

Public Bill Committee

SERIOUS CRIME BILL

WRITTEN EVIDENCE

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ABOUT THE NSPCC

The NSPCC is fighting to end child abuse in the UK by helping children who have been abused to rebuild their lives, protecting children at risk, and finding the best ways of preventing child abuse from happening. We achieve this through a combination of service provision, campaigning and public education.

EXECUTIVE SUMMARY

1. The NSPCC is concerned that there is inadequate protection for children from adults who send sexual material to them. Current law in this area is fragmented and confused, and ‘bites too late’ in the grooming process meaning the child may already have suffered abuse. It also fails to recognise the nature of grooming where the abuser aims to flatter the child. We propose creating a standalone offence of an adult intentionally sending a sexual message to a child.

2. The NSPCC welcomes the Government’s commitment to introduce a new law that would make sexual communication with a child a criminal offence. We want to ensure the amendment is worded robustly so there is no doubt that it is always illegal for an adult to send a sexual message to a child.

3. The NSPCC has gathered evidence from the police which demonstrates that the convoluted nature of existing law poses a problem when dealing with adults who send sexual messages to children.

4. The Sexual Offences (Scotland) Act 2009 makes it an offence to send or direct sexual communication to a child aged under 15. Although the Act has several shortcomings, it shows the increased powers which police in England, Wales and Northern could have that would enable them to intervene earlier in cases of sexualised contact between adults and children, preventing abuse escalating.

5. We would be happy to give oral evidence to the Committee should that be helpful.

SEXUAL MESSAGING: THE PROBLEM

6. Young people are experiencing all sorts of new forms of abuse via technology. Many parents tell us that keeping their children safe online is a key concern for the welfare of their child. Last year there was a 168% increase in contacts to ChildLine from children about online sexual abuse.

7. The NSPCC is concerned that there is currently inadequate protection for children from adults who send sexual material to them (primarily over the internet). This material could be visual, written or verbal.

8. The fragmented nature of current law in this area makes it hard for police to deal with sexual messaging appropriately. Legislation covering this predates the widespread use of the internet, including social networking sites. Without clarity in this area, vital opportunities to stop abusers grooming young people online are being missed. More needs to be done to enable the police to take early action to prevent abuse escalating, reducing the risk to children and young people, and helping to keep them safe online.

Case study

In a recent case, a male adult defendant targeted three victims; two girls aged 14 and one girl aged 13. He began to talk to them in an inappropriate manner, referring to having sex with them, which made them uncomfortable.

The defendant sent the 13 year old girl messages saying he wanted to have sex with her. She was so traumatised she told her father who called the police and installed a panic alarm in the house.

The defendant was charged with ‘minor’ harassment offences.

The Judge felt this did not reflect the level of ‘seriousness’ displayed by the defendant’s behaviour, but he could not be charged with an offence under the Sexual Offences Act (2003), as the burden of proof to show that he was inciting sexual activity had not been met.

9. Drawing on the Sexual Offences (Scotland) Act 2009, we propose creating a standalone offence as an amendment to the Sexual Offences Act (2003), of an adult intentionally sending a sexual message to a child.

10. The early stages of the online grooming process typically do not see adults sending intentionally malicious messages to children. The adult often flatters, seeking to gain the trust of the child. We are concerned the law does not ‘bite early enough’ in the online grooming process. Creating this new offence would help protect children from unwanted and distressing sexualised contact online, enable action to be taken against offenders at an earlier stage of the grooming process, and help prevent abuse escalating.

INADEQUACIES IN THE CURRENT LAW

11. At the #WeProtect Children Online Global Summit in London in December 2014, the Prime Minister committed to introducing a new law that would make sexual communication with a child a criminal offence. This was a welcome step, reflecting the call made by the NSPCC's *Flaw in the Law* campaign.

12. There have been suggestions that there is already adequate provision in existing law to cover online grooming. The NSPCC does not agree. Existing legislation is not clear and in many cases, the defence could argue that the threshold required for the communication to be covered by the offence had not been met.

Sexual Offences Act (2003)

13. Section 10 of the 2003 Act, which makes it an offence for an adult to cause or incite a child to engage in sexual activity, is insufficient as there are many cases where a charge of incitement may not be met. In most cases of online grooming the adult seeks to flatter the child, attempting to gain their trust, before inciting the child to engage in a sexual activity such as sharing an indecent photo of themselves. At the point at which a child has been incited to engage in sexual activity, a vital window of opportunity to prevent further abuse has been lost. The purpose of the new clause would be to give the police greater powers to intervene earlier in the process of online grooming before abuse escalates.

Malicious Communications Act (1988)

14. Messages that are indecent or grossly offensive would fall foul of Section 1 of the 1988 Act. However, there has to be intent to cause distress or anxiety and this is not always the case with an adult sending a sexual message to a child in the early part of the online grooming process, where the message is more likely to flatter and compliment the child.

Communications Act (2003)

15. A grossly offensive, indecent, obscene, or menacing message would also fall foul of Section 127 of the 2003 Act. However, in cases of adults sending children sexual messages the defence could argue that the threshold has not been met. Perpetrators do not necessarily try to be offensive or to frighten the child. Often the perpetrator tries to convince the child that they are special and this is a loving act.

Current position

16. We are now concerned with ensuring that the amendment to the Serious Crime Bill, which introduces the new law, is worded robustly. There must be no doubt that it is always illegal for an adult to send a sexual message to a child.

EVIDENCE FROM THE POLICE

17. The NSPCC has established a clear evidence base for the new law to ascertain whether the existing legal framework poses a problem in dealing with adults who send sexual messages to children. This has been developed in part with the assistance of the Association of Chief Police Officers.

18. The majority of police forces the NSPCC spoke to agreed there was a gap in the law that needed to be filled. Detective Inspector Martin Hillier, Head of the Sexual Exploitation Unit with Nottinghamshire Police said: *"This is a major issue for us within sexual exploitation investigation—clearly the disclosure of age is critical which in some cases does not take place via chat and in other cases may be disclosed later in the relationship. The behaviour is commonly referred to as sexualised chat but as you have stated if it does not involve incitement to commit offences, direct sexual activity or preparation to meet then we are always struggling. Clearly there are no direct offences committed under the SOA2003."*

19. Responding to a question about how they deal with sexual messages, some police forces said they often feel that the criminal threshold has not been met so it is difficult to pursue a prosecution. In these instances some forces stated that they will look for other behaviour where there is clarity that an offence has definitely been committed, such as possession of child abuse images. Where police concerns about an adult sending sexual messages to a child fall short of the criminal threshold, some said they may visit and discuss the behaviour with the adult. Two forces struggled to answer the question due to difficulties in searching their records.

20. When asked if current legislation adequately addresses situations where grooming occurs online, without any intention on the offender's part to meet the child, a majority of respondents agreed that current legislation is insufficient. Detective Inspector Robert Chitham of the Kent Police Paedophile Online Investigation Team said: *"The current legislation does not adequately address the online issues outlined that fall short, (as most do) of the threshold for criminal prosecution. If such a law was enacted, it would significantly enhance our ability to deal more effectively with online offences, and go a long way to safeguard children exposed to such offences."*

21. Police forces were asked specifically whether the Sexual Offences Act (2003) has shortcomings in tackling sexualised contact between adults and children. There was unanimity among respondents that the Act has shortcomings. Numerous officers said there was a difference between the 'sexualised chat' they often see at the **preliminary stages of online grooming** and content or messages that could be defined as sexual under the Sexual Offences Act (2003). Detective Inspector Linda Howard of the Hampshire Constabulary said: *"There*

are currently difficulties in dealing effectively with those people who message children with what is an obvious attempt (to us) to groom but they do not go on to arrange to meet child. A standalone offence would make it much easier to safeguard vulnerable children, deal effectively with those offenders and also send a very clear message to those who may be thinking about contacting children for sexual means.”

22. Police forces were asked what difference it would make if a standalone offence was created under the Sexual Offences Act (2003) that made it always illegal for an adult to send a child a sexual message. The majority of respondees said it would be helpful, citing the ability to intervene earlier and prevent ‘hands on’ offences being committed as specific benefits. Detective Superintendent Gemma Booth of the Child Exploitation Investigation Unit at the Derbyshire Constabulary said: “A standalone offence, under the Sexual Offences Act, making it illegal for an adult to send a child a sexual message would provide earlier enforcement opportunities.” Several respondees did note caution about the potential impact this could have on their resources and how a ‘sexual message’ would be defined.

23. Finally, forces were asked how often they used the Malicious Communications Act (1988) or the Communications Act (2003) to prosecute cases of adults sending sexual messages to children. The response was mixed. Several forces stated that neither Act is appropriate, whilst others said they do utilise the Malicious Communications Act (1988) but either the number of successful prosecutions under the Act was low, or they could not be specific about individual cases.

SEXUAL MESSAGING IN SCOTLAND

24. The Sexual Offences (Scotland) Act 2009 made it an offence to send or direct sexual communication to a child aged under 15. It is a useful model to consider. However, there are three aspects of this law that we would not seek to replicate in our proposal:

25. Firstly, under Sections 24 and 34 it has to be proven that the offender’s purpose was to obtain sexual gratification or to humiliate, alarm or distress the victim. Scottish police tell us that the requirement to prove ‘sexual gratification’ is too high a threshold and it has blocked prosecution in some cases.

26. We would also not seek to replicate the wording of ‘humiliating, distressing or alarming B’ as set out in Sections 24 and 34. This fails to recognise the nature of grooming, where the abuser aims to flatter and build trust with the child rather than send indecent or offensive communications. We want the law to enable prosecution of sexual messages before the abusive behaviour escalates.

27. Section 39 of the Act provides a defence to Section 34 that the accused reasonably believed that the child had attained the age of 16 years. Under Section 39, a defence can be mounted if the difference in age at the time of which the charge took place does not exceed two years. We would not seek to replicate this two year age gap. Scottish law makes it possible to prosecute a child but the NSPCC believes it is rarely in the best interests of either child (in the scenario of where the defendant and victim are both children) to prosecute. We would only want the proposed law to apply to adults.

Scottish case studies

28. Below are examples of media reports from Scotland regarding convictions for adults entering into sexual communications with children under 16.

29. In August 2013, 55 year old Stephen McLaren admitted sending sexualised written communications to a ten year old girl for the purposes of obtaining sexual gratification. McLaren was prosecuted receiving a sexual offence prevention order, 300 hours unpaid work, and a £1,000 fine.

30. Sean Baird was a 19 year old football referee who sent an indecent Facebook message to a 14 year old girl. The girl had not responded to the messages but instead told her football coach and police were subsequently informed. Baird was put onto the Sex Offenders Register for five years and fined £300.

Data on Scottish legislation

31. Convictions under Sections 24 and 34 of the Sexual Offences (2009) Act are low but rising slightly. However, the reported and recorded crimes figures potentially represent more useful figures in that they give an indication of the level of additional investigation which needs to be carried out by Scottish Police when these offences have been reported.

		2010-11	2011-12	2012-13
Section 24 Communicating indecently with a child under 13	Reported	73	74	103
	Recorded	15	73	97
	Convicted	1	4	6
Section 34 Communicating indecently with a child aged 13-15	Reported	95	123	233
	Recorded	25	95	150
	Convicted	0	5	22

32. Reported offences under Section 24 have increased by about half since the law was introduced. Over 90% of reported offences become recorded offences by 2012/13.

33. Reported offences under section 34 have more than doubled to 233 in 2012/13 and by 2012/13 close to two thirds of reported offences are subsequently recorded as a crime.

34. To put these figures into context, there were 3,369 sexual offences against under-18s in 2012/13. Offences under sections 24 and 34 accounted for 7.3% of all sexual offences against under-18s in Scotland.

Resourcing impact for the police

35. The evidence from two police forces indicated concerns about the impact of introducing this offence on their ability to resource policing it. Whilst the new offence could create an increase in reports, we believe the evidence from Scotland shows it would not be excessive in relation to police resource and time.

36. The new offence would also mean that offenders were charged earlier so there would potentially be a dip in other recorded offences, such as ‘causing or inciting a child to engage in sexual activity’ or ‘meeting a child following sexual grooming’. This means the increase may be offset by decreases in other crimes, and also a reduction in the resources police need to pursue and prosecute these crimes. The new offence would also mean thousands of children across England, Wales and Northern Ireland could be protected, and could also act as a deterrent to some potential offenders. The new offence would therefore enable the police to act upon available evidence (of sexual communication) with greater clarity and, potentially, less burden.

January 2015

Written evidence submitted by Paul West, Jessica de Grazia, David Bethom, and Alistair Richardson (SC 02)

CLAUSE 50 OF THE SERIOUS CRIME BILL: GANG INJUNCTIONS

Section 1 Introduction

1.1 On 7th January 2015 the Scrutiny Unit of the House of Commons invited interested parties with relevant expertise and experience to “Have your say” on the Serious Crime Bill by submitting their views in writing to the House of Commons Public Bill Committee, which is scheduled to consider the Bill between 13th–22nd January.

1.2 This submission has been produced in response to that invitation. It deals with three specific amendments to Gang Injunctions that we suggest should be included within Clause 50 of the Serious Crime Bill. If enacted, we believe these amendments will fine-tune the existing law and make Gang Injunctions more user-friendly and cost-effective, thereby widening their use and driving down the incidence of gang-related serious incidents in communities throughout England and Wales.

1.3 The authors of the submission are Paul West, Jessica de Grazia, David Bethom, and Alistair Richardson.¹ Collectively, we have considerable operational experience in obtaining and enforcing gang injunctions; investigating, prosecuting and defending in gang-related criminal cases; conducting strategic reviews of anti-gang partnership working; and developing and implementing law enforcement policy.

1.4 In 2014 we were jointly commissioned by the Home Office to prepare two documents: (1) a Practitioners’ Guide to Gang Injunctions, and (2) a Legislative Reference Guide explaining the full range of civil powers available to address the harm caused by gangs.² This tasking followed the Home Office Review, published in January 2014, which found that take-up of Gang Injunctions had not been as wide-spread as anticipated.³ The Review cited several explanations for this, including the cost of applying for orders and follow-up enforcement; some police forces and local authorities were reporting that the outcomes of injunctions were not always commensurate with the resources invested in them.⁴

Section 2 The Context of Our Proposals

2.1 From a policy perspective, we believe that the concept of Gang Injunctions is sound. A Gang Injunction enables a police force or a local authority to combine in one application, based on the civil standard of proof and civil rules of evidence, all core members of a gang, and through a programme of rigorous enforcement of

¹ The Appendix contains a brief biographical note on the authors.

² In the Ending Gang and Youth Violence (EGYV) Annual Report, 2013, the Home Office committed to producing a legislative reference guide.

³ “Review of the operation of injunctions to prevent gang-related violence”, Home Office, January 2014. Section 50(3) of the Policing and Crime Act 2009 (which created Gang Injunctions) required the Secretary of State to conduct this review and to submit its conclusions to Parliament within three years of the Act’s commencement.

⁴ Whilst Gang Injunctions are resource intensive, in our view, costs could be reduced by making the process of application for orders and enforcement more efficient. In any event, they are significantly less expensive than many large-scale criminal investigations and prosecutions and arguably more effective in preventing gang-related harm.

prohibitions and proactive monitoring of positive requirements, effectively to destroy the gang and its corrosive influence.

2.2 In one particular community where this was done, there was a dramatic reduction in gang crime, as measured by the number of gang-related serious incidents.⁵ In the 18 month period before the injunction was obtained, there had been 58 gang-related serious incidents involving members of the two gangs included in the order whereas in the 18 months following the injunction, no such incidents were linked to the two gangs.

2.3 Up to the present time, three police forces have led the way in obtaining Gang Injunctions—Merseyside, South Yorkshire and West Yorkshire. Together these forces account for 80% of the successful applications made to date. Surprisingly, London, which has the most gang-related violence of any area in the country, has obtained only 14 Gang Injunctions.

2.4 We wholeheartedly support the legislative changes included in the current draft of Clause 50 of the Serious Crime Bill. We also suggest three other amendments to fine-tune the law and make it more effective and efficient.

Section 3 Proposed Amendments

3.1 PROPOSED AMENDMENT 1: Equalise the current maximum length of orders for both adult and youth respondents in Gang Injunctions (currently two years) with the adult order in Anti-Social Behaviour Injunctions (indefinite).

3.2 We believe this to be a priority. There are seven current or proposed civil orders that are designed to prevent or reduce the harm caused by anti-social or criminal behaviour. These are: the Gang Injunction; the current Anti-Social Behaviour Order; the Anti-Social Behaviour Injunction (not yet in force); the Criminal Behaviour Order; the Serious Crime Prevention Order; the Sexual Offender Prevention Order; and the Injunction for Housing Providers. Of these, the Gang Injunction is the *only* order with a two year maximum term for adult offenders. The maximum adult term for *all* other orders is *either life or an indefinite period (until further order) or five years*. Chart 1 in the Appendix to this document lists the orders, what must be proved, and their maximum term for adults and youths.

