



Rights of Women response to the Sentencing Council Sexual Offences Guideline Consultation

Responder details

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About Rights of Women

Rights of Women aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers¹.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Rights of Women is a not-for-profit organisation that provides free legal advice to women and engages on a policy level concerning access to justice and violence against women issues. We provide training on legal issues to statutory and third sector professionals, write legal publications designed to assist individual women, and those supporting them, through the law and provide three legal advice lines offering legal advice to women on immigration and asylum issues, sexual violence and criminal law, and family law (including domestic violence, divorce, contact

¹ For advice on family law, domestic violence and relationship breakdown telephone 020 7251 6577 (lines open Mondays 11.00am-1.00pm, Tuesdays and Wednesdays 2.00pm-4.00pm and 7.00pm-9.00pm, Thursdays 7.00pm-9.00pm and Fridays 12noon – 2.00pm). For advice on sexual violence and criminal law telephone 020 7251 8887 (lines open Tuesdays 11.00am-1.00pm and Thursdays 2.00pm-4.00pm). For advice on immigration and asylum law telephone 020 7490 7689 (lines open Mondays 2.00pm-4.00pm and Wednesdays 11.00am-1.00pm).

disputes). Our advice lines are staffed by qualified practising women solicitors and barristers.

We therefore have significant experience and understanding of supporting women who have experienced domestic and/or sexual violence through the criminal justice system. Our legal officers (who are all qualified solicitors and barristers) train professionals from the third sector and local authorities, police and NHS on how to support women as victims in the criminal justice system and how to support women who have experienced sexual exploitation. Staff on our criminal law advice line have expertise in all aspects of the criminal justice system, including sentencing procedures. Our acclaimed publication *From Report to Court*, which explains the law and criminal justice system process to victims who have experienced sexual violence, was commissioned for its fourth edition last year by the Home Office and copies were provided to every police force, rape crisis centre and Sexual Assault Referral Centre in the country. We are therefore well placed to be able to comment on significant aspects of this consultation, with a background in direct support of victims and witnesses experiencing the criminal justice system combined with the legal knowledge and training of qualified solicitors and barristers.

Introductory Comments

Our focus

The consultation is wide ranging to reflect the comprehensive nature of the Sexual Offences Act 2003, so Rights of Women have limited our response to areas of our expertise. We have decided to respond to section 4 and section 7 of the consultation, as well as question 89 on historic sexual offences. This reflects the issues that we are consulted about on the advice line most frequently, and ties into our policy work areas. In consideration that our advice line is open for adult victims only, we have not responded to questions regarding child sex offences.

On 28th February 2012 our Senior Legal Officer Hannah Camplin attended an event at the Sentencing Council offices to discuss Section 4 of the guidelines in more detail. Points raised from that meeting, and considered afterwards at length, feature in this response as well as references to the Rape Crisis response, which was circulated since the meeting to attendees.

Contributing discussions

Furthermore, on 7th March 2013 Rights of Women in partnership with Eaves' Sexual Violence Action and Awareness Network (SVAAN) delivered a workshop examining the draft guidelines. The aim of the workshop was to provide a summary of the guidelines for those participants who wanted to provide their own response and to encourage discussion from participants who did not want to complete their own response but who wanted to contribute ideas. Discussion points at this workshop have been incorporated throughout this response, but some specific themes from this event were:

- Sentencing starting points and ranges in the guideline were generally considered too low, especially considering the fact that offenders were usually released on licence after serving half their prison sentence.
- The mitigating factor of *previous good character and/or exemplary conduct* was mentioned throughout as creating the unsavoury event of a perpetrator being rewarded for good behaviour *before* committing the offence, seemingly ignoring the fact that the offence had now been committed and so surely previous good character was irrelevant.

