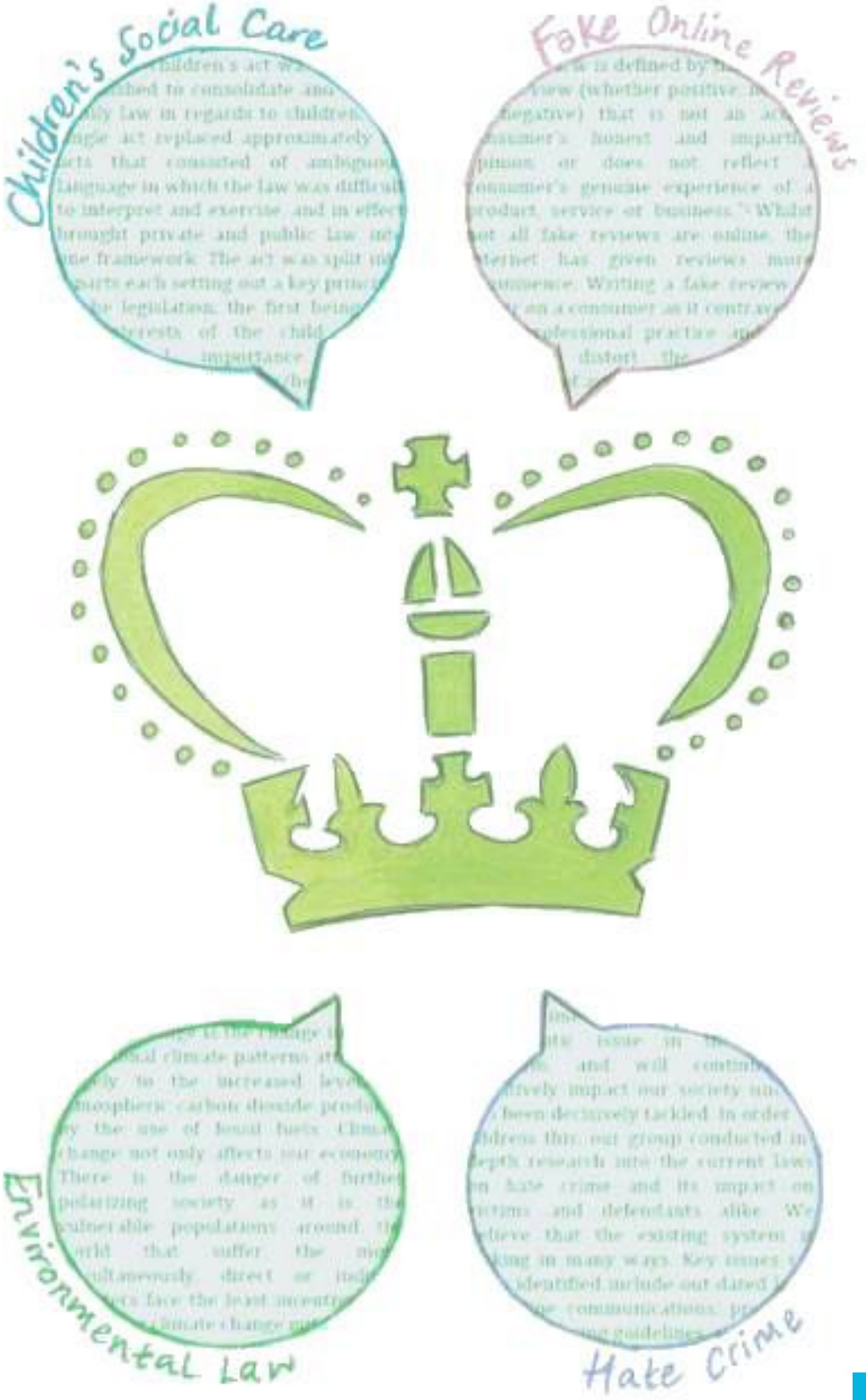
Big Voice London

Model Law Commission Report 2016

Supported by the UK Supreme Court



LexisNexis®

BIG VOICE LONDON

Edited by Victoria Anderson
Published December 2016 by LexisNexis

Foreword note by the Big Voice London Director

I have been involved with Big Voice London for over four years and the talent, determination and intelligence of the students we work with continues to impress me year on year. Our students, recruited solely from non-fee paying schools, are part of a group within society that is severely underrepresented in the legal profession in this country. According to research conducted by the Sutton Trust, 32% of law firm partners, 71% of QCs and 74% of judges attended private schools. Big Voice London seeks to address this problem, by providing a programme of activities, which aim to make the law more accessible to those from non-traditional backgrounds. Thankfully, our feedback indicates that we have had some success in achieving these ambitions, with student feedback from last year's Model Law Commission indicating that 90% of students felt they were more likely to consider attending University, whilst 95% indicated that the programme made a career in law feel more accessible to them.

Our four key projects, which seek to provide an insight into law and the legal profession are 'an Introduction to the Legal System Project', run in association with the Supreme Court, an Annual Mooting Competition, a Summer School, in association with Linklaters and our flagship 'Model Law Commission' project. The latter of these programmes, which enables young people between the ages of 16 and 18 to mirror the work of the Law Commission, is the only one of its kind, offering participants a unique insight into legal policy and reform.

Over the course of three months the students explore four distinct areas of law, learning from experts and consulting with their peers; all with the aim of devising a series of reform proposals. This year our students have tackled a range of challenging and controversial topics from the rise of hate crime, to the complex area of environmental law. These young people, all from a wide array of cultures and backgrounds, have risen to the challenge presented by the Model Law Commission and have provided us with what I hope you will agree is an interesting and well thought out set of proposals.

Our students would not have been able to share these ideas without the generous support provided by experts in their respective fields, who give up their time to speak to the groups. These individuals guide our students as they initially get to grips with the current law, the associated problems and the benefits. We are extremely grateful for the invaluable contribution they have made to the project.

We are also indebted to the eleven Big Voice London Group Leaders who have volunteered their time to teach the students each week, over the course of three months, all while undertaking other study and work commitments. It is with the help of these volunteers and, of course, the generous sponsors and supporters that we are able to run projects like these all year round and we hope to continue to do so for many more years to come.

It is with great pride that I now present the report of the Model Law Commission 2016. I hope you enjoy reading it.

Victoria Anderson
Director

Model Law Commission 2016

Contents:

Big Voice London Logo Designed by Sarah Roberts. Photography and Media Content by Ben Chinnery, David Carey, Matthew Bayly and Samantha Chinnery. Cover Artwork Designed by Victoria Anderson.

Introduction

Big Voice London

At Big Voice London we believe that all young people, from all backgrounds, should have the opportunity to share their thoughts on the legal landscape and, for those who choose to, perhaps one day enter the legal profession themselves. To further this aim, we take students from non-fee paying schools and give them the chance to have an insight into the law through a variety of events and programmes.

Over the last five years, we have reached hundreds of students from all across London, continuing to grow and develop our events as we go. In 2011 when Big Voice London was founded, it ran as a small youth organisation running out of City Law School. Now, in 2016, with the help of our volunteers, Management Board, supporters, sponsors and a business strategy team at Linklaters, we have successfully registered as a charity. The formalisation of the project, will, we hope, enable us to grow and reach yet more students.

We are extremely fortunate to be able to name Cohen Davis Solicitors, Carter-Ruck, Horsey Lightly Solicitors and LexisNexis as sponsors of the organisation, in addition to the on going support from Linklaters, Middle Temple and the Law Commission. We also extend our appreciation to the UK Supreme Court for their continuing support of our objectives.

The success of Big Voice London is most clearly exhibited in the achievements of our alumni. At least one student in this programme's cohort has been invited to an interview at Cambridge to read law and many more have been motivated and inspired to pursue higher education and careers in law. We have no doubt that as we continue to empower and engage more students through our programme of activities over the coming years that we will be able to share many more stories of our student's achievements, regardless of their background.

Model Law Commission 2016

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

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

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

Our Students

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

All the students that participate in the Model Law Commission apply to this project off their own backs. It is not a school run activity; these are students who want to learn about and have their voices heard in the law. That being said, we rely on the continued co-operation and support of the teachers from schools around London to pass on the message of Big Voice London to their students. This year, our applicants came from our largest ever pool of schools, with other 250 schools informed of the opportunity.

With sessions run every week in the evenings after school, this is not a small commitment to undertake alongside studying for all-important A-Level exams. Despite this fact, our call for applications in 2016 received a record response of over 100 applications, meaning that we were unable to take everyone we wanted. We hope that as we expand, we will be able to provide this valuable opportunity to more ambitious young people.

The Authors/Commissioners

The young people that have contributed to this briefing paper are:

Part One: Property, Family & Trusts: Children's Social Care

Anisha Noshin
Annaliese Jackson
Baran Bayir
D'nieccio Mitchell
Ellen Collins
Enisha Patel
Farnosh Tolou
Gina Richards
Grace-Rachel Achiaa
Hamzah Abbas
Ibraheem Hussain
India Lindsay
Jamila Khatun
Jenny Sacaj
Jill Arundhu
Joshua Lawrence
Juste Rudminaite
Laura Somanska
Marthina Amarachi
Mary Bonsu
Medani Imtiaz
Michael Okojie
Myra Christodoulou
Nahid Ahmed
Nuha Chy
Prabhjot Parmar
Rahma Al-Dabbagh
Rejanur Rahman
Safa Hussein
Sanah Mahmood
Shalom Ajala
Shannon Reddington
Syeda Tazeen Gilani
Tanay Patel
Taznim Aktar
Tijesunimi Adeagbo
Urvashi Balgobin
Winnie Adebayo

Part Two: Commercial & Common Law: Fake Online Reviews

Aminah Habib
Anita Kamara
Ashleigh Gabriel
Blessing Eze
Erikas Mikusauskas
Fatima A Halim
Gabriel Ogabe
Jamima Hussein
Jeff Vincent Santiago Torio
Jennifer Boadi
Kainat Baig
Kandeel Shah
Minhal Shahid
Naqeeb Ali
Sabrina Daramola
Saffron-Lucia Gilbert-Kalua
Vivian Matthews

Part Three: Public Law: Environmental Law and Climate Change

Alex Johnson
Andrew Wolckenhaar
Dhevia Sharma
Harvinder Bharj
Kyieron Clarke
Pamela Consistente
Poppy Blackshaw
Sania Shah
Sila Ozkan
Thomas Mulligan

Part Four: Criminal Law: Hate Crime

Abdullah Sekin
Annine Ngesang
Callum Steele
Chazi Mwale
Deborah Longe
Elena Atalay
Emily Rose Lee-Williams Potter
Ghazala Moosa
Johan Xyrielle Repato
Laura Szomanska
Megan Porter
Mudia Abifade
Nishta Pandit
Nyrose Kardasi
Rosie Asplin
Simran Rupal
Tasnim Ahmed
Varun Valla

Big Voice London Volunteers

Director of Programmes: Louise Ketley

Co-ordinator: Sophie Catchpole

Property, Family & Trusts Team: Elly Nowell, Elly Sharrock and Shannon Knight

Commercial & Common Law Team: Sam Way and Sophie Catchpole

Public Law Team: Nadia Aumeer and Peter Wat

Criminal Law Team: Joyce Sun Xiaoning, Nicole Demarlo Taylor, Raida Peermahomed, Ségolène Lapeyre

Acknowledgement

We are extremely grateful to the LexisNexis team for kindly sponsoring this publication 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.