3.3 A two year term for Gang Injunctions could be justified if respondents were minor offenders, and their conduct not significantly harmful. But three years' experience of the law shows that the police and local authorities (correctly, in our view) are using Gang Injunctions as a weapon of last resort, often when they are unable to bring criminal prosecutions, usually because witnesses refuse to co-operate out of fear, or because they also are involved in criminal activity. Gang Injunctions have proved effective in these situations because the civil burden of proof and rules of evidence permit the applicant to use police reports of serious incidents and, to a lesser extent, police intelligence as the basis for applications. This obviates the need to call witnesses who are vulnerable to intimidation.

3.4 An appellate court has previously ruled that Gang Injunctions are compliant with the Human Rights Act, although further challenge should be anticipated. We urge Parliament to take the opportunity of the debate on Clause 50 to re-iterate the need for the civil burden of proof, which overcomes the very real problems encountered in proving gang-related criminal cases caused by the reluctance of witnesses to engage with the police.

3.5 To that end, we compiled Chart 2 in the Appendix, which lists just six months (out of an 18 month period) of gang-related serious incidents that were used in one successful application that is typical of the Gang Injunctions obtained in Merseyside, West Yorkshire and South Yorkshire. Of the 28 incidents listed in the Chart, only two resulted in criminal convictions (of three men).

3.6 Looking at Chart 2, serious violence leaps off the page—arson using petrol bombs; grievous bodily harm with intent; possession and/or use of offensive weapons (firearms, axes, machetes, metal bars); ramming cars; threats to the families of victims, etc. We think that Parliament would agree that a two year term simply does not do justice to the extent of the criminality demonstrated by this Chart.

3.7 The two year term also raises a fundamental question of fairness. Is it right to restrict a court to imposing a two year order on a member of a gang involved in selling dangerous drugs, causing grievous bodily harm, armed attacks, arson, etc. when a court can impose indefinite restrictions on a compulsive “peeping tom” or a homeless person with Asperger’s Syndrome who has harassed and harangued train conductors who have caught him fare-dodging?⁶

3.8 Moreover, two years is insufficient to embed changes in behaviour, whether achieved through prohibitions or positive requirements, which is a goal of the law; nor does it give judges sufficient scope to distinguish between the conduct of peripheral and core gang members, which fairness and proportionality also requires.

⁵ For the purpose of this document, we have defined a gang-related serious incident as one that has potential life threatening consequences and requires a priority response.

⁶ These are real cases. In the former, the respondent was subject an indefinite Sexual Offender Prevention Order; in the latter, the court imposed a two year ASBO.

3.9 We propose that an amendment to Section 36(2) of the Policing and Crime Act 2009 should be included in Clause 50 of the Serious Crime Bill, phrased in the following terms:

Section 36 Contents of Injunctions: supplemental

- (1) *This section applies in relation to an injunction under section 34.*
- (2) *An injunction under this section must—*
 - (a) *specify the period for which it has effect, or*
 - (b) *state that it has effect until further order.*

3.10 PROPOSED AMENDMENT 2: The conditions for giving housing providers absolute grounds to take possession of social housing should include breach of a Gang Injunction.

3.11 This proposed amendment addresses what we suspect is an oversight. Part 5, Section 94(1) of the Anti-Social Behaviour, Crime and Policing Act 2014 creates an absolute ground to enable housing providers to take possession of social housing. Five conditions may trigger the application: 1) the respondent was convicted of a serious offence; 2) the respondent is in breach of an Anti-Social Behaviour Injunction under Part 1 of the Act; 3) the respondent is in breach of a Criminal Behaviour Order under Part 2 of the Act; 4) the property has been subject to a closure order for over 48 hours under Section 76 of the Act and; 5) a person residing at the property has been convicted of an offence under Sect 80(4) or 82(8) of the Environmental Protection Act. (All of the breaches must have occurred in, or in the locality of the dwelling house.)

3.12 There is no reason not to include a sixth condition, namely the breach of a Gang Injunction if the breach occurred in or in the locality of the dwelling house. Including this condition would incentivise gang members to comply with their orders lest a breach leads to them or their families being evicted from social housing.

3.13 We propose that an amendment to Part 5, Section 94 of the Anti-Social Behaviour, Crime and Policing Act 2014 (New ground for serious offences or breach of prohibitions, etc.) should be included in Clause 50 of the Serious Crime Bill, phrased in the following terms:

Part 5 Recovery of possession of dwelling-houses: anti-social behaviour grounds

Absolute ground for possession: secure tenancies

94 New ground for serious offences or breach of prohibitions etc....

.... (8) Condition 6 is that a court has found in relevant proceedings that the tenant, or a person residing in or visiting the dwelling-house, has breached a provision of an injunction under Section 34 of the Policing and Crime Act 2009, other than a provision requiring a person to participate in a particular activity, and—

- (a) *the breach occurred in, or in the locality of, the dwelling-house, or*
- (b) *the breach occurred elsewhere and the provision breached was a provision intended to prevent—*
 - (i) *conduct that is capable of causing nuisance or annoyance to a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or*
 - (ii) *conduct that is capable of causing nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions.*
- (9) *Condition 1, 2, 3, 4, 5 or 6 is not met if—*
 - (a) *there is an appeal against the conviction, finding or order concerned which has not been finally determined, abandoned or withdrawn, or*
 - (b) *the final determination of the appeal results in the conviction, finding or order being overturned.*

3.14 PROPOSED AMENDMENT 3: The right to a 12 month review should not be automatic if a respondent has breached the order or been convicted of another offence.

3.15 To support positive changes in behaviour, the current law requires an automatic review of a Gang Injunction at the end of its first year. This means that the police or local authority must prepare an in-depth file in advance of the review date and attend court even if a person has been convicted of another offence or of a breach whilst under the order, in which event judges invariably decide to continue the order. In these situations, it would save police, local authority and court time if the law were amended to permit the applicant, in advance of the one year review date, to notify the court of the conviction (copied to the respondent), unless there is a specific request by either the court or the respondent for a full review hearing. This will prevent unnecessary file preparation, court attendance, and court listings.

3.16 We propose that an amendment to the Police and Crime Act 2009, Section 36 Contents of Injunctions: supplemental be included in Clause 50 of the Serious Crime Bill, phrased in the following terms:

Section 36 Contents of Injunctions: supplemental

(4)(a) The court must order the applicant and respondent to attend a review hearing on a specified date within the last 4 weeks of the 1 year period (whether or not the court orders them to attend any other review hearings) commencing from the date the order is imposed.

(b) The 1 year review hearing may be deferred upon written application by the applicant to the court, with written notice to the respondent, if the respondent has been convicted of a breach of the injunction or a criminal offence committed during the term of the injunction.

(c) If the court decides to defer the review, it should set a new review to take place before the expiration of 1 year from the date when the first review would have been held had the respondent not committed a criminal offence or breached the order.

Section 4 Conclusion

4.1 By making the changes we suggest, which are all a matter of fine-tuning based on experience, we firmly believe that Parliament will make Gang Injunctions a more user-friendly and cost-effective legal tool. This, in conjunction with a continuing programme of peer reviews, mentoring and training, and publication of materials, should achieve the wider take-up of the law that the Home Office is seeking to encourage and thereby protect communities from serious gang-related violence and other offending.

January 2015

APPENDIX

BIOGRAPHICAL NOTE ON THE AUTHORS

Paul West, former Chief Constable West Mercia (2003-11), led nationally for the police service in relation to the management of violent offenders (2008-11) and is the only former Chief Constable to have qualified as a Peer Assessor for the Home Office Ending Gang and Youth Violence Team (EGYV). He participated in EGYV Peer Reviews in two London boroughs during 2012. Paul holds the distinction of being the longest serving Chief Constable in West Mercia's history and for much of his time in post he also led nationally for the police service on all strategy and policy concerning police misconduct, discipline, complaints against the police, counter-corruption and professional standards. He was awarded the Queen's Police Medal for distinguished police service in 2005.

Jessica de Grazia, a barrister (6 KBW College Hill) and U.S. lawyer, has international expertise in developing and implementing law enforcement policy relating to the investigation and prosecution of serious and organised crime. In addition to investigating and trying gang-related murders, she set up the first intelligence driven proactive police-prosecutor gang unit in New York City, which was a precursor of Operation Trident. Her previous UK projects include co-developing and co-delivering a two year change management programme for the Crown Prosecution Service to develop its capacity to deliver charging and conducting a review of the Serious Fraud Office. In 2013, she was the only non-Canadian appointed by Canada's Minister of Public Safety to serve on a four person expert panel to review the effectiveness of the federal system for investigating and prosecuting crimes against capital markets.

David Bethom is a former Merseyside Police Force Detective Sergeant, who was one of the first operational officers in the UK to make effective use of gang injunctions to reduce gang violence. He is responsible for the making of 46 successful applications and has provided advice and guidance on the making of a further 36 successful applications by other forces. David is a Peer Assessor for the Home Office EGYV Violence Team and recently participated in an EGYV Peer Review in a police force area in the east of England.

Alastair Richardson is a barrister (6 KBW College Hill) with experience in criminal law, gang-related crime and the use of civil remedies in a criminal context. He represented defendants and prosecuted cases arising out of the London riots in 2011, including appearing in specially convened night courts. Alistair has appeared in the British and international media to give expert opinion on the causes of and responses to these riots.

Chart 1

COMPARISON OF LENGTH OF MAXIMUM ORDERS FOR CIVIL LAW ENFORCEMENT ORDERS

Civil Power	What must be proved	Length of Order Adult	Length of Order Youth
Current Gang Injunction	Member of a gang and involved in specified acts of gang-related violence. Civil burden of proof	Maximum two years	Maximum two years
Current ASBO (stand alone or post- conviction)	Harassment, alarm and distress to people not of the same household and that the order is necessary. Criminal burden of proof. ⁷	Two years to life	Two years to life
Proposed ASB Injunction (Anti-Social Behaviour and Policing Act of 2014)	Harassment, alarm or distress and that the order is just and convenient to grant. Civil burden of proof.	Indefinite period	Maximum 12 months
Criminal Behaviour Order (Anti-Social Behaviour and Policing Act, 2014)	Harassment, alarm or distress and that the order will help in preventing the offender. Post-conviction order based on civil burden of proof.	Two years to indefinite period	Not less than 1 year, not more than 3 years
Injunctions for Housing Providers (Anti-Social Behaviour and Policing Act, 2014)	Similar to above. Only available to social landlords.	Indefinite period	Maximum 12 months
Serious Crime Prevention Order (stand alone or post- conviction)	The person is involved in serious crime and that the order would protect the public by preventing the involvement by the person in serious crime". Criminal burden of proof.	Maximum five years	Not applicable
Sexual Offender Prevention Order (post-conviction by sentencing court or after conviction by Chief Constable)	On conviction of a sexual offence or if there has been a past historical offence and the respondent is now dangerous to the public. Criminal burden of proof.	Five years to indefinite period	

Chart 2

GANG-RELATED SERIOUS INCIDENTS USED TO OBTAIN AN INJUNCTION, WITH LEGAL OUTCOMES

Incident	Legal Outcome
Car chase through estate, car rammed, man driven over, sustains two broken ankles and head injuries.	Two names provided via intelligence. Victim refused to cooperate. No other witnesses. No further action (NFA).
Gang fight involving ten people outside pub. One male stabbed twice in the upper back.	Five names provided via intelligence. No person willing to provide witness statement. Victim refused to cooperate. NFA.
Planned police search recovered drugs, loaded firearm and ten blank passports, two men arrested.	The loaded firearm or the passports could not be forensically linked to an individual as numerous people in property. NFA re firearm and passports. One male convicted of drug possession.

⁷ Although described as the civil burden in the statute, by case law, it is the equivalent of the criminal burden of proof. The same is true for Serious Crime Prevention Orders and Sexual Offender Prevention Orders.

Incident	Legal Outcome
Gang fights with doormen in city centre, threats to doorman.	Police attended, offenders no longer at scene, doormen reluctant to cooperate. NFA
Windows smashed at the house of the mother of a doorman involved in the above incident.	Three men arrested for threats to commit criminal damage. Statements retracted. NFA.
Planned police search recovered drugs valued at £76,000, £14k cash, loaded firearm and two CS gas canisters.	NFA on firearm because no forensic links. Two brothers convicted re the drugs and cash.
Car chase through estate, car rammed off road and firearm discharged.	Numerous witnesses to various stages of incident. Intelligence named 5 people. No one prepared to make statements. NFA.
Intelligence that a man had been attacked with an axe and machete.	Police attempt to locate scene and victim, no trace. Intelligence received later about incident.
Car rammed and overturned, all run off prior to police arrival.	Car unregistered, intelligence identified 4 people. No witnesses. Forensics could not place people in the car at time of incident. NFA.
Three cars chasing man up a road, police attend, no trace.	Incident confirmed by members of the public—no one prepared to provide statements. Intelligence named one person. NFA
Windows smashed at sister of gang member's house	The sister refused to provide any information or make any statement. NFA
Gang members gain access to opposing gang member's property, and smash up cars using weapons.	All people in the house at the time refused to assist the police or make statements. People responsible identified via intelligence. No direct evidence. NFA
Car belonging to gang member rammed off road into tree and set alight.	Gang member refused to cooperate. Men responsible subsequently named via intelligence. No direct evidence. NFA.
Firearm discharged at gang member's property.	No witnesses identified. Insufficient forensic evidence. Lack of cooperation from victims. NFA.
Father of gang member reports nearly being run over. Names offender.	One person arrested. Statement retracted. No further evidence. NFA.
Same father reports land rover has just been driven through the front window into his house	One man subsequently arrested. Statement retracted after incident described immediately below. NFA.
A car was deliberately driven into a house; this was a revenge attack in response to the above crime.	All witnesses at scene refused to cooperate. Incident caused the retraction described immediately above. NFA.
Residents report hearing five to ten gun shots, gang members confronted each other, gun residue was found on floor.	Numerous calls from the public. No one prepared to give statements. 5 people arrested. All gave no comment interviews. No forensic links. NFA.
Car reverses into garden wall of gang member	No witnesses. NFA.
Car belonging to another gang member set on fire.	No witnesses. NFA.
Car rammed on supermarket car park, one overturned.	Two men subsequently arrested. No one prepared to give statements. No comment interviews. NFA.
Arson by petrol bomb thrown at house- no forensics.	No witnesses. No forensics. Persons named via intelligence as responsible. NFA.
Arson by petrol bomb. Tenants' son linked to gang member. Two elderly people and five year old child rescued.	No witnesses, no forensics, no intelligence, but believed revenge attack for incident above. NFA.
Car rammed off road. One man hospitalised.	No person prepared to make statements including victim. 4 people named via intelligence. NFA.
Car rams another car, men get out and hit the other driver with a metal bar, then steal his car.	No forensic evidence, and victim refused to cooperate. NFA.
Gang members threatened to kill opposing gang member's mother and son.	Two people named and arrested. No comment interviews. Statement retracted. No other evidence. NFA.

Incident	Legal Outcome
Mother reported that her son had been beaten up by gang members (broken arm).	Victim refused to cooperate. Intelligence developed, named two people responsible for attacking victim with hammers. NFA
Three gang members stopped in car smelling of drugs. Axe found, one man arrested	On interview stated that he used the axe for gardening. Case discontinued at court as prosecution could not disprove defence that axe was being carried for an innocent purpose.

Written evidence submitted by the British Transport Police (BTP) (SC 03)

1. On behalf of the British Transport Police (“BTP”), the national police force responsible for the railways, please accept the following as a submission for the House of Commons Public Bill Committee regarding the public consultation on the Serious Crime Bill (“the Bill”), particularly in relation to Part 4: Seizure and forfeiture of drug-cutting agents.

2. Under clause 60: forfeiture and disposal, or return of seized substances; there is no explanation as to what threshold the Court must be satisfied, or the applicant needs prove, that the forfeited substance is intended for use as a drug-cutting agent. It is considered that a further sub-section, specifying the level of proof needed to satisfy clause 60(3) is needed so as to make clear to the applicant authority when they should, and should not, apply for forfeiture (i.e. is it on the balance of probabilities? Or should the court only need be reasonably certain the substance to be forfeited is intended for use as a drug-cutting agent?).

3. Furthermore, it is considered that clause 63 should be omitted in its entirety. A successful respondent, who has the seized substance returned to them, would still be permitted to apply through the civil courts for compensation from the seizing authority if there was any damage resulting from the unsuccessful application for forfeiture. If clause 63 was omitted, the parties would be able to discuss the matter, on a without-prejudice basis, in the hope that an agreed settlement be reached.

4. Without making the above amendments, Officers may refrain from making an application for forfeiture as they may be concerned that (1) they don’t know how far they should prove their case to the court and, (2) they may be responsible for the applicant authority having to pay compensation to the person who they have seized the substance from.

January 2015

Written evidence submitted by the Royal College of Nursing (RCN) (SC 04)

1.0 With a membership of more than 420,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the UK Governments, the UK Parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

1.2 The RCN welcomes the efforts made by the Government to legislate for tackling Female Genital Mutilation (FGM) within the Serious Crime Bill. This briefing sets out the RCN’s position regarding FGM and health professionals in regards to the legal structures.

