Therefore, **paragraphs 6(1)** and **7(1)** should be amended. After "person", insert: "who entered the United Kingdom as an adult"

This would ensure that children who have been in local authority care will be supported until they either leave the country or receive leave to remain in the UK. However, its effects are limited to failed asylum seeking children and children in the UK illegally.

(In addition, we support the introduction of a statutory guardianship scheme implemented to support unaccompanied children through the difficult legal procedures necessary to claim asylum, seek indefinite leave to remain, or in any dealings with local authorities or the police. See section 4.5 below)

Furthermore, we found that by only providing the minimal support, this imposed barriers to a child's prospects of higher education and therefore hindered their chances of attaining degree-level professions. To remedy this, we recommend that local authorities should be required to assist care-leavers who are granted indefinite leave to remain, by providing the necessary information and support for pursuing higher education.

Statutory Guidelines

In researching this topic, we received considerable assistance from the NRPF Network's Practise Guidance for Local Authorities, which provides guidance to local authorities in assessing whether they have a duty to support families with children and former looked-after children[43].

We were therefore surprised to find that currently this guidance has only been adopted by 58% of local authorities (as of 2011), with 29% having adopted it to some extent and 13% have not adopted it at all[44]. While all local authorities do use some form of guidance, and seek legal advice when making decisions, the lack of a uniform system of assessment and support makes services across the country inconsistent.

In addition, we are concerned by the wide variety in staffing and data-collection. For example, of the 51 local authorities that responded to a 2011 NRPF network survey, 24 recorded data on all the NRPF cases they support, 11 record only adult cases, 9 record only children supported and 5 did not record any data[45].

Furthermore, Local authorities structure their services to people with NRPF in a number of different ways. These have been summarised in Table 1 overleaf[46]. Of the authorities responding to this question, 83% had NRPF- specific services of some sort, whether across adult and children's services or in either of the two. This demonstrates that, as a complex and unique area of work, it is widely seen as beneficial to develop specific services to the client group.

A legal advisor to a local authority informed us that they would almost always provide support, whereas others are significantly more stringent in carrying out human rights assessments. We consider this to be unfair on children who, by no fault of their own, claim in a local authority that operates in a more stringent manner.

43 NRPF Network (2011) *"Practice Guidance to Local Authorities, Assessing and Supporting Children and Families…who have NRPF for Support from Local Authorises under the Children Act 1989."* Islington Council

44 NRPF Network (2011) "*Social Services support to people with NRPF: A national picture*." p.11

45 ibid p.11

46 Ibid p.11

NRPF Service Structure Type	Number of authorities
General NRPF Team	9
NRPF Specialist Worker across Children's and Adult Services	1
Separate NRPF Teams in Children's Services and Adult Services	5
NRPF Team in Adult Services only	1
NRPF Team in Children's Services only	2
NRPF Specialist Worker in Adult Services only	4
NRPF Specialist Worker in Children's Services only	2
Total with dedicated NRPF Service	24
No dedicated team or specialist worker	5

As a result, we recommend that statutory guidance be drafted by parliament that follows closely to the NRPF Networks provisions as we were impressed by its focus on good practise, thorough assessment and clear explanations as to the requirements for support.

Statutory guidance would facilitate social workers in carrying out assessments and to understand who is eligible for support. We believe it should also be implemented in conjunction with other legislative amendments to maximise efficiency in the training of staff and would complement the implementation of the other recommendations – see section 4.3.1 below.

Review of local authority decisions concerning support to families with NRPF

We are concerned by what we consider to be an inadequate review of the assessment process. While we believe that judicial review is too great a procedural leap from one social worker making a decision, we are concerned by the difficulty of access to judicial review as a result of the changes to legal aid.

We recommend a moderation scheme whereby local authority staff on the same level, but in a different local authority, anonymously review a random selection of decisions from other local authorities. Where a local authority is regularly found to be applying stricter standard than others consider appropriate, their staff should be cautioned or provided with training to bring their assessment criteria in line with the national norm. By implementing a 'peer to peer' moderation process, social services staff are able to take account the subjective nature of decision making by considering the regularity of under (or over) estimating human rights claims and targeting the standards in that Council rather than constantly reviewing challenged decisions.