Ayath Ullah
Daveena Ogene
Farhan Dawood
Henry Engelsman
Louise Ketley
Nim Njuguna
Richard Bolton
Steven Barrett
Yair Cohen

Big Voice London, December 2016
www.bigvoicelondon.com
Email: info@bigvoicelondon.co.uk

Disclaimer

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

Part 1: Property, Family & Trusts

Recommendations on the laws governing the operation of children's social care.

Compiled with thanks to:

Damian Stuart, 14 Gray's Inn Square

Professor Jane Tunstill, King's College London

Shu Shin Luh, Garden Court Chambers

Tony Harrop-Griffiths, Field Court Chambers

Introduction

After three months of research and discussions, we are proposing three main areas of reform to Part 3: the definition of welfare, the definition of disability and clearer rules governing which Local Authority should have the primary responsibility of caring for a relevant child. We make three core recommendations:

- to adapt the definition set out in s1(2) Care Act 2014 and to introduce this into the law of Child Social Care;
- to modernise the current definition of disability by adjusting the definition set out in the Equality Act 2010; and
- to reduce disputes between Local Authorities by implementing clearer rules about when an Authority has the main responsibility to provide care.

Methodology

For this report we approximately followed the four stages of the Law Commission: pre-consultation, consultation, policy development and reporting. During the pre-consultation phase we analysed Part 3 of the Children Act 1989, in particular its flaws. We met with multiple accomplished family lawyers and experts in Child Social Care such as Shu Shin Luh, Tony Harrop-Griffiths, Jane Tunstill and Damian Stuart to gain their perspective on the practical application of these laws. We then conducted a detailed survey with 54 respondents to collect the views of the general public for our consultation. Thirdly, we engaged in policy development where we intensely debated proposals. Submitting the report is the final stage of our process. We also met with the Law Commission and received advice on how to structure our report and the how to assess the implications of our reforms.

Context and Current Law

The 1989 children's act was originally established to consolidate and reform family law in regards to children, this single act replaced approximately 32 acts that consisted of ambiguous language in which the law was difficult to interpret and exercise, and in effect brought private and public law into one framework. The act was split into 3 parts each setting out a key principle of the legislation, the first being that the interests of the child are of fundamental importance in all decisions made about his/her welfare.

In the Act itself, Parliament implemented some fundamental changes in the approach of Child Social Care, for example "*the Act replaced the concept of parental rights with that of parental responsibility, reflecting Parliament's view that parenthood was a matter of responsibility not rights*" and introduced the welfare principle which was designed to be a consideration whenever deciding any question respecting the upbringing of a child. The Children Act 1989 sets out the process for assessing when a child is in need, outlining when a child is in need and whether local authority or a school takes responsibility.

When making the law the government addressed the key issues, as were relevant in the context of the law and social context in the 1980s. Since the implementation of the Children Act 1989, there have been numerous refinements to the Act, through case law, statutes and secondary legislation. This has created a system which no longer as clear or as accessible as it should be.

When considering the law and any reforms to the law in this area, we considered any impact it has in the wider context by looking at the economic and social context of an area of law that reflects the interests of many different stakeholders.

Economic Context

Economic context is a key factor when making the decision to reform the law of Children's Social Care. Money runs our world, including the state and the law, meaning it has placed restrictions on what we wish to do. In an idealistic world, the authority (state) would have the funding and ability to support anyone with housing needs. However, financial restrictions, such as the affordability and availability of housing, has limited the amount of resources that are available to the state, and therefore available to the public.

Other financial expenditures such as background checks, training, the hiring of lawyers and social workers, all cost money which, frankly, the state cannot afford. The cost to take a case to court is high when you round up all the legal fees. Due to this, while it may seem in the best interest to change the word power to duty, we could be putting a strain on the state, who now have to make sure they provide for children in-need, even when funding is low. This could lead to inadequate housing or legal misrepresentation, because it is what they can afford at the time. It might be advisable to wait until the state has funding so that they can do a more effective and thorough job when supporting a child in need.

Furthermore, while we may argue it is a good idea to increase the pay for foster parents, we must think about the implications this can have. It is logical that the public fears that more importance will be placed on the money rather than the child in need. There are cases where foster parents do not provide a caring and nurturing home for the child as they see it as a job, not a moral duty that they have agreed to. Children are not a means to pay bills and with the increase in pay, added to the desperation of the state to get more foster parents to supply the high demand for them, untrained and unqualified parents end up having control over socially vulnerable children.

Overall it is imperative that we consider the economic state of the authority before pushing for change. It would be fair to say that England is still experiencing the effects of the 2008 banking crisis, as well as the current consequences of Brexit, which have put a strain on our economy, as evident in the drop of the pound. This has caused the government to make financial cuts to certain sectors. Can we say that foster parents are more important than the NHS or the education system, and therefore deserve more money?

Social Context

The social and political contexts intertwine in their effects on the reform. As seen previously, through the state played an interventionist role in the matters of a child's life, removing them from the home if the parents were indicated as unfit to take care of a child. However, our current society prefers the rights of the parent over the power of the state, thinking it better of the state to take a more relaxed role and work with the parents to improve the home life for the child. It could be argued that this view has arisen from society's knowledge of the damaging effects going into care can have on a child. Studies have shown that children in foster care, or who have had their relationships with parents interrupted, have a higher chance in committing crimes, or having unstable relationships themselves. The socialisation of the child is imperative if they are to become a productive and well-adjusted member of society.

Parental rights are also highly considered amongst adults. The majority of people would argue that it is in the best interest of a child to stay with their parent, not just for the child's sake, but for the parents. Most parents have a loving and nurturing relationship with their child, and the idea of them being sent into care brings about the fear of the unknown. The parent doesn't know who is receiving their child, or what the environment is going to be like for their child. This worry is built upon by the fear of not only the short term but also the long-term effects that foster care will have on a child.

On the other hand, while we still consider the rights of the parent, we argue (in cases of abuse and neglect) that a parent throws away their parental rights to a child. If the state has to get involved for financial reasons,

when the parents are loving and nurturing, then the state should work with the family, rather than intervene. However the child's safety take priority over parental rights, so in cases of abuse and neglect the state should take an interventionist role and remove the child immediately, as to avoid any further harm to the child.

Linking back to economic context, while a child's safety is important, people question the cost on taxes that this approach will have.

Proposed Reforms

Welfare/Well-Being Definition

An issue with the Children Act 1989 is that it does not provide a clear and understandable definition for the word '*welfare.*' In fact, it simply places a duty on local authorities to 'safeguard and promote the welfare of children in their area who are in need. Collectively, we have decided that this statement is far too broad and doesn't provide an exact definition that local authorities can understand and act on when needed. Through this, the court has regard to a checklist under section 1(3) to assist its decision-making. It acts as a guideline for courts but as stated previously, it doesn't provide enough clarity to what welfare should actually be defined as. Further to this, it does not provide specific actions that can be taken and is particularly insufficient when determining whether someone is eligible for certain incentives that are provided for people who come under the term '*welfare*'.

We suggest that the use of a checklist, rather than providing a specific definition is a big issue as it makes it difficult to decide what the word actually means. It creates a sense of ambiguity as it is not clearly stated how or when a child lacks '*welfare*'. Rather, it is left to the local authorities to decide, which can often lead to them unintentionally ignoring issues. However, this issue can also be attributed to the lack of actions that are provided for local authorities. This therefore creates issues as not only do local authorities lack the definition that helps them determine whether the child is 'in need' but it also lacks specific instructions on what they should do once they have determined whether or not a child is in fact, "*in need*'"

Due to all the above factors, we decided to create a definition that incorporates the Welsh definition which is used in the Social Services and Well-Being (Wales) Act 2014 as well as the definition provided in the Care Act 2014 for adults and integrating both to form one finalised and clear definition which can be applied to children. The '*welfare*' of a child is defined as:

a. *"Physical and mental well-being;*
b. *Social inclusion;*
c. *Financial stability;*
d. *Access to full time education, training and recreation;*
e. *Suitable shelter and accommodation that follows health and safety regulations;*
f. *Protection from physical abuse and (physical) neglect;*
g. *Protection from emotional abuse and (emotional) neglect;*
h. *The feeling of contentment and emotional stability;*
i. *Personal dignity (including treatment of the child and respect);*
j. *Domestic, family and personal relationships; and*
k. *Control by the individual over day-to-day life (including all care and support, or support, provided to the individual and the way in which it is provided)".*

The definition set out in s1 of the Care Act 2014 is particularly useful because it makes it clear about what does and does not come under welfare. Having certainty about what is included under the definition of welfare is advantageous, because it clarifies to Local Authorities about when assistance is necessary, and could prevent local authorities from abusing their discretion to intervene. Having a clear, yet sufficiently broad and flexible definition would ensure that people do not abuse the resources provided to them, as this new definition limits issues which come under the meaning of welfare. Additionally, 92.6% of respondents to our survey agreed that the above provides a satisfactory definition of well-being.

Further to this, we believe that the above term excludes any ambiguity that was present due to the absence of such a definition in the Children Act and ensures people are aware of what exactly '*welfare*' is defined as. It ensures clarity and allows local authorities, social workers and the general public to fully understand the law that may apply to them. Unlike now where there is a risk of local authorities abusing the power granted through a vague definition, or decisions being made on a poor understanding of what welfare includes.

Disability Definition

We are looking to reform the definition of *'disabled'* in the Children's Act 1989 to create a more cohesive and unified idea of what disability across the board and to eliminate any confusion about the definition. The current law under s17 Children's Act 1989 is:

"*a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in and in this part—*

- *"development" means physical, intellectual, emotional, social or behavioural development; and*
- *"health" means physical or mental health*".

One issue with the definition is the stigmatized language used such as "*disorder*" and "*dumb*". In the survey we carried out, 75.5% of people said that they had negative connotations with the word "*disorder*". Another issue is that in this definition, the word "*substantially*" is not defined, whereas in the definition of disability in the Equality Act 2010 the word "*substantially*" is defined as "*substantial*" is more than minor or trivial, e.g. it takes much longer than it usually would to complete a daily task like getting dressed.' In addition, the use of the word 'permanently' is problematic because sometimes disability cannot be categorised as non-permanent or permanent, for example Cancer.

