

# Report of the Parliamentary inquiry into the effectiveness of legislation for tackling child sexual exploitation and trafficking within the UK

Chaired by Sarah Champion MP

**Believe in  
children**



**Barnardo's**

April 2014





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# Foreword

by Sarah Champion, Chair of the inquiry and MP for Rotherham

As politicians, we often speak in abstract terms about the most profoundly disturbing issues: and the words we use lose their power through repetition. ‘Child sexual exploitation’ is one such term. Through this inquiry, my fellow panel members and I have heard the full horror of what young people experience. It is emotional manipulation that preys on victims’ inexperience and vulnerability; on the very fact they are children. It ruins childhoods through rape and stomach-churning sexual violence, its young victims frequently abused under the influence of drugs and alcohol.

We also know that young people are increasingly trafficked around the country to be used for sex and for commercial gain by organised gangs of abusers.

The first session of the inquiry heard from young victims who had suffered such cruel abuse, and the panel were at one in finding this deeply affecting.

Hearing from these brave young people, who were able to talk to a room full of strangers about this incredibly personal issue allowed us to ask the right questions of the professionals we saw. They must of course remain anonymous, but I am so grateful to them.

Listening to young people’s stories about the many failures in the system has made me determined to understand the policy, legislative and practice issues underlying the reasons that they had been let down so badly by those who were supposed to protect them. This has been painstaking work, which would not have been possible without the expertise of my fellow panel members, whom I would like to thank for giving up their time to make the inquiry happen.

Throughout the course of this inquiry the panel and I have heard from representatives of the agencies that deal with sexual exploitation on the ground and I do not think that any of them doubt that this issue is a very serious priority for the Government.

While sexual exploitation is not a new issue, policy makers have only really begun to address it in recent years: it was only three years ago that, as a result of Barnardo’s campaigning, the Government published its national action plan on child sexual exploitation and the topic was made a specific ministerial responsibility.

This Government has shown vision in committing to tackle sexual exploitation, but inevitably there is more to do, and children are still suffering appallingly due to oversights and omissions in policy, practice and legislation. This inquiry sought to identify such instances and to suggest practical solutions to help the Government to achieve its vision on tackling child sexual exploitation.

We have developed a number of legislative suggestions, which are set out in this report. What became clear during the course of the inquiry, however, is that there are a number of equally important steps the Government can take that do not require new legislation, but instead require changes to policy and practice.

The Government has shown a commitment to tackling this abhorrent form of abuse. It must now ensure momentum is maintained and give serious consideration to our recommendations.

I would like to thank the team at Barnardo’s for all its hard work on the inquiry and Cassandra Harrison in particular for drafting this report.



# Foreword

by Puja Darbari, Barnardo's UK Director – Strategy

For more than two decades, Barnardo's has worked with children who have suffered sexual exploitation. We are the largest provider of services for these young people - supporting them to escape abuse, helping them to get justice and get on the road to recovery. Informed by the experiences of the thousands of young people we work with, we campaign for better recognition of this type of abuse, prevention and support.

Progress is being made. Following our 'Cut them Free' campaign in 2011, we have seen child sexual exploitation become more high profile and a higher priority at both local and national level.

This is positive, but we should not and will not rest on our laurels. We know that there are many victims who are not receiving the support they need and that much more can be done to fight this insidious form of abuse. That is why we are delighted to have the opportunity to work with Sarah Champion MP and the wider panel of parliamentarians on this important inquiry into the legislative provision. Their commitment – working across the political divide – to improving the system for vulnerable children is heartening.

It is difficult to comprehend just how devastating the impact of abuse on children's lives can be, but their voices and needs should be central to all we do. Our particular thanks therefore go to the young people who spoke to the inquiry panel about the changes they think are needed. Their bravery in talking through their personal experiences, so that the system can be improved for others, was invaluable and we could not have done this without them.

The Government and others have taken action to address child sexual exploitation. Here we lay out a set of practical recommendations for taking the next steps on that journey. We offer Barnardo's assistance in making these a reality so more children can live lives free from sexual exploitation.

# Terms of reference

## About the committee

On 20 November 2013, Sarah Champion MP convened an inquiry into the effectiveness of legislation for tackling child sexual exploitation and trafficking within the UK. The launch of this inquiry marked the 10th anniversary of the Sexual Offences Act 2003, the key piece of legislation in this area.

## Membership

The members of the panel were:

- Baroness Benjamin – Liberal Democrat
- Sarah Champion MP – Labour, Rotherham (Chair)
- Ann Coffey MP – Labour, Stockport
- Emma Lewell-Buck MP – Labour, South Shields
- Sir James Paice MP – Conservative, South East Cambridgeshire
- Yasmin Qureshi MP – Labour, Bolton South East
- Lord Thomas of Gresford QC – Liberal Democrat
- Baroness Walmsley – Liberal Democrat
- Craig Whittaker MP – Conservative, Calder Valley

It also included one lay member, Simon Snell, the former head of Devon and Cornwall Police's Child Exploitation Unit. Mr Snell's role was to provide expert advice to the panel and bring his experience of tackling this issue on the ground into the evidence sessions.

## Panel staff

The panel's secretariat was provided by Barnardo's staff: Alison Worsley, Cassandra Harrison, Oliver Chantler, Carron Fox and Eve Byrne.

## Contacts

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## Format of the inquiry

This report is based on the analysis of the evidence received, which represented a wide range of views on a number of complex issues.

The inquiry convened four oral evidence sessions:

### Session 1: Victims of child sexual exploitation

This was a closed session, which heard from six young people, who agreed to give evidence anonymously.

### Session 2: Legal professionals

- Nazir Afzal QC – Chief Crown Prosecutor, Crown Prosecution Service North West and CPS lead on violence against women
- Eleanor Laws QC
- Patricia Lynch QC
- Stephen Smith MBE – co-founder and senior partner of criminal law practice Wilford Smith

### Session 3: Police

- Detective Superintendent Ian Critchley – Lancashire Constabulary
- Inspector Graham Hadley – Thames Valley Police
- Detective Superintendent Gary Ridgway – Cambridgeshire Constabulary
- Detective Superintendent Terry Sharpe – Metropolitan Police Service
- Chief Constable Sara Thornton – Thames Valley Police
- Police Sergeant Katherine Wallis – South Yorkshire Police



**Session 4: Partnership working**

- Maggie Blyth – Child Sexual Exploitation lead, Association of Independent Chairs of Local Safeguarding Children Boards
- Jenny Coles – Chair of the Families, Communities and Young People Committee, Association of Directors of Children’s Services
- Wendy Shepherd – Service Manager, Barnardo’s
- Councillor David Simmonds – Chair of the Children and Young People Board, Local Government Association

The inquiry held a session with Norman Baker MP, Minister of State for Crime Prevention.

The inquiry received informal advice from HH Judge Rook QC.

In November 2013 the inquiry issued a call for written evidence. Submissions were received from the following organisations and individuals:

- Association of Independent Chairs of Local Safeguarding Children Boards
- Cllr Jeremy Blatchford – Lead Member for Children Services for North Somerset Council (in a personal capacity)
- Brent Council
- British Sexual Health and HIV Association
- Bury Metropolitan Council
- CAN Young People’s Team
- Central Bedfordshire Council
- Centre for Social Justice
- Cheshire Constabulary
- ECPAT UK
- Dr. Ella Cockbain, University College London
- Greater Manchester Police
- Hampshire Safeguarding Children Board
- Herefordshire Local Safeguarding Children Board
- Huw Watkins (retired police officer)
- Lancashire Constabulary
- Martyn Underhill, Police and Crime Commissioner for Dorset

- Metropolitan Police Service Sexual Offences Exploitation and Child Abuse Investigation Command
- Muslim Women’s Network UK
- National Crime Agency (NCA)
- NWG Network
- NSPCC
- Office of the Children’s Commissioner for England
- Richard Hiom, Leicestershire Constabulary
- Rotherham Metropolitan Borough Council
- Safe and Sound Derby
- Stonewall Housing
- Suffolk Constabulary
- Victim Support

## Background to Barnardo’s work on child sexual exploitation

Barnardo’s has been tackling sexual exploitation since 1994, and now delivers specialist services in 35 locations across the UK. In 2012-13, we worked directly with 1,940 children who had suffered, or were at risk of sexual exploitation and saw a 34% increase in the number of service users. Information gathered from our services shows that in September 2013, at least 112 of the service users were moved for exploitation and technology played a part in the exploitation of 370 children, for example meeting an abuser online or being controlled using a smartphone.

By gathering information annually and working closely with our services, Barnardo’s is able to track trends and collect data that is used to raise awareness of the issue among young people, parents and carers, professionals, policy makers and frontline staff. We use this knowledge and expertise to campaign for improvements to policy and legislation to help prevent sexual exploitation, and ensure that victims are provided with the support they need.





# Introduction

Child sexual exploitation (CSE) is a form of child abuse, which can happen to boys and girls from any background or community. It can range from seemingly ‘consensual’ relationships, informal exchanges of sex in order to get affection, accommodation or gifts, through to exploitation by gangs involved in serious, organised crime. The definition used by the Government is:

**Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive ‘something’ (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities. Child sexual exploitation can occur through the use of technology without the child’s immediate recognition; for example being persuaded to post sexual images on the Internet/mobile phones without immediate payment or gain. In all cases, those exploiting the child/young person have power over them by virtue of their age, gender, intellect, physical strength and/or economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child or young person’s limited availability of choice resulting from their social/economic and/or emotional vulnerability.<sup>1</sup>**

Barnardo’s has been working with children who have suffered or are at risk of sexual exploitation for two decades. However, in recent years child sexual exploitation has become more high profile. Media coverage of court cases has seen horrific stories of abuse and the failure of statutory services to protect victims capture the attention of the general public.