We also recommend that claims should be assessed by three social workers. In this way, the subjective temperance of one person would not be able to adversely affect the decision making process and ensuring that decisions are fairly and clearly justified.

Although there could be a difficulty arising from whom then has liability for this decision, we feel that to solve this, all three social workers should be held responsible. This in itself would be a deterrent for all parties involved to make sure that they make the right decision. In addition, using three people's viewpoints would make a legal challenge less likely.

Finally, we recommend that an alternative review tribunal should be offered in the event that the family challenge the decision of the local council. This is because of the concern that judicial review is too great an institutional leap and too costly and difficult in most cases.

Increasing the scope for review, moderation and challenge in this area of local authority decision-making is highly complemented by the implementation of statutory guidance. This is because independent legal advisors, supporters and charities would know exactly how a case *should* be assessed, and what the likely outcome would be, in advance of a decision being made. They could then more easily identify missed evidence or assessment errors and submit these, with evidence, to any review, tribunal or judicial review hearing.

A referral mechanism

We were surprised to learn that whilst all local authorities are required to provide support to destitute children, Councils experienced hugely disparate numbers of claimants. This was often because they were home to a port of entry, or in some cases, certain immigration offices. As a result, those Councils children's services departments were unduly strained by claims from destitute families where others were not.

In response, this report recommends that a referral mechanism, similar to that used to distribute unaccompanied children, be established for families claiming support.

We did consider the potential problems for child welfare resulting from uprooting a family from their home. As a result they recommend that a mechanism would be needed to establish which families are suitable for transfer according to pre-determined criteria, this could be included in the statutory guidance, and should have the best interest of the children at its heart. For example, priority should be given to a family with a disabled member (whose mobility is limited), as opposed to a family with no disabled members, such that the latter is more likely to be referred to an alternative local authority in the event that their current local authority was unable to support them.

The Guardianship Scheme

We reviewed the existing procedures in place to protect the welfare of unaccompanied vulnerable migrant children. We are unsatisfied that they are sufficient to fulfill international obligations under the UN Convention on the Right of the Child for the following reasons:

Social workers, allocated to a vulnerable child, are required to draw up a care plan, which is then verified by an independent reviewing officer (IRO); this is not adequate because these social workers are not adequately qualified to attend immigration and criminal hearings or to give advice and support in the place of a parent. They also lack the necessary continuity and trust that would be achieved with an independent and permanent guardian.

An Independent Reviewing Officer, responsible for periodic review of the care-plan, is employed by the local authority and cannot be truly independent, and may not always consider what is in the best interests of the child. Furthermore, the social worker and the IRO do not sufficiently fulfil any of the essential roles of a parent.

Guardianship and Trafficking

We are concerned that the existing provisions implemented to identify and protect victims of trafficking are inadequate. We feel that a guardianship scheme would be beneficial identifying and protecting victims for the following reasons.

- Often children do not reveal vital information necessary to recognise them as victims of trafficking until they have formed a bond of trust with their social worker. The current system does not provide one independent adult on whom they can rely, but a guardian would fulfil this role.
- If a child is prosecuted for being involved in criminal activities, the guardian would be able to help the child through the traumatic and confusing proceedings. The consultation indicated that there was a majority consensus (85% of students surveyed) that there should be an adult (acting in the role of the parent or guardian) present during judicial proceedings in support of the child.
- The guardian would ensure that the child is provided with sufficient information and explanations about his/her right to local government services and international protection; thus, the child could then indicate to the guardian what he/she wishes to say in relation to any choices open to him/her.

Extending the scope of the national referral mechanism

Under the existing system, only certain designated 'first responders' are able to refer young persons to the competent authorities based on a suspicion that they might be the victims of trafficking.