Sentencing Procedure

Whilst we are aware in this response what falls within and what falls outside of the Sentencing Council remit, we wish to emphasise that the sentence received for a sex offence does obviously have an impact on the victim as well as the wider public, but that this impact can be greatly enhanced either positively or negatively by the way in which the judge or magistrates panel explains the sentence given in court and justifies the decision they came to. Therefore, in addition to using the final set of guidelines we would also urge that consideration be given to the way in which sentences are explained in court including adherence to the sensitivities of the victim in terms of their credibility, their sense of justice etc. Perhaps some thought should be given to a basic 'template' explanation (which potentially could fall within the guidelines), obviously for significant adaptation case by case, which the sentencer could use to explain the steps gone through and why the particular sentence (and annex orders) is justified.

Another overarching factor in the sentencing exercise is how a judge or magistrates panel ascertains enough information to apply the various harm, culpability and aggravating factors to the case. This is obvious in the case of a trial, but when the defendant has pleaded guilty, it falls to the prosecution to set out the facts and the sentencer to discover whether the relevant factors within the guidelines are present or not. Therefore we suggest the prosecutor should have regard to the guidelines and the relevant factors to be considered when summarising a case at sentencing. In addition, the welcomed focus on psychological harm to the victim in some of the offence guidelines may lead to further Victim Personal Statements being taken and considered prior to sentencing. Procedures for both issues may already be in place, but we submit that nevertheless it is something the Sentencing Council could have regard to. We will also raise this issue with the CPS.

Section 4: Rape and assault offences

Question 1: *Do you agree with the approach to harm and culpability proposed, in order to reflect the fact that all rape involves harm to the victim and a high level of culpability?*

Question 2: *Do you agree with the harm and culpability factors proposed at step one for rape? If not please specify which you would add or remove and why.*

Harm

There is a tension throughout this consultation between the clear aim of the Sentencing Council to incorporate current policy approaches to sexual violence within the criminal justice system e.g. an awareness of, and move away from, ‘victim-blaming’², whilst at the same time meeting the demands of a guideline that by its very nature requires sexual violence to be categorised and defined to aid those imposing sentences.

This tension is nowhere more pertinent than in the consultation approach to harm and culpability factors for rape (and by extension to assault by penetration).

Rights of Women welcomes the appreciation of the Sentencing Council that “there is always a baseline of harm [to the victim]” in rape (and indeed all sexual offences). We agree that this should always be the starting point for examining harm caused by a sexual offence, and more specifically, rape. However the translation of this principle into categories of harm is, in our opinion, problematic. Category 1 features only *extreme violence* as a factor or *the extreme nature of one or more category 2 factors*. Category 2, we submit, also does focus on levels of violence. *Use of violence* is an obvious reference, but *Forced entry into a victim’s home* and a *Prolonged/sustained incident* also create a focus on a violent offender who has used a level of force causing more harm to the victim. Category 3 assumes a base level of harm but does not include any factors. Therefore the assumption created is that a rape occurring at acquaintance level with no force demonstrated e.g. a rape occurring during dating perhaps when a degree of sexual activity has already been agreed to, is less harmful to a victim than if an element of force is used, for example the ‘stranger rape’ incident or a rape occurring within an already violent relationship.

By categorising levels of harm in the way proposed, the guidelines, albeit inadvertently, are in danger of creating a ‘hierarchy of rape’ based on force used. This contradicts research carried out over many years to demonstrate to the public and the criminal justice system that all rape is rape and is harmful to the victim and that, more particularly, a ‘date rape’ is no less harmful than a stranger rape and in fact is far more likely to occur³.

The further issue arising from the categorisation of harm in this way is that it does not allow for the fact that the level of harm incurred by the victim does not necessarily depend upon what happened in the course of the incident, but relates to the vulnerability and particular situation of the victim. The issue then arises – would it be wrong to sentence on the basis that the incident is the same but the victim reacts differently to it?