Another issue with this definition is the use of the word "*disability*" in "*or such other disability as may be prescribed*" this creates a circular definition as this refers back to the above definition of disability and further excludes those who could be seen as disabled but do not fit the criteria. After consulting experts in Child Care law we concluded that this definition is not a substantial issue in practice. However, we felt that it was an area that still needed some clarification; codification of the change would also make the law more accessible to the public as the language is not so complex and could be found in one place.

Objectives of reform

Our objective is to firstly modernize this definition by using language that does not have negative connotations and create more clarity by providing a clearer definition that is easier to follow. We want a definition that considers disabilities that didn't exist at the time this definition was written, for example Autism. In addition, in order to create more cohesiveness, as we believe it's more beneficial to have a definition that is not too restrictive, a definition that is specific but doesn't over exclude.

We would like to adapt the Equality Act 2010 definition of disabled: "*Person has a disability if the person has a physical or mental impairment. The impairment has substantial and long term adverse effect on person's ability to carry out day to day activities.*" However, with some revisions to tailor it to children:

i. "*Day to day activities*" needs to have more guidelines so that it's not so ambiguous. As it is the case that "*day to day*" activities could be seen as many things. We asked in our survey what people considered as "*day to day*" activities and the answers ranged from "*using public transport*" to "*playing sport or exercising*" to "*going to school*" Currently, there is only one guideline which is "*such as getting dressed*". We believe that this is not sufficient. In addition, it could be argued that day to day activities are not just different from person to person but it is different for adults and children for example, it is believed that children have the right to play as daily activities, in order to achieve optimum mental development.

ii. Long term in the definition is described as "*12 months or more*", however we thought that this could be too long for a small child, where 12 months is a huge proportion of their lifetime for example, a three-year-old child. 53% of people who participated in our survey described long term as less than twelve months.

Options for reform

Option 1: Do nothing.

Option 2: Copy the definition of disabled from the Equality Act 2010.

Option 3: Copy and adjust the definition of disabled from the Equality Act 2010 to suit children with the revisions stated above.

We chose option 3 rather than option 1 because there is already a definition of "*disabled*" from the Equality Act 2010 that is easily adapted to this law without going through a timely process of creating a new definition. We chose option 3 rather than option 2 because this would make the legislation as suitable as possible for childcare.

Which Authority should be involved?

In regards to reform of the Children Act 1989 part III, due to disputes over which Local Authority must provide services of care (if any) to a child deemed "*in need*" and ambiguities with the "*appropriate Local Authority*" we have decided to reform s23A and s17 of Children Act part III.

ss(4) of s23A in reference to ss(1) describes the "*responsible local authority*" as "*the one which looked after the child first*". Also in S17, provision of services for children in need, their families and others, the "*general duty of every local authority*" is to safeguard and promote the welfare of "*children within their area*". Thus the current legislation in regards to appropriate local authority and responsibility to provide for in need children says that the two criterions are "*area*" referring to proximity and location and initial care or local authority who has already provided the child with care/services "*first*".

Reform of the current legislation would comprise of firstly the duty of care allocated to appropriate local authority in line with aforementioned "*area*" but specify more clearly by type of care to be provided:

a. If the care is to be provided in education or within means of the child's schooling care/services are to be provided by the local authority of the school. In this case the "responsible local authority" refers to the local authority of the school borough ['area']. This is in accordance with the results of our survey, where 55.6% of respondents said that the school authority should be most involved in a child's life in terms of schooling.
b. Where provision of care is required to do with accommodation, housing and/or transport, the care to be provided is to be by the local authority of where the child currently or previously has resided/lived for a prolonged period of time/the longest time.

Conclusion

In conclusion, we understand that a majority of reforms concerning childcare are restricted due to funding issues however with regards to the definition of disability we feel as if the current law is out-dated and must be reformed in order to be inclusive and make the law more accessible to the public especially if there is a definition that is easily adapted. In addition, reform is needed due to the lack of clarification in the definition of welfare. Not stating what falls under welfare has caused loopholes in the statute allowing the state to abuse their power. Our reform for a new definition has eliminated this opportunity to abuse this section, as well as implementing a larger focus on emotional abuse and neglect and including new criteria such as happiness. By making it more clear which local authority should get involved in a child's life this will mean that the authority that is chosen will be able to carry out their responsibilities more effectively as the more suitable local authority will be the one that is chosen.

Part 2: Commercial & Common Law

Recommendations on the laws governing fake online reviews.

Compiled with thanks to:

Godwin Busuttil, 5RB Chambers

Greg Callus, 5RB Chambers

Thomas Samuels, Gough Square Chambers

Yair Cohen, Cohen Davis Solicitors

Introduction

Fake online reviews pose a variety of problems for consumers and businesses. Whilst there are areas of existing law which may provide a remedy, we believe that these are inadequate to address the core problem.

We therefore propose the following reforms:

1. An enhanced regulatory response through the creation of a new department in the Competitions and Markets Authority ("CMA");
2. The creation of a new criminal offence to penalise those who write or procure fake online reviews; and
3. Education to bring the extent of this problem to public attention.

The problem

A fake review is defined by the CMA as "*any review (whether positive, neutral or negative) that is not an actual consumer's honest and impartial opinion or does not reflect a consumer's genuine experience of a product, service or business*."[1] Whilst not all fake reviews are online, the internet has given reviews more prominence.

Writing a fake review is unfair on a consumer as it contravenes good professional practice and it is likely to distort the economical behaviour of average consumer. Our consultation found that more than half of the adults in Britain use only review websites such as Amazon, Tripadvisor, Expedia, and Checkatrade to find the best deals, but their impressions are distorted by the growth of a market for fake reviews. In several cases some rival companies were posting disparaging remarks about each other to cloud the judgement of potential customers.

Review websites are a vital part of many people's research. Misleading or fake reviews undermine consumers' confidence in integrity of online reviews. Our consultation found that confidence in online reviews reduced after people were alerted to the fact that many reviews may not be genuine.

Another risk is the development of "*a lemon's market*", meaning the consumer is unable to distinguish between quality products and services and possible defective or inferior ones, competition can suffer. This could drive down prices and quality.

A loss of trust in reviews will also lead to review sites going out of business as less consumers use them. Eventually this harms the consumer as they longer know whether they are getting the best value for price. It also means consumers will rely more largely on advertisements and marketing of the goods or services. Larger firms who have large revenues will be able to invest more into these campaigns, a smaller firm may only be able to invest less. This leads to a larger increase of demand for the larger firm even though the good or service may have been of the same quality.

1. "Online reviews and endorsements: Report on the CMA's call for information", available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/436238/Online_reviews_and_endorsements.pdf

A further problem is the commissioning of fake online reviews. Some firms purposely hire individuals to post false negative reviews about a competitor, or false positive reviews about themselves.[2] The main intention of this to harm the competing firm, with the hope that consumers will switch to buying their product or service.

The current law

The Consumer Protection from Unfair Trading Regulations 2008[3]

We believe that The Consumer Protection regulations are insufficient to cover all aspects of fake online reviews.

Section 3 and 5 of The Consumer Protection from Unfair Trading Regulations may address the practice of positive fake online reviews. Under regulation 5 (2) (a), a practice is misleading "*If it contains false information and is therefore untruthful.*" However, the Regulations also rely on the economic impact of fake online reviews. The practice is unfair "*if it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise*" and "*it materially distorts or is likely to materially distort the economic behaviour of the average consumer*". This may be difficult to prove in practice.

Further, the Regulations have limits concerning their ability to successfully address negative fake online reviews. It would be very difficult to prove that a negative review "*materially distorts or is likely to materially distort the economic behaviour of the average consumer.*"

The Defamation Act 2013

Section 5 of the Defamation Act 2013 applies to operators of websites.

"5. Operators of websites:

1. *This section applies where an action for defamation is brought against the operator of a website in respect of a statement posted on the website.*
2. *It is a defence for the operator to show that it was not the operator who posted the statement on the website.*
3. *The defence is defeated if the claimant shows that—*
    a. *it was not possible for the claimant to identify the person who posted the statement;*
    b. *the claimant gave the operator a notice of complaint in relation to the statement; and*
    c. *the operator failed to respond to the notice of complaint in accordance with any provision contained in regulations."*

However, the Defamation Act has its limitations. It will only cover false negative online reviews that are defamatory. Nevertheless, this legislature is insufficient when it comes to false positive online reviews as it can equally destroy a business or distort the consumer's economic choice. Therefore, legislation has to be implemented to combat this misdemeanour to reduce its level of occurrence.

The Fraud Act 2006

The Fraud Act may be of some use in combating fake online reviews. A key attribute is the breadth of its application. The Fraud Act states that an individual commits an offence if they "*dishonesty make a false representation*". A "*representation is false if it is untrue or misleading*". However, it is unclear whether this is sufficient to cover the representations made in reviews. For example, it is unclear whether the law extends to contend that persons other than the business operator has posted on the website. Does this count as misrepresentation?

2. Supra n1
3. SI 2008/1277

Furthermore, the current legislation simply mentions in section 2 that one must make the false representation to "*cause loss to another or to expose another to a risk of loss*". A person is in breach if he causes "*loss to another [or he exposes] another to a risk of loss*". However, in real life scenarios, which may take place online, one may not be putting another in any risk at all and so they would be abiding by the law, despite their intention being dishonest.

Ultimately, although the practices described above may be described as "*fraudulent*", it is unclear whether the Fraud Act provides a sufficient tool to combat them.

Our proposals and their impact

A regulatory solution

The CMA should create a new department on fake online reviews. The CMA is an established independent governmental body regulating businesses deals with issues concerning businesses.[4] We therefore believe that the issue of fake online reviews falls within their powers.

The new department should focus on regulating/limiting issues concerning fake online reviews. In addition, it should consist of being responsive to complaints and should have maximum authority on the regulations concerning online fake reviews.

Moreover, the department should create regulations aimed at fake online reviewers (consumers) and punish them through a fine. It should also ban entities, such as Amazon, providing a discount or giving products for free to review to consumers with an incentive to make them give a good review of the product. It should serve as an advisory body to influence implementation of the legislation concerning fair competition and fake online reviews.

We propose that this new department could set the standard for online reviews in two ways.

The first concept proposed is a "*Trusted Review*" concept. Reviews on a product should be restricted to those where it can be proved that the product was bought on the site. The second concept proposed is a review application for smartphones. This concept is about developing a simple app where users can register with their personal information and leave reviews. The following options could be made available on the app to ensure genuine reviews:

1. geo-tagging at the location of a service;
2. uploading pictures with reviews; and
3. the introduction of QR codes/barcodes on receipts which the customers can scan to leave a review.

This method ensures that only authentic customers leave reviews.