2.0 INTERCOLLEGIATE REPORT

2.1 In November 2013, the RCN, as part of a unique coalition of royal colleges, trade unions and third sector organisations, published ‘*Tackling FGM in the UK: Intercollegiate recommendations for identifying, recording and reporting*’.⁸ This ground-breaking report and collaboration recognises that implementing a comprehensive multi-agency action plan is urgently required to ensure that young girls at risk of undergoing FGM are protected by the existing UK legal framework. The joint report from the Intercollegiate Group sets out nine recommendations aimed at health and social care professionals, who are key to bringing about the changes needed to help eradicate FGM.

2.2 Intercollegiate recommendations for tackling FGM in the UK

1. Treat it as child abuse.
2. Document and collect information.
3. Share that information systematically.

⁸ http://www.rcn.org.uk/_data/assets/pdf_file/0004/547996/Tackling_FGM_in_the_UK_Intercollegiate_recommendations_for_identifying_recording_and_reporting.pdf

4. Empower frontline professionals.
5. Identify girls at risk and refer them as part of child safeguarding obligations.
6. Report cases of FGM.
7. Hold frontline professionals to account.
8. Empower and support affected girls and young women (both those at risk and survivors).
9. Implement awareness campaign.

2.3 Since the publication of the Intercollegiate report, tackling FGM has quickly become a Government priority, and the RCN very much welcomes the heightened awareness of FGM among parliamentarians, the media and the public.

2.4 The Department of Health has made significant steps to tackle FGM from a health care perspective and rightly recognises that health care professionals are crucial to tackling FGM. As set out in the Intercollegiate report, the RCN encourages a multi-agency approach to the implementation of the measures regarding FGM set out in this Bill. It is imperative that information is shared across health, local authorities, schools and the police to ensure the implementation of comprehensive and integrated strategies for tackling FGM.

2.5 The measures set out in this Bill to amend the current legal framework are very much welcome. However, the RCN is mindful that to ensure their success, appropriate training and education of professionals across health and other agencies is essential. It is crucially important that health professionals are comfortable working with survivors/victims of FGM and are aware of the legal structures in place which are there to benefit women and girls who may have been abused or are at risk of FGM. This will also enhance professional understanding and awareness, as well as wider public awareness of the legal parameters that protect victims/survivors and those at risk of FGM. Much work has been done this year to raise awareness of FGM and this effort must continue.

3.0 CLAUSE 68: ANONYMITY FOR VICTIMS

3.1 The introduction of anonymity for victims of FGM is a welcome step. It is important, however, that the complexities of FGM are sufficiently considered, in comparison to victims of other crimes. For example, anonymity for victims of FGM might result in children, who have been subjected to FGM, being moved away from their families and communities.

3.2 The RCN is mindful that guidance following this legislation should be explicit in signposting survivors/victims of FGM to relevant support services and ensuring that there is sufficient resourcing of appropriate psychological support. FGM causes death, disability, physical and psychological harm for millions of women every year. The Intercollegiate group found that there is strong evidence of a correlation between FGM and psychiatric disorders, with young girls and women presenting with psychological distress and post-traumatic stress disorder.

3.3 The RCN has continually highlighted concern regarding the loss of services and nursing and midwifery posts in settings which would care for girls and women who require care and support. In August 2014, there were nearly 4,000 nursing mental health posts less than in 2010,⁹ an extremely worrying decrease which has negatively affected services, particularly in the community. The RCN's recent *Frontline First* report highlighted these cuts in stark detail; '*Turning back the clock*'¹⁰ reveals that the loss of these vital services means many people experiencing symptoms of mental illness are having to wait extraordinary lengths of time to be treated and cared for.

4.0 CLAUSE 69: OFFENCE FOR FAILING TO PROTECT

The current law does not see FGM as a criminal dereliction of parents'/guardians' duty to protect their children. The RCN strongly welcomes measures within this Bill to make it a criminal offence for parents' and guardians' who fail to protect girls from FGM. To ensure that parents and guardians understand these new laws, it is important that nurses and midwives working with young families are fully aware of the legal framework. In a wider public health role for nurses and midwives working in these settings, it may be appropriate, should a child be identified as at risk, to inform parents and guardians of the legal ramifications of their actions. This multi-agency approach will encourage further sharing of information and increase levels of reporting and consequentially, prosecutions.

5.0 CLAUSE 70: PROTECTION ORDERS

5.1 A key barrier to achieving a successful prosecution for FGM offences relates to the low levels of reporting of the crime of FGM. The existing laws rely on victims of FGM to report the abuse to the police, despite the majority of victims of FGM being under the age of 10 with some under the age of 5, which is why these new measures are essential.

5.2 The Government recently consulted on the proposal to introduce protection orders, a specific civil law, which could provide an additional tool to prevent and help eliminate FGM, which complements existing

⁹ HSCIC workforce statistics August 2014

¹⁰ http://www.rcn.org.uk/__data/assets/pdf_file/0004/600628/004772.pdf

criminal law. The proposals suggest that a professional authorised by the courts could make an application for a protection order. For this reason, it is imperative that health professionals are fully engaged and consulted without throughout the process, and in subsequent guidance.

5.3 As part of the Intercollegiate Group, the RCN responded to the Ministry of Justice consultation on its proposal for protection orders. The RCN supports this specific legal measure which will strengthen the case for prosecution, and more importantly, it offers protection to at risk girls and young women. It is appropriate that provisions to protect girls from FGM are placed in statute so that a more comprehensive approach is taken to safeguard these girls. The RCN is encouraged by the protection orders for a number of reasons; they will help to further clarify the role of health care professionals in preventing FGM and they complement the Department of Health's and Home Office's initiatives on the mandatory recording and reporting of all FGM.

5.4 In particular, the RCN is supportive of a range of reporting options being available to victims of FGM; should FGM be prevented, girls may prefer the civil enforcement route over the criminal one. However, to further strengthen the law the RCN believes it is necessary to place a limit on the number of civil breaches before criminal sanctions are imposed.

6.0 MANDATORY REPORTING

6.1 The RCN welcomes steps towards the introduction of mandatory reporting of FGM by health care professionals and will be responding to the current Home Office consultation on this issue in due course.

6.2 At present, it is mandatory to *record* cases of FGM to safeguarding, to ensure that relevant authorities are informed. The mandatory *reporting* of FGM to authorities, or potentially the police, will alter the landscape of this issue for health care professionals. The RCN supports efforts to introduce mandatory reporting, which will increase information about the prevalence of FGM; this is an important component which will assist health care professionals, local authorities and the police to prevent and prosecute cases of FGM. These steps send a clear signal that FGM must be treated as a crime and as child abuse. For mandatory reporting to be successful, however, it is crucial that health professionals are sufficiently educated and trained in both identifying FGM and working across agencies to record and report the crime. The RCN believes further efforts should be made by the Department of Health and across Government to encourage this.

6.3 A large number of health care professionals, much like the public, are unaware of the nature of this crime, and how to deal with it effectively. It is imperative that all health care professionals are educated and trained to know that FGM is a crime, and know what to do when they have concerns when a girl or woman is at risk.

6.4 In light of recent developments in this area, the RCN will be publishing updated resource for nurses and midwives early 2015.

January 2015

Written evidence submitted by Barnardo's (SC 05)

ABOUT BARNARDO'S

1. Barnardo's works directly with over 200,000 vulnerable children, young people and families every year through over 900 services. We use the knowledge gained from our work with children to campaign for better policy and to champion the rights of every child. Our purpose is to transform the lives of the UK's most vulnerable children and young people.

2. Barnardo's is the largest provider of child sexual exploitation support services in the UK. We have been tackling sexual exploitation since 1994 and now deliver specialist services in over 40 locations nationally. We support around 2000 children who have suffered, or are at risk of, sexual exploitation each year. Staffed by qualified professionals, our services provide a safe and confidential environment where young people can go for help, advice and support.

SUMMARY

3. Barnardo's welcomes the opportunity to submit evidence to the Public Bill Committee. Part 5 of the Serious Crime Bill contains a number of important child protection provisions, including in relation to Female Genital Mutilation. We believe that it also presents an opportunity to further strengthen the police's ability to fight the grooming and sexual exploitation of children.

4. Barnardo's provided the secretariat to a cross-party Parliamentary inquiry in early 2014, chaired by Sarah Champion MP. This inquiry considered the effectiveness of legislation for tackling child sexual exploitation. It received evidence from victims, police and legal professionals and made a number of recommendations, some of which were legislative.¹¹

¹¹ The inquiry's report is available here: http://www.barnardos.org.uk/cse_parliamentary_inquiry_report.pdf

5. The Government has accepted one of the legislative recommendations of the inquiry’s report—on grooming¹²—in an amendment to the Criminal Justice and Courts Bill. The Serious Crime Bill offers the opportunity to implement another key recommendation: placing Child Abduction Warning Notices, a tool currently used by the police, on a statutory basis.

6. Following debates on this issue at the Committee and Report stages of this Bill in the House of Lords, and after continuing discussions with Home Office officials and police across the country, we believe that a ‘two-stage’ process should be introduced, mirroring the provision that is already in place for Domestic Violence Prevention Notices/Domestic Violence Prevention Orders.¹³

7. This change would strengthen the power of the police to protect children from grooming and exploitation, while also:

7.1. Ensuring judicial oversight over police powers to issue statutory orders; and

7.2. Maintaining the ability of the police to issue a CAWN without delay.

CHILD ABDUCTION WARNING NOTICES (CAWNS)

8. Child Abduction Warning Notices (CAWNS) are part of a police procedure to document and record potential evidence for the future. They are used by the police as a deterrent against those thought to be grooming children by stating that the suspect has no permission to associate with the child and, if they continue to do so, they may be arrested for an abduction offence under the relevant legislation.¹⁴

9. CAWNS are a valuable safeguarding measure, particularly in cases where children do not recognise themselves as victims but where families have identified a risk. This is because issuing a notice involves taking a statement from the person with parental responsibility (“lawful control”), rather than the young person.

10. However, in written and oral evidence to the inquiry, the police argued that placing the notices a statutory basis would give them far greater strength and impact, enabling them to intervene earlier and disrupt perpetrators more effectively.

THE NEED FOR A STATUTORY BASIS

11. Breaching the conditions of a CAWN is not an offence and action can only be taken if the thresholds of the abduction offences (in the Child Abduction Act 1984 and the Children Act 1989) are met.

12. Both of these offences require a perpetrator to ‘take’ or ‘detain’ the child. However, the nature of the grooming process means the control that a perpetrator has over a child is likely to involve mental or emotional manipulation, not necessarily physical force. Actions that breach the conditions of the notice—i.e. the adult is simply with the child without permission—may therefore not lead to arrest or prosecution.

13. Placing CAWNS on a statutory footing would enable the police to intervene in the grooming process earlier and with greater effectiveness, enabling them to better protect vulnerable children before a more serious offence has been committed.

14. An additional benefit is that prosecution for breach of a CAWN would not require the victim to give evidence; it would only need to be proved that the conditions of the CAWN had been breached i.e. that the adult was with the child.

15. Currently, if a perpetrator breaches a notice but the police are unable to take action, the confidence of victims and their families in the police’s ability to protect them is eroded. Strengthening notices through statutory powers would therefore also help to improve victims’ confidence in the police when they seek help and protection.

January 2015

Written evidence submitted by Action for Children (SC 06)

ACTION FOR CHILDREN

Action for Children work with over 300,000 children, young people, parents and carers through 650 services across the UK. We are committed to helping the most vulnerable and neglected children and young people. We provide support at the earliest possible stage, coupled with targeted and intensive intervention.

Neglect is the most common problem we face across our services. Child neglect¹⁵ is the most common form of child abuse in the UK today, and the most common reason for a child protection referral across the UK.¹⁶

¹² The Government’s amendment would reduce the number of times perpetrators need to make contact with young people from two to one prior to meeting them with the intention to groom them to be considered to be committing an offence (as long as other conditions are met).

¹³ See sections 24-31 of the Crime and Security Act 2010

¹⁴ Section 2 of the Child Abduction Act 1984 and section 49 of the Children Act 1989

¹⁵ As defined by HM Government, ‘Working Together to Safeguard Children’ (HM Government, London 2013)

¹⁶ Child Neglect in the UK, Action for Children 2011

Over the past six years we have developed our evidence base on child neglect, campaigned for change and used our knowledge and experience to support practitioners and develop innovative services to help neglected children.

SUMMARY

Working with an independent group of legal and child protection experts, Action for Children have been campaigning to reform the criminal law on child neglect for a number of years. We welcome changes introduced in the Serious Crime Bill to make it a crime to inflict cruelty which is likely to cause psychological suffering or injury to a child. Non-physical neglect is child abuse, just as much as physical assault. For too long, non-physical harm of children has been viewed as less serious but it can be just as damaging, if indeed not more so, with life-long consequences for victims' mental health, wellbeing and success in life. There is mounting evidence that neglect is at least as harmful to a child's long-term welfare as contact abuse.¹⁷

During its passage through the House of Lords, the Government made a number of additional and welcome improvements to the Serious Crime Bill. These include extending the definition of 'ill treatment' to include non-physical harm and updating subsection (2)(b) to cover circumstances where an infant is suffocated as a result of sleeping next to someone under the influence of prohibited drugs.

For the first time, children will be legally protected from all forms of child abuse. This welcome change presents a rare opportunity to refine the criminal law and ensure we can best protect children.

KEY POINTS FOR COMMITTEE

The Government must provide further clarity about the definition of 'wilful' which equates to 'reckless'. It is not only prosecutors and social care professionals who need to understand the law, but also judges, juries, lay magistrates and police. This includes addressing concerns around the antiquated term 'unnecessary suffering' and professionals' understanding of non-physical abuse under the five conduct elements; assault, ill-treatment, neglect, abandonment and exposure.

The Government must also play an active role in ensuring that the full range of guidance and directions are updated in line with the new offence.

Paragraphs 1 & 2 provide background to Clause 65, paragraphs 3 to 7 deal specifically with the meaning of 'wilful' and 'recklessness', and paragraphs 8 to 13 address the need for updated guidance and training.

1. In the 80 years since the Children and Young Persons Act 1933 was drafted, our understanding of the harm caused by emotional child neglect has developed significantly. Empirical research indicates that emotional abuse may be the most damaging form of child maltreatment because the perpetrator is usually the person responsible for enabling children to fulfil their developmental milestones (i.e. the primary carer).¹⁸ This type of abuse can include forcing a child to witness domestic violence, scapegoating a child, systematic humiliation and the enforcement of degrading punishments. Whilst the effects upon a child of physical neglect can be immediately damaging and in some cases life-threatening, the effects of emotional neglect have been shown to be potentially life-long and more profound. These have been identified to include depression, post-traumatic stress disorder, personality disorder, aggression, disassociation, mental illness and suicide.¹⁹ Children who experience rejection or neglect are less able to learn and achieve educational outcomes than their peers.

2. Where there are concerns about child neglect, the vast majority of parents and other carers can be effectively supported to improve their parenting. Action for Children is committed to identifying gaps in the UK child protection systems that result in neglected children failing to receive early help, and to delivering policy and service responses, including raising professionals' awareness of all forms of neglect. Our campaign to update the criminal law complements this on-going work and seeks to protect the most vulnerable children by capturing extreme cases of child neglect. It is not intended to criminalise vulnerable parents and carers, including those who do not have the intellectual capacity to change their behaviour. In these cases a social response is required, not the criminal law. Equally, the intention is not to prosecute parents who have difficulty physically or financially providing for their children. We are seeking to amend the criminal law to protect children whose parents have the capacity to change, but who persistently reject any help from statutory authorities and refuse to change their patterns of conduct towards the child.

WILFUL VS RECKLESS

3. The current offence requires prosecutors to demonstrate that child cruelty has been carried out 'wilfully' (the mens rea of the offence). However, the legal definition of 'wilfully' in this context differs from the common understanding. The term 'wilful' has presented numerous difficulties in the context of neglect. Unlike other parts of the updated offence, neglect is typically an omission or failure to act. Professionals, judges and, through their direction, juries, as well as lay magistrates, must comprehend how a defendant can wilfully not do

¹⁷ R. Gilbert, C.S. Widom, K. Browne et al., Burden and consequences of child maltreatment in high-income countries, *The Lancet* 373 (2009), pp. 68-77

¹⁸ Glaser D. Emotional abuse and neglect (psychological maltreatment): a conceptual framework. *Child Abuse and Neglect* 2002;26(6-7):697-714.

¹⁹ Neglect: Research evidence to inform practice, Dr Patricia Moran, Action for Children Consultancy Services (2009)

something. It is clear from independent legal evidence²⁰ and consultation with frontline professionals, including the police, that ‘recklessness’ is the preferred and more widely understood term to determine the mens rea of the defendant. Understanding whether someone has caused psychological harm to a child through a failure to act while in a reckless state of mind is easier for professionals to apply in practice. Authoritative case law from the highest court in England and Wales already establishes that the definition of ‘wilfulness’ means ‘advertent recklessness’ (foreseeing possible harm but unreasonably taking the risk to act, or not act, anyway) but this is not sufficiently understood by those responsible for enforcing the law.