A number of reports and research projects have also contributed to the evidence base and understanding of child sexual exploitation, including, but not limited to:

- Barnardo’s ‘Puppet on a string’<sup>2</sup> and ‘Running away from hate to what you think is love’<sup>3</sup> reports
- The Office of the Children’s Commissioner for England’s inquiry into child sexual exploitation in gangs and groups<sup>4</sup>
- The Home Affairs Select Committee inquiry into child sexual exploitation and the response to localised grooming<sup>5</sup>
- The report of the joint inquiry into children who go missing from care by two All Party Parliamentary Groups<sup>6</sup>

The Government has established a national group on sexual violence against children and vulnerable people to urgently address any missed opportunities to protect these groups. In July 2013 it published a progress report and action plan,<sup>7</sup> with an update expected shortly.

Many organisations are also taking steps to support more effective protection of young people from exploitation and bring perpetrators to justice. The Crown Prosecution Service (CPS), Association of Chief Police Officers (ACPO) and the Local Government Association (LGA), among others, have developed plans, produced toolkits or published guidance.



# Summary of recommendations

We did not receive any compelling evidence which clearly made a case that justice cannot currently be served due to the lack of a specific offence. Legislation is not necessarily the best mechanism to raise awareness of child sexual exploitation. The evidence did indicate that existing offences could be used more effectively, with the decision about which offence to use based on the circumstances of the particular case. We **recommend** that:

- The police and Crown Prosecution Service (CPS) should raise awareness within their organisations of the different options in terms of the range of potential offences that can be used and their associated advantages and disadvantages.
- The police and CPS should also promote that the lesser offences should be charged where appropriate before offending escalates and not be used simply as alternatives to more serious charges for the purposes of plea bargaining.
- The Government should ensure training on use of the National Referral Mechanism for trafficking within the UK is delivered to relevant agencies.

Evidence presented to the inquiry has made a strong case for the strengthening of Child Abduction Warning Notices. The evidence received did not raise any objections or highlight unintended consequences. We therefore **recommend** that the Government amends legislation in order to place the notices on a statutory footing and create an offence of breaching the conditions of a notice. We consider it unacceptable that young people should not be afforded the same level of protection on the basis of whether they are living at home or are in the care of the State; there should be consistent provision for all children, regardless of their legal status. The Home Office should also work with the police to ensure they receive guidance and advice on their use.

We agree with the evidence received that there is no reason why a second contact should need to take place in the offence of ‘meeting a child following sexual grooming’, particularly as combined with the other requirements of meeting or travelling to meet a child, with the intention of abusing them, the threshold remains high. To enable the police to intervene earlier we **recommend** that the Government amends s.15 (1)(a) of the Sexual Offences Act 2003 accordingly.

The inquiry concludes that the new Sexual Harm Prevention Orders and Sexual Risk Orders provided for in the Anti-Social Behaviour, Crime and Policing Act 2014 have the potential to fill the legislative gap with regards to online grooming. We **recommend** that the Government should:

- Ensure that the guidance issued by the Secretary of State, required by the Act, clarifies that online contact falls within the definition of ‘an act of a sexual nature’.
- Carry out a review of their use and effectiveness after 12 months of coming into force, in light of the limited use of existing civil prevention orders.

It is positive that the Government supports the principle that the phrase ‘child prostitute’ should not be used and has committed not to do so in future. However, the retention of the terminology in some legislation has an on-going impact on the attitudes towards, and treatment of, child sexual exploitation (CSE) victims. We therefore **recommend** that the Government should lead the world and progress the removal of all references of ‘child prostitution’ in legislation as soon as possible. We call on the Government to outline how it will do this.



It is clear to this inquiry that the manner in which a judge manages a case in ground rules hearings and throughout the trial is of crucial importance and that appropriate training of the judiciary is essential.

We **recommend** that no judge should be assigned to try a complex child sexual exploitation case without having received such training. It is recommended that further work is carried out to understand the benefits and disadvantages (particularly in respect of delays) of limiting those authorised to preside over sexual exploitation cases to have previous relevant experience of working on sexual offences cases.

We **recommend** that all advocates working on cases of sexual exploitation that involve children should be required to undertake specialist training. Given the particular concerns about defence counsel, in principle, we could see no reason why it should not be a requirement that legally aided defendants should be restricted in their choice of representation to a panel of solicitors and counsel who have undergone specific training in CSE issues. The professional bodies should have the power on complaint to remove an individual from such a panel.

We **recommend** that the pan-legal training being developed is given the necessary support and resources to ensure it is widely used.

Balanced judicial comment on myths and stereotypes and the impact of sexual exploitation on victims is a hugely positive step and has the advantage of being tailor-made to the case. However, evidence strongly suggests that this is undermined by the variability of practice. The inquiry **recommends** that the Ministry of Justice should explore, with relevant stakeholders, the development of materials, either written or filmed, to better inform jurors about the potential impact of CSE (addressing common myths and stereotypes).

It is clear to this inquiry that the treatment of victims appearing as a witness along with the support provided before, during and after court, is vitally important. This not only reduces the potential of further trauma to already vulnerable children, but also serves the interests of justice by enabling witnesses to give their best evidence. We acknowledge that progress is being made, but believe more can and should be done. We therefore **recommend** that:

- The Ministry of Justice includes a requirement for specialist provision for children and young people when it commissions the court-based witness service.
- The Ministry of Justice makes rolling out pre-recorded cross-examination<sup>8</sup> a priority. It should have the capacity for witnesses to give evidence from a location outside the courtroom where they would feel more comfortable.
- The Home Office should work with police representative bodies and voluntary organisations to produce a checklist to assist the police in communicating with children about their case.
- The CPS must ensure children's wishes are sought and taken into account when applications for special measures are made. At ground rules hearings, judges should check that this has happened.

It is important that personal information is dealt with in a responsible way; however we have heard that risk-averseness can leave children at risk of harm. Leadership is crucial to achieving the necessary culture change. We **recommend** that the Government should make, and continue to make, clear statements from the highest level to reinforce the expectation that where it is in order to protect a child, professionals must share information.

We **recommend** that the Government gives chairs of Local Safeguarding Children Boards (LSCBs) the power to require local agencies to provide them with information, mirroring the power of the Children's Commissioner for England, in order to aid local strategic work on tackling CSE and trafficking within the UK. This would also support the development of 'problem profiles' or 'problem mapping', as recommended by the Office of the Children's Commissioner for England (OCCE).

We **recommend** that LSCBs include prevention and awareness-raising within their strategies and hold agencies to account for the activity they are undertaking in respect of this, including the dissemination of concise information to frontline workers and the wider public.

Given the strength of evidence we have received, it is clear that high quality age-appropriate sex and relationship education is vital in every school, even if it is not provided on a statutory basis. We **recommend** that the new expert group established by Government to support teachers on the issue of personal, social and health education (PSHE) must ensure a focus on prevention of CSE and make certain young people's views on the content of resources are taken into account. It should also be kept under review to ensure the incorporation of the evolving nature of the abuse and in particular the role of technology.





# Legislation

The Sexual Offences Act 2003 (“the Act”) introduced the most substantial changes to the law governing sexual offences in England and Wales ‘since at least Victorian times.’<sup>9</sup> The White Paper which preceded the Act<sup>10</sup> was informed by a wide-ranging review and public consultation<sup>11</sup>. It described the existing law at that time as ‘archaic, incoherent and discriminatory’ and ‘widely considered to be inadequate and out of date’.

There was a broad degree of consensus among those providing evidence to this inquiry that, 10 years on from its introduction, the Act is largely fit for purpose in respect of tackling child sexual exploitation and trafficking within the UK. We did however identify a small number of specific amendments to legislation that would be beneficial.

While there was agreement that the legislation is generally sound, we also heard consistent concerns from a wide range of individuals and organisations about the understanding, interpretation and implementation of the legislation. These issues are as vital to the efficacy of the system as the wording of the statute itself and are addressed in subsequent sections of the report.

*‘As an overarching piece of legislation, it is good enough and is largely appropriate. Issues we’ve seen have been its application.’*  
Detective Superintendent Ian Critchley,  
Lancashire Constabulary

*‘I looked up the Sexual Offences Act last night and it looks like a good law. It’s the fact that the police don’t care and social workers have too many cases and sexual health services don’t know what to do.’*  
Young person giving evidence to the inquiry

## The use of relevant offences within the Act

There is no specific offence of ‘child sexual exploitation’; instead, prosecutions may be

brought on a range of offences including: rape (s.1); sexual assault (s.2 and 3); rape and other sexual offences against children under 13 (s.5-8); meeting a child following sexual grooming (s.15); causing or inciting child prostitution or pornography (s.48); and trafficking within the UK for sexual exploitation (s.58).