Furthermore, the department should have the power to require a business to give undertakings in relation to their future conduct regarding online reviews, and, where necessary, impose injunctions. Persistent offenders should be subject to a fine.

Criminalising fake online reviews

We have considered whether criminal liability should be imposed on either individuals who post fake reviews, or on businesses that commission them. We believe that both acts are sufficiently serious to amount to criminal acts.

There would only need to be one element to the actus reus which would be an individual and/or independent reviewer(s) posting an online review which could be classed as misleading or containing false information. The definition of the word "*fake*" meaning something not genuine must be taken into consideration when discussing the actus reus.

4. Supra n1

To prove the mens rea of posting a fake online review the defendant must have posted the fake review with the intention of misleading a customer with a dishonest comment. The dishonesty of the comment must be genuine and intentional to either dissuade a customer from buying a particular product or to persuade a costumer into buying a product.

For a business, the actus reus would be that business causing an a fake review to be posted online. The mens rea would be that they needed to do so with the intention of making a financial gain from the fake review being posted online.

Indirectly addressing fake reviews

We have considered whether the problem of fake online reviews could be better addressed in an indirect way.

Education

We propose a lesson on false reviews in citizenship lessons in secondary school and further education institutions. This educational strategy aims to raise awareness of the existence of false online reviews. The quiz would serve as a reminder to all pupils to not entirely trust what they read online.

We also propose a media-based education campaign. This would be funded by the government and would seek to publicise the convincing nature and prevalence of such reviews in order to raise public awareness. This would conceivably lead to more informed purchasing decisions by consumers and a potential decrease in the £23 billion that is currently wasted per annum due to the misled purchasing decisions that fake online reviews lead to. We would argue that such an approach is necessary as 63% of those who responded to our consultation stated they were unable to recognise a false review from a genuine one. 53% had never even suspected many reviews were false.

As the publicising of the prevalence of fake online reviews would arguably lead to a diminished level of public trust in reviews, there poses a financial incentive for online retail platforms to privately implement review-regulating measures to regain confidence of consumers.

The cost of a public awareness campaign would be minimal. It could be assumed that the educative campaign proposed for online reviews would entail a similar cost to that of the early 2011 media based campaign[5] run by the government to promote bowel cancer screening. The cost of this amounted to £1.6M for the pilot campaign resulting in a cost of £0.22 for each person in the UK over 30.[6] Fake online reviews impact industries worth around £23 billion per year.[7] We therefore believe a small investment of taxpayer money is necessary it will lead to taxpayers saving millions in the future. 63% of those who responded to our consultation stated they were unable to recognise a false review from a genuine one, 53% had never suspected many reviews were false. Education would raise public awareness of the issue.

A pop up

An idea to combat this issue would be to create a pop up disclaimer which would appear before the customer is able to post any sort of review on any website. The pop up would explain the effects of posting a false review to any site and consequences if the individual still decides to do so. The individual would then have to confirm that they still want to post the review after having read the disclaimer. This is a method of deterrence as once seen will make the customer think twice before posting. Our consultation results showed that 84% of people would not post a false review if the pop up was in place.

Moreover, the CMA should control businesses on their instalment of the pop-up system. The pop-up system will act as a deterrent to prevent disgruntled fake online reviewers in posting fake online reviews. We believe that this will not impose a heavy burden on website operators, and would help address the problem in two ways. First, it would act as a deterrent for people to post fake reviews. Second, it would raise awareness that many people do post fake reviews.

5. "Evaluation of the Bowel Cancer Awareness Pilot in the South West and East of England: 31 January to 18 March 2011" available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/215106/dh_133125.pdf
6. Supra n5
7. Supra n1

Part 3: Public Law

Recommendations on the laws governing the operation of environmental law and climate change.

Compiled with thanks to:

Alison Ratliff, Friends of the Earth

Fiona Harvey, the Guardian

Jake White, Friends of the Earth

Michal Nachmany, London School of Economics

Tallat Hussain, White & Case LLP

Introduction

Climate Change is the change in global or regional climate patterns attributed largely to the increased levels of atmospheric carbon dioxide produced by the use of fossil fuels. Climate change not only affects our economy. There is the danger of further polarizing society as it is the vulnerable populations around the world that suffer the most. Simultaneously, direct or indirect polluters face the least incentive with respect to climate change mitigation. The externality problem in combination with the embeddedness of fossil fuels in modern economies makes climate change a complex issue from a policy standpoint. Currently, the frequent emission of greenhouse gasses into our environment has caused the planet to reach a point of no return. According to experts, even if we were to stop burning fossil fuels immediately, there will still be islands underwater by 2050. This leads to the disappearance of major coastal cities such as Manhattan and Brighton in the UK alone. From health to livelihood, individuals are going to be affected in several ways. These include the loss of wildlife and ecosystems, damages to natural resources, unpredictable and severe weather patterns, greater risk of disease epidemics, healthcare costs, resource related conflict and violence and loss of livelihoods and homes.

The Paris agreement which was sealed on the 22 April 2016 is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC). Its purpose is to deal with greenhouse gases emissions mitigation, adaptation and finance starting in the year 2020. The goal is to keep the temperature rise from pre-industrial levels to within 2°C and to potentially contain this to within 1.5°C. Whilst hailed as a landmark agreement, current commitments appear to only prevent the rise to between 3°C and 4°C. Furthermore, there are difficulties in transitioning existing economies, infrastructure and consumer behaviour that threaten to halt the progress of action against climate change. Responding to these policy challenges requires a holistic approach and our recommendations aim to do this. Our recommendation on diesel vehicles is a reflection the political salience and urgency of air pollution as a health issue. The recommendations on meat taxation are a response to the move from an 80% reduction in emissions to a 100% reduction in emissions by 2050. Farming and agriculture are the hardest sectors to decarbonize and the Paris agreement places a downward pressure on emissions from these sectors. These policies are supplemented by education and training with the hope of facilitating behavioural change at a human level and anticipating the potential consequences of climate change policy. Finally, we propose a strengthening of courts, tribunals and environmental bodies through the use of binding obligations on public decision makers to prioritize climate change issues

Recommendations

Clear Air Regions and Pollution Tax Influences

Nitrogen dioxide has been at illegal levels in 90% of the country's air quality zones since 2010 and largely stems from diesel vehicles. Air pollution costs at least £27.5bn[8] a year and is referred as a "public health emergency". Clear Air Regions (CAR) should be implemented to reduce the risk of health-associated effects from Nitrogen dioxide and reverse the detrimental effects that excess NO_2 output has on the local environment. It is expected that any policy change along these lines will significantly impact end users, customers, and suppliers so it is important to note the extent of those impacts. By implementing CAR, the sales of certain cars will decrease if they are not compliant with the policies set out below. To this effect, therefore, it is expected that automotive manufacturers will respond negatively and will push for less stringent changes. However, as this report is citing major changes, it is imperative that possible impacts from the industry are mitigated, therefore this scheme will not come into effect before 1 January 2019 to ensure that manufacturers have enough time to change their model ranges to include vehicles that will be compliant with the incoming changes.

CARs are designed to limit the use of diesel vehicles in three cities, (Birmingham, Leeds and Nottingham), with the goal of reducing NO_2 output. These cities were chosen as they have consistently exceeded their allocated targets for pollution output. It is important that action is taken in order to achieve the limit in the soonest possible time and by 2019 at the latest to come into line with EU targets. This can be done through combinations of road usage efficiency schemes, such as switching to different forms of transport (e.g. use of Park and Ride), road improvements, improved signage, and infrastructure for alternative fuels (e.g. roll out of electric charging points). To ensure this action is delivered, legal requirements must be imposed on the local authorities in these cities to implement CAR. Government must allocate funding to help local authorities implement this scheme and support them in dealing with any associated issues. Government must also review the effectiveness of such measures and take further action if needed to ensure NO_2 requirements are met if this appears to be in doubt.

Currently London has the highest NO_2 output in the UK.[9] The size and complexity of the Capital's transport networks and construction activity from accelerated growth means the task of reducing NO_2 emissions is the most challenging in the country. However, various schemes have been rolled out across London to reduce pollution output. These have been met with varying levels of success but all have had an impact - the following are examples of the most effective schemes:

- Reduce emissions from buses. By 2016, NO_x emissions from the London bus fleet will have been halved compared to 2008.
- Reduce emissions from taxis. The introduction of an age limit for taxis has retired the most polluting taxis, and from 2018 new London taxis will be required to be zero emission capable;

Both schemes have been remarkably effective and relatively easy to implement due to their 'phase in' approach. Similar schemes should be followed in the three mentioned cities as they have proved effective in reducing NO_2 output. It is schemes such as these that will form the core policy of CAR.

The three main policy recommendations for the initial roll out of CAR will be:

- A 'postcode tax' in certain areas where sales of the most harmful diesel are most frequent. The goal of this policy is to reduce the sale of 'Chelsea Tractors' in urban areas which do not provide the same challenging terrain as rural areas do.
- All public transport must by 2020 must meet Euro 6 standards. This would reduce the amount of harmful NO_2 pollution in central areas.

8. Damian Carrington, 'Action to Combat UK Air Pollution Crisis Delayed Again' The Guardian (10 November 2016) <https://www.theguardian.com/environment/2016/nov/10/action-to-combat-uk-air-pollution-crisis-delayed-again> accessed 15 December 2016.
9. Simon Birkett, 'Guide to Sources: London Has the Highest Levels of Nitrogen Dioxide of Any Capital City in Europe' <http://cleanair.london/sources/guide-to-sources-london-has-the-highest-levels-of-nitrogen-dioxide-of-any-capital-city-in-europe/> accessed 15 December 2016.

- A Road Efficiency Programme (REP) must be set up in each urban centre of all three cities to ensure road capacity is being used efficiently. The goal of this is to reduce the amount of NO_2 produced by vehicles idling at traffic lights. To complement this, previously neglected regions must have an Electric Sustainability Assessment (ESA) carried out. This would determine whether using electric vehicles in urban centres as an alternative mode of transport is feasible or not.

It is vital that current legal requirements are met if we wish to reduce NO_2 output in the shortest time possible. These include ensuring that the emission standards for Euro 6 diesel vehicles, Euro 4 petrol vehicles and Euro 6 HGVs, buses and coaches are adhered to across CAR.