4. Action for Children held a number of focus group discussions with police officers and social workers to explore front-line understanding of the current criminal law. The police reported that the term wilful creates confusion amongst some officers. None of the police officers taking part in the focus group were aware that ‘wilful’ had been legally interpreted to mean ‘reckless’ by the ruling by the House of Lords in *R v Sheppard* [1981] AC 394. Instead, they tended to interpret ‘wilfulness’ as requiring evidence of a deliberate intention to neglect the child, whereas *Sheppard* states (at page 418) that the requirement of wilfulness is satisfied *where the carer does not care one way or the other about the child’s welfare* (also a standard alternative for advertent recklessness).

5. Legal experts David Ormerod (Criminal Law Commissioner for England and Wales) and Professor Laura Hoyano (Associate Professor in Law and Senior Research Fellow at Oxford University) have both pointed to cases where trial judges have misinterpreted the mens rea requirement of ‘wilful neglect’.

6. In both *R v H* [2014]²¹ (in which a father abused his daughter over two and a half years and failed to take her to psychiatric appointments) and *R v Turbill* [2013]²² (in which staff in a care home left an elderly man in distress all night) the judges’ original directions misinterpreted ‘wilful neglect’. In *R v Turbill* [2014], advocates made a similar error in the subsequent appeal. Case commentaries by Ormerod²³ and Hoyano²⁴ are available if Committee members wish to see the full text. In both cases, the judges’ misinterpretation provided grounds for appeal. Unfortunately, in neither case did the Court of Appeal actually clarify the correct interpretation—that ‘wilful’ equates to ‘advertent recklessness’ (foreseeing possible harm but unreasonably taking the risk to act, or not act, anyway). We cannot rely solely on the Court of Appeal for clarification of this point of law that has created misunderstanding and confusion.

7. The term ‘wilful’ is clearly not understood by professionals across different agencies. The Government must take a leadership role in ensuring that the definition of ‘wilful’ which equates to ‘advertent recklessness’ is recognised by all parts of the criminal justice system. Whether through statute, a broad range of professional and legal guidance, or both, it must be clear in practice when someone has caused psychological harm to a child through a failure to act while in a reckless state of mind.

UPDATED GUIDANCE AND TRAINING

8. The welcome inclusion of psychological abuse in Clause 65 requires careful guidance and direction. It must fully protect children against criminal abuse whilst ensuring that vulnerable parents are not unduly prosecuted. It is crucial that the police, judges and others within the criminal justice system are aware of the change in law and are able to apply it consistently.

9. During Action for Children’s focus groups with police and social workers, both groups of professionals shared the concern that the police are unable to intervene in cases where there is a risk of non-physical harm. They concluded that the widely discrepant definitions of what constitutes neglect under the Children Act 1989 and under the CYPA 1933, which the law requires the two agencies to apply are preventing them from working together effectively in accordance with *Working Together to Safeguard Children*. Updated guidance is required for both sets of professionals, alongside training for prosecutors, to ensure that they fully understand the type of conduct that constitutes non-physical neglect and which part of the offence this would come under, i.e. ill-treatment in the criminal code.

10. To protect vulnerable parents, including victims of domestic violence, from a harmful prosecution, clear, published CPS prosecutorial guidance is required. This should provide necessary and adequate safeguards to identify the real perpetrator of the act or omission which risks harming the child. Further frontline training is also required for police officers and prosecutors to identify and understand the issues involved in these cases, and we welcome the work currently being done by the CPS in this area.

11. Similarly, unless the terminology on the face of the Bill is clarified, improved guidance is needed for judges and juries to ensure that confusion regarding the interpretation of ‘wilful’ as ‘reckless’ does not occur in future. It is not enough to rely on clarification by the Court of Appeal (see paragraph 6). Judicial training

²⁰ *Criminal child maltreatment: the case for reform*, Rachel Taylor and Laura Hoyano, *Criminal Law Review*, 2012

²¹ *R v H* [2014] EWCA Crim 15555; [2014] Crim. L. R. 905 (CA (Crim Div))

²² *R v Turbill* [2013] EWCA Crim 1422; [2014] 1 Cr. App. R. 7 (CA (Crim Div))

²³ This material was first published by Sweet and Maxwell Limited in David Ormerod, [R v Turbill (Maxine): wilful neglect—trial—summing up, [2014] Crim LR 388-390 and is reproduced by agreement with the Publishers

²⁴ This material was first published by Sweet and Maxwell Limited in Laura Hoyano, *R v H: expert evidence—exclusion of expert psychiatric evidence sought to be adduced by defence*, [2014] Crim LR 905-909 and is reproduced by agreement with the Publishers

and guidance such as the Crown Court Bench Book also need to be updated and the Government should take a leadership role in this.

12. The Government has acknowledged concerns that the term ‘unnecessary suffering’ is archaic and could suggest that some child suffering can be considered by the law as ‘necessary’. The rationale for this language must also be sufficiently addressed through guidance, whilst making sure that the threshold for criminal harm is not lowered.

13. In all areas of child protection, professional discretion will have to be exercised in each case, but greater consistency in decision-making can be achieved when that discretion is guided by a set of criteria which encourage the decision-makers to consider the entire circumstances of the family in ascertaining what is in the best interests of the child. As soon as the Serious Crime Bill receives Royal Assent, Government must play an active role in ensure the full range of guidance is updated as part of a co-ordinated approach to ensuring professional fully understand all of the language contained in Section 1 of the Children and Young Persons Act 1933.

January 2015

Written evidence submitted by the Henry Jackson Society (SC 07)

The Henry Jackson Society (HJS) is a London-based think-tank founded to support the global promotion of the rule of law, liberal democracy and civil rights. HJS specialises in the study of international terrorism, counter-terrorism and radicalisation. This submission is a corporate view of the society, based on original research and institutional expertise.

PART 6 OF THE BILL WOULD PROVIDE FOR EXTRA-TERRITORIAL JURISDICTION FOR TWO OFFENCES UNDER THE TERRORISM ACT 2006: PREPARATION OF TERRORIST ACTS AND TRAINING FOR TERRORISM

1. The provision is designed to more effectively prosecute terrorism-related activities abroad. Conferring extra-territorial jurisdiction for preparation of terrorist acts (section 5) and extending the limited extra-territorial jurisdiction that currently applies to training for terrorism (section 6) would close a legislative gap in the government’s capacity to respond to the domestic threat from individuals entering or returning to the UK with terrorist training or combat experience by enabling prosecutions for such activity when undertaken overseas.²⁵

2. In a speech to Parliament on 1 September 2014, Prime Minister David Cameron acknowledged that the provision is a response to the substantial threat to the UK from terrorist activity in Syria and Iraq.²⁶ At least 600 British nationals and residents have travelled to these conflict zones, with many joining the proscribed terrorist organisations Jabhat al-Nusra and the Islamic State of Iraq and al-Sham (ISIS)²⁷ and up to 300 already back on British soil.²⁸ The security services’ foremost concern is that some will engage in terrorism, with the Director General of MI5 confirming that “British extremists who have travelled to Syria...have already tried to carry out acts of terrorism” in the UK.²⁹ The provision of extra-territorial jurisdiction would expand the investigative and prosecutorial abilities of the police and the Crown Prosecution Service (CPS) with regards those returning from the conflict in Syria and Iraq.

²⁵ For more information see Stuart, H., ‘British Jihadists: Preventing Travel Abroad and Stopping Attacks at Home’, Henry Jackson Society, September 2014, available at: <http://henryjacksonsociety.org/2014/09/12/british-jihadists-preventing-travel-abroad-and-stopping-attacks-at-home/>. See also Simcox, R., ‘The Presumption of Innocence’, Henry Jackson Society, December 2013, available at: <http://henryjacksonsociety.org/2013/12/23/report-release-the-presumption-of-innocence-difficulties-in-bringing-suspected-terrorists-to-trial/>, last visited: 19 January 2015.

²⁶ ‘Statement on European Council and tackling extremism’, Prime Minister’s Statement in the House of Commons, 1 September 2014, available at: www.gov.uk/government/speeches/pm-statement-on-european-council-and-tackling-extremism, last visited: 19 January 2015.

²⁷ ‘Proscribed Terrorist Organisations’, Home Office, November 2014, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/380939/ProscribedOrganisations.pdf, last visited: 15 January 2015.

²⁸ ‘Syria civil war: Hundreds of radicalised fighters are already back in the UK, warns former MI6 chief’, *The Independent*, 22 June 2014, available at: www.independent.co.uk/news/uk/home-news/syria-civil-war-mi6-fears-the-jihadist-enemy-within-9554429.html, last visited: 15 January 2015.

²⁹ ‘Address by the Director General of the Security Service, Andrew Parker, to the Royal United Services Institute (RUSI) at Thames House, 8 January 2015’, MI5, 8 January 2015, available at: www.mi5.gov.uk/home/about-us/who-we-are/staff-and-management/director-general/speeches-by-the-director-general/director-generals-speech-on-terrorism-technology-and-accountability.html, last visited: 16 January 2015.

3. Over the past two years, the CPS has increasingly sought prosecutions for Syria-related offences.³⁰ While individuals can be prosecuted for offences carried out in the UK, two offences relevant to overseas activities—preparation of terrorist acts and training for terrorism—are constrained by the limits of British jurisdiction. This constraint is best demonstrated by the conviction of two returning fighters in July 2014 of preparing for terrorism on the basis of plans made in the UK prior to their departure. This is despite the men having spent eight months in Syria, being arrested at the airport on return with a digital camera containing images of themselves with guns and satellite imaging showing they had been in Aleppo, Syria.³¹

4. Preparation of terrorist acts and training for terrorism are useful offences for the police and CPS in disrupting and prosecuting terrorism, evidenced by the frequency of their usage. Of a total of 227 principal offences convicted under terrorism legislation since 11 September 2001, preparation of terrorist acts was the single most frequent; while of the 75 principal offence convictions under the Terrorism Act 2006, the majority (56) have been for preparation of terrorist acts, with a further seven being terrorist training-related (Sections 6 and 8).³²

5. Foreign fighting and terrorist training are not new issues. For almost three decades, small numbers of British Muslims have fought for Islamist terrorist groups abroad and/or travelled to receive training from terrorist groups. Many of the British detainees held at Guantanamo Bay admitted to attending training camps abroad; in 2008, senior security officials estimated that up to 4,000 individuals had attended terrorist training camps in Afghanistan before returning to the UK;³³ and in 2010, MI5 warned that a “significant number” of UK citizens were training in Somalia with the proscribed terrorist group, al-Shabaab.³⁴ Prior to the conflict in Syria, the CPS failed to convict anyone entering or returning to the UK for actions or training undertaken as part of jihadist conflict overseas.

6. The domestic threat from returning fighters is demonstrated by the prevalence of individuals with prior combat experience or terrorist training in the most serious Islamism-inspired terrorism offences.³⁵ A 2011 HJS study of all such offences and attacks in the UK between 1999 and 2010 found that almost one in every five (19%) individuals either convicted or killed in suicide attacks had attended foreign terrorist training camps and/or obtained combat experience abroad prior to their offence. This prevalence increases to 41% among those involved in the eight major bomb plots identified during this time,³⁶ all of which involved at least one cell member with prior combat experience or training overseas.

7. In addition, the British security services recognise that the “experience of fighting overseas with terrorist groups can also promote radicalisation”.³⁷ The ideological reach of British veterans of the Afghan and Bosnian wars in the 1980s and 1990s, for example, was evident in subsequent terrorism cases during the 2000s,³⁸ and extended to the gunmen who carried out the attack on the satirical French magazine *Charlie Hebdo* in January 2015.³⁹ The impact of perceived legitimacy gained through foreign combat experience could be limited, however, by prosecuting individuals for preparing and training for terrorism while abroad.

³⁰ May, T., ‘We must give ourselves all the legal powers we need to prevail’, *The Telegraph*, 22 August 2014, available at: www.telegraph.co.uk/news/11052510/We-must-give-ourselves-all-the-legal-powers-we-need-to-prevail.html. See also ‘Threat level from international terrorism raised’, Prime Minister’s Press Statement, 29 August 2014, available at: www.gov.uk/government/speeches/threat-level-from-international-terrorism-raised-pm-press-conference, last visited: 16 January 2015.

³¹ Mohammad Ahmed sentence, Woolwich Crown Court, available at: www.thelawpages.com/court-cases/Mohammed-Ahmed-14503-1.law. See also ‘Two British men admit to linking up with extremist group in Syria’, *The Guardian*, 8 July 2014, available at: www.theguardian.com/world/2014/jul/08/two-british-men-admit-linking-extremist-group-syria, last visited: 15 January 2015.

³² Operation of police powers under the Terrorism Act 2000, quarterly update to June 2014: data tables, Home Office, 4 December 2014, available at: www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-june-2014-data-tables, last visited: 15 January 2015.

³³ ‘4,000 in UK trained at terror camps’, *The Telegraph*, 19 April 2008, available at: www.telegraph.co.uk/news/uknews/1557505/4000-in-UK-trained-at-terror-camps.html?mobile=basic, last visited: 15 January 2015.

³⁴ ‘MI5 chief warns of terror threat from Britons trained in Somalia’, *The Guardian*, 17 September 2010, available at: www.theguardian.com/politics/2010/sep/17/mi5-chief-somalia-terror-threat, last visited: 15 January 2015.

³⁵ Simcox, R. et al., ‘Islamist Terrorism: The British Connections’ (2011), *The Henry Jackson Society*, available at <http://henryjacksonsociety.org/2011/07/07/islamist-terrorism-the-british-connections/>, last visited: 19 January 2015.

³⁶ The eight major bomb plots which resulted in either convictions or successful attacks were: the 2001 ‘shoe bomb’ plot, for which Sajjid Badat was the only cell member convicted in the UK; the 2003 ‘ricin bomb’ plot for which Kamel Bourgass was the only cell member convicted in the UK; the 2004 ‘fertiliser bomb’ plot headed by Omar Khyam; the 2004 ‘dirty bomb’ plot headed by Dhiren Barot; the 7/7 London bombings in 2005; the 2005 21/7 plot headed by Muktar Said Ibrahim; the 2006 transatlantic ‘liquid bomb’ plot headed by Abdulla Ahmed Ali; and, the Glasgow airport and London Haymarket attacks in 2007 carried out by Bilal Abdulla’s cell. See Simcox, R. et al., ‘Islamist Terrorism: The British Connections’ (2011), *The Henry Jackson Society*.

³⁷ ‘International Terrorism’, MI5, available at: www.mi5.gov.uk/home/the-threats/terrorism/international-terrorism/international-terrorism-and-the-uk/foreign-fighters.html, last visited: 15 January 2015.

³⁸ Simcox, R. et al., ‘Islamist Terrorism: The British Connections’ (2011), *The Henry Jackson Society*.

³⁹ Cherif Kouachi was mentored by Djamel Beghal, an al-Qaeda-linked terrorist previously based at Finsbury Park Mosque under the tutelage of 1990s radical preacher and jihadist ideologue Abu Hamza al-Masri. See ‘Charlie Hebdo suspect “mentored” by Abu Hamza disciple’, 8 January 2015, available at: www.telegraph.co.uk/news/worldnews/europe/france/11333776/Charlie-Hebdo-suspect-mentored-by-Abu-Hamza-disciple.html, last visited: 15 January 2015.

8. Finally, conferring extra-territorial jurisdiction provides legal recourse to disrupt and deter terrorist activity in open court, the most effective and transparent way of challenging terrorism. Prosecution, therefore, is preferable to a number of other current counter-terrorism measures, including the restrictions placed on terrorism suspects, Terrorism Prevention Investigatory Measures (TPIMs), and the forthcoming temporary exclusion orders for returning fighters, both of which advocates acknowledge are imperfect and carry reputational risk.⁴⁰

January 2015

Written evidence submitted by the British Medical Association (SC 08)

The British Medical Association (BMA) is an apolitical professional association, representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 153,000, which continues to grow each year.

EXECUTIVE SUMMARY

- **Female Genital Mutilation (FGM) is a serious crime and form of abuse that no child should have to suffer. The BMA recognises that doctors have a vital role in breaking the generational cycle of this illegal and harmful practice.**
- **The BMA welcomes recent measures as part of the Serious Crime Bill that aim to help protect girls and women who are at risk of, or have undergone, FGM. Nevertheless, we have significant concerns about the potential amendments on mandatory reporting for under-18s.**

CONTEXT

1. The BMA's interest in the Serious Crime Bill relates to Part 4 of the Bill and concerns mandatory reporting of FGM by health professionals.

MANDATORY REPORTING

2. The BMA is opposed to mandatory reporting as we believe that it does not always put individual survivors and potential victims of FGM first. There are significant risks attached to the introduction of mandatory reporting which we do not believe have been fully explored.