The inquiry encountered some debate as to whether it is more effective to bring prosecutions for ‘one-off’ offences such as rape or those offences that involve a pattern of activity over time, namely trafficking.<sup>12</sup>

Evidence suggested that a focus on one incident, rather than multiple connected events, is often due to the evidence available. The prosecution must only prove an offence which constitutes one event in time. This approach may therefore be simpler as the boundaries of the offence are more tightly drawn. While a case may be brought for a ‘one-off’ offence, Dr. Cockbain, of UCL, considered in her written submission that the on-going abuse that often characterises sexual exploitation is best described as a ‘process crime’. For victims, one incident of rape can be difficult to separate from the multiple rapes that they have endured, particularly if it has continued for many years or if they were intoxicated with alcohol or drugs. Some also felt that the focus on one occurrence of rape does not give a true representation of the abuse they have suffered. One young person speaking to the inquiry stated:

*‘I was pressurised to go to court. There needs to be a sexual exploitation law. My charge was for rape, this was the wrong charge. So many times it happened.’*

Additionally, a support worker for another of the victims giving evidence said:

*‘The CPS dropped the rape case and didn’t look at the four years of abuse.’*

Written and oral evidence considered that trafficking is poorly understood and the s.58 trafficking offence of the Act under-utilised. Lancashire and Suffolk constabularies explained that this could be due to the fact that when such offences come to light there is also evidence of 'serious' sexual offences, which carry a higher sentence and therefore the trafficking offences are set aside. Dr. Cockbain cited research that supported this: 'Several [prosecutors] felt that trafficking charges added little to such cases if evidence could substantiate equally serious but better-known and more straightforward sexual offences.'

On the other hand, a number of submissions advocated the prosecution of trafficking offences alongside the more 'serious' sexual offences. DS Ridgway stated that this approach is preferable because otherwise you 'put all the eggs in one basket if you go with rape, as you have one rape, one instance and the jury get focused on that moment in time whereas we are trying to paint the picture of behaviour'. The NWG Network considered that whenever there is evidence that could prove trafficking, the offence should be used because 'it helps to explain the behaviour of the victims through control, fear of reprisal and retribution'. Furthermore, its response also highlighted that if there is evidence to show someone was being moved for the purposes of exploitation, it does not have to be proved that they were actually exploited. This means that 'issues of age or consent can be rendered irrelevant as a defence'.

According to the National Crime Agency (NCA) 'it should be borne in mind that although not all CSE involves human trafficking, in cases where there is movement of children for the purposes of sexual exploitation, human trafficking offences should be considered. This provides a broader set of offences for charging purposes'. CAN Young People Team proposed more training on trafficking legislation 'as this isn't being used enough

and yet it takes the young person out of the picture in regards giving evidence'. The Muslim Women's Network asked 'that pragmatic approaches are taken in pursuing prosecutions so as not to place sole reliance upon the evidence of the victim'. It should be noted that trafficking offences will be moved and consolidated with other trafficking offences in the Modern Slavery Bill<sup>13</sup>; it will be important to ensure this does not detract from the use of the offences in respect of child sexual exploitation.

The National Referral Mechanism (NRM) is operated by the UK Human Trafficking Centre (UKHTC) and UK Visas and Immigration (UKVI), which both sit within the Home Office. It is a framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support. The NRM is also the framework through which UKHTC collects data about victims. The NCA reported a 109% increase in the number of child victims of trafficking for sexual exploitation within the UK in 2013.<sup>14</sup> The NWG Network believes that using the trafficking legislation 'in conjunction with... a positive [NRM] referral will result in the identification of the child as a victim of human trafficking, a decision that cannot be challenged other than by Judicial Review'.

Evidence given during the oral evidence session found that not all police forces that use the trafficking offence to prosecute perpetrators make referrals to the NRM. The written submission from Rotherham Council recommended that 'further consideration and training needs to take place regarding understanding and implement[ing] the National Referral Mechanism for trafficking'. The Modern Slavery Bill will make it compulsory for all first responders<sup>15</sup> to make referrals to the NRM. Whether or not this becomes law, it is crucial that all first responders are aware of the NRM and receive training on trafficking and how to respond accordingly.

## Introduction of a specific offence of child sexual exploitation

There were differing opinions among those who submitted evidence as to whether it is necessary to create a separate, specific offence of child sexual exploitation. The primary argument for its introduction appeared to be that it would bring improved awareness and recognition of the issues and ‘highlight that it should be treated even more seriously by the public, agencies, law enforcement and the judiciary’ (Greater Manchester Police). The Centre for Social Justice considered that new legislation is required to address all forms of child exploitation (including non-sexual) so that they are seen as criminal offences in their own right.

Suffolk Constabulary argued against introducing a single offence of child sexual exploitation, on the basis that it would be too problematic due to the nature of sexual exploitation; it takes many forms and straddles many areas, including domestic abuse, gang-related violence and peer-on-peer abuse. Lancashire Constabulary considered that ‘it is important to stress that CSE is not a crime per se and should not be categorised as such, because, the most substantive offences such as rape, sexual assault and grooming, are committed by the perpetrators which all carry significant sentences on conviction’.

We did not receive any compelling evidence which clearly made a case that justice cannot currently be served due to the lack of a specific offence. Legislation is not necessarily the best mechanism to raise awareness of child sexual exploitation. The evidence did indicate that existing offences could be used more effectively, with the decision about which offence to use based on the circumstances of the particular case. We **recommend** that:

- The police and Crown Prosecution Service should raise awareness within their organisations of the different options in terms of the range of offences that can be used and their associated advantages and disadvantages.
- The police and Crown Prosecution Service should also promote that the lesser offences should be charged where appropriate before offending escalates and not be used simply as alternatives to more serious charges for the purposes of plea bargaining.
- The Government should ensure training on use of the National Referral Mechanism for trafficking within the UK is delivered to relevant agencies.

## Child Abduction Warning Notices

Child Abduction Warning Notices (“notices”) were previously known as Harbourers’ Warnings. They are part of a police procedure to document and record potential evidence for the future. They can be used 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<sup>16</sup>: Section 2 of the Child Abduction Act 1984 and section 49 of the Children Act 1989.

Lancashire Constabulary stated that the notices are very useful and have proved to be a valuable safeguarding measure, particularly in cases where children do not recognise themselves as victims, but 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.

Nonetheless, written and oral evidence strongly advocated changes to the way the notices operate to enable the police to

intervene earlier and disrupt perpetrators more effectively.

### **Putting the notices on a statutory basis**

The notices themselves have no statutory footing and breaching the conditions of a notice is not an offence; however, the inquiry encountered some confusion about their status. One submission, for example, expressed frustration about lack of police and CPS action when perpetrators had breached a notice (CAN Young People Team), but action can only be taken if the thresholds of the abduction offence, as set out in the legislation, have been met. This includes a requirement to prove the adult has ‘taken’ or ‘detained’ the young person. The grooming process means the control the perpetrator has over a child is likely to involve mental or emotional manipulation, not necessarily physical force.

*‘I genuinely thought these people were my friends and the only people that cared about me in the world.’*

### **Young person giving evidence to the inquiry**

Actions that breach the conditions of the notice may therefore not be sufficient to constitute an offence under s.2 of the Child Abduction Act 1984 or s.49 of the Children Act 1989. This was clearly illustrated by the Metropolitan Police Service: ‘On occasions abduction notices have been served and offenders found with children, however, a prosecution has not been taken forward by the CPS due to the issue of the child “willingly” remaining with the offender, when the offender makes no act to remove or detain the child.’

Creating an offence of breaching a notice would therefore bridge this gap, enabling the police to intervene earlier, rather than having to wait for a more serious offence and the associated harm to occur.

*‘We would like it to be a powerful weapon for us as early intervention and disruption.’*

**Sergeant Katherine Wallis, Safer Neighbourhood Team, South Yorkshire Police**

There would also be less reliance on victims’ evidence and their support for the prosecution, often required to prove the current abduction offence. Once it has got to that stage, it is further on in the grooming cycle and hence the victim is less likely to cooperate. An offence of breach of notice would only require evidence that the person on whom the notice is served breached the terms of the notice i.e. they were found to be with the young person.

*‘That is the one most significant change in the legislation that would allow us on the ground to disrupt those who are actually carrying out this activity.’*

**Inspector Graham Hadley, Thames Valley Police**

The Metropolitan Police Service noted that such an extension of legislation would likely require a power of entry to gather evidence and protect the child.

Discussion in the oral evidence session with police identified that the current approach has a further damaging effect, because it erodes victims’ and their families’ confidence in the police’s ability to protect them when they see that their abuser has broken the terms of the notice and no action is taken. Plainly, this will have implications for their willingness to engage with the police and any potential prosecution in future. Creating an offence of breach of notice would therefore likely strengthen victims’ confidence in seeking help and protection.

### **Different application for children in care**

As described above, child abduction warning notices refer back to the two pieces of legislation in which the abduction offences are contained. The result is that the police



are able to issue notices for children up to the age of 18 if they are in the care of the local authority, but only up to age 16 if they are not. Submissions from Cheshire and Greater Manchester Police and witnesses giving oral evidence proposed that the police should be able to issue a notice in relation to 16 and 17 year olds regardless of whether they are in care or not. While looked after children are particularly vulnerable and are disproportionately likely to be victims of CSE, the majority of victims are not in care.<sup>17</sup>

Evidence presented to the inquiry has made a strong case for the strengthening of Child Abduction Warning Notices. The evidence received did not raise any objections or highlight unintended consequences. We therefore **recommend** that the Government amends legislation in order to place the notices on a statutory footing and create an offence of breaching the conditions of a notice. We consider it unacceptable that young people should not be afforded the same level of protection on the basis of whether they are living at home or are in the care of the State; there should be consistent provision for all children, regardless of their legal status. The Home Office should also work with the police to ensure they receive guidance and advice on their use.