Restrictions on Meat Consumption

It has been noticed that the consumption of meat is resulting in atmospheric emissions. Pastoral farming exploits resources and land through deforestation and excess grazing. A report from The Guardian has stated that pastoral farming is a serious issue and that reducing it and the consumption of meat has a significant impact on current emissions. The result of deforestation caused by pastoral farming means that there will be fewer forestation that removes greenhouse gases from the atmosphere – otherwise known as a carbon sink. Institutions like National Geographic, Friends of the Earth, the Grantham Institute acknowledge that the current rate of deforestation contributes to issues surrounding climate change and the loss of habitats. The Government needs to implement laws and policy recommendations to deter people from continuing with their contribution to climate change. Raising awareness and reducing pastoral farming would help to reduce the destruction of land and exploitation of resources, and therefore mitigate the harm caused to the environment and to people's health. By reducing the consumption of meats and pastoral farming, we are aiming to lower carbon emissions in the UK and become one step closer to meeting our current carbon emission targets. This is also an opportunity for the UK to lead in climate change action. The proposed ideas are long-term targets with a transition period.

Meats can also be taxed on to incentivise people to pick cheaper alternatives.[10] Increasing taxes on meat products and decreasing prices of substitute products, such as Quorn would make cheaper protein alternatives more appealing. The profit generated from these taxes should incentivise "*meat substitute producing companies*", so that when they lower prices on what they produce, they do not hit a sudden loss. In addition, nudge strategies can be deployed at the consumer level. This could be done by placing meat substitute products next to meats, placing meat products at the bottom and lower shelves and by placing limitations on advertising.

Those that would be the most affected would be businesses that produce and sell meat to supermarkets and stores, as they will have to try and reduce the amount they produce over a period of time and could face a loss in customers, and therefore a loss in profit. However, to cover these costs, these businesses will be selling their products at a higher price; therefore, they will get a better value for every unit they sell. Companies should also be offered a fairer deal on every unit they sell. Companies that produce and sell meat to stores and supermarket could sell their products at an increased price which will generate more profit. However, this will need to be a part of a gradual process as social groups of people can rebel against this action if it is put in place. Taxes should be put on meat products at a lower rate and should be increased over time so people can see the gradual increase in price and can still buy meat if they want to. Taxes should also be increased in line with updated policy research – for example, a recent study suggested that a 40% surcharge on beef would result in a 13% decrease in consumption.[11] Businesses that sell meat substitutes will also be affected, as they will have to try and reduce their prices. However, to cover any losses, they will be given a fairer deal for every unit that they do sell, increasing the value for what they produce. Consumers are impacted by the increased prices of meat. The key challenge going forwards will be mitigating these effects through the provision of meat-alternatives at a low cost whilst simultaneously protecting business interest.

10. Damian Carrington, 'Tax Meat and Dairy to Cut Emissions and Save Lives, Study Urges' The Guardian (7 November 2016) <https://www.theguardian.com/environment/2016/nov/07/tax-meat-and-dairy-to-cut-emissions-and-save-lives-study-urges> accessed 17 December 2016.
11. Marco Springmann and others, 'Mitigation Potential and Global Health Impacts from Emissions Pricing of Food Commodities' (2016) advance online publication Nature Climate Change <http://www.nature.com/nclimate/journal/vaop/ncurrent/full/nclimate3155.html> accessed 17 December 2016.

Education - National Curriculum

In 2013, the Department of Education removed climate change from the national curriculum meaning it can only be studied in Geography or as a unit in Science. There have been concerns that this would result in less awareness of the importance of climate change. Although our statistics have shown that 98% of people are aware of the issue of climate change, the problem itself lies in the improvement on the quality of knowledge, as well as how behaviour and lifestyle can create environmental impacts. Our objective is for the Department of Education to recognise that creating provisions for climate change studies or activities, for Key Stages 3 and 4 pupils, will help to emphasise moral virtues, ethical motivation, and ability to work with others to help build a sustainable future.

To accomplish these objectives, there should be a reorientation of the current curriculum to place a larger emphasis on climate change and a focus towards sustainability. Currently, section 2 of the Education Reform Act 1988 states that the basic curriculum should include "religious studies"; Climate Change Studies could be integrated into this section after 2(1)(a). This would have the effect of placing Climate Change Studies within the same importance as Religious Studies. The studies could also be integrated into Citizenship Studies, thereby helping students to become well-rounded individuals. First and foremost, though, the Department of Education should have a policy committing themselves to sustainability. This can be a wide policy but should range from a commitment to reduce the carbon footprint to the promotion of sustainability in schools for children and young people.

The impacts of this recommendation would include costs of reorienting the curriculum. The Education Funding Agency currently manages £54 billion of funding a year to support all state-provided education for 8 million children aged 3 to 16, and 1.6 million young people aged 16 to 19. Funding will be set aside for new assessments and activities that will promote Climate Change Studies and sustainability. The Department of Education should show their commitment to this through implementing a policy to promote sustainability. This will improve knowledge and attitudes towards climate change while incentivizing behavioural and lifestyle changes to benefit the environment. The main stakeholders of this recommendation would be both primary and secondary schools, and the teachers themselves may require additional training. This may take a few years for it to take effect but it is essential for the younger generations as education plays an important role, both in reproducing certain aspects of current society and preparing students to make a difference in the future.

Education - Corporate Responsibility

UK businesses are waking up to the threats of climate change. For example, there is greater awareness that CO_2 emissions in the atmosphere has contributed to increased global temperatures. The Stern Review concluded that failure to act now could result in a reduction of income from 5%to 20%.[12] Predictions suggest that UK businesses may suffer due to the direct effects of climate change such as flooding, storms, regular periods of droughts and deaths caused by dangerously hot summers. As the weather patterns become less predictable and cause unpreventable effects, the UK government needs to take action since these harm living and working conditions, hitting the poorest and vulnerable the hardest. Therefore, it is important that the UK moves to a low-carbon economy in order to combat the imminent threat of climate change.

Persuading employers to create greener workplaces by using efficient resources is a long-term investment rather than a short-term cost. Businesses could save up to £1.6 billion per year through investing in energy saving measures, upgrading to efficient heating and lighting, retraining workers and energy policies. Workers should be made aware of the ways they can help reduce climate change through lifestyle changes and through reducing their carbon footprint. Businesses should create climate change committees that organize

12. Nicholas Stern, The Economics of Climate Change: The Stern Review (Cambridge University Press 2007) <http://dx.doi.org/10.1017/CBO9780511817434> accessed 15 December 2016.

awareness-raising events, surveys, and training workshops. Workers should have the choice to elect Green Representatives who will be responsible for raising awareness of environmental issues in the UK, providing strategies for creating a greener workplace, and offer schemes that allow workers to benefit from changes within the workplace. A main cost to introducing a corporate responsibility reform would be that businesses may not want to comply. During consultation we found that due personal interest, business owners were among the most reluctant to make changes to combat climate change. Nonetheless, some big businesses such as Nike, Apple and Sony are endorsing green schemes so they can work towards a better future. The reforms proposed would allow for both big and small businesses to capitalize on the benefits green schemes could provide.

The Government would implement a 2% tax cut for businesses that agree to comply with making their workplace greener. Tax reliefs will be used to invest in workplace schemes that ensure there are sufficient resources for representatives. All UK workers will be given the opportunity to complete a course on climate change and will be given advice from their Green Representative on how they could reduce their carbon footprint. At the end of each course, workers will be given a qualification paid for by their workplace. The Department of Work and Pensions would commit to ensuring workers benefit from the changes introduced through greener workplaces. The Department for Business, Energy & Industrial Strategy could oversee commitments made by the Department of Work and Pensions regarding greener workplaces.

Retraining Workers

As the economy transitions towards a greater reliance on renewable and clean energy, it is important to consider those who will be directly and indirectly affected by the potential drawbacks of climate change policies. In the UK, 40,000 people are employed in the Oil and Gas sector, whilst approximately 335,000 jobs are reliant on the industry.[13] The main issue is determining how best to facilitate an economic transition for workers - whether this could be best achieved through retraining and/or compensation. For renewable energies not to be perceived as an economic threat, the government must outline a long-term vision which they set to achieve through firm environmental and investment policies. They must also be active in the implementation of long-term environmental policies, to create the legal certainty that encourages businesses and industries to be more flexible in their approach to change. Failure to do so could halt expenditure on vital skills training that is highly demanded. Despite the livelihoods of thousands being put in jeopardy, the renewable energy sector could create up to 6.1 million jobs by 2050, according to Sustainlabour.[14] Job creation is one of the greater, long-term benefits of renewable energies. However, the longer it takes for a plan of action to be initiated and implemented, the longer it will be for those changes to reap their benefits.

Skills training, educational outreach programmes, and apprenticeships all require "long, incubation periods".[15] Although the policy officer of RenewableUK says that many of the skills needed in the low carbon industry are "*similar*" to those in current power industries,[16] considering the changing demographic of the country, (i.e. the ageing population), and the more practical qualifications suited specifically to the energy sector, only a marginal proportion of workers will be in the position of having transferrable skills. The government thus needs to publish its long-term provision for the majority who will be entering, rather than transferring to, the renewables sector. This can be in terms of preparing people for a new economy and for economic mobility, or for the elder workers close to retirement, a replaced source of income. In 2010, the government set 2020 targets for renewable energy, including 10% of transport fuels to come from renewable energy sources, as well as 12% of heat energy. 6 years later, only 5.64% of total heat is generated through renewables and only

13. Amy Sippit, 'How Many Jobs Are Supported by the UK's Oil and Gas Industry?' (Full Fact) <https://fullfact.org/economy/how-many-jobs-are-supported-uks-oil-and-gas-industry/> accessed 15 December 2016.
14. Oliver Balch, 'What Will Happen to Oil and Gas Workers as the World Turns Carbon Neutral?' The Guardian (27 August 2015) <https://www.theguardian.com/public-leaders-network/2015/aug/27/fossil-fuels-workers-retraining-carbon-neutral-solar-wind-energy-oil-gas> accessed 15 December 2016.
15. ibid.
16. ibid.

4.23%[17] of transport fuels (down from 4.93% the previous year).[18] This clearly demonstrates that despite a strong domestic demand for renewables, it is still in its teething period with British industries receiving a low supply of it. If the UK wants to meet these targets, many adjustments within this sector should take place, consequently speeding up the nation's progress. Additionally, the process of transitioning will also be sped up, thereby further necessitating the retraining of workers. If this key element is ignored, then although industry would have physically adapted, the desired benefits that come with of the renewables, (in relation to the 2020 targets), may still not be achieved as those working with the technology will simply not know how best to use them.

Changing the energy source that supplies the UK with power not only affects domestic jobs, but also affects employment in less developed countries. A universal solution would be to offer effective upskilling and retraining programmes which equip workers with transferable skills rather than occupation-specific skills. For example, in Scotland £12 million was invested domestically into the Transition Training Fund,[19] which provides training grants for jobs in the energy sector, manufacturing, engineering or even science, technology, engineering, and mathematics (STEM) related teaching. This has been largely successful with over 1000 applications being accepted. If a similar strategy was adopted in England, then workers would be reassured for the future as their career prospect would broaden. Moreover, the public appears to be more supportive of measures that prioritise climate change over other economic and political factors, which 49% of respondents to our survey believe should happen. Having environmental implications at the forefront of decision-making will ensure that policies are beneficial in the long run, as opposed to having the economic interests at the core. This will provide short-term benefits and essentially prolong the inevitable transition. It allows time for businesses to transition, which means that high carbon technology will slowly be eased out and replaced, therefore reducing the economic investment waste. In addition, the support and willingness of the public will make implementation easier and longer lasting.