We therefore recommend that suitably trained prison and youth offending institute staff, and teachers should be allowed to refer young people they suspect of being victims of trafficking. Essentially, more needs to be done to identify potential victims of trafficking. In the first case, this would avoid victims from being prosecuted and/or deported. The latter could result in their being caught by traffickers again[47].

v. Conclusion

Prior to starting the commission, we had very little understanding of the current statute law implemented in relation of migrant children. We were shocked at how many children did not receive full s.17 support because of their parents' immigration status, notwithstanding the government's international treaty obligations. We regard this as fundamentally flawed, but we decided that schedule 3 was not in itself at fault- it was intended that all children be exempt. We found that the key problem was the confusing legal position caused by the interaction of the statutes, and the resulting gaps in implementation by council's. In our opinion, the reforms discussed are necessary to protect the rights of the child, as at present there are serious shortcomings. Out of all the parties involved, the child should always take priority, and thus a lack of resources should not result in a family being refused support where to do so would result in enforced destitution and poverty.

47 ECPAT UK *"Watch Over Me, A system of guardianship for child victims of trafficking."* http://www.ecpat.org.uk/sites/default/files/watch_over_me.pdf

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Part 4: Criminal Law

Recommendations on the criminal law in relation to prostitution.

Compiled with thanks to:

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The English Collective of Prostitutes

Introduction

While it is widely known that prostitutes are routinely exposed to the threat of extreme violence, many are also subject to further exploitation and are often in desperate need of support to overcome drug addiction. The underground nature of prostitution renders it difficult to ascertain with certainty the demographics of those involved, however experts agree that the profession is one in which participants are particularly vulnerable to violent and sexual crimes. Unfortunately, at least 137 people have been murdered since 1990 through their involvement in prostitution, and women involved in prostitution are 12 times more likely to be murdered in the UK.

In light of the above, we formulated the following three aims of our proposed reforms:

1) We wish to improve the safety of those involved in prostitution.
2) We wish to place prostitution on the path to ultimate extinction.
3) Bearing in mind the link between prostitution and human trafficking, we wish to implement policies that will reduce trafficking.

Further, the following factors influenced our exploration of the topic:

- The differing views of stakeholders in society, including the public at large; law enforcement agencies; and people involved in prostitution.
- The importance of agencies co-operating effectively to provide a holistic approach to rehabilitating and regulating those involved in prostitution.
- The importance of preventing people, especially young people, entering into the profession.
- The role that the police have in protecting the public and prostitutes.

The current law on prostitution

The UK legislative framework is designed to discourage prostitution. It encompasses a wide spectrum of measures aimed at prosecuting those selling sexual services on the street; those keeping brothels; those profiting at the expense of others; and purchasers of women suspected of being forced into performing sexual acts.

The main offences in the UK are:

- **Loitering and soliciting in a street or a public place for the purposes of offering services as a prostitute** – The *Policing and Crime Act 2009* amends the *Street Offences Act 1959* to create an offence when a person persistently found loitering or soliciting in a street or public place for the purposes of offering services as a prostitute. 'Persistently' is defined as conduct that occurs on *two* or more occasions over a period of three months. Two police officers would need to witness each instance and administer a 'prostitutes caution'. The offender may incur fines, or alternatively courts may direct that the offender attend meetings designed to deter the offender from future illegal conduct.
- **Causing, inciting and controlling prostitution for gain** – The *Sexual Offences Act 2003* makes it illegal for a person to intentionally cause or incite another person to become a prostitute when doing so for or in the expectation of gain for himself or a third party. Further, an additional offence under the Act criminalises those selling another's sexual services in the expectation of gain for himself. 'Gain' is defined as any financial advantage or goodwill that at some point will manifest in financial advantage.
- **Keeping a brothel** – Under the *Sexual Offences Act 1956*, it is an offence to keep a brothel and for a landlord to let premises for use as a brothel. S 55 of the Act also creates an offence of 'keeping, managing, acting or assisting in the management of a brothel'. Premises only become defined as a 'brothel' when more than one woman uses the premises for the purposes of prostitution.
- **Paying for sexual services** – With effect from 1st April 2010, section 53A of SOA 2003, as inserted by s.14 of the *Policing and Crime Act 2009*, creates a new offence of paying for the sexual services of a prostitute subjected to force. S. 53A provides that a person commits an offence if he promises payment for the sexual services of a prostitute where a third person has engaged in exploitative conduct against the prostitute. 'Exploitative conduct' is the use of force, threats, deception or any other form of deception. This offence is rarely used against those who are procuring services from street prostitutes and the Crown Prosecution Service believes it may prove difficult to prove 'exploitative conduct'.
- **Kerb crawling** – The *Policing and Crime Act 2009* introduces a new offence for a person in a street or a public place to solicit another for the purpose of obtaining a sexual service as a prostitute. This includes those persons in motor vehicles, and a person guilty of this offence is liable to a fine.
- **Advertising** – s 46(1) of the *Criminal Justice and Police Act 2001* creates an offence to place advertisements in, or in the immediate vicinity of, a public telephone box.
- **Trafficking** – The *Sexual Offences Act 2003* creates three offences of trafficking for the purposes of sexual exploitation. Sections 57-59 cover the offences of trafficking into the UK; within the UK; out of the UK.