3. In most cases where FGM is identified in under-18s there is already a legal and professional obligation to report through established safeguarding mechanisms. These are sensitive to the individual interests of a girl or young woman.

EXCEPTIONS

4. In circumstances where a decision is made not to report, the justification for not reporting must be linked to the wellbeing of the girl or young woman concerned. Advice should be sought from experienced colleagues, and the decision and its justification should be carefully recorded. Any decision not to report must not mean inaction. Steps should be taken to ensure the girl or young woman receives appropriate care and support.

5. The introduction of a blanket mandatory obligation could, in some cases, act against an individual girl or young woman's interests: for example, by discouraging vulnerable girls and women from accessing health services, where there is little or no benefit to reporting.

CASE EXAMPLES

6. Below are two hypothetical examples where the introduction of mandatory reporting may result in vital opportunities to offer help and support being lost, with little or no benefit to reporting.

Case 1 (hypothetical)

A competent 17-year-old wishes to access medical services to address the physical and psychological consequences of having undergone FGM. She is reticent to access health services and she does not want anyone other than the healthcare team she contacts to know that she has undergone FGM. If the FGM was carried out on her when she was five, in another country, by her grandmother who is long dead, against her parents' wishes, and it is clear from the way the 17-year-old presents that she will never let a child of her own undergo FGM, in this situation there is no risk to other girls and there will be no prospect of a prosecution for her case. The priority for health care professionals will be to establish a relationship of trust with the young woman and ensure that she is supported and her physical and mental health needs are met. It is difficult to see any benefit in reporting.

⁴⁰ See, for example, 'The operation of the TPIMs Act', Human Rights Joint Committee—Tenth Report: Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011 (2014), available at: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/113/11305.htm, last visited: 19 January 2015.

Case 2 (hypothetical)

A child has undergone FGM in her country of origin. Since moving to the UK the family is made aware of the harmful consequences of FGM and wishes to seek health assistance to reduce the risk of complications following the FGM. The family has no intention of continuing with the practice now that they are aware of the harm and risks. The mother of the girl is concerned that if she accesses health services she will be reported to social services or the police and her daughter will be taken away from her.

7. These examples highlight why the BMA is opposed to a blanket mandatory obligation to report that does not take into account the individual circumstances of the survivor or potential victim.

8. Furthermore, the BMA has serious concerns that automatic reporting will move the focus away from the young woman as a victim of a crime to making her feel stigmatised, and in some cases, criminalised. Doctors may cease to be seen as independent providers of medical care and will be viewed, by victims of FGM who are in need of care and support, as part of the Criminal Justice System.

EVIDENCE BASE

9. The BMA strongly believes that, as with medicine, a rigorous evidence-based approach is important to ensure that the outcomes intended by any legislation are delivered. In the case of FGM, the outcome must be that the best interests of girls and women are effectively protected.

EMPOWERING PROFESSIONALS

10. The BMA welcomes the government’s recent work to raise awareness of FGM, including the development of practical training materials. We believe that this approach is the most effective way to empower professionals to tackle this serious form of abuse, along with the proper resourcing of care pathways to support survivors and potential victims of FGM.

11. It is critical that doctors are aware and have the ability to identify the risk factors for FGM; and if they report a case to social services and/or the police, that they are confident there are appropriate care and safeguarding pathways in place to manage the situation sensitively and supportively for the girl or young woman.

January 2015

REFERENCES

¹ See, for example—GMC. *Protecting children and young people: The responsibilities of all doctors*. GMC, London, 2012. Available at www.gmc-uk.org/guidance/ethical_guidance/13257.asp. Any “serious or persistent failure” to follow the GMC guidance puts doctors’ registration at risk.

Written evidence from the City of London Police (SC 09)

SUBMITTED BY THE OFFICE OF THE CITY REMEMBRANCER

1. The City of London Police has led the implementation of the National Fraud Intelligence Bureau (NFIB) since 2010. Prior to this, due to its unique relationships with the financial community in the City and the specialist fraud investigations skills and experience of its detectives, the City Police had been designated the National “Lead (Police) Force” (NLF) for fraud since 2003. The force receives additional funding from the Home Office to investigate serious and complex fraud and also to run the NFIB. These fraud functions come together as the Force’s Economic Crime Directorate and are match funded by the City of London Corporation. Within policing, the force leads the Association of Chief Police Officers Economic Crime Portfolio and has been working with Chief Constables across the country over the past 12 months to define a new model for recording and investigating fraud.

2. The NLF provides specialist advice on law enforcement dealing with often highly complicated and detailed criminality. Its objectives are to provide advice to all police forces, industry investigators and other law enforcement agencies to disseminate best practice, deliver training and act in an independent advisory capacity to other forces on request. The NLF provides a national investigative capacity to deal with all types of fraud (subject to agreed case acceptance criteria) and to assist other police forces in local investigations, and act as a single point of contact for anti-fraud advice.

3. As a result of the Fraud Review in 2006, the concept of the National Fraud Intelligence Bureau was created along with Action Fraud (the brand name of the National Fraud Reporting Centre launched and run by the National Fraud Authority) to help UK law enforcement agencies and their partners catch and disrupt criminals and to alert communities to fraud threats. Action Fraud moved to the City of London Police in April 2014. The NFIB gathers a large volume of information on suspected fraud from both public and private sector sources, much of which is not reported to, or made routinely accessible to the police. This is analysed and

turned into intelligence such as the identification of the scale of fraudsters' criminal activities. The intelligence is used to support law enforcement operations and also provide prevention advice to industry.

4. The City of London Police is supportive of the aims of the Bill, particularly Part 2 of the Bill which strengthens the Computer Misuse Act and ensures UK compliance with the Attacks Against Information Systems EU Directive. It has also contributed to the drawing up of the 'beneficial ownership' proposals for off shore subsidiary companies and the asset recovery proposals which should result in more effective seizure under the Proceeds of Crime Act. There may also be a role for the NFIB under Part 3 of the Bill in providing the intelligence and evidence to show 'participation' in an organised crime group.

January 2015

Written evidence submitted by the Mothers' Union (SC 10)

AMENDMENTS ON STRENGTHENING THE LAW ON DOMESTIC ABUSE

1. Mothers' Union is a Christian membership organisation, supporting family life through fellowship, projects and campaigning in 83 countries. We have a particular interest in gender equality and gender-based violence, and campaign at the national and international level on these issues.

2. Mothers' Union responded to the Home Office consultation on strengthening the law on domestic violence in October 2014 and we have a number of comments on the proposed amendments that introduce clauses on coercive and controlling behaviour in an intimate and family relationship.

3. Mothers' Union welcomed the proposals in *Strengthening the Law on Domestic Abuse* to criminalise a pattern of controlling and coercive behaviour in intimate relationships; and we therefore welcome these amendments. However, we believe that a number of points need to be clarified to ensure that a law would be enforceable and effective.

4. NC3 (2)(a and b): Mothers' Union would be concerned about the use of a fine as a stand-alone sentence. We are not convinced that this acts as an appropriate deterrent and feel it would signify that coercive and controlling behaviour was still seen as 'lesser' abuse; whereas it usually underpins other forms of domestic abuse.

5. NC3 (3)(b): Mothers' Union welcomes this section, which prevents an alleged victim's current address from being disclosed by a court, local authority or other public body if it is deemed as placing the victim at risk. This could remove some potential concerns for victims about reporting an offence and pursuing a case through the criminal justice system, as well as manifestly providing for their safety.

6. NC3 (3)(c): We welcome any proposals to rehabilitate and change the behaviour of perpetrators of domestic abuse and would like to see the Government invest further in such programmes. However, given the ingrained nature of abusive behaviour, short term programmes may not be sufficient to create the necessary transformation and therefore we recommend the Government invest in long term rehabilitation, both during and after any prison sentence or other non-custodial conviction. In particular, such programmes or counselling need to address the abusers attitude towards power and control.

7. NC4 (1): We welcome the absence of statutory time limits on the offence of coercive control as this will help victims of domestic abuse to access justice for past or historic offences.

8. NC5 (1)(c): Mothers' Union would question setting age parameters on victims of coercion and control in an intimate partner setting. Whilst we recognise that other areas of the law do afford some alternate protections for children and young people, domestic abuse—in particular the dynamic of power, coercion and control—affects people in relationships across the board, including those under 16. A 2009 study by Bristol University on behalf of the NSPCC found that 13–15 year olds were just as likely to experience certain forms of abuse within intimate partner relationships as those aged 16 and over.⁴¹ We recommend that this definition for domestic abuse does not exclude people under the age of 16.

9. NC5 (2): It is unclear as to whether all of the patterns of behaviour listed must be demonstrated in order for a definition of coercion and control to be met, or if a definition is achieved by one or more of the conditions being met.

10. NC6: It is essential that a National Framework for the implementation of this legislation, along with appropriate monitoring tools is introduced, as well as supporting the call for police services to work closely with local domestic violence experts and agencies. This legislation has the potential to be extremely effective in combating controlling and coercive behaviour in intimate or family relationships. However, great care should be taken with implementation, to ensure that it works to protect and provide justice for survivors of domestic abuse. Mothers' Union welcomes the criminalisation of coercion and control, as a move away from outdated and unhelpful ways of dealing with domestic abuse in the legal system, where more emphasis was placed on

⁴¹ *Partner exploitation and violence in teenage intimate relationships*. Christine Barter, Melanie McCarry, David Berridge and Kathy Evans, October 2009. www.nspcc.org.uk/inform.

one off physically violent incidents, than on the pattern of behaviour which actually characterises domestic abuse.

11. NC9 (1)(a): There needs to be clear guidance on what constitutes *repeated* or *continuous* behaviour. Our concern is that if clarity is lacking within this legislation, it will not be effective or enforceable, and will therefore fail to provide appropriate protections and justice to those who have experienced domestic abuse. Without further clarity within this definition, we could see wide variations in the way in which this law is applied and used. For example whilst one police force area may consider *repeated* or *continuous* to be behaviour which has occurred on more than one occasion, another police force area may take continuous to mean that it has been unceasing and without break, which obviously provides two very different levels of protection. Whilst we welcome further guidance which will accompany this legislation, we urge that this definition is given more clarity, in order to make it effective and usable.

12. NC9 (1)(c) and (4)(b): We would like to see clearer parameters surrounding the measurement of the ‘serious and substantial adverse effect’ of the behaviour on a victim’s life. Due to the nature of domestic abuse, and the mental and emotional impact on the victim⁴², the victim may not be capable of adequately assessing the impact that this has had on them. Therefore we suggest the introduction of a clear and concise measurement as to what constitutes a ‘serious and substantial adverse effect.’ Failure to do so may result in subjective law enforcement which may fail to protect and provide justice adequately for those who have experienced domestic abuse.

13. We have concerns surrounding the wording used in section 1 (c) in NC9 that “the behaviour *has* a serious impact on B” and in section 4 (b) that the behaviour “causes B serious alarm or distress which *has* a substantial adverse effect on B’s usual day to day activities. This is due to the fact that the actual effect on the victim is being measured here, rather than the behaviour of the perpetrator.

14. This can be illustrated in the example of a perpetrator who exhibits coercive and controlling behaviour by hiding their partner’s car keys in order to attempt to prevent the partner from being able to go to work, as part of a continued pattern of behaviour with the aim of isolation, control and dependence. This action, intention and behaviour could be identical in two different scenarios, however these could then play out in very different ways. In one scenario the victim of this behaviour could be unable to get to work and consequently lose their job, resulting in further isolation, control and dependence and thus the behaviour could be considered to have *had* a serious impact on B. However in the second scenario, the victim may have been able to call a family member to take them to work, caught a bus, or may have had a more understanding employer, or more secure job. This may have meant that on this occasion the behaviour did not *have* a serious impact on B, however this does not mean that the behaviour was not coercive or controlling. Many factors can affect the actual impact of coercive and controlling behaviour on a victim, such as where they live, whether they have a support network nearby, their previous background or educational attainment, personality or resilience. Our concern is that if this legislation is established on the basis of its actual impact upon a victim, then the offence becomes about the victim and their reaction to the behaviour, rather than being an opportunity to turn the offence of coercion and control, and consequently domestic abuse back on to the perpetrator.

15. Mothers’ Union would recommend that this amendment be adapted to reflect the fact that coercion and control should be considered a crime, regardless of the actual impact of the behaviour on the victim. Therefore we suggest that the wording of Section 1c be changed to:

“the behaviour has a serious effect on B, *or has the potential of having a serious effect on B.*”

16. Whilst Mother’s Union welcomes the potential of fair and protective defences to those wrongly accused of committing the offence of coercion and control, we do have concerns surrounding the defence available in section 8 of NC9. This section stipulates that:

“(a) in engaging in the behaviour in question, A believed that he or she was acting in B’s best interests, and
(b) the behaviour was in all circumstances reasonable.”

17. We would urge caution in the creation of any defence in which a perpetrator of domestic abuse may be able to argue that they believed their behaviour to be in the best interest of the victim. Domestic abuse, and coercion and control often includes a mindset in which the perpetrator believes themselves to be justified in their behaviour towards a victim, regardless of the actual impact of their behaviour, or the legal standing of their behaviour.

18. There are also concerns around the use of false claims in order for a perpetrator to use this defence. Perpetrators of domestic abuse often bring in to question the mental health, capacity, or credibility of their victims, and can be extremely plausible, whilst a victim can appear to be less cohesive in their story, and less confident than the perpetrator⁴³ as a result of continued abuse. Therefore it could be easy for a perpetrator to defend their own behaviour by convincing authorities that they believed themselves to be acting in the best

⁴² *Mental health and domestic violence: Audit 1999*. Janet Bowstead 2000. Greenwich Multi-agency Domestic Violence Forum Mental Health Working Group. *Domestic Violence and Mental Health*. Louise Howard, Gene Feder, Roxanne Agnew-Davies (Eds.) 2013. Royal College of Psychiatrists.

⁴³ For more information on perpetrator behaviour see: *Tackling Domestic Violence: Theories, Policies And Practice*. Lynne Harne and Jill Radford 2008. Open University Press.

interests of the victim. An example of this could be a perpetrator who locks a victim within their own property, claiming that they believe the victim to be suicidal. If this is considered reasonable in the circumstances then it could be used as a defence, in a situation where there is no evidence other than the perpetrator's word. Indeed there may be many circumstances where a victim is feeling suicidal as a direct result of the coercive and controlling situation they are in. Therefore they are prevented from gaining outside help, however the perpetrator could argue that they believed it to be in the best interest of the victim.

19. In order to ensure that these defences are not taken advantage of, Mothers' Union would propose that a requirement for appropriate evidence for use in conjunction with these defences is introduced.

20. Mothers' Union would recommend that the terms "domestic abuse and domestic violence" which are currently used interchangeably between various amendments and new clauses be standardised to avoid confusion. Mothers' Union would support the use of the phrase "domestic abuse" in referring to the pattern of coercion and control within intimate and family relationships, in order to move away from the misconception that abuse in intimate partner and family relationships must include some form of physical violence. We feel that this misconception has prevented those suffering from the serious and devastating effects of non-physical abuse dynamics characterised by coercion and control from recognising their situations appropriately, reporting and seeking help.

January 2015

Written evidence submitted by LGA and Dexter Dias QC (SC 11)

FEMALE GENITAL MUTILATION (FGM): AN OFFENCE OF ENCOURAGEMENT OF FGM

1. SUMMARY

This submission focuses on the Female Genital Mutilation (FGM) provisions in Part 5 of the Serious Crime Bill. The Local Government Association (LGA) has been campaigning for measures which would disrupt and prevent people from encouraging FGM, thereby preventing the perpetuation of this harmful social practice.

Dexter Dias QC, a human rights barrister who has chaired reports by the Bar Human Rights Committee on FGM both to the UK Parliament and the United Nations, has been advising the LGA on the drafting of an amendment which would create an offence of encouragement of FGM and the legal arguments for a change in the law of this kind. His legal opinion and the evidence he has gathered from survivors and frontline workers in affected communities demonstrate the need for such an offence.

2. LGA VIEW

Councils have a key role to play when it comes to safeguarding children and protecting them from harm. The LGA is helping councils to raise awarenessⁱ of FGM in their communities and supporting councils and councillors to tackle FGM.ⁱⁱ

According to a study commissioned by Equality Now and City University, an estimated 197,000 women and girls in England and Wales are affected by FGM. From 1 September 2014, the NHS has been collecting monthly data on the prevalence of FGM. According to their most recent report in October 2014, 455 female patients treated at acute NHS hospital trusts in England which provided data were newly identified as having undergone FGM. The data also showed that 1,468 female patients who had undergone FGM were being treated at the end of October 2014. The figures for September 2014 were 467 newly identified cases and 1279 active cases.

The Government has set out its ambition of eliminating FGM within a generation. Achieving this requires changing the culture in communities that have traditionally practised FGM. The LGA has identified certain barriers to change which will not be overcome without legislation. While we very much support the valuable practical measures introduced in the Lords, which will make it easier to bring prosecutions and prevent girls being taken abroad for FGM, the practice will only be eliminated if the source of the problem is directly confronted.