² In recent years there has been an awareness of ‘victim-blaming’ in society, and within government institutions, and a move to criticise this approach. For example, an article in The Independent last year www.independent.co.uk/news/uk/home-news/2012-the-year-when-it-became-okay-to-blame-victims-of-sexual-assault-8432716.html

³ See *Just Representation? Press reporting and the Reality of Rape* Natasha Marhia [2008] for a classic study on pervading rape myths. See also the BCS and the ground breaking Home Office report *Investigating and Detecting Cases of Rape* [2007], which both state that statistically someone is far more likely to be raped by a partner, ex-partner or acquaintance than a stranger.

There are, we think, two possible ways in which to overcome this problematic issue. The first proposal would be to assume that there is a level of harm for all victims of rape and therefore not to have categories for harm at all, and instead raise all sentencing starting points to reflect the level of harm, and categorise only by culpability of the offender. The second approach would be to keep the harm categories but include more harm factors in Category 1 and Category 2 to try and reflect that level of harm is perhaps increased by use of force but other factors also raise level of harm, for example, a context of vulnerability, a 'deceptive' element within the relationship. This still risks however excluding some cases and will inevitably 'categorise' harm which, as mentioned above, will be problematic with rape and other sexual offences.

We would add, however, that we welcome the deliberate mention of rape within abusive relationships and that this should be recognised as a factor to increase sentencing starting points.

Culpability

We welcome again the starting point that rape involves an inherent level of culpability. We would submit that categorisation on this basis works more effectively, and also allows the taking into account of sexual violence within abusive relationships or upon relationship breakdown.

Significant degree of planning

Whilst we agree with the inclusion of this factor in increasing culpability, we would ask what is meant by *Significant*. In our submission, sentencers may interpret this factor to be akin to 'going equipped', and the risk is that by including *significant* this factor will only be applied where the offender has, for example, brought a weapon or laid in wait for a victim. As mentioned by an ISVA representative at the Section 4 meeting on 28th February 2013, planning can also be in the looser sense, for example, an offender going to a nightclub with the intention of finding a woman who has drunk too much. Although it is appreciated lengthy definitions may result in the explanation being ignored in the pressure of the sentencing exercise, this is an important culpability factor and we submit should refer to a broader set of actions. Therefore if a definition is not preferred, removal of the word *significant* would, we suggest, be an option.

Vulnerable victim targeted

This is a very important factor to highlight because it recognises the fact that in many situations of rape the victim will be targeted because of their vulnerability. The most consistent calls we have to our criminal law advice line are from women who have been raped or sexually abused, and usually vulnerability prior to the incident of rape is inevitable. This could be an abuse of trust e.g. an exploitative acquaintance or carer, or commonly because the woman was intoxicated and alone. We strongly believe that this should be recognised as a factor of culpability and we strongly welcome the wide definition of 'vulnerable'. However, we endorse the Rape Crisis response wording of this factor, to have the action of targeting as

the focus of the factor i.e. '*targeting of a vulnerable victim*', because it is this targeting action that creates the increased culpability.

Stalking/harassment of victim and Previous violence against victim

It is recognised widely that rape can and does often occur as a feature of abusive relationships. At Rights of Women we have over 35 years expertise in advising women on their legal rights in relation to abusive relationships and so we very much welcome these factors as an appreciation of the broader context in which sexual violence can be committed. We would suggest that a broader definition of 'violence' would however be more suitable so that those sentencing do not automatically assume previous physical violence or force, and to respond to the fact that the government definition of domestic violence includes psychological, financial and emotional abuse⁴. We suggest something like:-

Previous violence and/or abuse against victim

Unfortunately this does draw an unnecessary distinction between physical violence and abuse and other forms of violence and abuse, but this wording also allows not only for abusive relationships but previous separate incidents of violence that have impacted upon the victim e.g. from a colleague. This factor being taken into consideration in sentencing also of course depends on what evidence the prosecution has drawn out during the course of a trial or at a sentencing hearing in terms of the context of the offence, but we appreciate that this is not a matter for the Sentencing Council.

Offence committed in the course of burglary

Rights of Women endorses the extensive comments on this factor made by the Rape Crisis consultation response.

