

**Professor Penney Lewis**  
**Law Commission**

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1<sup>st</sup> November 2023

**Consultation Response – Criminal Appeals**

Dear Penney and team,

I hope this letter finds you well.

Thank you for your engagement with me on this consultation, and my apologies again that I was unable to make the roundtable which you organised. As mentioned previously, I am focusing this response to the issues concerning the Unduly Lenient Sentence (ULS) Scheme, referenced in 7.43 – 7.53 of your consultation.

I am writing this response in collaboration with Tracey Hanson, founder and CEO of the Josh Hanson Charitable Trust. Tracey has been a passionate advocate for legislative change to the ULS Scheme, following the murder of her son Josh. Tracey appealed the offender's sentence on the 28<sup>th</sup> day after sentencing, but was rejected by the Attorney General's office for being 'outside of court hours'. She has since campaigned for 'Josh's Law', which seeks a number of key changes to the scheme, outlined below in our response.

Duty to Inform Victims

Perhaps the most significant issue with the ULS Scheme at present is that the vast majority of victims remain unaware that the Scheme exists. The Victims' Code of Practice states "the Witness Care Unit will tell you about the scheme, when you are told the sentence in the case", however this duty in the Victims' Code fails to consider that only witnesses at trial will be engaged with the Witness Care Unit. Many bereaved family members, as well as some direct victims, will not have any contact with the Witness Care Unit and so will never be informed of their right to apply to the Attorney General under the Scheme.

It is our view that a duty be imposed on another body, to be responsible for informing all victims and bereaved family members of their rights to refer a case to the Attorney General under the scheme. We have given significant consideration to the legislative change required, and amendments (as seen below) were tabled throughout the passage of the 'Police, Crime, Sentencing and Courts Bill', though were ultimately withdrawn.

Insert the following new Clause –

**“Duty to inform victims and families of the Unduly Lenient Sentencing Scheme**

- (1) The Criminal Justice Act 1988 is amended as follows.
- (2) After section 36, insert –

**“36A Duty to inform victims and families of the Unduly Lenient Sentencing Scheme**

The Secretary of State must nominate a Government Department (“relevant body”) to inform victims and their families of their rights under the Unduly Lenient Sentencing Scheme, and such information provided must include the type of sentence and the time limit for application, and advise that applications must be made to the Attorney General.””

Figure 1: Amendment 196A to the Police, Crime, Sentencing and Courts Bill, which sought to establish a duty on the Crown Prosecution Service to inform victims and bereaved family members of their rights under the Unduly Lenient Sentence Scheme

You will be aware that the Justice Committee recently published its [report into Public Understanding of Sentencing](#), in which it made a clear recommendation that “Government should ensure that victims of crime and bereaved families receive tailored information about sentencing during the court process. The Government should amend the Victims’ Code to make clear that victims be entitled to ready access to information about how sentences are determined for offences relevant to the victim’s case, including average sentence lengths. When a sentence is handed down, victims should have ready access to information about how the sentence works. The Government should ensure that where they are eligible, victims of crime and bereaved families should automatically be referred to accurate and clear information about the Unduly Lenient Sentence scheme in a timely fashion. The information should make clear the deadline for making an application under the scheme. These changes should be made before the Victims and Prisoners Bill receives Royal Assent.”

We fully support the Justice Committee’s recommendations, and while we will work alongside Members of Parliament and Peers to amend the Victims Code and Victims and Prisoners Bill, we are aware of Government opposition to these proposals, and would welcome supportive recommendations in the work of the Law Commission.

### 28-Day Time Limit for Applications

Currently, victims have a strict 28-day time limit from the point of sentencing within which they can make an application under the ULS Scheme. This relies on the victim or family being informed within good time, in order to be able to consider the scheme and make an application. Transparency and due process are crucial in legal proceedings, and lack of communication of the timeframes to victims and bereaved families threatens this.

Offenders can appeal their sentence outside of the 28-day timeframe in certain circumstances, however this right is not currently extended to victims. Offenders in the case will also have meetings post-sentence, in which they will have the right to appeal explained to them and discussed. This meeting is not offered to the victim or their family.

Government’s core rebuttal to amendments tabled in the PCSC Bill was that offenders deserve certainty over their sentence, and as the ULS Scheme is a rare exception to this it is tightly circumscribed and the timeline reflects the importance of finality in sentencing. While we appreciate the importance of certainty, this should also apply to the victim or bereaved family. Offenders can apply outside of 28 days in certain circumstances, and we therefore simply believe there should be some level of parity between the rights of the victim and that of the offender.

The real risk to certainty is in the backlog of cases leading to significant delays in the court system. The Court of Appeals is not immune to the backlogs, and we have seen cases which have taken months to be heard, such as the recent appeal hearing of Jordan McSweeney, who murdered Zara Aleena. This hearing took place ten months after the appeal was made, keeping Zara's family in limbo and causing significant anxiety.

The system needs to strike a balance between ensuring finality in legal proceedings and allowing for appeals in cases of injustice. The 28-day rule is designed to promote finality, but if there are compelling reasons, such as the victim's lack of awareness, some flexibility is warranted. A specific time limit for extensions (both for victim and offender) may need to be considered in any reform, to provide some level of certainty.

<b>196B</b>	Insert the following new Clause— <b>“Unduly lenient sentences: time limit</b> (1) The Criminal Justice Act 1988 is amended as follows. (2) In Schedule 3, paragraph 1, at end insert “, subject to paragraph 1A.” “(1A) The time limit of 28 days shall be extended in exceptional circumstances, which shall include but not be limited to a failure of the relevant body to inform the victim and families of their rights under the Unduly Lenient Sentencing Scheme.””
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Figure 2: Amendment 196B to the Police, Crime, Sentencing and Courts Bill, which sought to allow flexibility in the time limit for applications under the Unduly Lenient Sentence Scheme

The above amendment to legislation would work alongside the amendment in relation to providing a statutory duty to inform victims, and so failure for the relevant body to inform victims of the scheme would be considered an 'exceptional circumstance'. We have seen this timeframe, combined with victims not being informed, lead to significant injustices.