Possible approaches to reform

Commentators and legal experts that we consulted argued that the UK's current legal framework operates unfairly against prostitutes, in that the system favours criminalizing the activity of prostitutes rather than those who are buying their services.

Our research showed that many prostitutes are forced into the profession through adverse economic, personal and social circumstances, often linked to addiction problems. While we noted that some prostitutes enter the profession of their own volition, our recommendations were rooted in the recognition that the majority of participants do not enter prostitution of their own choice, and that in some instances paying for sexual services vitiates free and fair consent entirely.

We considered a number of legislative regimes offering differing approaches to regulating prostitution, and identified three possible legislative 'models':

- A model that aims to cut demand for sexual services through prosecution of persons paying for sexual services. This is often known as the 'Swedish Model' owing to its implementation in Sweden.

- A model of complete decriminalisation of prostitution offences and deregulation of the profession. This is often known as the 'New Zealand Model'.
- A model allowing prostitution to be regulated by the state, as implemented by the Netherlands. Although we analysed the benefits of this model, we rejected its suitability in the UK based on: a) legalisation often leads to a location becoming attractive to traffickers; b) we expressed fears over providing tacit encouragement for young people entering into the profession; c) symbolically, we felt uncomfortable with accepting that prostitution was similar to any other business pursuit.

We considered the *Swedish Model* and the *New Zealand Model* in more detail below.

a). The Swedish Model : Criminalizing the purchase of sex

In 1999 Sweden reformed their laws on prostitution, changing the emphasis from prosecuting the prostitute and instead criminalising the person paying for sex. The 'Swedish model' shifts criminal liability away from those who are exploited through prostitution and towards those who contribute to this exploitation by choosing to purchase sex.

The argument in favour of the Swedish Model is that it sends a powerful message that it is not acceptable for women's bodies to be bought and sold for sexual use, and it seeks to overturns outdated legislation that focussed on those who *sell* sex acts whilst ignoring those who *buy* them. The legislation sought reduce the demand for the services of prostitutes and encourage them to seek exit strategies.

However, some commentators believe the legislation will simply cause prostitution to be driven further underground, as prostitutes will be less likely to speak out against violent clients due to the fear losing customers. The prostitutes may also have to resort to taking greater risks with clients, as the "good" clients will be driven away and the clients that are willing to take the risk of prosecution are likely to be more dangerous. Police currently rely on the *purchaser* of sex to inform them if they believe that the prostitute is being controlled, and without this stream of information it will be harder to protect against traffickers.

In the first year following implementation of the regime, the police used video cameras to harass clients and to collect evidence; filming both the exchange of money and the sex act. Many women felt that even though they were no longer performing a criminal act, the law was used by the police in a manner that violated their integrity. Clients became increasingly agitated and negotiations had to go very fast as clients feared being recorded by the police. This made it impossible for sex workers to assess the client and the risk that client presents. Many of the 'good' clients turned to indoor sex workers instead, and street sex workers were left with the more dangerous clients.

Results under the Swedish Model

Social workers reported that some women did leave prostitution in Sweden after the law had been passed due to the availability of exit strategies, and the Swedish public appeared to be 80% in favour of the new stance on prostitution.