Question 3: *Do you agree with the aggravating and mitigating factors proposed at step two for the offence of rape? If not, please specify which you would add or remove and why.*

Aggravating factors

Victim compelled to leave their home

⁴ The Home Office definition of domestic violence is now: *Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse: psychological; physical; sexual; financial; emotional.*

We again welcome the recognition that offences taking place in a context of relationship abuse should often lead to an increased sentence e.g. *Exploiting contact arrangements* and *Victim compelled to leave their home*.

However, whilst we agree that this should be an aggravating factor, we ask that consideration be given to those victims who have their lives disrupted by the offence in other ways. An obvious example of this would be a woman who has to resign from her work because she has been raped by a work colleague and does not feel able to continue in her job, but there are other examples of tangible disruption such as cases where women have had to move home because the offender has told people in the community of the upcoming court case (not illegal as anonymity only covers media and social media). We have had calls of this nature fairly frequently to our advice line.

We suggest that this further disruption may be included as an aggravating factor by changing the wording of the factor to:-

Victim compelled to leave their home and/or other significant disruption to victim's life (including victims of domestic violence).

Location of offence and timing of offence

We endorse the comments made by the Rape Crisis response regarding these factors. We also point out that whilst these left in could lead to misinterpretation as to what constitutes a 'worse rape', we think they do relate to the planning of an offence. This reiterates the above culpability point that planning of an offence is important and a definition of planning therefore needs careful thought.

Mitigating factors

Our comments in relation to mitigating factors relate to all the sexual offences featured in the draft guidelines. We strongly object to the mitigating factors of *remorse* and *previous good character and/or exemplary conduct* being included.

Remorse in our view is irrelevant to sexual offences in Section 4 because, as recognised by the consultation, an inherent degree of culpability is a feature of the offences. An offender may well be remorseful that the offence took place and that they now find themselves about to be sentenced for it, but remorse can be demonstrated by an early guilty plea, which is rewarded by its own likely reduction in sentence. Remorse as expressed, for example, in the PSR or during oral mitigation at sentence is, in our submission, irrelevant for the victim and the public because it cannot be demonstrated or linked to a course of action. We submit it should be omitted as a mitigating factor.

Previous good character and/or exemplary conduct is a dangerous factor to have as mitigation, even with the caveat provided that little weight should be attached. Although an offender may have led an exemplary life or be of good character up to the point of the offence, this does not mean that, now having committed an offence, they should have their sentence reduced because of their previous activities prior

to it. The offence has still occurred, which indeed will probably lead to a revision of their character or conduct by the public.

This is also dangerous because *exemplary conduct* could be conducted alongside a life of sexual offending e.g. it is possible for someone to win a Nobel peace prize and simultaneously conduct a campaign of rape against their wife. This is particularly relevant today in the context of the Jimmy Savile revelations.

Question 4: *Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.*

As mentioned in the introductory comments of this response, participants at the workshop we held on 7th March 2013 to examine the draft guidelines felt strongly that sentencing levels were too low in the lowest categories. This, it was felt, is a particularly important point when time served in custody is usually halved for good behaviour. If rape is inherently harmful to the victim, as the Sentencing Council takes as a starting point for this consultation, then it seems incongruous that the lowest available sentence should not be 4 years custody (of which the offender is likely to serve 2).

Whilst we do not have expertise in producing sentencing levels that are comparable with other offences and so cannot offer an alternative as such, we would suggest a higher starting point and higher sentencing levels for this and each category.

Question 5: *Do you agree that assault by penetration and rape should be treated separately in the guidelines?*

Question 6: *Do you agree with the harm and culpability factors proposed for assault by penetration? If not, please specify which you would add or remove or why.*

Rights of Women submit that the sentencing levels and range for assault by penetration should reflect the intention behind the creation of the offence in the SOA 2003 to provide an offence for serious acts of what used to be indecent assault. Although we would probably prefer the sentencing levels and starting points to be the same as rape because of the consistent similar intrusive experience of the victim, we are content for this offence to be treated separately due to the fact that the act could in some cases be a different experience than that of rape. We strongly advocate in this case though that the higher categories of this offence reflect the same starting points and sentencing ranges as that of rape.