With regards to sources of funding, the European Commission state that money is already put aside in existing green-growth funds. Examples of investment funding could come from the European Social Fund which could encourage sufficient job creation, fund training programmes and could finance those who would be frictionally unemployed. To support less developed countries, the European Development Fund could be used to fund education-based training as this would provide a more sustainable, long term solution for workers with limited access to resources. Money from the fund could also be used to purchase equipment for workers to train with, which not only boosts development, but results in a much more skilled, efficient, and modern workforce. This money can be widespread across all manufacturing sectors, not just energy. However, as the UK is now leaving the EU, all of these areas of EU funding need to be replaced by UK funding. This can be done by either setting up and investing in separate national commissions, or have the UK look to its other international climate agreements, such as COP21, to fuel investment funding. Poorer nations tend to have an agricultural based economy, and so funding can be used to retrain cattle farmers, (as livestock are responsible for 18% of greenhouse gas emissions), and make them more equipped to directly deal with the "*needs of the land*" without damaging the environment i.e. teaching farmers how to fish.

97% of respondents to our survey agreed that they have a right to a clean and healthy environment, thus it is part of the government's responsibility to provide this. Investment could come from a portion of both private and public finance, with climate change being prioritised and cuts being made to less important, (in terms of global wellbeing), sectors such as the arts and the sports industry (which receives a third of its total income from the government). In addition, grants-in-aid can also be provided, especially to hard-hit areas, (e.g. Wales), to kick-start small-scale local projects. If these "tester" schemes are successful, they can then

17. Great Britain and others, 2020 Renewable Heat and Transport Targets (2016).
18. Energy and Climate Change Committee, 'Government to Miss 2020 Renewable Energy Targets' (Parliament) <https://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/news-parliament-2015/heat-transport-report-published-16-17/> accessed 15 December 2016.
19. 'Transition Training Fund' (Skills Development Scotland) <https://transitiontrainingfund.co.uk> accessed 15 December 2016.

be implemented nationally. A benefit of easing workers into working with new technology is that it is more economically sustainable and has a higher chance of being successful as no direct loss is felt. Current workers still have a source of income whilst the 2°C goal becomes more attainable.

Environmental Rights

Public entitlement to environmental protection is an important issue. Its importance was reflected in our survey where 95% of participants agreed that an environmental right was more important than the right of freedom to do what they want to the environment. Our objective is therefore to protect people's environmental rights through law and policy. Other objectives included setting a standard for companies and to make the judicial system more focused upon environmental issues. The key difficulty lies in selecting the institutional and legal mechanisms. An early proposal was the setting up of an independent environmental body. During consultation, it was decided that the best solution was to empower the existing institutions through more substantive environmental rights.

An independent environmental body would be both neutral and transparent. This body could consist of both a prosecution arm and a decision-making tribunal, with the possibility of judicial appeal. The benefit of this is institutional neutrality and expertise. In conjunction with this is the adoption of a law which requires that the government and public decision making bodies prioritise, rather than merely consider, climate change issues. This would create judicial review and will ensure an immediate change. For instance, the government will be forced into not giving permission for companies to undertake fracking. The logical extension of this proposal is the requirement that new planning and energy projects should be based on renewable and clean energies. However, this recommendation can be criticised since allowing claims by private litigants could open the floodgates to countless lawsuits. There is the further difficulty of proving causation in cases with multiple polluters. In addition, individuals may not benefit from this as they may not have the sufficient funds to claim against big companies. However, NGOs will benefit from this proposal as they may have the ability to bring forward lawsuits on behalf of groups of claimants. In addition, companies may nevertheless limit their use of non-renewable energy due to compensation and public image risks.

Currently, environmental NGOs are conducting research to facilitate policy development, building institutional capacity, and facilitating independent dialogue with civil society to help people live more sustainable lifestyles. Despite their great doing, NGOs face many barriers within the legal framework. Consequently, instead of creating new independent prosecutorial bodies, the focus should be on empowering NGOs by giving them legal grounds to make climate-change-related claims in civil cases or judicial review. In addition, both an environmental court and an independent body would be expensive to set up and maintain. An independent body would also require the government to monitor it, which would cost further time and resources. Introducing a law which requires that the government prioritise climate change issues has an impact on incoming planning approvals and ensures that the big picture environmental ramifications are considered.[20] This is also cost effective in terms of implementation whilst simultaneously empowering NGOs in private and public litigation. Within the broader institutional framework, NGOs are better able to act as a counterbalance. At the same time, the clear standard of prioritising climate change considerations would not place additional informational burdens on decision makers as it implies a deferral to scientific expertise.[21]

Conclusion

The recommendations set out in this report serve a purpose in the most significant aspects of climate change. They range from the education of young children to the concept of having an environmental right in a modern society. Fundamentally, we aim towards educating the public on the different areas and sections of society that are affected by climate change. Through education, we are complementing all the other areas that we have covered such as the increasing air pollution in London and how we should tackle

20. Jake White and Alison Ratliff, 'Big Voice London Model Law Commission Conference' (27 October 2016).
21. Michal Nachmany, 'Big Voice London Model Law Commission Conference' (22 October 2016).

it, the restrictions on meat consumption and moving towards alternatives, and the possibility of having an environmental right as a citizen. We also aim to promote the idea of social responsibility and mobility through our recommendation of retraining workers in declining industries - this is a sufficient start on moving towards global responsibility. Climate change is not unknown to the public - many are aware of its causes and consequences and yet there are not enough laws or policies fixating on the impact of human behaviour on the environment and how it should be dealt with. There is a disjunction between awareness and action. All of our recommendations embody the idea of a person having a duty to protect the environment as a public good. We have an obligation to protect the environment to those impacted directly and for future generations. The recommendations made in this report, taken together, aim to respond to the complexities of climate change as a policy issue. The climate change challenge is as much institutional and infrastructural as it is behavioural.

References

Balch O, 'What Will Happen to Oil and Gas Workers as the World Turns Carbon Neutral?' *The Guardian* (27 August 2015) <https://www.theguardian.com/public-leaders-network/2015/aug/27/fossil-fuels-workers-retraining-carbon-neutral-solar-wind-energy-oil-gas> accessed 15 December 2016

Birkett S, 'Guide to Sources: London Has the Highest Levels of Nitrogen Dioxide of Any Capital City in Europe' <http://cleanair.london/sources/guide-to-sources-london-has-the-highest-levels-of-nitrogen-dioxide-of-any-capital-city-in-europe/> accessed 15 December 2016

Carrington D, 'Tax Meat and Dairy to Cut Emissions and Save Lives, Study Urges' *The Guardian* (7 November 2016) <https://www.theguardian.com/environment/2016/nov/07/tax-meat-and-dairy-to-cut-emissions-and-save-lives-study-urges> accessed 17 December 2016

'Action to Combat UK Air Pollution Crisis Delayed Again' *The Guardian* (10 November 2016) <https://www.theguardian.com/environment/2016/nov/10/action-to-combat-uk-air-pollution-crisis-delayed-again> accessed 15 December 2016

Center for Climate and Energy Solutions, 'Outcomes of the U.N. Climate Change Conference in Paris' (*Center for Climate and Energy Solutions*) <http://www.c2es.org/international/negotiations/cop21-paris/summary> accessed 15 December 2016

Energy and Climate Change Committee, 'Government to Miss 2020 Renewable Energy Targets' (*Parliament*) <https://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/news-parliament-2015/heat-transport-report-published-16-17/> accessed 15 December 2016

Great Britain and others, *2020 Renewable Heat and Transport Targets* (2016)

Harvey F, 'Big Voice London Model Law Commission Conference' (22 October 2016)

Hussain T, 'Big Voice London Model Law Commission Conference' (23 October 2016)

Nachmany M, 'Big Voice London Model Law Commission Conference' (22 October 2016)

Oxford Martin School, 'Pricing Food according to Its Climate Impacts Could Save Half a Million Lives and One Billion Tonnes of Greenhouse Gas Emissions' (*Oxford Martin School*) <http://www.oxfordmartin.ox.ac.uk/news/2016_11_Emissions> accessed 17 December 2016

Sippit A, 'How Many Jobs Are Supported by the UK's Oil and Gas Industry?' (Full Fact) <https://fullfact.org/economy/how-many-jobs-are-supported-uks-oil-and-gas-industry/> accessed 15 December 2016

Springmann M and others, 'Mitigation Potential and Global Health Impacts from Emissions Pricing of Food Commodities' (2016) advance online publication Nature Climate Change <http://www.nature.com/nclimate/journal/vaop/ncurrent/full/nclimate3155.html> accessed 17 December 2016

Stern N, *The Economics of Climate Change: The Stern Review* (Cambridge University Press 2007) <http://dx.doi.org/10.1017/CBO9780511817434> accessed 15 December 2016

'The Global Climate Legislation Study | Grantham Research Institute on Climate Change and the Environment' <http://www.lse.ac.uk/GranthamInstitute/legislation/> accessed 16 December 2016

'Transition Training Fund' (*Skills Development Scotland*) <https://transitiontrainingfund.co.uk> accessed 15 December 2016

White J and Ratliff A, 'Big Voice London Model Law Commission Conference' (27 October 2016)

Climate Change Act 2008

Education Reform Act 1988

Part 4: Criminal Law

Recommendations on the laws governing hate crime.

Compiled with thanks to:

Joanne Kane, Carmelite Chambers

Kathleen Shields, Law Commission

Laura Manson, Taylor Wessing

Loretta Trickett, Nottingham Trent University

Paramjit Ahluwalia, Garden Court Chambers

Samuel McCann, Farringdon Chambers

Sebastian Walker, Law Commission

Introduction

Hate crime is a prevalent and problematic issue in the United Kingdom, and will continue to negatively impact our society until it has been decisively tackled. In order to address this, our group conducted in-depth research into the current laws on hate crime and its impact on victims and defendants alike. We believe that the existing system is lacking in many ways. Key issues we have identified include out-dated laws on online communications, problems with sentencing guidelines, and inadequacies in hate crime education. We have outlined several proposed solutions to each of these issues and we suggest that they be urgently implemented to modernise and clarify the law.

Methodology

To investigate the general public's experiences of hate, prejudice and targeted hostility, we surveyed approximately 200 people on their views of the specific problems we have identified with hate crime legislation. The profile of research participants was extremely diverse in terms of age, gender identity, ethnicity, religion and disability. The results of our survey are therefore a good representation of the thoughts of the populace at large.