The LGA has heard from the British Arab Federation, the Association of British Muslims (see Annex A) and councils that their efforts to change culture are encountering social pressure and resistance. Their efforts are hampered by people who argue that there are religious or cultural justifications for carrying out FGM or point to faith or community leaders in other countries who advocate it. The LGA has seen evidence that people in the UK are making these arguments.

The same faith or community leaders place parents under huge social pressure to perform FGM on their children, with some saying it is the parents' 'duty' or justifying it with reference to religious texts. Additional pressure comes from the threat of exclusion from the community if parents do not comply. We have heard from survivors and parents asking for those who promote FGM to be stopped.

The LGA has been campaigning for measures which would disrupt and prevent people from encouraging FGM, thereby preventing the perpetuation of it at source. In the Lords, the LGA pursued an amendment to Bill

which would create a specific offence of encouraging FGM and will be continuing to campaign for this in the Commons.

3. SUGGESTED AMENDMENT: AN OFFENCE OF ENCOURAGEMENT OF FEMALE GENITAL MUTILATION

The LGA suggests the following amendment, as drafted by Dexter Dias QC, be inserted in the Bill:

After Clause 66, insert the following Clause –

“Offence of encouragement of female genital mutilation”

- (1) The Female Genital Mutilation Act 2003 is amended as follows:
- (2) After section 2 (offence of assisting a girl to mutilate her own genitalia) insert –
 - “2A Offence of encouragement of female genital mutilation
 - (a) A person is guilty of an offence of encouragement of female genital mutilation if he makes a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to mutilate the genitalia of a girl.
 - (b) A person commits an offence if-
 - (i) He publishes a statement to which this section applies or causes another to publish such a statement; and
 - (ii) At the time he publishes it or causes it to be published, he-
 - (a) Intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to mutilate the genitalia of a girl; or
 - (b) Is reckless as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to mutilate the genitalia of a girl.

4. OPINION OF DEXTER DIAS QC

Encouragement of Female Genital Mutilation

Purpose of amendment

The purpose of this amendment is to criminalise the encouragement of FGM. The proposal rests on three connected planks:

- 1. It adds a vital tool to the existing legal framework in the UK’s fight against genital mutilation by criminalising one of the social behaviours that contributes to the perpetuation of this crime: the preaching and proselytising of FGM.
- 2. It provides an effective legal intervention because it is modelled on what is known to work: comparable powers used to combat the dissemination of encouragement to commit acts of terrorism.
- 3. By directly confronting one of the roots of the problem—preaching and propaganda that encourages parents to mutilate their children—it proactively enhances the protection of young women and girls. It does this by disrupting harmful social practices at source—‘upstream.’ In this way, it also acts to strengthen the UK’s compliance with its international law obligations to protect women and girls from discrimination, gender-based violence and genital mutilation.

Social need

To understand the need for the legislation, we need to understand the mechanism that drives mutilation. The actual act of mutilation sits at the end of a long series of social processes, many of them little understood by mainstream British society.

The notion that parents who send their daughters to be ‘cut’ are barbaric or monstrous or malicious dangerously misunderstands and misinterprets the social reality. Parents in these tightly knit, socially isolated communities are faced with difficult—sometimes almost impossible—choices. Mutilating a child comes at a cost. Not mutilating a child also does. We cannot shy away from this complex truth.

But we can make a difference. We can make a difference by legislating to ease the awful social pressure parents are placed under by their community. We can do this by attacking one of the principal sources of social pressure. In traditional societies, which are intensely hierarchically structured, elders and preachers exert enormous influence. This is precisely why the United Nations has sought to co-opt such community leaders in the Global South in its fight to eradicate FGM.

We can also contribute to this. Some community leaders continue to proselytise about the supposed ‘duty’ to ‘cut’ children. The mutilation is justified in various ways: whether as a doctrinal duty prescribed by the Koran or authoritative Haddith (erroneously), by an appeal to tradition and social conformity or even by the need—as documented in a UN Population Fund film—to ‘cut out the devil.’ It all comes to the same thing: pressure to mutilate children. We must stop this.

If you speak to researchers who work with practising communities around the world, they will tell you two things. Firstly, survivors and parents ask whether we can help stop leaders from demonising and stigmatising those who stand up and speak out against FGM. Secondly, they ask if we can stop those who constantly promote FGM. So if we can't stop such people saying opposing FGM is 'bad', we can at least criminalise their preaching that FGM is 'good.'

The further advantage of this approach is that it helps direct our efforts where they should properly lie: not on the insensitive prosecution of parents but on prevention. Parliament was clearly warned about the counter-productive nature of an overly punitive approach to parents by the Bar Human Rights Committee (BHRC) in its report to the Parliamentary Inquiry.

It is a report that has been much quoted (and commended). Indeed, the BHRC's proposals for a range of civil powers are also working their way through the legislative process.

As Dexter Dias QC, Chair of the BHRC's FGM group, has said on many occasions: we can't prosecute FGM into extinction by prosecuting parents. What we need to do is to disrupt one of the prime sources of perpetuation. We can accomplish all this.

What works

This amendment is modelled on similar legal provisions directed at criminalising the encouragement of acts of terrorism. Clearly, this is *not* to equate terrorism and FGM. Nor is it to suggest that the population groups involved in these offences are the same or similar. But the mechanism of promoting and encouraging these crimes is similar: the influence of powerful, authoritative figures in the community. The law cannot remain silent while such people encourage child mutilation.

Criminal offences have two parts. The first is the 'act' being criminalised. This amendment—as in Encouragement of Terrorism—criminalises the 'publication of statements.' The virtue of this formulation is that it encompasses both oral and written pronouncements. The amendment specifies statements directed at 'members of the public.' This is because a single lecture or public talk or written publication might encourage one person or several people to mutilate. The provision captures both.

The second part of a criminal offence specifies the necessary mental state. Here—as in encouragement of terrorism—the offence can be committed either by (a) intending that prohibited act (mutilating girls) occurs or (b) by being reckless about whether it happens. Recklessness is of course a well-known and much used concept in criminal law. Here what it addresses is the situation where people take unjustifiable and irresponsible risks that create harm to vulnerable children.

International law

In a vibrant democracy such as ours, there is always a balance to strike between free speech and the protection of the vulnerable. Our historic and venerable tradition recognises that free speech is not an unfettered right. International law recognises the same principle.

Thus we must be perfectly clear and not shy away from what we are proposing. We are suggesting that it will become a criminal offence to encourage others to genitally mutilate women and girls either with the intention that this consequence will follow or when being criminally reckless about it. But can we justify this curtailing of free speech—for that is what it is?

We have by virtue of our international law and treaty obligations duties to protect women and girls. I emphasise that they are positive legal duties to be proactive in protecting females within our jurisdiction.

As long ago as 1979, by virtue of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UK committed itself to eliminate discrimination against women. FGM unambiguously constitutes one of the most abhorrent forms of discrimination against young women and girls. Further, by dint of the UN Convention on the Rights of the Child 1989 (CRC), the UK has positive obligations in international law to ensure that children are not subjected to cruel, inhuman or degrading treatment (art. 37). FGM constitutes an irreparable violation of the child's bodily integrity and physical and psychological health. FGM is also a violation of the UN Convention against Torture 1984 (CAT), which has been ratified by the UK.

As such the UK has a positive obligation to take legislative, administrative, judicial or other measures to prevent acts of torture within its jurisdiction (art. 2). Thus this amendment not only acts to disrupt harmful patterns of propaganda and proselytising, it enhances our compliance with international law.

It is proportionate for three reasons. Firstly, because it is not indiscriminate: rather it is targeted and tightly limited to a particular social vice that irreversibly damages some of the most vulnerable young women and girls in our nation. Secondly, because what we are doing is criminalising the encouragement and glorification of criminal acts in the main directed against children who cannot consent and cannot protect themselves. Thirdly, it is proportionate because every child and young women within our shores has a right under Article 8 of the European Convention on Human Rights to bodily integrity.

The UK must fearlessly implement the international law principle that it is legitimate, necessary and desirable for a state to intervene to modify social and cultural patterns of conduct that result in discrimination against women. This approach is fully authorised by article 5 of CEDAW.

FGM is a paradigmatic example where entrenched traditional practices that seriously disadvantage and damage women should be modified by a range of interventions, including criminal laws such as this amendment proposes.

Conclusion

Ultimately we must unambiguously recognise that we have both a right and a duty to protect women and girls. Therefore this amendment is based on the living reality of how Female Genital Mutilation is perpetuated; it is modelled on legal powers that are known to work; and it strengthens the UK's compliance with international law. No one has a right to encourage crime, which is what the genital mutilation of women and girls is.

5. EVIDENCE FOR THE OFFENCE GATHERED BY DEXTER DIAS QC

For the purposes of providing evidence to Parliament, testimony was sought from those who have undergone FGM, or are at risk of FGM, or who are fighting it. The contributors include some of the most prominent campaigners against FGM in the UK and those most actively involved on the frontline. They have direct personal experience of what FGM is actually like in the UK today. They provide a snapshot of the living reality of FGM.¹

There are three key messages:

1. **Key Message 1:** There is still very significant support amongst affected communities in Britain for 'sunna', that is, Type 1 and Type 2 FGM.

2. **Key Message 2:** The process by which FGM actually occurs is complex, but a significant contributing factor is the encouragement of FGM by elders or prominent members of the community, particularly in small gatherings and informal settings 'behind the scenes.'

3. **Key Message 3:** There is unanimous support among those interviewed for a distinct offence making the encouragement of Female Genital Mutilation unlawful. It would help protect at-risk girls and young women.

The evidence from the contributors is set out in the Annex. The following is a short **Analysis** of the evidence provided and how the proposed offence is not only consistent with the UK's international law obligations but *strengthens our compliance*.

Analysis

International law

In November 2014—and for the first time—two UN human rights committees joined forces to issue a comprehensive interpretation of the obligations of States to prevent and eliminate harmful practices inflicted on women and girls.⁴⁴ The Committee on the Rights of the Child said, 'It is time to examine harmful practices from a human rights perspective. Children have a right to be protected from practices that have absolutely no health or medical benefits but which can have long-term negative effects on their physical or mental well-being.'

This is precisely the critique that the Bar Human Rights Council advanced to Parliament. Thus two eminent international committees have explicitly articulated a similar stance, because adopting such a stance has direct implications for this amendment.

As the UN joint statement emphasises: 'Prevention is vital, and that requires the design of measures aimed at *changing existing social norms* and patriarchal cultures' (emphasis provided). This is a positive duty in international law.

FGM is plainly a problem *for* the UK and in the United Kingdom. As the UN states, 'Harmful practices like FGM have become increasingly common in some countries where they did not used to exist, mainly as a result of migration.' The FGM survivors who have been consulted for this briefing note say the same thing. Two things are notable (1) how there is greater emphasis on 'sunna', Type 1 and Type 2 FGM; (2) the different forms of communal encouragement that play a part in the decision to mutilate. Thus this legislative intervention responds to an evidenced and empirical social need.

How does it sit with Article 10 and freedom of speech? How do we as a nation strike a balance?

Competing rights

Free speech is critical to a democracy. But in international law it is not an unqualified right—particularly where it collides with other kinds of freedoms.

⁴⁴ The Committees on the Elimination of Discrimination against Women (CEDAW) and the Rights of the Child (CRC). The CEDAW convention is commonly referred to as the 'international bill of rights for women.'

There is a freedom not to be genitally mutilated. Young women and girls have a right to enjoy bodily integrity. International law also recognises these rights.

Therefore one must ask what kind of ‘speech’ is claimed to be protected? It is not the expression of an ‘offensive opinion’ but the right to encourage the commission of a gender-based crime.

It is for Parliament to decide which of these competing rights to prioritise: the right to encourage the commission of a criminal offence (which is what FGM has been for 29 years in the UK—and is in 24 out of the 29 Global South countries in which it is concentrated) or the right for young women and girls to enjoy bodily integrity.

Criminalising such encouragements is proportionate because (a) it is not criminalising the expression of a preference; but (b) rather focuses on rendering unlawful the making of statements where the speaker **intends** that they incite others to mutilate women and girls or is **reckless** (to a criminal standard) whether they do.

Where the social process of perpetuation involves encouragement by those in authority and influence in a community, disrupting that encouragement to mutilation is fully justified by international law. It constitutes a proportionate measure to ‘change an existing social norm.’

We should not forget that in December 2012 the General Assembly of the United Nations resolved ‘to take all necessary steps’ to end FGM—a resolution introduced by the 50-strong African Group of nations. Disrupting and deterring the encouragement of child mutilation is a necessary step. But more than that, knowing what we now know about (a) how the pressures producing mutilation operate; (b) the existence of those pressures in the UK, it is morally indefensible not to intervene.

We are beginning to understand better the mechanisms that produce and reproduce this form of gender-based violence. We are finally grasping how these crimes happen. We have an opportunity with this amendment to challenge and change some of the most crucial perpetuating pressures.

Objectively viewed, the situation is simple: mutilating young women and girls is a criminal offence; encouraging their mutilation should be one also.

January 2015

Annex B

TABLE OF CONTRIBUTORS

Contributor	Name	Organisation / Status
1.	‘Asma’ ⁴⁵	FGM survivor
2.	Afrah Qassim	Chair of Saver, (Charity dedicated to tackling Domestic Abuse within BAMER Communities)
3.	‘Lucee’	FGM survivor Works to combat FGM in the UK
4.	‘Sara’	Young woman from practising community in north of England.
5.	Hekate Papadaki	Rosa Fund: Grants and Development Manager, managing the Tackling FGM Initiative.
6.	Naana Otoo-Oyotey	Executive Director, FORWARD UK
7.	Muna Hassan	Integrate Bristol
8.	Mrs Dorcas O. Akeju, OBE	Retired FGM midwife/campaigner Chair of Liverpool FGM and multi-cultural women’s advisory group Member of FGM national clinical group
9.	Leyla Hussein	FGM survivor Co-founder, Daughters of Eve and the Dahlia Project
10.	Amina Elmi	Granby Somali Women’s Group
11.	Charlotte Proudman	Researcher on FGM, Cambridge University

Contributor 1: Asma

Asma is a survivor of FGM. I asked her a simple question. It was this: should the UK Parliament create a law making the encouragement of FGM illegal?

“Dear Honoured Members,

⁴⁵ Most of the names provided in the table are real. But a few contributors wish to remain anonymous for reasons of personal safety. We trust that is understandable. Their names appear in inverted commas in the table (but not thereafter).

It's incredible to me that people care what happens to me and my sisters. Before no one ever did. In my country then and in yours (ours) now girls are cut because parents have pressure put on them. Our elders tell them to cut their daughters. It happens in small groups when we come together and when we worship here in Britain. They say you must cut. And people agree. You cannot marry among us if you don't cut. You are not clean if you don't cut. And people agree. The pressure is like water from a tap. Can you turn the tap off? I don't know. But I hope you try. It will help girls in danger. Even knowing you are trying to turn off the tap helps girls in danger. Thank you.

Asma”

Contributor 2: Afrah Qassim

Chair of Saver

(Charity dedicated to tackling Domestic Abuse within BAMER Communities)

- We must highlight that it is a crime to encourage FGM. Those who practice and encourage it still do not understand the seriousness of the law. To have it made clear in law that encouragement of FGM is unlawful would be useful so people cannot hide behind any confusion in the law. We have heard of cases where parents are in two minds about FGM but they speak to elders in the community or at faith groups/communities who believe in FGM and encourage it. We need people in authority in the community to understand that the UK law challenges the encouragement of FGM and has made it unlawful.
- The law is part of protection and needs to be there to inform the practicing communities that this not acceptable within this country, but the point is not putting people in prison, but to protect and safeguard children and women from this cruel practice.
- Having the law will support and “strengthen” parents/families, especially when one side of the family/parents believe in the practice and the other is against it. We have become aware of cases where one parent wanted FGM on the child, but the other parents doesn't and sometime both parents don't want to their daughter to undergo FGM, but are pressured by the extended family.
- From my work in the community and with professionals, I have come across people openly thinking that type 1 and 2 is not as bad and don't cause much harm, the only type they have more concern about is type 3. I found this unbelievable, especially with professionals. All types are harmful abuse and against the child's human rights.

Contributor 3: Lucee

Lucee is survivor of FGM. Her family is from West Africa and now is resident in the UK.

The community leaders play an important role in life of ordinary people from birth, through childhood and adulthood to death. No one wants to grow up outside that circle—you join or become ostracised. People have social intelligence: they understand these things. There are pressures from the community. They don't want to be excluded. It is not just religious leaders who influence people to do FGM, but community leaders. For many people in migrant communities from the Global South, tradition is all they live for. The law should make it clear that it is unlawful for anyone to encourage FGM.

Contributor 4: Sara

Sara is young woman in her late teens from the north of England. Her family hails from a practising community.