We understand that the features of assault by penetration lead to similar harm and culpability factors. Therefore, please see our comments on these factors for the offence of rape.

We agree with the inclusion of the harm factor *Penetration using large or dangerous object(s)*. Although our comments on harm categories for rape still apply (see above), if categories of harm remain in the same format after this

consultation we would submit that consideration should be given to moving this factor to Category 1 to reflect the internal damage done or at risk of being done, as well as the psychological harm alongside it, to the victim by the use of a large or dangerous object to penetrate her with.

Question 7: *Do you agree with the aggravating and mitigating factors proposed for assault by penetration? If not, please specify which you would add or remove and why.*

Question 8: *Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.*

Please see our comments on these factors and the sentencing levels for the offence of rape for answers to these questions, particularly the overall point of higher sentencing ranges for the lowest categories of offences.

Question 9: *Do you agree with the harm and culpability factors proposed at step one for sexual assault? If not, please specify which you would add or remove and why.*

Harm

We recognise that sexual assault can be a range of acts rather than one act of penetration. For this reason, we would submit that having categories of harm for this offence is less problematic than with the offence of rape.

Whilst we agree that the focus cannot simply be the type of touching that occurred, we submit that this is an important harm factor. In terms of the other factors, again careful thought needs to be given as to what implications there are in having a focus on use of violence and force during the assault. Category 1 has a strong emphasis on force and violence used during the assault – the obvious *Use of violence* but also *Forced entry into victims home* and *Abduction/detention of victim*. We would submit that these factors do not provide a higher level of harm caused to the victim than no or limited force used but *Additional degradation/humiliation* occurring or a *Context of habitual sexual abuse*. Callers to our line often point out, especially in the context of sexual abuse by a family member or friend, that they feel similarly damaged due to the fact that the perpetrator was invited and welcomed into their house than they would if he forced his way in.

The solution to this problem is difficult. We would be inclined to have two categories based on the act for harm but potentially increase sentencing starting points to reflect the inherent level of harm caused by sexual assault of all situations, and with a greater focus on culpability and aggravating factors to include the important elements picked out for harm factors. This, we acknowledge, reduces the harm category back to the SGC guideline which would not exactly be our intention, but some more thought should be given to relying overly heavily on force and violence as increasing harm as opposed to other factors. Perhaps, if a solution cannot be found, more factors could be considered within Category 1, such as a context of sexual or domestic abuse.

Culpability

Culpability factor comments are the same as for rape (see above). We welcome the inclusion of *Threats of violence/threatening or violent sexual language*. From our experience in supporting women this is often a factor of an assault that is alarming for them.

Question 10: *Do you agree with the aggravating and mitigating factors proposed at step two for sexual assault? If not, please specify which you would add or remove and why.*

Comments on aggravating and mitigating factors are the same as for rape (see above).

Question 11: *Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.*

Given that the statutory maximum for this offence is 10 years, consideration could be given to increasing the maximum within the guidelines to 8 years rather than 7 years where the highest harm and culpability applies. It is made clear in the guidelines that sentencers are not encouraged to exceed them except in rare circumstances, so a higher maximum in Category 1 A would be useful in creating higher sentences at the 'higher end' of the offence.

Question 12: *Do you agree with the Council's approach to the guideline on sexual activity without consent?*

We agree with the approach to this offence guideline.

Section 7: Exploitation offences

Question 59: *Do you agree with the harm and culpability factors proposed at step one for **trafficking for sexual exploitation offences**? If not, please specify which you would add or remove and why.*

Harm

We welcome the recognition that trafficking for sexual exploitation always causes harm to the victims of trafficking. We also appreciate that different 'sexual exploitation' situations may involve different types of harm occurring to the victim. Whilst the increased harm factors in Category 1 do feature *Violence used* and *Forced into prostitution*, we welcome both the simplifying of the harm categories to just two and the inclusion in Category 1 of factors unrelated to violence or force such as *Sustained and systematic psychological abuse of victim* and *Victim tricked/deceived as to purpose of visit*. This is both a move against 'ranking' harm as such and, within that, ranking violence as increased harm to the detriment of other factors.

