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Rt Hon David Gauke
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Independent Sentencing Review – Call for Evidence Response

Dear David,

I hope this letter finds you well, and I want to begin by thanking you and your fellow panel members for taking on this role. As you are all too well aware, the challenges facing our justice system are significant, and I hugely welcome this opportunity to swiftly bring forward recommendations for progress.

Introduction

It will come as no surprise that, as London's Victims' Commissioner, I am submitting this response with victims' interests and their sense of justice at the forefront, and in that vein I believe there will always remain a clear need for short term custodial sentences. Persistently targeted victims are provided a period of respite while their offender is serving their sentence, giving the victim time and space to cope and recover, or to take necessary actions such as rehousing in the case of domestic abuse. While there has been much discourse about 'sentence inflation', I must be honest in saying that no victim in the years I have worked on these issues has expressed the view that sentences have become too lengthy, nor that they would be better served through a community sentence.

A review of Unduly Lenient Sentences by the House of Commons Library in 2022 found a relatively steady and significant increase in the number of requests made to the Attorney General for sentences being too lenient. One can also look at the response to Government's decision to reduce the time spent in prison for Standard Determinate Sentences from 50% to 40% to see that victims – speaking broadly – are unhappy with sentencing, and with the justice system more broadly. The Victims' Commissioner's latest victims survey found that only a quarter of victims believed the justice system to be effective.

This Review needs to be mindful of victims' perspectives and ensure that its recommendations do not further erode their confidence in the justice system. Victims feel like bystanders in a justice process that has a significant impact on their lives while giving them little opportunity to have a voice. Victims also see and are impacted by the under-funding and under-resourcing of this system. I hope this review and its recommendations will go some way to addressing these issues.

Public Understanding of Sentencing

An underlying and fundamental barrier to the objectives of this review is the general lack of understanding of sentencing among the public, and by extension by victims. This arguably reflects a wider lack of understanding of our justice system, which can often be opaque and confusing, both for those going through it and for ordinary members of the public. I spoke about this in evidence given to the Justice Committee in 2022.

In Government's move to reduce the release point for Standard Determinate Sentences down from 50% to 40%, it became clear that the majority of the public were even unaware of the previous 50% release point. This lack of awareness among victims leaves them open to being retraumatised when they realise the custodial part of their offender's sentence is nowhere near as long as they had anticipated, leading to a feeling of injustice.

Furthermore, the public are largely unaware of the different kinds of sentence that can be given, such as concurrent vs consecutive sentences, suspended sentences, determinate vs. indeterminate sentences, and life sentences. These sentence types are of particular consequence to victims, as they will affect how long (if at all) an offender spends in custody. The role of the Parole Board is also little understood in different types of sentences, regarding which offenders will come before a the Board vs. which will be automatically released as part of their sentence.

We know much of public understanding comes from media portrayal, and I know from colleagues in the police that phrases like 'pressing charges' are sometimes used by victims, reflecting the impact that American programmes have in confusing our understanding of England's and Wales' justice process. The justice system also doesn't feature in our education system, public campaigns, or public discourse – in contrast to other areas of society such as consumer rights. The public has a robust understanding of their rights as consumers, and even of relevant legislation, and yet as a victim people are entirely unaware of the justice process and their rights within it.

While public understanding of sentencing is not necessarily within the direct influence of this Review, I feel it important to raise, as a lack of understanding risks the recommendations from this review and can lead sensible decisions for our justice system to become politically unpopular.

Transparent and Open Sentencing

Attempting to understand sentencing can be confusing and overwhelming for a victim or member of the public, with a number of potential sources of information including the CPS website, Sentencing Council guidelines, sentencing remarks (if available), and comparison to similar cases (though this can compound confusion given the complexity of individual cases).

A Judge's sentencing remarks are crucial to understanding a sentence, and yet victims tell us they are consistently advised by police and prosecutors not to attend a trial after they have given their evidence, and/or not to attend the sentencing hearing. One victim told us they "were advised not to attend because it may make [them] look bitter".

