



EVIDENCE TO THE HOUSE OF COMMONS PUBLIC BILL COMMITTEE REGARDING CLAUSES 8-16 OF THE COURTS AND TRIBUNALS BILL

Written evidence of Professor Penney Lewis, Criminal Law Commissioner

- 1.1 I am the Law Commissioner for Criminal Law at the Law Commission of England and Wales.
- 1.2 The Courts and Tribunals Bill (“the Bill”) contains provisions on evidential thresholds and special measures, some of which are based on the Law Commission’s Evidence in Sexual Offences Prosecutions (“ESOP”) project.

Background

- 1.3 The Law Commission of England and Wales is an independent, statutory body established in 1965 to keep the law of England Wales under review and recommend reform to ensure it is fair, modern, simple and cost-effective.¹ In March 2019, the Government commissioned the End-to-End Rape Review to seek a better understanding of what was happening in rape trials to try to improve the criminal justice system’s response. One outcome was the Government’s request to the Law Commission to review the trial process in sexual offences cases. We launched the ESOP project by publishing a background paper in February 2022 and published a consultation paper containing 119 consultation questions in May 2023. We held a four-month public consultation ending in September 2023, received 133 consultation responses, and conducted around 60 consultation events and meetings. We published the final report with recommendations to the Government for reform on 22 July 2025. Our conclusions and recommendations were informed by our detailed analysis of the current legal framework, guidance, research and practice in England and Wales and comparable jurisdictions, and of consultation responses and feedback from events.²
- 1.4 The project examined the law, practice, guidance and procedure in sexual offences cases and made recommendations for reform to improve the understanding of

¹ See [About us – Law Commission](#).

² For further details, see our [project page](#); [Evidence in Sexual Offences Prosecutions: a Final Report](#) (2025) Law Com No 420 (“FR 420”); and [Evidence in Sexual Offences Prosecutions](#) (2023) Law Commission Consultation Paper No 259 (“CP 259”).

consent and sexual harm, improve treatment of complainants, and ensure that defendants receive a fair trial. It focuses on how to counter juror misconceptions about sexual offending (rape myths).³

Why reform is needed

- 1.5 Rape and serious sexual offences are amongst the most significant criminal offences and are mostly committed by men.⁴ Each year, around “128,000 adults – over 90% of them women” are estimated to have experienced rape (including attempts) according to the Crime Survey for England and Wales (“CSEW”), and over the last decade, the number of such reports has increased.⁵
- 1.6 A large number of sexual offences are either not reported to the police or once reported, do not proceed.⁶ Even when reported, some complainants choose not to support investigations, often due to mental health impacts, lack of support, intrusive requests to access private information, and/or fear of the defendant.
- 1.7 While progress has been made, evidence shows that the criminal justice process for rape and serious sexual offences is still flawed and more can be done to ensure that sexual offences are tried justly, without traumatising complainants. One issue particularly harmful to the fair and effective trial of sexual offences is the risk that rape myths will permeate the criminal process, influencing jurors’ deliberations.
- 1.8 There is a lack of consensus regarding the frequency and impact of myths on sexual offences cases and jurors’ deliberations. A post-trial attitudes survey conducted with real jurors in England and Wales found no support for the claim that “juror bias” is “widespread” in sexual offences trials.⁷ However, in New Zealand, a recent study supports the view that some degree of illegitimate reasoning does occur in real jurors’ decision making.⁸ Additionally, research with mock jurors in England and Wales indicates that myths do impact jurors’ deliberations.⁹

³ “Rape myths” are genuine and sincere beliefs that are factually incorrect and derived from stereotypes. For example, there is a myth that rape will always be reported promptly – the reality is that most rapes are never reported, and delay is common.

⁴ Office for National Statistics (“ONS”), [Nature of sexual assault by rape or penetration, England and Wales](#) (18 March 2021) Tables 3 and 4.

⁵⁵ HM Government, *The end to end rape review report on findings and actions* (June 2021) (“End-to-End Rape Review”) p 3; R George and S Ferguson, *Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales; and Research Report* (HM Government, June 2021) (“End-to-End Rape Review Research Report”) p 29.

⁶ HM Government, *Criminal justice system delivery data dashboard* (May 2025).

⁷ C Thomas, “The 21st century jury: contempt, bias and the impact of jury service” [2020] *Criminal Law Review* 987; C Thomas, “A response to ‘The Jury is Still Out’” [2021] *Criminal Law Review* 772.