Victim coerced or forced to participate in unsafe/particularly degrading sexual activity

From our campaigning work and our role in training professionals who support victims of trafficking, we submit that *particularly degrading sexual activity* would be hard to define, because all those who have been trafficked for sexual exploitation will have experienced degradation by being sexually exploited. What is *particularly degrading* is hard to define in consideration of what would harm the victim more. Whilst we do not suggest that a victim who had been defecated upon or had been penetrated with many people in the room does not experience significant harm, it would be hard to define that as *particularly degrading* compared to, for example, dancing naked in front of one person or having sex with someone they are not attracted to. We would suggest that what is particularly degrading is personal to the victim and so should be included when considering psychological harm, although we suggest that *Victim forced/coerced to participate in unsafe activity* should remain.

Culpability

We agree with the Sentencing Council's approach to culpability for these offences, to focus on the offender's involvement rather than whether victim was coerced or not (a factor also hard to define). Whilst we would warn against over complication of the sentencing categories by having 3 categories of culpability, we do agree with the 3 levels in principle here to reflect different 'power positions' and involvement.

Category B

We would suggest that the 2 separate factors in Category B actually relate to the same thing i.e. a 'middling level of power' within the operation. We would suggest that these factors are altered to one:-

Level of operational or management function within chain and/or involves others in operation (including by pressure/intimidation/reward but not coercion).

A close involvement with the victim would also lead to a higher level of culpability. *Abuse of position of trust* is, quite correctly, in Category 1 and to continue this appreciation that culpability is not only about power within the trafficking operation but also power over the individual we suggest that a factor mentioned in previous exploitation offences be slightly changed to fit the offence and included here:-

Close involvement with victim of trafficking during exploitation e.g. personal control of finances and living conditions, key in deception and/or movement of the victim to the exploitative situation.

Category C

We welcome the ongoing recognition of those who were victims of trafficking pressured into exploiting others as having lesser culpability than those pressuring them by the inclusion of *Close involvement but engaged by pressure etc.*

Question 60: *Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.*

Aggravating factors

We agree with the wide ranging factors here reflecting the wide variety of *means* used to exploit a victim in the definition of trafficking created by Article 4 of the Council of Europe Convention on Action against Trafficking 2005⁵.

Mitigating factors

Please see comments above on the guidelines for the offence of rape for *remorse* and *previous good character*. However, we concede an argument for remorse as a mitigating factor for this offence, where, for example, a prior victim of trafficking may have been pressured to be involved in the exploitation of others and steps are taken to demonstrate remorse e.g. tried to also stop/limit abuses against victim.

Victims willingly travelled to/out of/within the country and engaged in prostitution without being pressured or corrupted by offender and exploitation minimal

Rights of Women suggest that this factor be omitted from mitigating factors because firstly, it appears to 'blame' those who were willing to travel and those who were willing to engage in prostitution freely and who were then exploited. Exploitation is the element that completes the offence of trafficking and victims who were exploited should not be, in our opinion, subject to distinction in mitigation according to theories of what they were or were not expecting.

Secondly it is very difficult to suggest what might feature in *exploitation minimal*. For this offence to occur there has to be exploitation and, as in levels of harm, it is difficult to define exploitation that would be *minimal*. Increased levels of exploitation are already covered in increasing culpability so it is suggested this 'minimising' factor would confuse and complicate the sentencing exercise. If the Council had a definition for *exploitation minimal* or a scenario where it may exist and still create the requirements for the offence to be charged then we would willingly engage in further discussion regarding this.