Parents who cut their daughters, they aren't these terrible people everyone thinks. Most time, they don't know what to do. Do this or that. Follow tradition or not hurt our little girl. What makes them do it? What sends them over the edge? People. People telling them to. You call it encouragement, I call it people telling them you must follow our tradition. Or else. Do you understand the or else? It's the or else that sends them over. I suppose it is encouragement. Cut your daughter or else all these bad things happen.

I then asked her directly whether the law should make encouraging the mutilation of young women and girls unlawful. Sara said:

You tell me why you shouldn't. Parents don't just do this in a cellar. They do it in a community. Where people tell them and tell them to do it. If you ask should it be okay for people to encourage sexually abusing these same children, what would you say? But you wouldn't, because you don't need to ask the question, do you?

Contributor 5: Hekate Papadaki

Grants and Development Manager at the Rosa Fund

Hekate manages the Tackling FGM Initiative, a £2.8 million investment in UK grassroots FGM prevention work and includes a network of 30-plus organisations including Forward, Integrate Bristol, Manor Gardens, Birmingham and Solihull Women's Aid and many others.

- We believe that expressing support for FGM in public venues (such as mosques, churches or community celebrations) should be banned, particularly when expressed by community and religious leaders.
- In the experience of the Tackling FGM Initiative there is widespread acceptance for 'sunna' (Type 1 & Type 2) FGM amongst most members of FGM-affected communities outside the capital.
- In our experience, newly arrived communities, communities in areas outside of London and older community members express the greatest support for FGM. Older relatives both in the UK and overseas are often the ones exerting most of the pressure to perform FGM—mothers in law or grandmothers are usually the ones communicating that pressure onto parents. Men often expect their brides to be to be cut but are not the ones putting on the pressure; it is the role of female elders to ensure girls are marriageable.
- Support for FGM is also expressed openly in communities that are less integrated (newly arrived communities and those in dispersal areas with a majority white population).
- We have encountered religious leaders describing 'sunna' as religious credit. For example, these views have been expressed by religious leaders in explicitly anti-FGM events in the context of 'sunna is not compulsory but could be a good thing for women to do. However, it's illegal in this country so it shouldn't be done.' The lack of expressed condemnation in the presence of anti-FGM campaigners and statutory professionals indicates the likelihood of support in more private community settings.
- The Tackling FGM Initiative has found that the views of older relatives are deeply entrenched and resistant to change. They regularly equate the end FGM movement to cultural imperialism or racism. Older community members are held in very high esteem, and we have regularly observed that in inter-generational workshops younger participants are not allowed to express their views or contradict those of older community members.

Contributor 6: Naana Otoo-Oyotey

Executive Director, FORWARD UK

Naana said this about making encouragement of FGM unlawful:

If someone has a position of power and uses that to influence and encourage FGM, then this should be made unlawful. Particularly when these people are using their authority and is done in public. A community leader from Gambia attended our offices in London. He was someone who advocated FGM. His children had been mutilated. He said in Gambia. But his view was that FGM was acceptable. Such people do have influence in diaspora communities. The law should make it clear that it is unlawful to encourage parents or anyone else to do FGM to young women and girls. About three years ago there was a public meeting in Leicester where a religious leader spoke about FGM. He stated that he believed 'sunna' was acceptable. There is debate about the precise definition of this term, and it could cover either Type 1 or Type 2 FGM, but it certainly means mutilation. UK law should make it unlawful for someone like that to make public comments encouraging people to continue to practice FGM.

Contributor 7: Muna Hassan

Member, Integrate Bristol

- I've definitely come across the 'sunna' problem.
- I feel a lot of community leaders and gatekeepers know what to say to politicians, and then when people go they say something different in the community. I've come across people saying that Type 1 and Type 2 is acceptable. They are likely to say sunna is fine. These kinds of views are more prevalent in the elder generation.
- The importance of this is that such people are likely to be influential and can sway people or parents who are unsure about whether to have their daughter undergo FGM. In such communities people are scared of social isolation. They depend on the community for so much in their lives. They fear finger-pointing if they take a stand or speak out about FGM.
- So it should definitely happen that the law should make it clear that it is not okay to encourage anyone to perform any kind of FGM on young women and girls. It should be made clear that this kind of encouragement is unlawful. I think that would help protect girls and young women who are at risk.

Contributor 8: Mrs Dorcas O. Akeju, OBE

Retired FGM midwife/campaigner

Chair of Liverpool FGM and multi-cultural women's advisory group

Member of FGM national clinical group

- Some people are still sticking to tradition and say: it has to go on or our daughters will not be accepted.
- Even though I went to speak to this group (Somali women) in 1996 and now nearly 20 years later I was shocked how strongly the views were still held. Their attitude to Type 1 and Type 2 is: we do the sunna, not the big one, but the ‘small one.’
- Here in the UK I’ve spoken to women from different Nigerian tribes, a number of whom support FGM and regard it as their tradition. They say, ‘Why do these white people want us to stop? If it is their own tradition will they pass a law against it?’
- One tribe from Sierra Leone did not want me to interview them at all.
- You find that in the older generation it is more strongly entrenched. They can’t see beyond their belief and tradition.
- We now understand that FGM is being done more on babies and very young children as they would not know any difference.
- Even if we introduce civil protection orders, we must keep the criminal law. And we should make it clear that encouraging the mutilation of girls is illegal because otherwise FGM is going to go on forever.

Contributor 9: Leyla Hussein

FGM survivor

Co-founder, Daughters of Eve and the Dahlia Project

- You may well recall the controversy last year about a community leader from Bristol and the Metropolitan Police’s FGM Project Azure. It was a Somali television documentary about FGM in the UK. The Bristol community leader stated that although Type 3 was not allowed, Type 1 was permissible and it was our tradition and ‘we cannot leave it.’
- There is a big body of evidence from those working in the field with affected communities in the UK that many prominent communities leaders state that Type 1 is acceptable.
- In 2011 in London a female Islamic scholar stated in public that Type 1 was an acceptable practice. This was at an event on the UN Zero Tolerance Day.
- Around the same time and also in London, a male Islamic scholar publicly stated that all forms of FGM were not only unlawful but un-Islamic. He received a large amount of abuse and harassment from sections of the practising community.
- We must understand the nature of the migrant and diaspora communities. They are very self-contained and many people move in these circles from the neighbour, to corner shop to mosque to local community project leader. I’ve come across many NGOs that are supposed to be opposed to FGM and yet state that Type 1 is acceptable.
- I have also experience of people running child protection workshops who say if a parent tells them that they intend to mutilate their child they say they will not report them.
- Often when parents are torn between mutilating their child or not, they will go to the mosque and in mosques they are told it’s up to you whether you do Type 1 or Type 2, rather than challenging them that it is un-Islamic.
- If you go to Somali community websites that are contributed to by members of the community in the UK, you’ll see the kind of propaganda where people are encouraging that girls are ‘cut’ and people should keep to their traditions.
- To me there is no argument: someone encouraging any form of mutilation of children, that must be unlawful. Remember these are children. They do not have a voice. To the argument that ‘it is my right of freedom of speech, it’s my culture,’ my response is simple: FGM violates my basic human rights, so people who encourage that have no right to make that crime more likely to happen. Finally, I want to highlight the fact that we are talking about the proper protection of children. We all have the responsibility to protect any child at risk. We are talking about the ‘girl child.’ Globally the girl child is the most vulnerable human being. They must be our priority. That is—or must be—fundamentally what this country stands for. By neglecting these girls we go against what this country stands for.

Contributor 10: Amina Elmi

Granby Somali Women’s Group

- We have come across people advocating and encouraging FGM from all generations (young and old). To a certain extent elders in the community have influence over families. Some people thinking about doing FGM are illiterate and can be influenced by what they are told by senior members of the community and are unable to verify facts. So it is important to make it clear in law that encouraging FGM is unlawful, so people in authority (in the community) understand they are not allowed to encourage FGM.
- There is a two-fold process in relation to controversial issues like FGM for communities that are stigmatised and scrutinised in the media. They are likely to present views to outsiders in an acceptable

manner. However, when speaking to those within the community, they will feel free to provide their true views on issues like FGM.

Contributor 11: Charlotte Proudman

Researcher, Cambridge University

Charlotte is researching FGM in the UK. Although her sources are confidential, she has direct evidence that people in FGM-affected communities are in public advancing the view that Type 1 FGM is ‘acceptable.’

REFERENCES

ⁱ LGA FGM web resource: http://www.local.gov.uk/web/guest/community-safety/-/journal_content/56/10180/6510834/

ⁱⁱ FGM: A Guide for Councillors, 2014: http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10180/6601295/PUBLICATION

Written evidence submitted by Ms Vanessa Bettinson (SC 12)

INTRODUCTION:

This submission is by Ms Vanessa Bettinson, FRSA, a senior lecturer in law at Leicester De Montfort Law School (<http://www.dmu.ac.uk/about-dmu/academic-staff/business-and-law/vanessa-bettinson/vanessa-bettinson.aspx>). Her area of research covers issues of criminal law and justice and human rights for which she has written several articles published in internationally esteemed and peer-reviewed journals. In recent years her specific focus has been in relation to legal responses to domestic violence. In addition to publishing academic articles on this subject, she has also been actively engaging with members from academia, statutory and third sector in her local area. The culmination of these engagements has led to two conference events (2013 and 2014 respectively) co-hosted and organised by Ms Bettinson at De Montfort University, focusing on domestic violence. She is currently co-editing (with Ms Sarah Hilder, DMU) an edited book with Palgrave entitled: *Domestic Violence. Interdisciplinary perspectives on protection, prevention and intervention* (projected publication date December 2015).

This submission has not been previously published or circulated. The arguments made will form part of an academic article which is currently in progress and co-authored with Dr Charlotte Bishop, university of Exeter.

CONTENTS:

Summary

1. Offence of coercive control
2. Offence of domestic violence
3. Procedural matters

Annex 1

SUMMARY:

The focus of this feedback concerns the offences of coercive control and domestic violence proposed in the Notice of Amendment given on 7th January 2015 to the Serious Crime Bill. Whilst the view of the author is to endorse the legislative’s intention to strengthen the criminal justice response to domestic violence with the creation of a discrete offence, some reservations and suggestions are expressed. The proposed substantive offences in their current drafted form contain flaws which will not achieve the intended outcome of addressing a legislative gap in the legal framework of domestic violence. This feedback will therefore suggest several changes that the Public Bill Committee may wish to consider.

1. The offence of coercive control

1.1 The amendment to the Serious Crime Bill is an accurate reflection of the Home Office’s intended response following the Strengthening the Law on Domestic Abuse Consultation—Summary of Responses (December 2014). This document correctly recognises that there is a gap in the current legal framework around patterns of coercive and controlling behaviour.

1.2 This legislative gap means that there is no criminalisation of coercive and controlling behaviour. Such behaviour is however, a common feature to many relationships where domestic violence occurs as outlined in empirical research from the study of social sciences and the harm is considerable. (Dutton and Goodman: 2005; Kuennen: 2007; Stark: 2009; Williamson: 2010) It is also true that not every incident of domestic violence will involve coercive control and where single incidents occur and sufficient evidence is available, the prosecution are able to bring charges, most commonly a non-fatal offence, for these single incidents (Burton: 2008; Crown Prosecution Service: 2013-14).

1.3 Any discrete offence seeking to address the coercive controlling behaviour and the harm it causes must not be used as a replacement for all incidents of domestic violence as there are different forms (Kelly and Johnson: 2008). Where possible the prosecution should continue to bring charges for incidents of physical violence where it satisfies the Full Code Test.

1.4 An offence named coercive control is preferable to domestic abuse. The phrase domestic abuse is currently confusing and may promote the idea that abuse is less serious than domestic violence. Domestic abuse is more commonly used by health professionals to refer to non-physical forms of domestic violence. Coercive control can take the form of physical, non-physical behaviours or a combination and therefore it is a sensible basis for a discrete offence (Groves and Thomas: 2014; Williamson: 2010; Stark: 2009).

1.5 Clause NC3 states that it creates ‘offences’ the heading suggesting these offences are called coercive control and domestic violence. However, the first clause clearly outlines the proposed offence of coercive control followed by the penalty a conviction would attract for it. Within the entire amendment there is no other indication that domestic violence would form a discrete offence with its own penalties [discussed below in para. 2.1].

1.6 The proposed offence of coercive control states that it applies to a person who either commits an act or a course of conduct of the prohibited behaviour. The inclusion of merely an act of coercive control is problematic as it draws the parameters of the offence too widely and maintains a focus on single incidents (Hanna: 2009; Stanko: 2002; Burton: 2008). The Home Office paper *Strengthening the Law on Domestic Abuse Consultation—Summary of Responses* (December 2014) p. 11 states that the offence is intended to deal with the ‘persistent nature of the behaviour’ and ‘specifically criminalise patterns of coercive and controlling behaviour.’ Enabling the offence to apply in the face of just one act runs in direct contradiction to this aim. Creating a criminal offence that allows merely an act of coercive control will subject the proposed offence from justifiable opposition from those who are concerned that it will criminalise ordinary everyday behaviour between partners (Griffiths: 2014). It is recommended that the clause should remove the phrase ‘any person who commits an act of or’ and replace it with ‘any person who’.

1.7 The proposed offence of coercive control states that it occurs where the a person ‘engages in a course of conduct’ a reflection of the language used in existing statutory based criminal offences for example in the *Protection from Harassment Act 1997*. The retention of the phrase course of conduct seems unwise, given that judicial interpretation of it in respect of cases involving intimate partners has been so restrictive as to amount to a legislative gap warranting the creation of the proposed offences. For example in *R v Hills* [2010] EWCA Crim 123 the court did not find a course of conduct was established between two incidents ‘since the parties continued to live with each other through the relevant period’ [at para. 12] and similarly *R v Widdows* [2011] EWCA Crim 1500. To maintain the focus of the offence on the offending behaviour and to encourage fresh judicial understanding of the nature of coercive and controlling behaviour it would be appropriate to avoid the phrase ‘course of conduct.’ More accurately as an alternative and in line with the intentions expressed in the Home Office paper *Strengthening the Law on Domestic Abuse Consultation—Summary of Responses* (December 2014) p. 11 the phrase ‘patterns of behaviour’ ought to be considered. This phrase reflects the programmatic nature that domestic violence may involve (Williamson: 2010).

1.8 The term ‘coercive control’ is not defined within the clause. Reference is later made in a subsequent clause relating to domestic violence to ‘coercive controlling behaviour’ and ‘coercive or threatening behaviour’. It is not clear whether coercive control in respect of the offence ‘coercive control’ is intended to involve both ‘coercive controlling behaviour’ and ‘coercive or threatening behaviour’ or indeed if it is a separate term. Legislation that seeks to enact the proposed offence ought to make the meaning of coercive control explicit within the text (Hanna: 2009).

1.9 The term ‘domestic setting’ also requires further clarification. Without this clarification, appeal cases will emerge which may provide a narrower meaning than is intended. A domestic setting should not be defined in geographical terms, for example, as coercive and controlling behaviour can take place outside the physical home place (Groves and Thomas: 2014). An indication of the types of domestic settings that would apply to this offence would assist the prosecution and judiciary in applying the offence. Furthermore, a list would add clarity to the general public about what coercive control in a domestic setting looks like and that it is a criminal offence. Enabling victims to understand that they do not have to experience physical forms of violence before the criminal justice system will respond (Walby and Allen: 2004).

1.10 For the purpose of substantive criminal law the offence of coercive control should have a clearly expressed mens rea requirement. Currently, this is not the case in the proposal. Reference to the appropriate state of mind that would apply where the defendant uses ‘coercive controlling behaviour’ or ‘coercive threatening behaviour’ is contained in a later clause relating to domestic violence (NC5(3)). This clause provides an objective requirement and reads as: ‘a person shall be deemed to have undertaken a course of conduct knowingly if a reasonable person in possession of the same information would conclude that the individual ought to have known that their course of conduct would have the effect’ that it would ‘cause the victim or their child or children to—a) fear that physical violence will be used against them; b) experience serious alarm or distress which has a substantial adverse effect on the victim’s day-to-day activities.’ This objective approach is welcomed as it avoids perpetrators escaping liability by arguing that they had no idea that such harm would occur.

2. Offence of domestic violence

2.1 It does not appear that the proposal in NC5 in fact creates a discrete offence of domestic violence. The clause is headed 'definition of domestic violence' and no penalties are provided where the definition can be established. It is sensible to have a legal definition of domestic violence that accords with the non-statutory definition in use since March 2013. Mixed messages about the definition of domestic violence and a lack of understanding of what it entails was one reason for the negative findings concerning police responses in Her Majesty's Inspectorate Constabulary, 'Everyone's business: Improving the police response to domestic abuse' (HMIC: 2014). The clause however, doesn't explain when the definition should be used which is problematic particularly as s. 9, schedule one para 12.9 Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides a narrower legal definition stating that "domestic violence" means any incident of threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other.' To have two separate legal definitions of domestic violence will not diffuse the confusion around what domestic violence entails, in the authors' opinion. The proposal should consider whether it wishes to create two competing legal definitions of 'domestic violence' and if so legislative change should clearly convey when the different provisions apply. The legislature should also be mindful that family courts and criminal courts are confusing for victims of domestic violence. If they experience different attitudes in the family court compared to a criminal court their general experience of the legal response is unlikely to distinguish between the two systems. (Robinson: 2007).