However, many women simply left the streets to start working on their own or in illegal brothels, where they risked becoming dependent on pimps. Meanwhile, social workers report that the situation for women who stayed on the streets deteriorated.

b). The New Zealand Model : Decriminalization

In 2003 New Zealand decriminalized prostitution, removing much legislation related to prostitution. This approach follows one feminist view that a persons body is their own and can do with, and that sex work should be treated as an economic transaction not dissimilar from any other form of business.

New Zealand's decriminalization regime seeks to create a framework that protects sex workers from exploitation; promotes their welfare and occupational health and safety; is conducive to public health; and prohibits the use in prostitution of persons less than 18 years old. The regime allows up to four people to work together from premises where each sex worker retains control over their individual earnings, and where more than four people work it defines the manager as an "operator" with a requirement to apply for a licence. Most importantly, the regime reinforces offences against compelling anyone into prostitution, and states a specific right for sex workers to refuse any client.

A comprehensive review process is built into the act and specified that a Review Committee should be created, including representatives from the ministries of justice, police, health, women, commerce and the New Zealand Prostitutes Collective. Five years after decriminalisation was introduced, the Review Committee reported favourably on the change citing evidence which showed that there had been no increase in prostitution, and that sex workers are now more likely to report violence and leave prostitution. It has also been suggested that the change in the law has made conditions for sex workers safer by not forcing them to take risks regarding which clients they serve.

However, the New Zealand government noted that the law in itself could not prevent or address the causes of underage prostitution. This was also acknowledged by The National Council of Women of New Zealand, who noted that girls as young as 13 were currently engaging in prostitution, and people arrested for buying sex from minors were receiving light sentences.

Results under the New Zealand Model

It was noted that following decriminalization police were cut out and criminal organisations infiltrated brothels as a result of the inability of the police to collect intelligence. A 2008 government report in New Zealand stated that a majority of sex workers felt the new law failed to do anything about violence, and that they were still unlikely to report abuse. The report also noted that even though decriminalization had taken place, the stigma of being a sex worker remained.

Consultation responses

Following our initial research and consultations with experts, we wished to consider the views of other young people on this sensitive topic. A questionnaire was distributed amongst 16-18 year olds, and an analysis of the responses demonstrated the following:

Q. 1) The law on prostitution in the UK prevents people trying to sell their body on the street. How many times do you think the police should catch a prostitute 'loitering and soliciting' over a three-month period before charging them with an offence?

Responses: 90% of the group believed that the police should have to catch women at least 2-6 times.

Q. 2) How comfortable do you feel with the ideal of prostitutes roaming the streets?

Responses: 65% of respondents felt 'slightly uncomfortable' with prostitution being on the streets, with only 20% feeling 'comfortable'. The responses suggest that street prostitution was largely unwanted, and that moving prostitutes indoors was important.

Q. 3) Do you think brothels are morally acceptable?

Responses: 65% of respondents thought that brothels were 'not acceptable'; conversely 35% thought that brothels are 'acceptable'.

Q. 4) Brothels are currently defined in law as being an establishment where more than one woman is providing sexual services. Keeping a brothel is an offence. This encourages women to try and sell their bodies on the streets, which is ten times as likely to lead to physical abuse. We propose increasing the number of women needed to satisfy the definition of a brothel. What number of women do you think brothels should be limited to?

Responses: Results were scattered in response to this question. 35% of people thought that limiting brothels to 5 people was sensible, whilst 20% of respondents believed that brothels should be unlimited. The group discussed that many respondents may not have understood the question, however, it does indicate the wide variety of thinking on the topic.

Q. 5) If the government was seen to be permitting brothels containing a defined number of prostitutes, do you think this would lead to an increase in people choosing prostitution as a career choice?

Responses: 75% of responses indicated that more people would choose prostitution as a career path if brothels were permitted. The group suggested that a solution to this would be to limit the number of people who may be enticed into the profession by limiting the number of women that are able to legally practice in a brothel.