Sentencing Guidelines

Current Law

① Section 31 Crime and Disorder Act 1998

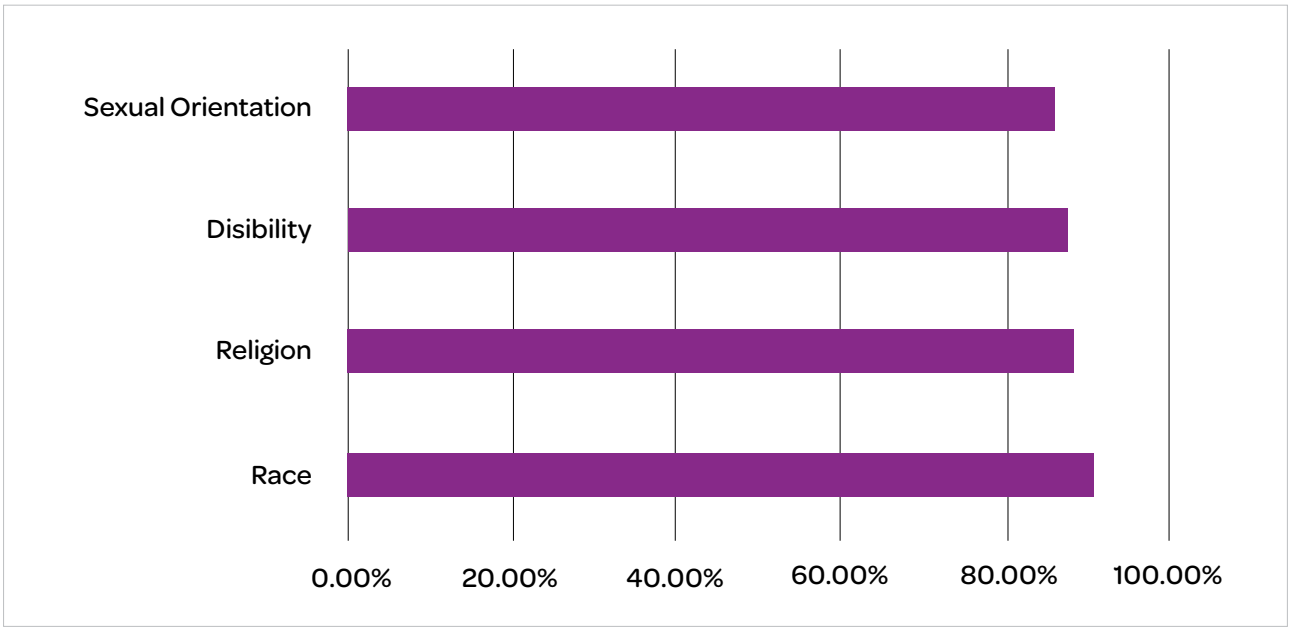
The current law is set out in Section 31 Crime and Disorder Act 1998, which punishes racially or religiously aggravated public order offenses:

> A person is guilty of an offence under this section if he commits—
>
> a. an offence under section 5 of that Act (harassment, alarm or distress),
>
> b. which is [racially or religiously aggravated] for the purposes of this section.

This means someone who harasses another person based on their race or religion is committing a public offense, whereas someone who harasses another because of their disability, sexual orientation or transgender identity will not be caught under this section.

Problems with Section 31:

The problem with this law is that it is biased, as it does not take into account other factors which may be just as serious. While the legislation only identifies race and religion as protected categories, the public believes that race, religion, sexual orientation and disability should be equally protected. Thus, we propose that disability and sexual orientation should also be taken into account. Our survey results show that the majority of the public think that these four categories are of equal importance and each is deserving of protection.



② ss. 145-6 Criminal Justice Act 2003 and s. 28 Criminal Disorder Act 1998

The current law on prison sentencing for addition of aggravating factors is 6 months to 2 years.

The issue with prison sentencing is that it places a burden on the state and subsequently on the taxpayer. It costs £69,950 to imprison a person in this country (including police, court costs and all the other steps). The certified prison capacity is 77,344 and the average prison population is 84,238. If the growth in the prison population is not stopped then more prisons will have to be built, at a huge expense to the government and in turn the taxpayers.

③ Aggravating factors on criminal records

The current law on criminal records does not take account of aggravating factors. While criminal records include the type of crime committed by the offender, it fails to record the aggravating factors - of which includes crimes motivated by racial and religious hostility.

Problems with aggravating factors not on criminal records:

If aggravating factors are not included in criminal records, the judge and prosecution of a repeat offender will not aware of whether they have committed a hate crime before. This is a crucial problem because the offender who commits multiple hate crimes is deserving of greater punishment. Our consultation shows that 70.4% of people believe that aggravating factors should be included in criminal records, while a minority of 23.1% think aggravating factors should not be included.

④ Sentencing guidelines for judges

The current law and guidelines is set out under the provisions of section 170(9) Criminal Justice Act 2003, which is issued by the Sentencing Guidelines Council. Currently the court must have regard to the five purposes of sentencing contained in section 142(1) Criminal Justice Act 2003: (a) the punishment of

offenders, (b) the reduction of crime (including its reduction by deterrence), (c) the reform and rehabilitation of offenders, (d) the protection of the public, and (e) the making of reparation by offenders to persons affected by their offence. However, despite setting out clear factors for the court to consider, the Act does not indicate that any one factor should be more important than another, or to what extent should the judge consider any particular factor or purpose. In practice the judge determines the manner and the extent to which the factors apply, and has great discretion in deciding which factor is more significant.

Furthermore, from our survey results we can see that an overwhelming majority of 77.4% of people disagree that a long sentence in prison is in itself a sufficient form of rehabilitation, and this data suggests that more emphasis on rehabilitation needs to take place. Sentencing guidelines instructs the judge, or the lay magistrates, to consider the seriousness of the offence, and what sentence (custodial, community, suspended) would be the most appropriate in each individual's case. The seriousness of an offence is determined by the culpability of the offender and the harm caused or risked being caused by the offence. Section 143(1) Criminal Justice Act 2003 provides: "*In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.*" The court looks at intention, recklessness, knowledge, and negligence, and harm includes harm to the individual, the community or any other types of harm.

Problems with sentencing guidelines for judges:

There is an issue with the lack of clarity in the sentencing guidelines, which do not provide for assessing and balancing culpability and harm. Another problem with the current sentencing guidelines is the difficulty for the judge or lay magistrates to determine the threshold for a custody sentence. Furthermore, it is impossible to determine definitively which features of a particular offence make it serious enough to merit a custodial sentence, and this needs to be addressed and specified.

Proposals

① Add aggravating factors onto criminal records

Option 0	Do nothing.
Option 1	Add aggravating factors to criminal's records
Option 2	Provide sentencing guidelines to judges in internalising the aggravating factor in criminal records.

We believe that adding aggravating factors to criminal records will help to deter potential repeat offenders. Furthermore, this addition of aggravating factors onto criminal records will be useful for judges when weighing up aggravating and mitigating factors in sentencing. Prosecutors and defence counsel can also use this information to justify if the sentence is appropriate. We propose that, as an aggravating factor increases the seriousness of crime, these should be reflected on offenders' criminal records.

② Increase training and development opportunities for prisoners

Option 0	Do nothing.
Option 1	Provide more jobs for prisoners
Option 2	Improve healthcare and personal development for prisoners

Over 70,000 people per year received training while they were in prison, and along with the courses to manage and change their behaviour; they were given the opportunity of employment when they completed their sentence. Without that training, statistics tell us that 75% will reoffend and end up back in prison. With training and development courses, ex-offenders could find jobs and contribute to society, rather than burdening the prison system.

③ Clarify sentencing guidelines of judges

Option 0	Do nothing.
Option 1	Strict guidelines in determining custodial sentence
Option 2	Sentencing guidelines should include aggravating factors
Option 3	Sentencing guidelines should have clear provisions for assessing culpability and harm

Currently, the court must have regard to the five purposes of sentencing contained in section 142(1) Criminal Justice Act 2003: (a) the punishment of offenders, (b) the reduction of crime (including its reduction by deterrence), (c) the reform and rehabilitation of offenders, (d) the protection of the public, and (e) the making of reparation by offenders to persons affected by their offence. However, despite setting out clear factors for the court to consider, the Act does not indicate that any one factor should be more important than another, or to what extent should the judge consider any particular factor or purpose. Another issue found in the lack of strict guidelines is difficulty for the judge or lay magistrates to determine the threshold for a custodial sentence.

Judges ought to determine which features of a particular offence need to be addressed and specified. Sentencing guidelines should provide a clear provision for assessing and balancing culpability and harm. Further explanatory notes would be useful to provide guidance to judges, and avoid inconsistencies in sentencing.

Online Communications

Online communications involve the way people communicate with each other over the internet, using platforms such as email, instant messaging, chat rooms and social networking sites. However, it also provides a stage for people to incite hatred based on another's race, religion, disability, etc. In our survey, 93.5% of people agreed that hate crime is indeed present online.

Current Law

① Malicious Communications Act

The current offence for which a defendant can be charged is governed under Section 1 of the Malicious Communications Act 1988, which states that a person is guilty if they "*intend to cause distress or anxiety by sending or delivering letters or other articles*". The Communications Act 2003 was clearer in confirming that sending malicious communication using online media is a criminal offence that is punishable by law. Section 127 of this act states that this message has to be "*grossly offensive or indecent of an obscene and menacing character*". Furthermore, the DPP in 2012 set out guidelines stating that communications which are credible threats of violence or stalking which are targeted at an individuals will be prosecuted. However, people who express an unpopular opinion on serious or trivial matters or make comments for the purposes of humour will not be prosecuted.

Problems with the Malicious Communications Act:

The words "*distress*" and "*anxiety*" can be categorised as being too broad and too vague, and does not set out examples of what symptoms these emotions entail. Furthermore, issues regarding what will be classed as grossly offensive or indecent need to be addressed. Magistrates are likely to have different opinions on these terms, and this confusion could delay the court process as it may mean a decision is not reached as quickly.

② Online Anonymity

The current law does not require ID checks for people to register to social media sites as it is not stated in their terms and conditions. Facebook has mentioned that the "*real names*" policy is used to "*prohibit abuse and profanity in the name field*" and Facebook also requires that users whose names are reported to be "*fake*" submit legal identification to prove their identity. Also, Facebook and Instagram are asking people to "*snap a photo of an official photo ID that people have in their possession and send it along for verification*", in order for people to confirm their identity. These checks are for those who appear to be violating either service's Terms of Service.

Problems with online anonymity:

Those who post offensive messages online advocating prejudice or racial/religious hatred may not breach the terms and conditions of social media platforms. This could lead to the perpetrator being banned from that site but not facing criminal charges. However, many people disagree that online postings should be punished because this would create more cases for the Crown Prosecution Service to deal with and act as a drain on taxpayers' money.