⁸ Y Tinsley, C Baylis and W Young, “‘I think she’s learnt her lesson’: Juror use of cultural misconceptions in sexual violence trials” (2021) 52 *Victoria University of Wellington Law Review* 464, 470.

⁹ L Ellison and V Munro, “Reacting to rape: Exploring mock jurors’ assessments of complainant credibility” (2009) 49 *British Journal of Criminology* 202 and S Dinos, N Burrowes, K Hammond and C Cunliffe, “A systematic review of juries’ assessment of rape victims: Do rape myths impact on juror decision making?” (2015) 43 *International Journal of Law, Crime and Justice* 36, 44 and 47.

- 1.9 Taking all of this into account, in our review we proceeded on the basis that there is a risk that jurors may be influenced by myths and misconceptions and reforms should try to minimise such risks.¹⁰

Our recommendations

- 1.10 In the first part of our report, we considered restrictions on certain types of evidence that carry the most risk of either introducing rape myths or infringing the complainant's right to privacy and dignity. Our recommendations are a proportionate way of targeting the most problematic evidence by improving scrutiny of access and admissibility. Our recommendations are for a structured discretion model where the judge has discretion to permit access to or to admit evidence that meets a certain threshold, plus factors they must consider, structuring the discretion and improving consistency and clarity of decision making. The factors ensure that the risks associated with such evidence are always considered, that the complainant's rights are taken into account, and evidence necessary for the defendant to have a fair trial can be accessed or admitted.
- 1.11 In the second part of our report, we considered reform to features of the trial process. Our recommendations ensure a fair trial process that will improve treatment of complainants, further mitigate the risk of myth-infected reasoning, and improve understanding of consent and sexual harm while maintaining the defendant's right to a fair trial.

The Courts and Tribunals Bill

- 1.12 The Bill reforms evidential thresholds for categories of evidence which pose the greatest risk of introducing myths and misconceptions into the trial process (Clauses 8-11),¹¹ and special measures to assist witnesses with giving evidence (Clauses 12-16). Its accompanying Factsheet and Explanatory Notes indicate that the Bill draws on the ESOP final report. In the following evidence I set out our recommendations where they are relevant to the Bill, and in particular highlight those areas where the Government has decided to depart from them. I hope this will assist the Committee's scrutiny of the Bill. An earlier version of this evidence was submitted to the Justice Committee on 11 March 2026 and is being considered by Ministry of Justice officials.

Sexual Behaviour Evidence – Clause 8

Key recommendations

- 1.13 Where evidence of the complainant's sexual behaviour ("SBE") is to be adduced, we recommended the use of an enhanced relevance threshold using a structured discretion model. We recommend repealing the current framework (section 41 of the Youth Justice and Criminal Evidence Act 1999 ("YJCEA 1999")) which has been criticised as being too complex, both too broad and too restrictive, and thus inconsistently applied. Our recommended framework focuses the decision-making process on the probative value and risks associated with this type of evidence. As questions of admissibility are often fact specific, we concluded this was a more

¹⁰ To reach this conclusion, we extensively surveyed available literature and empirical evidence on the prevalence and impact of rape myths. See CP 259, ch 2 and FR 420, paras 1.2-1.14.

¹¹ We concluded against reform similar to Clause 11 and made no recommendation about this.

appropriate way of assessing admissibility instead of the current approach which prescribes factual scenarios where SBE may be admitted.

1.14 We recommended a two-stage framework that prohibits the use of SBE unless:¹²

- (1) it has substantial probative value in relation to a matter in issue in the proceedings,¹³ which is of substantial importance in the context of the case as a whole (“stage 1”); and
- (2) its admission would not significantly prejudice the proper administration of justice (“stage 2”).

1.15 To improve scrutiny, we recommended a list of factors for consideration when assessing the probative value of SBE at stage 1. They will not all be applicable in every SBE application and therefore are not mandatory considerations.

- (1) the nature and number of the events, or other things, to which the evidence relates;
- (2) when those events or things are alleged to have happened or existed;
- (3) where it is suggested that the SBE has probative value by reason of similarity between it and the sexual behaviour alleged to have occurred, the nature and extent of the similarities and the dissimilarities between the SBE and the sexual behaviour alleged to have occurred;
- (4) the extent to which the evidence is necessary to rebut or explain evidence introduced by another party;
- (5) the extent to which the evidence may distract the factfinder from the main issues in the case; and
- (6) the risk that the probative value of the evidence relies on myths or misconceptions.