## Grooming offences

Evidence received by the inquiry raised concerns about the risks to children posed by internet-based grooming and sexual exploitation and the difficulties associated with stopping it. Technology offers children and young people many positive opportunities for learning and social interaction. Unfortunately, it also provides perpetrators with new opportunities and pathways to target potential victims. Children are spending more time online and are increasingly likely to communicate with someone not known to them using social networking.<sup>18</sup> Technology is known to be

used as a means of initiating, organising and maintaining CSE.<sup>19</sup> Its use is also reflected in a recent internal survey of 28 Barnardo's specialist CSE services, which reported that young people were being targeted by perpetrators through a variety of media including social networks such as Facebook, instant messaging apps such as Blackberry Messenger, dating apps such as Grindr and via online gaming.

The Child Exploitation and Online Protection Centre (CEOP)<sup>20</sup> reported in 2013 that online child sexual exploitation has shifted in its nature, with the time between initial contact and offending behaviour often extremely short and characterised by rapid escalation to threats and intimidation. It describes a 'scatter gun' approach taken by perpetrators who target a large number of potential victims. This was also reflected in the oral evidence session with police:

*'I would describe it as they just throw their net out there through social media. Ninety-eight people probably won't pay any attention, but it is the two that do.'*  
Inspector Graham Hadley, Thames Valley Police

Clearly it is important to ensure that children and young people have the necessary skills and knowledge to keep safe online. Parents and schools both have a role to play, which is considered later in this report. As noted in oral evidence, it is impossible to ever eradicate the risk of abuse and it is therefore necessary to consider the role of legislation in preventing abuse from escalating and the creation of effective deterrents for perpetrators or potential perpetrators.

The submission from Lancashire Constabulary highlighted that the Sexual Offences Act 2003 introduced a number of new offences such as grooming, which provides officers with greater scope to pursue perpetrators. Written submissions and oral evidence, however, also suggested

that the current legislation may not be sufficiently wide in scope to address the developing nature of online grooming and exploitation.

### Amendment to section 15 of the Act

The current offence of ‘meeting a child following sexual grooming etc.’ is provided for under section 15 of the Sexual Offences Act 2003. The components of the offence are that:

A person aged 18 or over (A):

- (a) has met or communicated with another person (B) on at least two occasions and subsequently—
  - (i) A intentionally meets B,
  - (ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world, or
  - (iii) B travels with the intention of meeting A in any part of the world
- (b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence
- (c) B is under 16, and
- (d) A does not reasonably believe that B is 16 or over.

Section 15 (2) goes on to clarify that ‘the reference to A having met or communicated with B is a reference to A having met B in any part of the world or having communicated with B by any means from, to or in any part of the world’.

Police officers giving oral evidence questioned why two occasions of meeting or communicating should have to be proved when the other elements of the offence are subsequently met:

*‘There is no reason why we should have to prove the second contact at all when the first can be proved.’*

**Detective Superintendent Ian Critchley,  
Lancashire Constabulary**

*‘I think first contact seems like a fantastic idea. I think most police officers would totally support that.’*

**Detective Superintendent Terry Sharpe,  
Metropolitan Police Service**

We agree with the evidence received that there is no reason why a second contact should need to take place in the offence ‘meeting a child following sexual grooming’, particularly as combined with the other requirements of meeting or travelling to meet a child, with the intention of abusing them, the threshold remains high. To enable police to intervene earlier we **recommend** that the Government amends s.15 (1)(a) of the Sexual Offences Act 2003 accordingly.

Even if this change is made, the offence would still not address occasions where sexualised contact occurs only online without a meeting or planned meeting, for example if the online grooming process is successfully interrupted by parents discovering and stopping the activity. The inquiry therefore considered other current legislative provision.

## Civil prevention orders

The 2003 Act contains provision for a number of civil prevention orders to be issued by a magistrates’ court on application by a chief officer of police. These are Sexual Offences Prevention Orders, Foreign Travel Orders and Risk of Sexual Harm Orders. Breaching any of these orders is an offence.

Risk of Sexual Harm Orders (RSHOs) appear able to address the perceived gap of grooming that only takes place online, but the number of orders issued is very low.<sup>21</sup> A review commissioned by the Association of



Chief Police Officers (ACPO)<sup>22</sup> highlighted that the requirements are such that RSHOs seldom arise in practice. It concluded that ‘the existing statutory regime presents unnecessary and unreasonable obstruction to the objective of preventing sexual abuse of children’ and advocated replacing the three orders with a single one, stating that ‘...prevention orders could and should be drafted to reflect what is necessary in any particular set of circumstances to prevent the sexual abuse of children where a significant risk of this is proved to exist’.

The Childhood Lost campaign,<sup>23</sup> led by Nicola Blackwood MP, is calling for a number of reforms to protect more victims of CSE and prosecute more perpetrators, including the ACPO proposal to replace existing orders. Through the Anti-Social Behaviour, Crime and Policing Act 2014<sup>24</sup>, the Government has subsequently rescinded the three orders in the 2003 Act and replaced them with two new ones: Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs). The SROs are drawn more widely and flexibly than the current RSHO, they are intended to replace. SROs will be able to be issued where a person has ‘done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a [SRO] to be made’, whereas RSHOs require at least two occasions of a specified set of acts prescribed on the face of the legislation.

The inquiry heard a positive reaction to these changes:

*‘I think that’s going to be really helpful in the preventative side.’*

**Detective Superintendent Terry Sharpe,  
Metropolitan Police Service**

The wording ‘act of a sexual nature’ is purposefully vague in order to avoid some of the unhelpful prescription in the previous orders and it is therefore not clear what is within scope of this definition; for example whether online activity would be classified as such.

## Creation of a ‘sexualised contact’ offence

The Hampshire LSCB submission suggested that consideration be given to creating an offence of ‘planning or conspiring to sexually exploit’. Rotherham Council suggested the creation of an offence of ‘sexualised contact with a child’. Creation of an offence to cover inappropriate online contact was also discussed in the oral evidence session with police. Although this was recognised as an issue, there was concern that the sheer volume of crimes that would be committed under such an offence would have significant resource implications and the potential to draw attention away from those most at risk.

The inquiry concludes that the new SHPOs and SROs provided for in the Anti-Social Behaviour, Crime and Policing Act 2014 have the potential to fill the legislative gap with regards to online grooming. We **recommend** that the Government should:

- Ensure that the guidance issued by the Secretary of State, required by the Act, clarifies that online contact falls within the definition of ‘an act of a sexual nature’.
- Carry out a review of their use and effectiveness after twelve months of coming into force, in light of the limited use of existing civil prevention orders.

## Use of the term “child prostitution” in legislation

In 2012 the Office of the Children’s Commissioner for England recommended that ‘a review of all legislation and guidance which makes reference to children as “prostitutes” or involved in prostitution should be initiated by the Government with the view to amending the wording to acknowledge children as sexually exploited, and where appropriate victimised through commercial sexual exploitation’.<sup>25</sup>

## Legislation

Concerns about the continued use of this terminology were strongly reiterated to this inquiry, including its impact on attitudes towards victims and reinforcing misconceptions. The NWG Network highlighted that it ‘implies an element of complicity with the offence which may not be the case’.

Two victims who gave evidence to the inquiry had been referred to as prostitutes or as prostituting themselves by social workers. Another young person said:

*‘Government is using child prostitution as a term. It suggests a choice. It is confusing to the public and I want the term removed.’*

When asked about this, all legal professionals in the oral session stated that, in their experience, the phrase is not used in court. In contrast to this, the inquiry heard from the police in oral evidence that in the summing up in one recent case, defence counsel posed the question of whether the young person should also be in the dock for prostitution offences. That this happened so recently is shocking. While this is not a direct use of the phrase ‘child prostitute’, it is apparent that the perception was that victims of sexual exploitation have a choice and are culpable.

The inquiry was told that police forces are advised by ACPO and the College of Policing not to use the term in local strategies or intelligence reports. The police aim not to use the phrase, but the fact that it remains in legislation hinders this.

*‘We try not to [use the term “child prostitute”] and our absolute aim is that we don’t use it. I think that if Parliament were to set the standard and say we’re thinking of new legislation and we don’t have the term child prostitution in the legislation, I think that would be a good step.’*

**Sara Thornton CBE QPM, Chief Constable, Thames Valley Police**

This was reiterated by a professional working in a service for young people who have suffered sexual exploitation:

*‘If there is any wish in legislation it is about taking out child prostitution.’*

**Wendy Shepherd, Service Manager, Barnardo’s**

On 18 January 2013, the Parliamentary Under-Secretary for State for Children and Families, Edward Timpson MP, responded to a request from the Deputy Children’s Commissioner for England for information about the action being taken by Government in relation to the recommendations made in its interim report. This letter stated that it is clear that children who are sexually exploited should not be referred to as prostitutes, but instead recognised as victims. The Government supported the principle behind the recommendation and pointed to action already taken to address this issue; for example the replacement of the Department of Health Safeguarding Children in Prostitution guidance from 2000 with the 2009 Safeguarding Children and Young People from Sexual Exploitation guidance. It went on to state that the wording of new legislation and guidance would be carefully considered, but that amending all existing legislation would not be straightforward, citing obligations in relation to international agreements<sup>26</sup> that use the word ‘prostitution’ as an example.