Tracey Hanson's own case best demonstrates this, where following the murder of her son Josh in 2015, and the offender's sentencing in 2019, no agency made her aware that she was able to refer the case under the ULS Scheme. It was only when I spoke with her – on the 28th day following the sentencing – that she was made aware of the scheme. Tracey submitted her application to the Attorney General's office on the 28th day, however this was rejected for being 'outside court hours'. At the time, there was no mention of 'office hours' or 'court hours' within the Victims' Code or on the Government website.

This consultation has also rightly identified a further issue, namely the potential for conflict between the 28-Day ULS Scheme time limit and the 56-Day Slip Rule time limit. This conflict was exemplified in the case of Alex Belfield, who received a 5.5-year prison sentence for a campaign of stalking against various employees of the BBC. I personally referred this case to the Attorney General's office, as I considered it to be unduly lenient. A response was received several weeks later to explain that the case had been referred to the CPS who requested the matter be listed under the Slip Rule. Although the Judge agreed there had been an error in his approach to sentencing, he declined to interfere with the sentence. The letter went on to explain that the time limit for referral to the Court of Appeals had since passed, and so the Attorney General's office would not be able to refer the case under the ULS Scheme, despite my initial application being within the time limit.

This unduly lenient sentence, which stemmed from a clear error on the Judge's part, was therefore unable to be rectified. An amendment to legislation, as set out above, would have provided the opportunity for the case to be heard by the Court of Appeal, as consideration of

the case under the Slip Rule would have been considered an exceptional circumstance through which the ULS Scheme timeframe could have been extended.

### Expansion to Further Offences

Over time, the ULS Scheme has seen some welcome expansions, perhaps most notably to cover stalking, harassment, coercive control, and child sexual abuse. We believe the offences eligible under the Scheme should continue to be kept under review, as there are notable exclusions which concern us.

People that carry knives, causing harm, distress, injury, or death must receive consistently tough, lengthy, and robust sentences, and we believe the Scheme's eligibility list should explicitly include offences related to the carrying and using of a knife to cause fear or threaten someone, particularly where there are aggravating circumstances. This would provide victims and bereaved families the opportunity to request that knife crime sentences that they think are unduly lenient be reviewed and potentially increased.

We have also worked with Gareth Johnson MP, whose constituent Gemma Robinson was attacked in 2019 by her partner, Mr Falconer. He had previously assaulted her and was subject to a restraining order, but had tricked his way both back into her life and into her home. She was mercilessly beaten by Falconer until her eye socket was fractured and her tooth punched through her lip. She was then spat on by him before he left the house and, in the final insult, he completely cleared her bank accounts.

He was arrested and charged with section 18 GBH, an offence that is covered under the ULS Scheme. The matter went to trial, with Mr Falconer having pleaded not guilty. Gemma, feeling unable to face him in court, took her own life—an event that devastated her family.

Subsequently, Mr Falconer was offered a less serious charge under section 20 of Offences against the Person Act 1861—an offence of malicious wounding. This is an offence that is not covered by the ULS and he pleaded guilty to that charge. Despite being described by the judge in court as a “dangerous, jealous and controlling man”, he was given just three and a half years imprisonment, with no ability for the family to appeal the sentence as unduly lenient.

### Open Justice

The existence of the Unduly Lenient Sentence Scheme provides a welcome avenue to request a sentence be appealed, and it is crucial that victims and bereaved family members be equipped with the knowledge to consider whether a sentence truly is unduly lenient.

A key element of this is access to a transcript of the Judge's sentencing remarks, so that victims and family members are able to understand how the final sentence was arrived at by the Judge. This may confirm a victim's belief that a sentence was lenient, or conversely may help them to understand how that conclusion was reached by the Judge. Unfortunately, where transcripts are requested, they are not free, can be delayed in their production, and victims are charged significant amounts of money.

The Government has been clear that “[open justice is a fundamental principle at the very heart of our justice system and vital to the rule of law](#)”, and even that “[accessing transcripts from proceedings in serious criminal cases is not only a fundamental right of victims but is also essential for maintaining transparency and accountability within the justice system](#)”. And yet, what is clear from victims is that justice does not feel open to them.

The Justice Committee's recent report stated that *"the current situation where victims have to pay significant sums to receive a transcript of sentencing remarks from the Crown Court is unsustainable. We reiterate our call for all sentencing remarks to be published (subject to the relevant legal restrictions). As a minimum, victims of crime and bereaved families should have ready and free access to sentencing remarks"*.

Although access to transcripts of court proceedings is not strictly within the scope of the Law Commission's consultation, I felt it important to raise as a factor which enables victims and bereaved family members to exercise their right under the ULS Scheme.

### Conclusion

Appeals processes are a fundamental part of the justice system, averting and correcting miscarriages of justice. These processes are of great importance both to offenders and to victims and bereaved family members. With specific reference to the Unduly Lenient Sentence Scheme, we seek some level of parity in these rights, striking a balance between providing an offender with certainty over their sentence, while also providing the legitimate right to victims and families to request a case be appealed.

Thank you again for taking these views into consideration, and we look forward to engaging with this work as it progresses.

Yours sincerely,



**Claire Waxman OBE**  
Independent Victims' Commissioner for London



**Tracey Hanson MA, FRSA**  
CEO of The Josh Hanson Trust