Fortunately, through our recent work and campaigning, the CPS has revised its guidance to make clear that victims should not be discouraged from re-entering the courtroom after giving evidence nor attending the sentencing hearing. However, there remain a host of

legitimate reasons why a victim may not want to attend, and even if they do, the traumatic nature of their experiences and what they hear are likely to affect their ability to hear and retain information.

Transcripts of sentencing remarks are therefore essential for many victims to be able to understand and come to terms with the sentence, and are also important in ensuring a transparent and open justice system. Unfortunately, under the current system, any transcripts of court cases come at significant expense to a victim, denying them access to records that pertain to them and often preventing their ability to understand the sentence and be able to move on.

As a result of our campaigning, Government is currently running a pilot to provide free transcripts of sentencing remarks to all rape and sexual offence victims, which is already making a difference to victims' lives. One victim, having received a transcript through this pilot, said "it reminded me I got justice and to move forward with my life", and so I hope the decision will be taken to further expand this access for victims.

I believe there is also a strong case for the more regular and consistent publishing of sentencing remarks, as done in some cases of particular public interest. This would enable media reporting to more accurately reflect on the sentence imposed. A lack of access to sentencing remarks can lead to unhelpful comparisons between cases, eroding trust in our justice system and in particularly in the Judiciary.

Victim Communication

What victims want and deserve is to be well informed when it comes to sentencing. Firstly, for them to be able to understand and come to terms with the sentence, which will aid their ability to cope and recover. Secondly, to ensure they can adequately prepare and plan for their own safety and peace of mind. And thirdly, in being able to come to an informed conclusion as to the fairness of the sentence, so that they might exercise their (admittedly limited) right to request an appeal under the Unduly Lenient Sentence Scheme.

I would urge the work of this review to link in with the Ministry of Justice's current plans to reform the Victims' Code, and to consider how victims' rights may be clarified or expanded in relation to sentencing. Right 9 of the Victims' Code provides victims with the right to be given information about the outcome of a case, however the reality of this right is a template letter from the Witness Care Unit scant of any detail.

I believe Right 9 of the Victims' Code should be expanded to more clearly provide a right for victims to have the sentence explained to them and to be given an opportunity to have their questions answered. Not only would this help victims to feel less like bystanders in the justice process, but it would no doubt help to reduce dissatisfaction with sentences.

Right 11 of the Victims' Code should also be revised to further expand the Victim Contact and Victim Notification Schemes to provide victims with more substantial information on their offender's activity, such as any rehabilitative activity they have undertaken. This would help to increase victim confidence in the effectiveness of sentencing and support their sense of safety when the sentence ends. If there is to be an increase in the use of community sentences, the Schemes should also be expanded accordingly, to provide victims with the confidence that non-custodial sentences can also be effective.

Victims' Voices in Sentencing

Victim Personal Statements (VPSs) – which we understand the Ministry of Justice are looking to rename Victim Impact Statements – are an important conduit through which victims can be heard in a system they have little control over. Work is needed to ensure more victims are given the opportunity to complete and update a VPS in their case. In some cases, such as stalking, an impact statement will directly influence the charge being sought and so affect the sentence if convicted. Victims need to better understand the important role that the VPS plays in the justice process, and the opportunity it can provide them to have their voice heard.

With this in mind, it is also important that the Judiciary endeavour to reflect victims' or families' voices in their sentencing remarks, acknowledging and validating the impact that the crime has had on its victims and clearly articulating how this may have impacted the sentence given. Without this, we risk minimising victims' experiences and exacerbating feelings of injustice.

VPSs play an important role for all victims, and I would like to see better utilisation of them in offences heard in the Magistrates Courts, where many crimes with significant victim impact – such as stalking and domestic abuse – are often heard. That is not to say that the wishes of victims are always acted upon through sentencing, but simply that their voices and the impact of the crime be acknowledged.