It is positive that the Government supports the principle that the phrase ‘child prostitute’ should not be used and has committed not to do so in future. However, the retention of the terminology in some legislation has an on-going impact on the attitudes towards, and treatment of, CSE victims. We therefore **recommend** that the Government should lead the world and progress the removal of all references of ‘child prostitution’ in legislation as soon as possible.<sup>27</sup> We call on the Government to outline how it will do this.

## Strict liability offence

Evidence from the police, both written and in oral sessions, stated that the requirement to prove that a defendant did not reasonably believe that the child is 16 or over acts as a significant barrier to investigation and prosecution. Indeed, one submission stated that ‘the phrase works exactly like a clause in the law specifically created to protect adults who wish to abuse children.’<sup>29</sup>

There was a suggestion made in an oral evidence session that consideration be given to making sex with an under 16 year old a strict liability offence, in essence, removing the current statutory defence. This issue was debated and considered in significant detail in the consultations prior to the publication of the Sexual Offences Bill (now Act).<sup>29</sup> Making such a change would have wide-ranging implications and is beyond the scope of this inquiry.

## Criminal responsibility

Some young people involved in sexual exploitation could be coerced by their abusers into committing crimes. The Police and Crime Commissioner for Dorset considered that trafficked victims, in particular, should be granted more immunity for any offences that they have committed when appearing as a witness, in recognition of the control that has been held over them. Bury took the view that such victims would already be treated by the CPS as an abused child and victim rather than as a defendant.

Discussion in the session with legal professions about whether legislation should be amended to provide for a blanket statutory defence highlighted the complexity of the issue and the need to consider this based on the circumstances of each individual case. The offences committed by victims could range from shoplifting to the abuse of others. The question about what point a victim of

abuse becomes culpable is very complex and requires specialist consideration by the CPS as to whether it is in the public interest to bring such cases to court, or whether an alternative should be found, such as rehabilitation.





# The criminal justice system

While the Sexual Offences Act 2003 was seen as fit for purpose, much of the evidence related to the implementation of the Act. How witnesses are treated in court makes a profound impact on the outcome of the case, both from a justice perspective, but also in relation to the trauma young people can experience. A recurring issue was delay, due to lack of resources or capacity, which means that witnesses and defendants wait a long time before cases come to court.

## Training and specialisation of the judiciary

The oral evidence session with legal professionals highlighted how a specialist judge, with experience of sexual offences and an understanding of child sexual exploitation, can help limit the trauma to which a victim witness could be subjected. The judge's role includes: setting out ground rules at the start of the trial; considering the use of registered intermediaries or other special measures; stating how long each cross-examination should take; intervening if defence barristers become aggressive; and, preventing the different defence barristers asking the same questions to the same witness. Judges also provide direction to the jury and can dispel myths and stereotypes when doing so where appropriate; this particular aspect is explored further in the section below on juries.

The evidence from legal professionals strongly indicated that while there are examples of judges who manage cases extremely effectively, this is not consistent across the board, with some judges unfamiliar with how vulnerable witnesses should be treated. Referring to previous research, Dr. Cockbain's submission stated that 'strong judicial trial management was often identified as crucial in ensuring a fair and expeditious trial and minimising trauma to victims'.

Specialist training for judges on sexual offence cases has been delivered since the 1990s, though it has been reduced from three to two days in length. Once the judge has completed the two day course, they are authorised to preside over sexual offence cases. These judges are commonly referred to as being 'ticketed'. They are required to take a refresher course every three years. An example was provided to the inquiry panel of a judge attending this training part way through a trial; following this, positive changes were made to the way the case was managed.

In the wake of many trials where it has been recognised that the victims had not been treated fairly, from March 2014, all salaried judges who are authorised to try sex cases now have to complete an additional one day training course on vulnerable witnesses.

Legal professionals noted that judges may have no courtroom experience of 'sex crimes' prior to the training. The current training is intense, appears effective and is being supplemented by the additional training on vulnerable witnesses. Nonetheless, evidence to the inquiry questioned whether this is sufficient to account for a complete lack of relevant experience.

It is clear to this inquiry that the manner in which a judge manages a case in ground-rules hearings and throughout the trial is of crucial importance and that appropriate training of the judiciary is essential.

We **recommend** that no judge should be assigned to try a complex child sexual exploitation case without having received such training. It is recommended that further work be carried out to understand the benefits and disadvantages (particularly in respect of delays) of limiting those authorised to preside over sexual exploitation cases to have previous relevant experience of working on sexual offence cases.

## Training and specialisation of advocates

In addition to the training of the judiciary being vitally important, evidence also indicated that the training and specialisation of barristers, both prosecution and defence, warrants further consideration. Herefordshire LSCB stated that 'legislation will only be effective if it is used by trained prosecutors who recognise the vulnerabilities of children who have been sexually exploited/groomed for sexual exploitation'. The NCA agreed, stating that 'within the investigative and court process, victims fare better when they interact with people with the knowledge and understanding of the subject matter, which supports the contention that people dealing with sexual abuse cases should be specially trained and experienced'.

The Crown Prosecution Service (CPS) has taken steps to improve its approach in these cases. In 2013, it published its revised guidelines on prosecuting cases of Child Sexual Abuse<sup>30</sup> (including sexual exploitation). Giving oral evidence to the inquiry, Nazir Afzal QC highlighted that this represents a change in mindset. Those outside the CPS appear to agree, with Lancashire Constabulary considering that it 'represents a massive shift in attitude across the criminal justice system'. The CPS also introduced Specialist Rape and Serious Sexual Offences Units embedded in the Crown Court team and specialist Coordinators across the CPS to deal with rape and child sexual abuse. Kier Starmer QC, then Director of Public Prosecutions highlighted the challenge being addressed: 'If credibility and reliability of the victims of exploitation in Rochdale were tested solely by asking questions such as whether they reported their abuse swiftly, whether they returned to the perpetrators, whether they had ever told untruths in the past, and whether their accounts were unaffected by

drink or drugs, the answer would almost always result in a decision not to prosecute.'<sup>31</sup> These changes are positive as they recognise the patterns of sexual exploitation.

Once the case goes to court, however, the prosecutor and defence advocates might not have training or relevant experience, which was a matter of concern for many giving evidence to the inquiry. This lack of understanding, combined with the confrontational nature of the courtroom, can lead to inappropriate and excessive cross-examination of already vulnerable witnesses. This has the potential to result in poor outcomes, such as a trial collapsing and personal trauma for the victim. It is essential that cross-examination is done sympathetically in order to gain the truth rather than simply trying to undermine a case.

It could be argued that some sexual exploitation cases can be as complex as murder cases, if not more so. In complex murder cases the experienced Treasury Counsel<sup>32</sup> may prosecute or advise on a case, but there are no specialist requirements in cases of child sexual exploitation in terms of training or experience.

***'Chambers used to have self-imposed rules that you didn't conduct a sex case until you were seven years call and 10 years for rape. Only Silks and very senior juniors did rape and serious sex cases and they were tried by High Court and Senior Circuit Judges. Now anyone can take on a sex case; Silks are deemed too expensive and there are not enough practitioners trained to do the specialist cases.'***  
**Patricia Lynch QC**

The inquiry also heard from legal professionals that the specialist training currently offered is not widely taken up. There appeared to be particular concerns about the behaviour of defence advocates, including aggressive questioning, blaming



the victim and attacking their credibility. Dr Cockbain highlighted that in her research ‘some prosecutors felt that defence teams had deliberately engaged in manipulative tactics to unsettle complainants and delay schedules’. While there is a need for judges to manage this, we do not consider that should negate the need for appropriate specialist training of advocates.

There were concerns about the specialisation of advocates, including that it would limit them to only working on sexual offence cases with an associated impact on their livelihood and that a limited pool of specialists could delay trials. However, we do not see any reason why an accredited advocate that had received specialist training should be restricted from taking other types of cases.

We **recommend** that all advocates working on cases of sexual exploitation that involve children should be required to undertake specialist training. Given the particular concerns about defence counsel, in principle, we could see no reason why it should not be a requirement that legally aided defendants should be restricted in their choice of representation to a panel of solicitors and counsel who have undergone specific training in CSE issues. The professional bodies should have the power on complaint to remove an individual from such a panel.

### **Pan-legal training**

The judiciary and legal profession comprise and are represented by many bodies, with advocates receiving education from their affiliated Inn of the Court. The Inner Temple has developed and delivered training on ‘Working with Vulnerable Witnesses’. Training materials are also provided by the Advocates’ Gateway and the Criminal Bar Association. This results in different training toolkits and could result in different standards. Pan-legal training for judges and advocates is in the early stages of development, and is welcomed.

We **recommend** that the pan-legal training being developed is given the necessary support and resources to ensure it is widely used.

## **Jurors’ perceptions**

Written evidence highlighted that a conviction of a CSE-related offence depends on a jury of people who are unfamiliar with child abuse and how it manifests itself.<sup>33</sup> This subject also arose at oral sessions with victims, police and legal professionals. Jurors’ lack of understanding of the levels of coercion and manipulation used to control and exploit young people was of concern to many witnesses.

