



**Philip Davies MP**  
House of Commons  
SW1A 0AA

**MoJ ref:** 89274

9 July 2021

Dear Philip,

### **POLICE, CRIME, SENTENCING AND COURTS BILL: REPORT STAGE AMENDMENTS**

We are writing to you in response to the amendments you tabled at Report Stage of the Police, Crime, Sentencing and Courts Bill. Due to the size of this Bill and the number of amendments tabled we regret that we were not able to respond to your amendments during the debate, but we'd like to take this opportunity to thank you for your close scrutiny of and contribution to this important piece of legislation.

#### NC64 – Scrutiny of investigation timeliness

The government very much agrees that long delays in investigations, can result in additional distress to all those involved. We know this is an important issue for police officers and the public. That is why we introduced the reforms last year to streamline decision making and to require written explanations when cases go beyond 12 months. We are seeing improvements in timescales as a result. The average length of an IOPC investigation is now less than nine months.

#### NC70 – Police driving

The government's view is that the statutory defence proposal is unnecessary and that the existing proposed legislation is sufficient to provide police drivers with the protection they need. The proposed amendment would not adequately provide for the State's duty under Article 2 of the ECHR. Including such a wide defence would not reflect that a balance was being struck between the need to apprehend criminals on the one hand and the need to avoid doing so in such a way as to create disproportionate risks to the lives of innocent citizens on the other. This proposed new test will mean that the courts take into account a police driver's skills and training, and strike the right balance between giving trained officers the confidence they need to fight crime effectively while holding to account those who drive in an inappropriate manner.

### NC71 – Intentional harassment, alarm or distress

The removal of the term “insulting” from the offence of causing intentional harassment, alarm or distress would have a knock-on effect on existing hate crime legislation into which the Law Commission is currently conducting a review. It is necessary to consider the issue raised in the context of the findings of the Law Commission’s report when it is published. We will respond to that review and consider relevant legislation when it is complete.

### NC72 – Criminalising commercial squatting and squatting on land

It would be premature for us to criminalise squatting in non-residential buildings and on land until we have fully considered what this might mean in practice. The reforms that we made in respect of squatting in residential buildings followed a full public consultation exercise. We would need to think carefully about the impact of such a change on all the different groups affected. Currently there is limited evidence presented that requires us to change the law in respect of commercial squatting, especially when other criminal offences may be committed by squatters in those buildings which can and should be pursued if reported.

### NC73 / NC74 – Changes to the Unduly Lenient Sentence (ULS) scheme

The government continues to keep the scope of the ULS scheme under review. However, any decision to further extend the ULS scheme to cover additional offences is not a straightforward one, as Parliament, in creating the ULS scheme, intended for it to be an exceptional power. It is also incredibly important that there is finality in sentencing. The general rule is that a person should expect to serve the sentence imposed by the court. The ULS scheme is a rare exception to this rule and is therefore tightly circumscribed. For this reason, the government has no plans to extend the 28-day time limit for a referral to the Court of Appeal by the Law Officers under the ULS scheme.

### NC75 – Release of prisoners who assault prison staff

Prisoners who commit assaults on staff must be punished – and the government is in agreement that they should serve additional time in prison which reflects the seriousness of that offence. We are of the view however that prosecuting offenders who assault prison staff, and ensuring they get the right punishment, is the right approach; rather than requiring them to serve the whole of the remainder of their original sentence in custody. To override release from an original sentence would lead to arbitrary and inconsistent additional custodial time depending on the length of the sentence being served. It would also mean there would be no period on licence in the community following release, where we know the Probation Service do important work in reducing crime by further tackling the drivers of reoffending. It should be noted that the sentencing guidelines, produced by the independent Sentencing Council, make clear that sentencing for a further offence committed in prison should normally be consecutive to the original sentence, resulting in additional time in custody.

### NC76 – Increased penalty for dangerous driving

The government is of the view that the maximum custodial sentence for the offence of dangerous driving is already set at the appropriate level for the severity of the offence. The vast majority of those given an

immediate custodial sentence for dangerous driving receive much less than the current 2 year maximum, suggesting that the courts do not consider their sentencing powers to be lacking in regard to this offence. In addition, we should be clear this offence does not involve an injury or death. Where serious injury or death occurs as a result of dangerous driving then separate offences, with significant maximum penalties – including the proposed life sentence for causing death included in this Bill will be charged. So, it is right that the maximum custodial sentence is set at the level it currently is to reflect the degree of culpability and harm caused by the offence.

#### NC77 – Limitation of Fixed Term Recalls

Public safety is the overriding consideration in any recall decision which is why there are already safeguards in place to ensure that fixed term recalls are only used in lower risk cases where re-release on licence is the safe and appropriate thing to do. Furthermore, some of the exclusions sought by this new clause are already in place. Prisoners serving an extended sentence are ineligible for fixed term recalls given they have been found to be dangerous by a court at the point of sentencing. And offenders released early on HDC who are recalled must remain back in prison at least until their normal release date, rather than be re-released automatically after 28 or 14 days.

#### NC78 / NC80 / NC81 – Restricting moves to Category D Conditions

Spending time in a Category D, or 'open' prison is an important part of an offender's sentence and serves a variety of functions. It is incorrect to view it as a reward or any kind of 'soft option'. Transfer to Category D conditions is not automatic for any prisoner and must be based on an assessment that the individual can safely and securely be managed in lower security conditions. For those who have been in custody for many years, such as those convicted of murder, time in open conditions allows them to re-adjust to life in the community and to prepare for release in a measured, controlled and gradual manner. The effect of these amendments would be to see certain prisoners, including those who have committed serious offences, released into the community directly from closed conditions with less preparation and less testing than they are currently subjected to. That is not in the interests of public protection or successful resettlement following release. In the case of Foreign National Offenders, the Prison Rules 1999 already restrict transfers to open conditions for offenders if they are liable to deportation and have exhausted their appeal rights.