Victims' voices should also play a role in sentencing where the offender pleads guilty, or charges are lowered. I have heard the frustrations of many victims and families who have felt sidelined by the process of plea bargaining, believing the CPS is not acting in their best interests and their voices are being silenced. In other jurisdictions, such as Manitoba in Canada, victims have been provided with a right to be consulted on potential plea agreements between the Crown and the defence.

Protective Orders and Intervention Programmes

Awareness of the range of sentences and their merits can be poor, particularly in the Magistrates Courts. Protective orders, community sentences, and positive requirements need to be better understood and utilised by Magistrates. Protective and Civil Orders are crucial for victims' safety both in the restrictions they provide and in their ability to reduce reoffending through rehabilitative requirements.

Through my recent London Stalking Review, there was a clear underutilisation of Stalking Protection Orders (SPOs), and in particular the positive requirements that can accompany these, such as a requirement to take part in Perpetrator Intervention Programmes. The Review found high levels of repeat offending amongst stalking perpetrators. Probation data shows us a wide range of vulnerability among stalking offenders, with 28% on medication for mental health problems, and 53% having had serious psychological problems or depression. In London, the Stalking Threat Assessment Centre undertakes perpetrator intervention work, developed in partnership with clinical psychologists in the NHS Mental Health Partnership and probation. These interventions are seeing a positive impact, and I welcomed recent plans to further expand this work utilising the positive requirements which can be enforced via a Stalking Protection Order.

The Early Stalking Intervention Programme (ESIP), funded by the NHS and part delivered through MOPAC, is multiagency intervention delivered by Police, NHS and the Suzy Lamplugh Trust to those on SPOs, with an aim to address stalking behaviours at an early

stage, using tools and strategies to manage emotional and social skills that are contributing to their offending behaviour.

Unfortunately, we have received feedback from police colleagues that Magistrates may not appreciate the importance and benefits of the positive requirements that can be attached to SPOs. We have been made aware of some Magistrates granting SPOs but not the ESIP positive requirement condition, potentially due to a lack of understanding about what this intervention entails in practice or a concern that it may be overly punitive or onerous. ESIP is a brief and low intensity offering which includes a 90-minute appointment and follow up call, and NHS colleagues who run this programme are confident that this early intervention effort will both improve compliance with stalking protection orders and desist escalating stalking behaviour.

With Government signalling that short-term sentences may be abolished, we must ensure we have robust orders that work to protect victims and the public, and must simultaneously move away from the view that positive intervention requirements being included as part of an order are a disproportionate response to offending. Any changes to remove shorter sentences must bear the importance of positive requirements in mind in the best interests of keeping victims and the public safe. We also need to see further investment in intervention programmes to enable them to reach a greater number of perpetrators and curtail their offending.

Electronic Monitoring

London has led a significant programme of work to electronically monitor offenders in order to drive down reoffending, from GPS tags for knife crime and domestic abuse offenders, to the use of Alcohol Abstinence Monitoring Requirements.

Evaluation of the GPS pilots in London for knife crime offenders has shown a statistically significant reduction in reoffending among those wearing GPS tags, with the vast majority of offenders themselves agreeing that it made them less likely to reoffending. Such electronic monitoring has proven its effectiveness and requires the investment to be rolled out at scale, targeted at offences we have high rates of reoffending and those where a victim is at heightened risk of further offending, such as stalking and domestic abuse case.

I am aware that MOPAC is also submitting a response to this Call for Evidence and so I defer to their submission for further details of the success of these schemes and the policies and resources needed to roll this out further.

Shifting the Burden to Probation and Police

The key to much of what has been discussed above, and likely much of what this Review is considering, is a well-resourced and effective police and probation service, as any move away from custodial sentences and toward management in the community will undeniably place increased burden on these agencies.
The Metropolitan Police are in the midst of a vast budget shortfall, risking a significant cut to officer numbers for a force that is already struggling to cope with the immense demands placed on it. All sentences require strict enforcement for victims and the public to maintain confidence, and without a significant uplift in resources I simply fail to see how this can be achieved.