In the past two years high profile court cases have attracted media and public attention, but many members of the public will not, fortunately, be exposed to CSE in the course of their daily life. It is therefore unsurprising that they would not be familiar with the nature of this type of abuse and the impact it can have on victims’ behaviour, both during the abuse and in the courtroom. One support worker stated that the young person she accompanied to the victims’ oral evidence session had said on the way there:

*‘Sexual exploitation is hard to understand for professionals, let alone the jury.’*

Young people may not present themselves in court as ‘victims’, often taking on a different character to mask their vulnerability. The inquiry heard that this could manifest itself in laughing, defensive or aggressive behaviour. This risks leading juries to believe that children were complicit in their own abuse. In one widely reported case, a judge and prosecutor said that the 13 year-old victim had been ‘egging her abuser on’, describing her as ‘looking older’ than her 13 years and a ‘predator’.<sup>34</sup>

*‘Trafficked victims don’t behave the way a jury thinks they should behave. There is a danger that the jury sits in judgement.’*  
Eleanor Laws QC

Guidance to judges<sup>35</sup> explains that the potential impact of stereotypes and preconceptions held by jurors can be highly significant:

‘The experience of judges who try sexual offences is that an image of stereotypical behaviour and demeanour by a victim or the perpetrator of a non-consensual offence such as rape held by some members of the public can be misleading and capable of leading to injustice.’

Although this relates to a broad definition of sexual offences, the principle is relevant to the exploitation of children.

That myths and stereotypes persist has also been recognised by the Crown Prosecution Service. Its new guidelines<sup>36</sup> set out some of the common areas of misconceptions about child sexual abuse (of which child sexual exploitation is a form), along with the basis for why they should be challenged. These include, for example that sexual exploitation only happens in large towns and cities and is only perpetrated by certain ethnic/cultural communities. This is a welcome development in improving prosecutors’ understanding of the issues, but it does not address the jury’s ability to understand the nature of the case on which they are sitting.

*‘I certainly think you need something, whether some kind of expert witness, expert testimony, or pre-approved approach. I think I see juries struggle to understand the complexities of why young people act the way they do.’*  
Detective Superintendent Gary Ridgway,  
Cambridgeshire Constabulary

Court of Appeal judgements in 2008 and 2010<sup>37</sup> have provided greater clarification that judges can make comments warning

juries against making assumptions about the possible effects of sexual offences on victims (in particular, the reasons for late reporting), where appropriate and provided they are balanced and uncontroversial. Such judicial comment has subsequently become more widely accepted practice when directing the jury, including specifically in relation to CSE, and is regarded as one of the major developments in the trial of sexual offences since the implementation of the Sexual Offences Act 2003.<sup>38</sup> We understand from His Honour Judge Rook QC that certain directions of general application<sup>39</sup> are beginning to be provided by some judges at the outset of a case, rather than at the end and that this practice may well be incorporated in future training.

The inquiry heard that there are examples of excellent practice, some illustrations of which are included in the trial of sexual offences chapter of the Crown Court Bench Book – Directing the Jury.<sup>40</sup> However, evidence from legal professionals with experience of working on these cases in both prosecution and defence suggests this is highly variable and far too dependent on the individual judge. There is an obvious link with training and specialisation of the judiciary discussed in previous sections of this report.

The possibility of introducing expert witnesses was raised in an oral evidence session as a potential solution. Expert evidence on the psychological effects of sexual offences on victims and their behaviour is currently inadmissible in court. There was significant opposition to the introduction of expert witnesses in rape cases when a government consultation<sup>41</sup> sought views in 2006. The 2010 Court of Appeal judgement referred to above made clear that the solution is well understood to be balanced judicial comment, not expert evidence.

There are two potential approaches to the introduction of expert witnesses: those

giving evidence on the impact of the offence to a specific complainant in a case and those who testify in general terms about a subject.

The potential disadvantage of generic expert witnesses is that their evidence may not be pertinent to the specific details of the case. Juries must make a decision based on the facts of that case and so the evidence could easily fall apart under cross-examination. The Court of Appeal has also voiced concern that the expert may lack the balance of a judicial direction and in particular, fail to take account of the position of the defendant. Case-specific expert witnesses would lead to the prosecution and defence each calling their own witness whose opinion best suited their arguments. This has the potential to significantly increase both delay and cost. Both options for expert witnesses therefore have significant drawbacks and we are not convinced that their introduction would be the best solution.

A fundamentally different option presented to the inquiry is for these types of cases to be heard not in a court with a jury, but instead by a judge and panel of experts. The inquiry heard that this inquisitorial approach would remove the reason for barristers to behave the way they currently do; our adversarial system leads them to seek to win over a jury and plant doubt by attacking victims' credibility.

It is hard to overstate the strength of opposition in principle to this. Trial by jury is a long-standing part of the British criminal justice system, a right enshrined in the Magna Carta in 1215. Its removal would represent a fundamental and highly significant shift in our justice system.

*'If you remove juries, you remove the core of the legal framework.'*

**Stephen Smith MBE, Wilford Smith Solicitors**

In practical terms, a specialised court would likely be in one location, potentially leading

to witnesses travelling long distances over long periods of time. Determining which cases should be eligible to be heard by the court could also be fraught with difficulty. We make no recommendations regarding the introduction of this approach, but consider that the idea warrants further investigation. We understand that the Home Office is exploring the international evidence base and await the results with interest.

Another option is to provide juries sitting on this type of case with standard, agreed information on common myths. They currently see a standard video at the start of the process, which explains their role and so on. Where jurors have been sworn in to try cases of exploitation, relevant information or a separate briefing sheet could be provided prior to the opening of the case.

We anticipate that there will be concerns, particularly from the judiciary, about the risk of giving defence grounds for appeal due to providing generic information. These can be mitigated by extremely careful drafting, making clear that whether the issues described are a factor in the case jurors are hearing must be for them to determine, based on the evidence presented in that specific case. The Crown Court Bench Book<sup>42</sup> states that 'it is not the responsibility of the judge to appear to support any particular conclusion but to warn the jury against the unfairness of approaching the evidence with any pre-formed assumptions. Judicial advice should be crafted and expressed in a fair and balanced way'. Any information to juries should be viewed in the same way and mirror the language used in the best examples of judicial direction. The involvement and agreement by all parts of the system in its development would be absolutely essential.

The advantage of this approach over generic expert witnesses is that it would be a single, agreed and approved set of information, leaving much less basis for challenge compared with several expert witnesses with slightly different views.

*'I believe in the justice system, but we must familiarise lay people with what sexual exploitation is.'*

**Young person giving evidence to the inquiry**

Balanced judicial comment on myths and stereotypes and the impact of sexual exploitation on victims is a hugely positive step and has the advantage of being tailor-made to the case. However, evidence strongly suggests that this is undermined by the variability of practice. The inquiry **recommends** that the Ministry of Justice should explore, with relevant stakeholders, the development of materials, either written or filmed, to better inform jurors about the potential impact of CSE (addressing common myths and stereotypes).

## Victims as witnesses

*'I can't go back to court. It's too intimidating.'*

**Young person giving evidence to the inquiry**

The treatment of victims of child sexual exploitation who appear in court as witnesses has been subject to media coverage and public scrutiny in the past year. In June 2013, the Government published its Strategy and Action Plan to Reform the Criminal Justice System,<sup>43</sup> which set out a number of measures to improve victims' and witnesses' experiences. In December 2013 it published a revised Victims' Code<sup>44</sup> and a new Witness Charter.<sup>45</sup>

A number of submissions to the inquiry voiced continued concern about the treatment of young victims and witnesses. The NCA, for example, stated: 'It is vital to strike the right balance between the needs of the courts and the needs of the victims. Children and victims of sexual assault have long expressed the view that the process of being a victim or a witness within the criminal justice system is a traumatising experience, with the adversarial process questioning their honesty while at the same

time making public the most humiliating aspects of their abuse.'

The problem of cross-examination in multi-handed (multi-defendant) cases where young people are repeatedly asked the same questions by several defence barristers was described as 'despicable' by CAN Young People Team. It is well-illustrated in the submission from Greater Manchester Police in relation to a recent trial of multiple offenders (now convicted) with a single victim: 'The young person was required to give evidence on multiple interviews due in part to complexity, over five days and in three separate trials. This led to cross-examination with defence barristers that drew from each trial and exploited any possible contradictions the victim made. This is not in the best interests of the victim nor justice.'

This practice has started to be addressed,<sup>46</sup> however evidence from Victim Support identified that it continues to happen.

Evidence to the inquiry suggests there is also need for a wider cultural change in how victims are treated in court, in particular moving away from seeking to blame victims and inappropriate, excessive cross-examination. Ground rules hearings held by the judge with legal teams prior to the trial to discuss the victim's needs is crucial; however, Victim Support stated they are not always adhered to and not always used in cases involving child witnesses. There is a clear link between the training of advocates (particularly defence) and robust judicial trial management with ensuring a fair trial and minimising trauma to victims.