Question 61: *Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.*

The statutory maximum for the trafficking offences is 14 years, and with this in mind, we would suggest that the sentencing range upper limit for Category 1 A be

⁵ According to Article 4 of the Council of Europe Convention on Action against Trafficking 2005 trafficking is "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

revised from 10 years custody to 12 years custody. As highlighted before, although we understand the guidelines would not recommend the statutory limit for an offence (and thus leave no capacity for extreme cases), this has to be balanced with the fact that most cases will fall within the guidelines and so a higher upper limit would encourage slightly higher sentences at the 'top end' of trafficking operations.

Comments on consultation questions 45-50

Language

We ask that the use of the term 'prostitute' in the guidelines for these offences is omitted and replaced with either 'victim' or, if this is legally too confusing when compared to the offence definition in the SOA 2003, the term 'those involved in prostitution'. It is interesting to note that in the exploitation offences where children are exploited the term changes to 'victim'. We would suggest that the use of the term 'prostitute' has unpleasant connotations for child or adult and as such, despite being used within the SOA 2003, should not be used in these guidelines in 2013.

Harm and Culpability

Please see comments on the categorisation of harm and specific factors for the trafficking offences (above) as factors and issues are very similar. We particularly welcome the broad range of harm factors for the offence of keeping a brothel.

Established evidence of community impact

It has long been established that the intention of the SOA 2003 was to protect vulnerable individuals from sexual violence⁶. Indeed, the focus for this offence within the proposed guidelines is clearly the harm to those who are involved in prostitution. Therefore we submit it is difficult to justify the above factor as something that would place this offence in Category 1 in the absence of any other factors. Whilst community impact will remain a concern for those in the community, we would suggest that it should not be placed in the highest harm category for this offence, in equal standing with long term psychological and physical harm to those involved in prostitution. The inclusion of this term inadvertently gives the impression that community impact creates an equal concern to the harm on those involved in prostitution, an impression which policy makers have moved away from in recent years⁷.

Aggravating and mitigating factors

Again please see comments on the trafficking offences guidelines because similar issues are featured throughout these offences. We welcome the broad range of

⁶ "The protection of children and other groups of vulnerable people lies at the heart of the [SO]Act", p4 *Sexual Offences: The New law* (2004) Richard Card, Jordans publishers.

⁷ For example, the government's Violence Against Women and Girls Action Plan March 2013 (action 67) provides an action on funding a national ugly mugs scheme, which encourages those involved in prostitution to report sexual violence they experience.

aggravating factors and particularly those referencing levels of control and victims of trafficking.

We would add also that for mitigating factors *Prostitute(s) working in brothel engaged in prostitution without being pressured or corrupted by offender and exploitation minimal* should be omitted for the offence of keeping a brothel, as with the offences of trafficking for sexual exploitation. Although keeping a brothel does not have to include an element of exploitation for the offence to be made out, this factor still, we would submit, implies a level of 'blaming' those who 'chose' to be involved as opposed to those who were 'forced'. This returns to the tensions discussed above in relation to categories of harm and a focus on force and violence. We would argue that all prostitution involves some element of exploitation and 'choice' would need to be explored fully before making assumptions for mitigation⁸. A focus on the offender for mitigation purposes would be much clearer and not create issues relating to assessment of the victim's level of choice and level of exploitation.

Question 89: *Do you agree with the addition of an annex to the sentencing guidelines which sets out a comparison of the sentences available under old laws and what the equivalent offences and sentences would be under the Sexual Offences Act 2003?*

A significant proportion of the women we support on our advice line(s) have experienced historic abuse or have not reported isolated offences from the past, for example 25% of callers to our advice line in the previous financial year disclosed historic abuse. We encourage the production of a guide that would assist a sentencer as to comparable current sentences, if this would aid predictability of sentencing for the victim. We would welcome the opportunity to consult on the annex if possible.

⁸ "Research also shows that women of any background in...prostitution in the United Kingdom are disproportionately likely to have suffered sexual abuse as children; be involved in violent relationships, to have experienced homelessness, and to have substance misuse issues" p6 *Sex in the City: Mapping Commercial Sex across London* [2004], Sandra Dickson, The Poppy Project.