2.2 Where a single act of physical violence or criminal damage can be proved, the prosecution should be encouraged to use existing offences regardless of the domestic setting. Where the physical violence is part of a pattern of behaviour amounting to coercive control, it may be preferable for a charge to be brought under the proposed offence (s) alone. Duplicity of charges must be avoided and guidance would need to be provided to the prosecution about this. The Law Commission is in the process of a consultation concerning the reform of the Offences Against the Person Act 1861. Reform would be welcome in the context of these offences between intimate partners, as psychological harm as opposed to psychiatric harm is not recognised under the Offences Against the Person Act 1861 (*R v Dhalliwal* [2006] 2 Cr App R 24; Munro and Shah: 2010)

3. Procedural Matters

3.1 Clause NC3(3(c)) seeks to provide the court with the power to attach a rehabilitative programme to a conviction of a proposed offence. Court sanctioned rehabilitative programmes do have a higher success rate than other forms of penalties (Gondolf: 2002; Lewis: 2004). It is sensible to provide this optional power to the court although adequate resources are essential to ensure the availability of appropriate programmes (Bettinson and Dingwall: 2012; Bettinson and Dingwall: 2013). In addition, the quality of programmes would need to be overseen by an appropriate independent body. A power to allow the court to make an order for costs towards the programme in lieu of the victim surcharge could be a consideration.

3.2 Where children are involved in a case, family proceedings may also be taking place during the course of the criminal proceedings. If a conviction is secured a victim ought to be granted legal aid in child contact proceedings. This would not currently be the case where coercive control is not embedded into Legal Aid, Sentencing and Punishment of Offenders Act 2012 [see para. 2.1 above]. Removing any anomaly in the 2012 act and the proposed offences may have would give greater substance to any domestic violence order (s. 28 Crime and Security Act 2010) issued under NC3 (3(d)).

3.3 Powers proposed under NC3(3) and NC6 are appropriate in the author's view.

January 2015

Annex 1

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Written evidence submitted by Live Nation (SC 13)

1. INTRODUCTION

1.1 On 7th January 2015 the Scrutiny Unit of the House of Commons invited interested parties with relevant expertise and experience to “Have your say” on the Serious Crime Bill by submitting their views in writing to the House of Commons Public Bill Committee, which is scheduled to consider the Bill between 13th—22nd January.

1.2 This submission has been produced in response to that invitation on behalf of Live Nation. Live Nation is one of the world’s leading entertainment companies and the world’s largest promoter of live music concerts. We have extensive experience of the live event industry and the challenges and requirement of managing events. Our submission concerns the issue of the increasing use of flares, fireworks and smoke bombs at concerts and live events.

2. CONTEXT OF OUR SUBMISSION

2.1 Flares, fireworks and smoke bombs are dangerous when used inappropriately. Flares—often manufactured for legitimate military, maritime or transport purposes—can burn as hot as 1,600°C for as long as an hour. Any burns caused by a flare are likely to be extreme. Fireworks can be equally dangerous, with a simple sparkler burning up to 2000°C and rockets travelling at up to 150 miles per hour. Smoke bombs can also burn at high temperatures. They are designed for use in open spaces and can be dangerous in confined spaces for those with asthma and breathing difficulties.

2.2 It is very difficult to extinguish pyrotechnics once lit because they often contain burning metals. Even after they stop burning, they will be too hot to handle for some time and could still set fire to flammable items like litter. In crowds, flares or smoke bombs cause serious burns, smoke inhalation injuries and panic or asthma attacks.

2.3 Legislation has existed since 1985 concerning the use of pyrotechnics at football grounds. Under the Sporting Events (Control of Alcohol etc.) Act 1985 it is an offence for a person to enter or attempt to enter a football ground while in possession of a flare, smoke bomb or firework. The sentence for these offences can be as much as three months in prison, and in many cases, fans who have no previous convictions are given prison sentences for attempting to enter a football ground with a smoke bomb in their pocket as the courts take these offences very seriously. Recently, fans who have been caught at football matches with smoke bombs have been given sentences between 1 and 2 months and banned from returning to football grounds for up to 6 years. This demonstrates the severity with which authorities treat this issue when it relates to football matches.

2.4 It is also an offence for a person under the age of 18 to be found carrying a firework or flare in a public place. Smoke bombs have the Firework Standard label on them and will be classed as a firework. However, in contrast to legislation around football matches, no specific offence exists for adults caught carrying flares or fireworks in crowded places (such as festivals or concerts) unless it can be proven that they were carried with intent to cause injury.

2.5 Many event venues, live event organisers and stadiums have their own regulations on prohibited items. However no statutory regulation currently exists and the use of flares, fireworks and smoke bombs at concerts and live events is becoming an increasing problem.

2.6 There have been a number of public information campaigns on the dangers and legal consequences of getting caught with a flare, firework or smoke bomb at football matches. The Government has taken a strong stance against flares at football matches, with former Policing Minister Damian Green warning last year that they put other supporters' lives at risk.

2.7 We believe that music and other live event fans deserve the same protection offered to football fans by extending laws preventing the possession of flares, fireworks and smoke bombs to sports matches to cover other events. The police and judiciary require the legislative power to ensure that incidents involving flares, fireworks and smoke bombs can be tackled effectively and appropriate sentencing considered.

3. PROPOSED AMENDMENT

3.1 We would like to see this inconsistency in legislation removed and live event fans afforded the same protection as football fans.

3.2 We would like to see an amendment introduced to the Serious Crime Bill that places new legislative restrictions on the possession of fireworks, flares or smoke bombs in public places such as at live events, concerts and festivals. We would like to see the criminal conviction for the possession of flares at such events brought in line with existing legislation governing the use of flares at football grounds.

3.3 We believe this is a priority as the incidence of the use of pyrotechnics is rising, placing fans and our employees at risk.

3.4 We would be happy to assist with the drafting of this amendment if this is considered helpful.

January 2015

Written evidence submitted by the International Fund for Animal Welfare (SC 14)

ABOUT THE INTERNATIONAL FUND FOR ANIMAL WELFARE

Founded in 1969, the International Fund for Animal Welfare saves individual animals, animal populations and habitats all over the world. With projects in more than 40 countries, IFAW provides hands-on assistance to animals in need, whether it's dogs and cats, wildlife and livestock, or rescuing animals in the wake of disasters. We also advocate saving populations from cruelty and depletion, such as our campaign to end commercial whaling and seal hunts.

SUMMARY

1. IFAW welcomes the opportunity to submit evidence to the Public Bill Committee on the Serious Crime Bill, in particular those provisions which amend the Computer Misuse Act 1990. The UK Commitment to Action on the Illegal Wildlife Trade, published in February 2014, stated:

“The UK Government and UK law enforcement agencies will...link action on IWT to existing efforts to tackle other forms of organised crime, through the Serious and Organised Crime Strategy, focusing on specific action to tackle cross-border organised crime in source and transit countries”.⁴⁶ As yet, the Government has not taken this forward.

2. This submission is intended to provide evidence that wildlife cybercrime constitutes serious crime and requires additional measures, which could be provided for by a number of minor amendments.

3. At a time when the poaching of endangered wildlife has reached unprecedented levels, the widespread availability of the Internet has transformed some traditional criminal activity to the extent that law-breaking takes place on an extraordinary scale. Governments must ensure they have robust laws in place that specifically tackle the unique challenges of wildlife cybercrime supported by sufficient enforcement capacity, while online marketplaces must commit to strong policies that are effectively implemented to prevent their platforms being abused by wildlife criminals.

⁴⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277772/pb14129-commitment-action-illegal-wildlife-trade.pdf

4. It was in this context of high levels of poaching and the increasing threat of cybercrime that IFAW investigated the trade in endangered wildlife taking place across 280 online marketplaces in 16 countries during a six-week period in 2014. IFAW contracted MK Consultancy, which is a company set up by the former Head of London’s Metropolitan Wildlife Crime Unit and the former Head of UK Border Force’s CITES Unit, who have more than 40 years of experience of wildlife crime enforcement, to support investigators by assisting with the identification of species and the compilation of intelligence packages for enforcement agencies to ensure that the quality of the data supplied met the highest policing standards. The results of this investigation were published in November 2014 in *Wanted—Dead or Alive: Exposing Online Wildlife Trade*.⁴⁷

5. Investigators found a total of 33,006 endangered wildlife and wildlife parts and products from species listed on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Appendix I and II available for sale in 9,482 advertisements, estimated to be worth at least £7,088,251.

6. IFAW has been investigating wildlife trade over the Internet since 2004 with past investigations including:

- *Caught in the Web: Wildlife Trade on the Internet* (2005).⁴⁸
- *Bidding for Extinction* (2007).⁴⁹
- *Killing with Keystrokes: An Investigation of the Illegal Wildlife Trade on the World Wide Web* (2008).⁵⁰
- *Killing with Keystrokes 2.0: IFAW’s Investigation into the European Online Ivory Trade* (2011).⁵¹
- *Making a Killing: A 2011 Survey of Ivory Markets in China* (2012).⁵²
- *Click to Delete: Australian Websites Selling Endangered Wildlife—Australia* (2014).⁵³
- *Bidding Against Survival: The Elephant Poaching Crisis and the Role of Auctions in the U.S. Ivory Market* (2014).⁵⁴

Clauses 40-43 and 46

7. Clauses 40-43 cover computer misuse, amending the Computer Misuse Act 1990. We welcome in particular clause 40, which makes clear that ‘a person is guilty of an offence if the person does any unauthorised act in relation to a computer’. The clause states that the person will be guilty, if at the time of doing the act the person knows that the activity is unauthorised. However, IFAW’s view is that the person carrying out the offence should be deemed guilty whether he or she was aware that the act was unauthorised, or not. In situations where there is evidence that illegal activity may be commonplace, we argue that the host of such activity, i.e. the website owner, should have an obligation to make site visitors aware that such activity may be, or is, illegal.

8. Subsection 2 which makes a person guilty of an offence when ‘the act causes, or creates a significant risk of, serious damage of a material kind’ and subsection d) ‘the person intends by doing the act to cause serious damage of a material kind or is reckless as to whether such damage is caused’ are also important provisions. However, it is our view that the list defining what constitutes ‘material’ damage, as laid out in clause 40, is incomplete. Our evidence shows that damage is of a ‘material kind’ if it is damage to animal welfare in any place. The existing provision includes ‘damage to the environment’, ‘damage to the economy of any country’ and ‘damage to national security’ as constituting damage to human welfare.

9. It is clear to IFAW that damage to the populations of endangered species, such as rhinos, constitutes damage to both the environment, the economy of some of the poorest countries in the world and national security. However, it is our view that, as the clause specifically refers to human welfare, ‘damage to animal welfare in any place’ should also be explicitly laid out in the clause.

10. This submission is intended to provide evidence which explains why the cybercrime relating to endangered animals or their parts constitutes serious crime. A key element of amending clause 40, subsection 2, would therefore be to outline that the animal or their parts would be those regarded as most endangered, i.e. those listed in Appendix I or II of the Convention on International Trade in Endangered Species of Wild Flora and Fauna.⁵⁵

11. Under CITES, the highest level of protection is afforded to the more than 800 Appendix I species designated as being in immediate danger of extinction. With a few exceptions, commercial trade in Appendix I species is banned.

⁴⁷ <http://www.ifaw.org/sites/default/files/IFAW-Wanted-Dead-or-Alive-Exposing-Online-Wildlife-Trade-2014.pdf>

⁴⁸ <http://www.ifaw.org/sites/default/files/Report%202005%20Caught%20in%20the%20web%20UK.pdf>

⁴⁹ <http://www.ifaw.org/sites/default/files/Report%202007%20Bidding%20for%20Extinction.pdf>

⁵⁰ <http://www.ifaw.org/sites/default/files/Killing%20with%20Keystrokes.pdf>

⁵¹ <http://www.ifaw.org/sites/default/files/FINAL%20Killing%20with%20Keystrokes%202.0%20report%202011.pdf>

⁵² <http://www.ifaw.org/sites/default/files/Making%20a%20Killing.pdf>

⁵³ http://www.ifaw.org/sites/default/files/IFAW_Internet%20Trade%20Report_AUS%20final.pdf

⁵⁴ http://www.ifaw.org/sites/default/files/IFAW-Ivory-Auctions-bidding-against-survival-aug-2014_0.pdf

⁵⁵ <http://www.cites.org/eng/app/appendices.php>

12. Species listed on CITES Appendix II are recognised as requiring protection from trade, but not to the point of a ban.

13. We also welcome clause 42, which provides for recourse to UK law, despite any international dimension of these crimes, as it is clear that cybercrime does not respect national borders. It is clear that the countries in which endangered animals and their parts are sourced, particularly the African nations, are in general not where the demand originates, which is in particular the Asian nations. It is also clear, however, that substantial demand also originates in Europe, in particular for live animals, and that much of this arrives from Africa via Asian sellers.

14. In our 2014 investigation, it emerged that UK websites hosted 1,087 online advertisements during the six-week period, offering a total of 2,063 items for sale. More than two-thirds of these were for wildlife parts and products rather than live animals. The majority of advertisements surveyed on the 13 websites monitored were for CITES Appendix I specimens (1,011 advertisements), i.e. in immediate danger of extinction.

15. The number of Appendix I items recorded in this investigation has increased dramatically compared with IFAW's 2008 survey *Killing with Keystrokes*, although this can be partly explained by a broadening in the scope of live animals recorded. However, ivory and suspected ivory listings have increased from 279 advertisements in 2008 to 409 advertisements across all websites in 2014.

16. Out of the total advertisements, 855 or 79 per cent suggested some claim to legality—the highest percentage of any country in this survey, with most ivory sellers stating that their items for sale were antiques. However, only six advertisements found in the survey offered any supporting proof of origin/legality of a proposed sale.

17. IFAW asks the Committee to include within these provisions, a requirement for those advertising an animal or its parts for sale online to display a valid permit to trade in CITES Appendix I or II species. Were a seller to have committed a criminal offence for failing to include evidence of legality within the advert, it is our view that it would be easier to identify which sales were taking place illegally and which were not. The legal trade in these products can act as a smokescreen for the trade in illegal products and a criminal offence in this respect would expose such crimes and support marketplaces in ensuring that they are not providing a platform for illegal trade.

18. The most dominant site for sales in the UK as recorded in this investigation is eBay.co.uk, although Preloved.co.uk and Gumtree.com (a subsidiary of eBay Inc.) also had significant amounts of trade, with 147 and 109 advertisements respectively. A new feature on Preloved.co.uk since the 2008 investigation requires those selling live animals to state whether they have the correct permit to sell their items. The UK was distinct for the number of sellers based overseas—out of the total, investigators identified 62 sellers located outside the EU who offered to ship items, mainly from the USA and China.

19. Perhaps due to a historic demand for ivory in the UK, the UK investigation found ivory and suspected ivory advertisements represented 38 per cent of all advertisements recorded in this survey. Suspected ivory examples were identified by IFAW's expert investigator, who has more than 20 years of experience of wildlife crime enforcement and is highly skilled at ivory identification.

20. Although similar in size to the eBay German marketplace where few suspected ivory items were recorded in this survey, eBay.co.uk hosted 376 out of the total 409 suspected ivory items found on UK websites. Most examples on eBay.co.uk used code words which would appear to be a deliberate attempt by sellers to disguise the true nature of their sales and to circumvent eBay's ivory ban. This is likely due to the fact that ebay.co.uk has invested significant efforts in preventing ivory sales, such as restricting the use of certain keywords and euphemisms for ivory, making it more difficult for potential buyers to find these listings.

21. While the number of potential ivory listings has increased since 2009, eBay.co.uk's measures have resulted in a lower number of successful transactions and overall bids on those items. Other ivory and suspected ivory advertisements were found on uk.ebid.net, with 13 carvings and jewellery for sale, despite a more explicit site policy banning animal ivory having been put in place since the 2008 survey. None of the sellers on uk.ebid.net disguised the fact that they were selling ivory. A number of sellers on eBay had multiple items for sale, with one seller posting 58 ivory and suspected ivory items on the site during the six-week investigation.

22. Clause 46, subsection 11a would also need to be amended to include 'unauthorised acts causing, or creating risk of, serious damage to animal welfare etc'.

CONCLUSION

23. There is clear evidence to support the inclusion of wildlife cybercrime measures within these provisions, which are to apply to UK nationals regardless of any international context surrounding the crime. We call upon the Government to:

- Include provisions tackling the wildlife cybercrime within the Bill
- Introduce a criminal offence for those advertising a CITES Appx. I or II animal, or its parts, without citing a valid permit number

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- Require online marketplaces to alert users searching for, or selling, these products, that they may be illegal
 - Commit to long-term funding for the National Wildlife Crime Unit and the reinstatement of a dedicated post for wildlife cybercrime.

January 2015