## Special Measures

The Crown Prosecution Service operates 'Special Measures'<sup>47</sup> for vulnerable witnesses, which are a 'series of provisions that help in court and help to relieve some of the stress associated with giving evidence. Special measures apply to prosecution and defence



witnesses, but not to the defendant<sup>48</sup>. They apply to all child witnesses (under 18) and can include:

- Giving evidence in chief by video recorded interview, and any further interview by live link
- Giving evidence behind a screen if the young person wishes to be in court
- Removal of wigs and gowns
- Examination of the witness through an intermediary

Additionally, the special measures provide mandatory protection to witnesses from cross-examination by the accused in person and restrictions on evidence and questions about the witnesses' sexual behaviour.

Special measures are subject to the discretion of the court. Evidence from the inquiry indicated that they are not always implemented and 'there is significant variation in the use of these measures' (NSPCC). In addition, Victim Support felt that the 'use of special measures is too rigid, with a too frequent assumption that children want to use video link screens'. This was reiterated by victims of sexual exploitation speaking to the inquiry, who had different views as to whether it was something they would want to do. Some witnesses want to see the defendant and 'have their day in court', but are not given the option as it is presumed that they want to give evidence outside of the court or behind a screen.

### *'I want to talk to the jury.'* Young person giving evidence to the inquiry

Registered intermediaries are employed by the court and can meet with the witness prior to the trial to assess their ability to give evidence and whether they require any assistance during the court case. At a ground rules hearing the report written by the registered intermediary helps guide the rules that the judge sets out and how the witness should be treated. This is particularly relevant, for example, if the witness has

learning difficulties and needs assistance in understanding questions.

Evidence indicated that the use of registered intermediaries is still too low and that it is a 'lottery' whether a witness would be assigned an intermediary or not. The NSPCC estimated that 'at most 1,400 young people have access to intermediaries, when approximately 23,000 children are required to give evidence'. The Association of Independent LSCB Chairs advocated a statutory entitlement to be assessed for intermediary support for both police interview and giving evidence in court and for this provision to be available to all appropriate child victims, witnesses and suspects. It was noted that there are plans to recruit more registered intermediaries, but there were concerns that this would not match the level of need.

## Pre-recorded cross-examination

Section 28 of the Youth Justice and Criminal Evidence Act 1999 was not enacted with the rest of the legislation relating to special measures and is only now being trialled. This provision allows victims to be cross-examined prior to the court case and outside of the courtroom. The advantage is that it takes place sooner after the offences have occurred, particularly given the sometimes lengthy wait for trial dates.

All evidence presented to the inquiry supported the roll-out of pre-recorded cross-examination, but there was disappointment that the trials were only taking place in three areas.<sup>49</sup> There were also concerns that Section 28 would only be applicable to under 17 year olds and it was felt that this was too limiting, as some victims of sexual exploitation might be over 18 by the time the case comes to court. A further concern was that, when the case came to trial, more questions would be raised that would require the victim to be re-called; however, evidence

provided by legal professionals referenced that in Australia and New Zealand, where the practice is already taking place, the re-calling of witnesses has not been an issue. While a number of these issues may be resolved after the pilots, one submission was concerned that while the young person would not have to be present in court to see the defendant, they would still have to undergo the pre-recorded cross-examination in court, rather than in remote sites, which could still result in 'considerable stress and anxiety' (NSPCC).

The Office of the Children's Commissioner for England pointed to concern about therapeutic and support services' ability to provide effective care due to the potential of the evidence gathered to impact on trials. As noted by the NCA, pre-recorded cross-examination would address this, by enabling victims to undertake therapeutic work prior to trial without concerns about contamination of evidence.

### Support before, during and after the court case

Many submissions to the inquiry highlighted the need for support for witnesses throughout the court process and beyond. While some cited support currently being provided (Bury), others raised concern about lack of provision, with the NCA noting that '...service provision is poor and is generally reliant on voluntary agencies'. It was felt that witnesses were often unprepared for the court case and not told enough about what to expect. They may have some awareness of the bad experiences of other witnesses. Victims may also be fearful about giving evidence against someone they may still have feelings for or about the potential repercussions for themselves and their family. One young person giving evidence said:

*'The [barrister for the CPS] showed me the courtroom. She got my hopes up. I wasn't warned about how hard it would be.'*

One of the oral evidence sessions heard from an Independent Sexual Violence Advocate (ISVA) and two young people she supports. The ISVA is employed by Barnardo's and is a specialist in assisting children going through court cases. As part of the ISVA's work, the two young people giving evidence had also been trained to become peer supporters to talk to other young people about the court process. The ISVA and peer supporters are not allowed to talk about the facts or individual circumstances of case, but can work to manage expectations, fears and worry. Reflecting on the particular benefit that a peer would have brought to her experience of the courts, one young person said:

*'I had no help when going through the court process. No one gave me coping strategies; that what I was feeling was normal.'*

Another example that demonstrated the need for support while giving evidence was a young person who had not been allowed their support worker with them in the live-link room. The victim giving evidence had a panic attack and was being sick, while the support worker had to wait outside the room.

### Taking account of victims' views

While the focus of the police and the Crown Prosecution Service is to see justice served, the inquiry heard that this might not always be the wish of the victim. A number of the submissions noted that it should be recognised that not all victims want to give evidence and their views should be taken on board.

*'Court isn't always the best outcome for victims. A court is one outcome where we seek to bring offenders to justice for abhorrent crimes of child abuse and one that we will always look for as police service, but we have to look at what's right for the victim and their families. And that's about having the support around the families and the child, because we will often come and go*



*after a court case, but the impact of being exploited and abused will remain and we have to make sure we have a service from the beginning that will support children and their families. That's why the commission of the voluntary sector into our multi-agency teams is absolutely key for me and is one of the fundamental parts.'*

Detective Superintendent Ian Critchley,  
Lancashire Constabulary

The NCA stated: 'There needs to be increased understanding of the reasons why young people might not wish to be part of a prosecution. Professionals should be aware of the need to be creative in engaging and protecting victims.'

This could be in the way that the police carry out their investigations, the type of evidence they present to the CPS or the support that the witness is given throughout the trial process, including using different methods to keep their attention and support. One example given to the panel was of a witness who failed to turn up to court, so the judge employed an independent barrister to visit the young person to explain why their involvement was so important and the problems that could arise if they refused to come to court. This encouraged the witness to return, and whenever they started feeling unsure again, they were able to discuss it with the barrister.

## Communicating with young people

Evidence provided in the session with victims highlighted that they were often not kept informed about their case and decisions or changes were poorly explained, if at all. This understandably made them feel frustrated and confused, as these quotes from three different young people illustrate:

*'I was prepared to go to court but was told I wasn't needed. It messed around with my head. I was just told I wasn't needed over the phone.'*

*'In my case, it was meant to go to court on a particular date. I remember the date as it was my birthday. Four days before that, they asked me and my parents to come to the police station. The police asked if I would rather have a restraining order put on the man so that it didn't have to go to court. They sort of explained why. I felt it was because they didn't believe me and that the restraining order was the easy option.'*

*'I was angry that nothing had happened. They wanted me to disclose and once I did, nothing happened.'*

It is clear to this inquiry that the treatment of victims appearing as a witness along with the support provided before, during and after court, is vitally important. This not only reduces the potential further trauma to already vulnerable children, but also serves the interests of justice by enabling witnesses to give their best evidence. We acknowledge that progress is being made, but believe more can and should be done. We therefore **recommend** that:

- The Ministry of Justice includes a requirement for specialist provision for children and young people when it commissions the court-based witness service.<sup>50</sup>
- The Ministry of Justice makes rolling out pre-recorded cross-examination<sup>51</sup> a priority. It should have the capacity for witnesses to give evidence from a location outside the courtroom where they would feel more comfortable.
- The Home Office should work with police representative bodies and voluntary organisations to produce a checklist to assist the police in communicating with children about their case.
- The CPS must ensure children's wishes are sought and taken into account when applications for special measures are made. At ground rules hearings judges should check that this has happened.



# Partnership working

*'We are only as good as our partners.'*  
**Detective Superintendent Ian Critchley,**  
**Lancashire Constabulary**

Effective partnership working across statutory and voluntary agencies is plainly crucially important in protecting children and young people at risk of or who have experienced child sexual exploitation.

## Local Safeguarding Children Boards

Local Safeguarding Children Boards (LSCBs) coordinate and hold to account the various local agencies with responsibilities for safeguarding children including local authorities, police and health services.

*'There is a statutory framework that holds local partners to account for meeting the needs of the vulnerable young people and children in the locality and these arrangements should be responsible for holding to account the child protection partnership in relation to CSE and children going missing at risk of exploitation. I think it is there. But I think there is still room for improvement in how that partnership works together.'*  
**Maggie Blyth, Association of Independent Chairs of Local Safeguarding Children Boards.**

Since November 2013, Ofsted has been reviewing the effectiveness of LSCBs,<sup>52</sup> providing a welcome additional level of scrutiny of the system and how it works together. On the matter of regulation and inspection, witnesses giving evidence to the inquiry considered that the inclusion of child sexual exploitation and children who go missing in Ofsted inspections of local authorities<sup>53</sup> had acted as a lever for action. This can only be strengthened by the proposed multi-inspectorate approach for child protection arrangements across relevant agencies in a local area, due to be introduced in 2015. This will provide

a greater emphasis that child protection is a shared responsibility and throw the effectiveness of partnership working into even greater focus.