Q. 6) Many prostitutes enter the industry due to poverty. Do you think that there is any distinction between selling your body like prostitutes do, or, working in a supermarket stacking shelves?

Responses: Inspired by provocative discussions, the group were interested to learn whether participants believed that most people take jobs to prevent themselves from being in economic distress, and thus there would be little distinction between prostitution and any other job. 75% of responders believed that there was a difference. The group decided that in light of this and lengthy debate, prostitution was inherently different to a regular job.

Q. 7) Should people have the right to buy sexual services?

Responses: 60% of responders believed that people should have the right to buy sexual services. The group noted that this response epitomized the stigma that surrounds prostitution. Many are happy to chastise prostitutes and hold them responsible for its effects, but are equally committed to maintain the right to pay for sexual services.

On the whole, the group considered the implications of the questionnaires and tailored the reform proposals in light of them. They noted that the survey may have been of limited evidential value owing to the fact that many participants had not studied the area, accordingly, may have been unable to make meaningful responses.

Recommendations

We recommend the following reforms to the current laws on prostitution:

Recommendation 1 – Loitering and soliciting in a street or a public place for the purposes of offering services as a prostitute

We propose increasing the number of times a prostitute needs to be caught loitering and soliciting before they can be convicted to three. We also believe that support should be provided to those that are caught loitering and soliciting on the streets in order to help them move indoors. Once a prostitute has been caught three times the offence should only punishable by community service, rather than fines which may force the prostitute to re-enter illegal street prostitution.

Recommendation 2 – Keeping a brothel

We recommend an overhaul of the current legislative regime applicable to operating a brothel. Noting the benefits of prostitutes being able to ensure their physical safety by working indoors, we propose changing the definition of 'brothel' to those establishments with more than four prostitutes; removing establishments of 4 or less from the offence. Limiting brothels to four people will remove the need for exploitative 'pimps', and discourage women from frequenting the streets where their safety may be compromised. We further recommend that those participating in prostitution in brothels must keep all of their earnings in order to discourage coercion by those with a financial interest.

We note that limiting the number of prostitutes in a brothel to four may also help to limit the profitability of prostitution. We further believe that a holistic and comprehensive support system should be implemented to aid women to exit the profession. We suggested creating more relevant and empathetic police units that specifically deal with prostitution, and officers should receive thorough training to help change antiquated values towards prostitution.

We stress the importance of reducing profitability for those who stand to make financial gains out of the exploitation of others. We recommend retaining all offences pertaining to the *control* of prostitutes, and further add that those controlling prostitutes should be held liable to imprisonment with fines reflecting their level of financial gain.

Finally, we recommend retaining the law criminalizing advertising in telephone boxes and public areas. We recommend that those operating brothels should be able to advertise their services in defined locations inoffensive to the public, and that this would have the advantage of discouraging street prostitution.

Recommendation 3 – Paying for sexual services

In line with our desire to reduce reliance on street prostitution, we recommend further criminalizing the purchase of sexual services on the street. This is based on our belief that those who create demand for sex workers should be held liable for the devastating effects of prostitution. We recommend strengthening the law to allow those buying prostitutes' services to be punished more severely than the law currently provides for.

Recommendation 4 – Criminal records

In light of the fact that many prostitutes have criminal records that prevent them from escaping the profession by prejudicing their chances of securing alternative employment, we recommend that any person who has been prosecuted for their participation in selling sexual services should have these offences removed from their criminal records.

Conclusion

Upon starting the Model Law Commission, the students of the Criminal Law Group had little understanding of the factors driving women into prostitution, and their opinions were influenced largely by media portrayals of prostitution. Following their involvement in the Model Law Commission students came to an understanding that prostitution is often seen as a way for vulnerable people to survive in tough economic times, and that those driven into prostitution should be supported rather than punished under the criminal law. However, students still felt that this must be balanced against a duty to protect public morality. We believe that the recommendations outlined above meet these dual aims of protecting prostitutes and recognising the public's moral concerns.

Big Voice London is always looking to grow our support from organisations and individuals who share our passion for increasing youth access to the legal system. For more information or to view our other publications, please visit our website at **http://bigvoicelondon.org**