Probation has also been struggling to cope under the pressures it faces, and victims have paid the price of this – either directly through a Victim Contact Scheme that has not

provided them with the information and support they need, or indirectly through a failure to adequately manage risk.

Tragic cases like that of Zara Aleena demonstrate what can happen when we have an under resourced and overstretched probation service. Significant investment is needed to increase staff pay, improve working conditions, and to train and retain these staff. Any move away from prison sentences and towards management of offenders in the community simply cannot take place safely in the context Probation currently finds itself in.

If more offenders are to be managed in the community rather than prison, or released into the community at an earlier point, then these sentences must be clear in their requirements, Probation must have the resources to supervise these offenders, and enforcement of breaches should be swift and robust.

Setting aside the issue of resource, the current system of supervision is confusing, contradictory, and often does not protect victims or the public. An example of this is Post-Sentence Supervision, introduced in 2015, which increased the length of supervision after a prisoner's release to a total of 12 months where they receive a custodial sentence of less than two years. In an example where a prisoner receives a two-month custodial sentence, this would result in one month in prison, one month on license, and 11 months on post-sentence supervision. Though there were no-doubt positive intentions behind its introduction, this supervision period currently does little to protect victims or serve the purpose of rehabilitation. Breaches can only result in a maximum of 14 days in prison, and have to be handled through the backlogged court system, meaning they are rarely acted upon.

Supervision periods should be of an appropriate length and Probation empowered and resourced to actually undertake robust supervision and see meaningful consequences if conditions are breached.

Appeals

The final consideration with regards to sentencing is in the ability to request a sentence be appealed. For victims (and for any member of the public), their only opportunity is through the Unduly Lenient Sentence (ULS) Scheme. The Scheme provides victims with a voice post-sentencing, but is highly limited in scope, restrictive in its timeframe, and is not well-known.

I have long lobbied for changes to the ULS Scheme to make it more accessible to victims, who have an absolute 28-day timeframe from the point of sentencing to make an application (less in reality, as the timeframe also accounts for the Attorney General's Office to consider the request). Victims are also rarely informed about the scheme, with the Victims' Code assigning responsibility for this to the Witness Care Units, who do not interact with all victims and often fail in their duty to inform those they do interact with.

An offender will inevitably have the opportunity to appeal discussed with them through their legal representation, whilst most victims remain uniformed of the scheme. Offenders can also appeal their sentence outside of this 28-day timeframe in exceptional circumstances; victims are not afforded this same right.

There are a number of circumstances that could and should enable a request for appeal outside of the given timeframe, such as where there is conflict between the 28-Day ULS Scheme and the 56-Day Slip Rule. 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. In this case, the Judge made an incorrect calculation, believing the maximum sentence for a single Stalking 4A charge was five years, when it is in fact ten. 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 back 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 Appeal had since passed, and so the Attorney General's office would not be able to refer the case under the ULS Scheme, despite the 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. Consideration of a ULS Scheme application under exceptional circumstances would have provided the opportunity for the case to be heard by the Court of Appeal. I would urge this Review to consider a strengthening of victims' rights in this respect, providing them with a reasonable opportunity to voice their views and influence any appeal.

Conclusion

Victims have little understanding of, or voice in, the justice process - a system that they are unwillingly forced to go through. I hope this Review and its recommendations will help remedy some of these issues, enabling victims' voices to play a more significant role in sentencing, helping victims to understand sentencing and how it impacts them, and in ensuring that sentences achieve their aim of protecting victims and the public. I am sure this Review will also be mindful of other work going on in this space, including the Criminal Courts Review and the revising of the Victims' Code of Practice.

Thank you again for taking the time to consider this response.

Yours sincerely,

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