## Information sharing

Poor information sharing is often cited as a factor in cases where children have come to harm; not only in respect of sexual exploitation, but in the wider context of child protection. The NSPCC's submission illustrated the extent and impact of this: a review of 19 Serious Case Reviews (SCRs) and Child Practice Reviews (CPRs) from England and Wales in 2013 found that 58% included explicit recommendations relating to improved information sharing and study of recommendations arising from SCRs between 2009 and 2010 found that 19 out of 20 reviews addressed information sharing in some respect.

Information sharing between agencies has been subject to substantial consideration both in general terms<sup>54</sup> and specifically in relation to child sexual exploitation. The Office of the Children's Commissioner for England (OCCE) made a recommendation for information sharing protocols at national and local level as part of its inquiry into CSE in groups and gangs.<sup>55</sup> The Hampshire Safeguarding Children Board and the NSPCC voiced support for this in their written submissions. Some local areas already have such protocols in place, but the NWG Network evidence considered that the 'implementation of robust information sharing protocols and models is at best patchy'. At the time of writing the Government has yet to respond to the final report of the OCCE inquiry that included this recommendation.

Although the challenge of information sharing is significant, there was consensus in the evidence that amendments to the Data Protection Act 1998 are not required. Instead, it suggested that the barriers are implementation, interpretation and practice.



Protocols and processes, as recommended by the OCCE, have clear value in underpinning information sharing arrangements between agencies. The NCA considered that models of best practice in relation to information sharing are often found in co-located, multi-agency teams. The London Borough of Brent was positive in its written evidence about the impact of having a Multi-Agency Safeguarding Hub (MASH). MASHs, also known as Central Referral Units or Joint Action Teams, bring together professionals from across different agencies, often physically in the same office building, but sometimes operating virtually. In July 2013, the Home Office published early findings of a review of multi-agency working and information sharing.<sup>56</sup> It found a range of different models, but three common activities: information sharing; joint decision-making; and co-ordinated intervention.

Structural changes such as MASHs and process changes achieved through protocols can undoubtedly support more effective information sharing, but they are not a panacea. From the evidence received by the inquiry, the factor with the potential for the greatest impact appeared to be a change of ethos.

*'Yes, there are always potential for blocks but you have to have the right people around the table who can give the right influence in their own organisation.'*

Wendy Shepherd, Service Manager,  
Barnardo's

*'I don't think there needs to be a change in legislation... It's how that's applied and it is about trust, relationships and confidence.'*

Jenny Coles, Chair of the Families,  
Communities and Young People Committee,  
Association of Directors of Children's  
Services

The inquiry consistently heard that health services can be particularly reluctant to share information, which may be due to the focus on patient confidentiality and exacerbated by the recent structural changes.

It is important that personal information is dealt with in a responsible way; however, we have heard that risk-averseness can leave children at risk of harm. Leadership is crucial to achieving the necessary culture change. We **recommend** that the Government should make, and continue to make, clear statements from the highest level to reinforce the expectation that where it is in order to protect a child, professionals must share information.

We **recommend** that the Government gives chairs of Local Safeguarding Children Boards the power to require local agencies to provide them with information, mirroring the power of the Children's Commissioner for England, in order to aid local strategic work on tackling CSE and trafficking within the UK. This would also support the development of 'problem profiles' or 'problem mapping', as recommended by the Office of the Children's Commissioner for England.

## Prevention

*'From a child protection perspective, it is impossible to ever eradicate children being at risk of abuse or maltreatment. There will be perpetrators out there whose primary intent and purpose is to harm children.'*  
Maggie Blyth, Association of Independent  
Chairs of Local Safeguarding Children  
Boards

It is important to be realistic about the extent to which child sexual exploitation or any form of child abuse can be prevented, but the consensus of the evidence received was that we should aim to do so as far as possible.

The primary focus of this inquiry has been the effectiveness of legislation. Rotherham Council highlighted that there are very few provisions under the 2003 Act that prevent the actual physical abuse taking place. Dr. Cockbain's evidence suggested that prevention might be more effectively achieved not from new laws but 'from

measures to increase the perceived risk of breaking existing laws'. An increase in the number and profile of convictions and new sentencing guidelines may contribute to such a change in perception.

There is a spectrum of non-legislative measures to support prevention and early intervention, which can increase children and young people's ability to recognise risks and protect themselves. The evidence received proposed that professionals from a wide range of agencies who come into contact with young people have a role to play in preventing sexual exploitation or intervening early to stop it escalating. These included police officers, health visitors and education professionals.

While professionals from statutory agencies can play an important role, Councillor David Simmonds highlighted the need for wider awareness-raising:

*'It's not just a job for the police or social workers. By the time they know it is usually too late.'*

The Local Government Association has produced a toolkit<sup>57</sup> to support councils, with their local leadership role, to raise awareness with the wider community. The police representatives who gave evidence to the inquiry considered that it should be built into existing activity, particularly community cohesion. The Muslim Women's Network highlighted the importance of local agencies working with local community organisations such as women's groups and religious institutions when raising awareness. They considered that this is 'especially vital to consider given that issues of honour and stigma make it difficult for such community members to deal with such crimes'.

Parents and carers are well-placed to spot signs of exploitation, if they are aware of them. One young person told us:

*'Mum would take me round to his house and leave me there. Mum said it wouldn't be fair if I went to the police, that they were such nice boys and that I was a whore.'*

This is a shocking and extreme case, but it starkly illustrates the importance of educating parents about CSE. This may not always be easy. We heard an example of one local authority running sessions for parents on mobile phone use and using the opportunity to raise the issue of CSE and the risks associated with mobile technology. It was felt that parents would not have attended if it had been advertised as a session about CSE.

Making sure that adults know the signs of child sexual exploitation and that they understand how to report concerns is vitally important to protecting vulnerable children. Barnardo's has produced a range of 'spot the signs' leaflets targeted at different groups, including children and young people, parents/carers, professionals and those in the service sector.<sup>58</sup>

We **recommend** that Local Safeguarding Children Boards include prevention and awareness-raising within their strategies and hold agencies to account for the activity they are undertaking in respect of this, including the dissemination of concise information to frontline workers and the wider public.

## Sex and Relationships Education (SRE)

The inquiry heard from young people who had been victims of CSE that the level of sex and relationships education (SRE) they had received was inadequate:

*'Some people came into our assemblies and gave basic information. More information would have been good. About the signs and healthy relationships. He was 45 and I was 14.'*



*'Nobody told me it was wrong.'*

*'I had no sex education and never knew what a relationship should be like.'*

The paucity of current provision and the need for improvement was strongly supported by many other witnesses and written evidence. Victim Support considered that children lack access to information and guidance on healthy relationships and sex. The Adolescent Specialist Interest Group of the British Sexual Health and HIV Association voiced concern that 'until SRE becomes a statutory requirement which schools have to provide, the uptake of good informative SRE will remain patchy to the detriment of young people'. This call to place SRE on a statutory basis was supported by other evidence to the inquiry and reflects a long-standing debate about the status of personal, social and health education (PSHE).

The PSHE Association<sup>59</sup> sets out the current status of PSHE and SRE on its website: PSHE is currently a non-statutory subject, though reference is made to its importance in the National Curriculum Framework and statutory guidance. Maintained schools are required to have a programme of SRE that includes information on sexually transmitted diseases and to have an SRE policy. The content of SRE programmes is up to each school to decide and there is no requirement on independent schools, free schools or academies. Ofsted inspections consider the extent to which a school provides its pupils with a 'broad and balanced curriculum that promotes their good behaviour and safety and their spiritual, moral, social and cultural (SMSC) development'. A report published by Ofsted in 2013<sup>60</sup> indicated that 'the quality of PSHE education is not yet good enough in a sizeable proportion of schools in England'.

Earlier this year, Brook, the PSHE Association and the Sex Education Forum published advice on SRE.<sup>61</sup> This specifically covers teaching about healthy relationships,

sexual consent, exploitation and abuse and is to be welcomed.

The question of whether PSHE and sex and relationship education should be placed on a statutory footing has recently been debated in Parliament<sup>62</sup> and it was not the will of Parliament to make its provision statutory.

Given the strength of evidence we have received, it is clear that high quality age-appropriate sex and relationship education is vital in every school, even if it is not provided on a statutory basis. We **recommend** that the new expert group established by Government to support teachers on the issue of personal, social and health education (PSHE) must ensure a focus on prevention of CSE and ensure young people's views on the content of resources are taken into account. It should also be kept under review to ensure the incorporation of the evolving nature of the abuse and in particular the role of technology.

## Other issues

There were a number of other issues that arose from the evidence received by the inquiry, which we were not able to consider in detail either because it was not within the scope or reform is already underway. This is not to suggest that they are not important and are referenced here in recognition of the evidence provided.

- International trafficking: a number of concerns were raised by ECPAT UK in relation to this issue. There is considerable work underway on these issues in the pre-legislative scrutiny of the Modern Slavery Bill.
- Residential children's homes: oral evidence from the police suggested that there are particular challenges associated with young people going missing from residential children's homes who are then exploited. This has been addressed in

some depth in a joint report by two All-Party Parliamentary Groups into children who go missing from care and action is being taken by the Government to reform residential care for children.

- Missing/absent categories: we received some feedback on the new approach being used by the police and will feed this into the on-going development of this work.

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# Notes





**Report of the parliamentary  
inquiry into the effectiveness  
of legislation for tackling child  
sexual exploitation and  
trafficking within the UK**

Chaired by Sarah Champion MP

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