#### NC79 / NC82 – Restricting 'resettlement licences'

The drafting of these clauses did not make it clear whether you were proposing to prevent release on temporary licence (ROTL) being granted to those prisoners convicted of murder and Foreign National Offenders subject to deportation – or to prevent the release on licence of both these groups of prisoners before the end of their sentence. For the purpose of this letter I will address these amendments in so far as they relate to ROTL as I expect that was your intent.

For those serving long sentences for murder, ROTL plays an important role in the very latter stages of the sentence to help safely prepare them for potential release by the Parole Board. It would be counter-productive to entirely remove the possibility of ROTL and the known benefits it can bring for those prisoners who are suitable for it, in terms of successful resettlement following release and reducing the risk of further offending. The evidence paints a positive picture of the benefits of ROTL - compliance

remains high at well over 99% and we have good evidence to suggest that ROTL helps to reduce the risk of re-offending which is an important contribution to our priority of cutting crime.

This government is clear that ROTL is not an entitlement and not all eligible offenders are suitable. A robust risk assessment is at the heart of the process and any release is always subject to licence, which will include conditions restricting where the offender can go and what they can do. Higher risk offenders, including all Indeterminate Sentenced Prisoners, are subject a restricted ROTL regime that necessitates additional assessment, for example a psychology assessment, prior to any ROTL decision.

On NC 82, we are confident that we have the balance right in terms of already excluding foreign nationals from ROTL where there is some certainty about their deportation, while allowing it in certain cases where release in the UK may still be possible given the important role ROTL plays in cutting crime by reducing reoffending.

#### NC83 – Sentencing for use of a knife in domestic homicides

We recognise the concern underlying this amendment and that this is of particular concern in cases of domestic homicide. However, it is critical that before considering reforms, we first understand how current legislation and guidelines are operating in practice, including for example, the sentencing guidelines for domestic abuse. In that spirit, we are pleased to inform you that the review of domestic homicide sentencing which the Lord Chancellor announced in March is well underway. This review will analyse recent cases to see what effect the current law and guidance are having, including explicitly looking at how cases involving a weapon are sentenced, and Parliament will be provided with more details as the review progresses. We hope this reassures you that the government is taking the necessary steps in this area and that we recognise the importance of the concerns you have raised.

#### NC84 – Recording of non-crime hate incidents

The collection of non-crime hate incident data is a key legacy of the Macpherson Inquiry, set up to consider the issues surrounding the murder of Stephen Lawrence, and is intended to give the police the means to understand tensions within communities before they escalate into serious harm. In this respect, this data is vital for helping the police build intelligence to understand where they must target resources to prevent serious crimes which may later occur.

In April the Home Secretary wrote to the Acting Chief Executive Officer of the College of Policing and to the relevant lead within the National Police Chiefs' Council to ask them to explore whether the collection of non-crime hate incident data may infringe fundamental liberties or harm a person's future prospects and to consider whether there are realistic and credible options for reforming non-crime hate incident recording to improve personal data protections.

#### NC92 – Sentencing Escalator

It has been a long-established practice under our criminal law for relevant and recent previous convictions to be treated as an aggravating factor during sentencing, increasing the seriousness of the offence and meriting a more severe sentence. Sentencing guidelines are also clear that, in cases involving significant persistent offending, *'the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence.'* We are therefore of the view that the current law and

sentencing guidelines provide courts with appropriate discretion and guidance on the taking account of previous convictions during sentencing.

#### NC93 / NC94 – Effect of remand time spent on tagged bail against a sentence of imprisonment

When an individual is subject to curfew with electronic monitoring (EM) while remanded on bail, their liberty is restricted. EM curfew on bail should not and is not treated as being equivalent to time spent on remand in custody, but it is still a restriction of liberty and it is therefore appropriate that proportionate credit is given if the court is subsequently considering a custodial sentence. The crediting of EM curfew on bail is also a useful tool to improve compliance with bail conditions because, if the curfew is breached, that time will not be subsequently credited.

#### NC95 - Magistrates Sentencing Powers

We are grateful to you for raising this important point as we consider all options to support the recovery of our criminal justice system and build back better from the impact of the pandemic. We are very sympathetic to the idea proposed and have asked my officials to look into extending magistrates' court sentencing powers. We recognise the important role that magistrates' courts play in our justice system and we want magistrates' courts to retain more cases than they do at present. In doing so, we need to give careful consideration to the impact such changes have on the wider criminal justice system.

#### NC96 – Power of police to stop vehicles

It is absolutely vital that our police officers are protected whilst carrying out their duties and keeping the public safe. The government supportive in principle of the extension of s163 (RTA) powers, but more evidence is needed to demonstrate that this would provide benefits to officers' safety and more opportunities for proactive policing. Further consultation would also be helpful in building support for the effectiveness and legitimacy of the proposal to extend s163 powers. The government will work closely with National Police Chiefs Council (NPCC) the College of Policing and Police Federation to develop the evidence base and policy on this, and other measures, that could improve officer safety at the roadside. Our programme of work under the police covenant and the new standard for police drivers will help to ensure our police officers are adequately protected.

We are placing a copy of this letter in the library of the House and on the Bill page on gov.uk.

We hope this letter has provided reassurance regarding the government's position on these issues and we look forward to working with you further as the Bill progresses.

Yours sincerely



**RT HON ROBERT BUCKLAND QC MP**



**Victoria Atkins MP  
Minister for Safeguarding**