Proposals

① Reasonable man standard

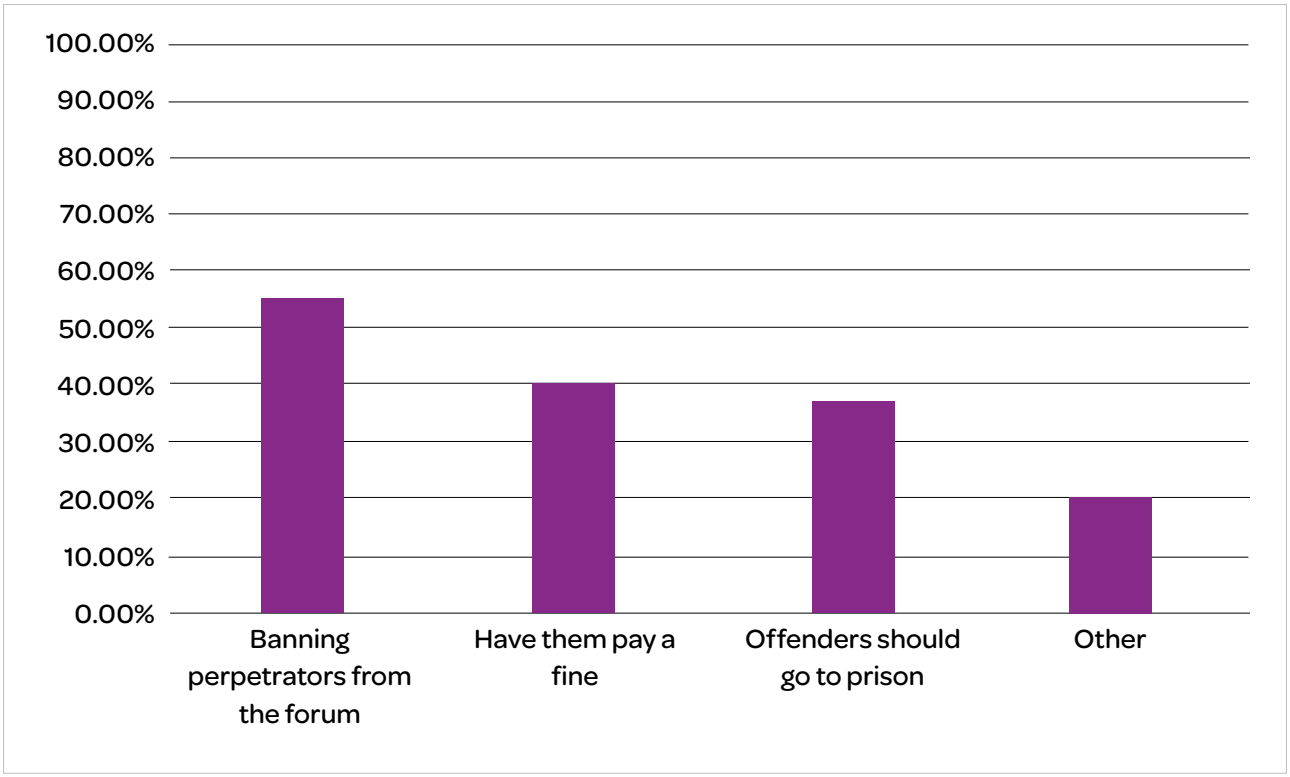
One way we propose to reform the law on online communications is by imposing the standard of a reasonable man. The question is whether the ordinary, sober and reasonable man of the victim's age and gender would have suffered from distress or anxiety as a result of the hate crime. By applying this objective test, it would be easier for the jury to reach a verdict on whether the victim did in fact suffer, and thus decide if the defendant is guilty or not of causing this through his online conduct. This in turn would have the effect of fairer convictions and act as a form of justice for the victim.

② Clarifying definitions

The definition of the words "*grossly, indecent, obscene and menacing*"' would need to be properly explained in order to clear up confusion that people may have on their meanings. This would create a more coherent understanding across the bench, instead of individual jurors having different views on what the words mean. This may also be necessary for the use of the word "*malicious*", which can be classed as being archaic language, as some people today may not fully understand its meaning. A solution to this would be to add proper guidelines to clearly state that anything involving targeting someone over prejudices through electronic communications is subject to prosecution.

③ ID Checks

In our survey, we asked the public how they thought our law should tackle hate crime online:



The majority of our participants agreed that in order to tackle hate crime online, social media sites must ban perpetrators from the forum. However, online anonymity makes this idea more complicated. By having ID Checks, it would be easier for social media sites to identify users violating their terms and conditions. This makes it simpler to ban the person from the forum, as they cannot only terminate the account but they can also prevent the person from creating fake accounts so they that they are unable to commit the same offences.

④ Monitoring social media platforms

Another suggestion for reform would be to create a new policy which would make social media platforms monitor its users' behaviour and to report any hate crime which causes people to be "*grossly offensive*" to be reviewed by the monitors and send them to the police if they are committing offences online such as harassment and assault. This will tackle hate crime as well as act as a deterrent for anyone thinking of posting something which might cause people to be grossly offended.

Education/Rehabilitation

Current law

There has been several governmental and non-governmental campaigns launched to target awareness of hate crime in society. However, according to our survey, 81.9% of participants believed that hate crime education should be included on the National Curriculum. Furthermore, 55.3% of these candidates ranged between the ages of 14 to 18. This is in itself evident that most adolescents believe that they should be educated more about hate crimes, perhaps suggesting such campaigns are ineffective. It is clear there should be more education on what constitutes a hate crime, how to report such incidents and the punishments in place as a means of tackling the problem.

Proposals

① Reform of Education and Inspections Act 2006

Currently, parents can withdraw their children from religious education. We believe that all students should be required to learn about different religions, as a deeper understanding of them could prevent hate crimes from occurring, as many prejudices originate from a lack of information. Religiously aggravated crimes also strongly correlate to racially aggravated ones, and in many instances of hate incidents, the two are closely linked. Education in this subject is therefore vital as people can gain a broader understanding, forming personal beliefs and a capability to reflect on their own actions rather than being influenced by others.

As the result of the current law and its ineffectiveness, we recommend that the current Education and Inspections Act 2006, section 55, subsection 7 be reformed in order to tackle the problems outlined previously. This proposed reform will revoke of parental rights in withdrawing children from the religious education classes provided to them by educational institutions. We advise that all religious education become mandatory throughout a child's time in the education system, with the exception of sixth-form and colleges. This approach is a preventative method of hate crimes, as it ensures there is a well-informed, positive association with religion from a young age.

② Making PSHE education compulsory

PSHE education is a non-statutory subject on the school curriculum. Section 2.5 of the National Curriculum states that all state schools "*should make provision for personal, social, health and economic education (PSHE), drawing on good practice*". Additionally, paragraph 41 of statutory guidance on Keeping Children Safe in Education, the Department for Education states that "*schools should consider how children may be taught about safeguarding, including online, through teaching and learning opportunities. This may include covering relevant issues through PSHE*". The prominent issue within this guidance is the sense of ambiguity that encompasses it. The wording within is extremely vague, meaning it is much easier for educational institutions to avoid the absolute following of such guidance. Furthermore, institutions can simply justify their inadequacy by stating they are merely following guidance, but making poor provisions for the teaching of PSHE.

We suggest that such PSHE should be changed to a statutory subject, to apply to all schools, whether public or private. In our survey, we found that 81.9% participants agreed that hate crime should be incorporated into the National Curriculum. We think that hate crime would be most effectively taught as a part of PSHE, due to the pre-existing strong links to the subject. However, in regards to the current laws of PSHE and its implementation, a review of the language is requested. We suggest that the language be changed in order to make the subject mandatory and ensure that it is more effectively executed. Adding hate crime to the National Curriculum through the subject of PSHE can be easily done - due to The Equality Act 2010, schools must advocate the need for tolerance and respect, and our proposal would definitely strengthen their commitment to promoting equality.

The summary below shows the contributions the Crown Prosecution Service (CPS) has made in creating crime resources intended for educational use. It includes a (i) teacher's pack, (ii) educational resources, (iii) guidelines and even presentations. Our suggestion further involves making these CPS resources compulsory for every school or secondary institution to teach as part of the 'PSHE' subject.

a. The CPS has launched a new anti-hate crime education campaign in schools to help young people tackle homophobic and transphobic abuse.

b. The CPS has teamed up with the Ministry of Justice and Stonewall to develop the educational resource pack which aims to inform and educate students about the impact of homophobic and transphobic bullying on victims and the potential consequences of this behaviour.

c. The LGBT Hate Crime Pack, which is backed by the National Union of Teachers, contains a DVD and lesson plans for teachers, designed to help students discuss stereotypes and prejudice and the impact of this type of bullying on victims.

d. The CPS is committed to prosecuting homophobic and transphobic hate crime robustly and are working closely with partner organisations not only to ensure that victims feel confident in reporting hate crimes to the police but also to prevent these crimes from happening in the first place.

We have made this proposal because cognitive growth is influenced by knowledge and increased experience, and teaching about hate crime from a young age will ensure that our children grow up to become more tolerant adults capable of respecting diversity. The costs of making this change would not overly impact the schools, as it would only affect a small part of the curriculum. The benefits of providing students nationwide an adequate and thorough teaching of PSHE extend beyond the classroom and will remain with students even after they leave the education system.

③ Cooperation between educational institutions and local police

Currently, there are no specific laws in place regarding cooperation between educational institutions and local police enforcement. In our research process, a certain section of the law enforcement who primarily focus on education regarding crime, brought forward the fact that when confronted with students who had committed hate crime, they had found it difficult to investigate into due to the lack of cooperation giving by schools. They have stated that this is most likely due to the fact that educational institutions are protective of their reputation, regardless of whether or not the student did commit a crime.

Our solution for this issue is for schools and law enforcement to enter into a memorandum of understanding, much like the 'Elizabeth Agreement' actively applied within the United States. This agreement would state that should an educational institution become aware of a possible hate crime or non-criminal incident motivated by prejudice, on or off school grounds, they must immediately report it to the local authorities. The additional costs would be insignificant as the police are already required by law to investigate these crimes, and this would make the prosecution process much easier.

Conclusion

As hate crimes are premised on an underlying offence, we believe that it is not necessary to repeal all provisions on hate crimes in current legislation and enact an entirely new statute that covers all aspects of hate crime. Instead, we have proposed specific solutions to tackle the wide range of issues we have identified, from prevention (education, rehabilitation) to cure (sentencing guidelines), taking into account the impact of modern technology (online communications). The implementation of our proposals will go a long way in making hate crime law more up-to-date and inclusive of broader categories deserving of protection.

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.co.uk.**