1.16 When assessing whether stage 2 is met, we recommended the judge must consider each of the following factors:

- (1) the impact on the complainant’s legal rights, including respect for the complainant’s dignity and privacy);¹⁴

¹² FR 420, Recommendation 14, paras 3.99-3.101.

¹³ In this context, the probative value of evidence in relation to a matter in issue is its weight, or the extent to which it contributes to proving or disproving that matter.

¹⁴ The right to respect for private and family life is a qualified right protected by the common law and article 8 of the European Convention on Human Rights (“ECHR”). Public authorities may not interfere with the exercise of this right except in accordance with law, and where it is “necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. For further details see CP 259, Appendix 2, paras 2.12-2.21.

- (2) the impact on the interests of justice, including the right to a fair trial;¹⁵ and
 - (3) the risk of myths or misconceptions being introduced to the trial.
- 1.17 The relevance of the stage-2 factors will vary depending on the specific details of the SBE and the facts of the case. These factors are not exhaustive, and no single factor is determinative; rather, the judge must assess them collectively to determine whether admitting the evidence would prejudice the administration of justice, and if so, to what extent.
- 1.18 Currently judges are not required to provide written reasons in relation to SBE applications. Written reasons would promote transparency and consistency and enhance scrutiny of these challenging decisions. We therefore recommended that judges should be required to give written reasons for their decisions on an application to introduce SBE, addressing the two-stage test, including the mandatory factors under stage 2.¹⁶
- 1.19 The current law prevents the use of SBE for the purpose (or main purpose) of challenging the complainant's credibility. Challenging the complainant's credibility includes questioning whether they are truthful, reliable, or consistent.
- 1.20 We saw the value in restricting the use of SBE to suggest that the complainant lacks credibility. However, we recommended restructuring the current restriction to better target problematic use of SBE. We concluded that there should be a prohibition on SBE sought to be admitted as evidence that the complainant is "unchaste" and therefore should not be believed. This protects against the use of myths about complainants, whilst ensuring necessary evidence relating to credibility can still be used in court. This restriction ensures that SBE that relies on the sexual nature of the behaviour to question the complainant's credibility is not admissible in court and enables SBE that relates to a credibility issue in the case to be admissible if it meets the threshold.¹⁷ We therefore recommended that our threshold should include a prohibition on sexual behaviour evidence where it seeks solely to support an inference that, by reason of the sexual nature of that activity, the complainant is less worthy of belief.¹⁸ Our recommendation is reflected in the Explanatory Notes, rather than the Bill. When describing the new SBE threshold, the notes state:

It is clear that a complainant should not be viewed as less credible solely by virtue of the fact that they have engaged in sexual behaviour on one or more previous occasions (see e.g. *Re A* [2001] UKHL 25, at [27] for a statement of this principle). Accordingly, sexual behaviour evidence should never be admitted on the basis that it has substantial probative value where it seeks solely to support an inference that,

¹⁵ The right to a fair trial is a fundamental and absolute right guaranteed by the common law and by article 6 of the ECHR. It includes the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal; the presumption of innocence; and for the defendant to examine or have examined witnesses against them. For further details see CP 259, paras 1.79-1.87 and Appendix 2, paras 2.8-2.11.

¹⁶ FR 420, Recommendation 19 and paras 3.176-3.182.

¹⁷ FR 420, paras 3.143-3.152.

¹⁸ FR 420, Recommendation 16, para 3.153.

by reason of the sexual nature of that activity, the complainant is less worthy of belief.¹⁹

Key areas where the Bill departs from our recommendations

Stage 2 and its factors

1.21 We recommended replacing the current gateways model restricting the use of SBE with a two-stage structured discretion model. Contrastingly, the Clause 8(4)(b)-(c) adopts only stage 1 and its factors (whether the evidence has substantial probative value to a matter in issue), meaning that it lacks the factors and the stage 2 requirement (whether admission would significantly prejudice the proper administration of justice) to consider the evidence in the wider context of a trial that is fair and just.

1.22 In the final report we explained the operation of the two stages as follows.

At stage 1, SBE must meet the threshold of “substantial probative value”. This is an assessment of the probative value of the evidence itself. If it does not meet this threshold, it cannot be admitted. SBE with just “some” probative value (bare relevance) will not be admissible. If the evidence does have substantial probative value, the court must then also be satisfied that its admission would not significantly prejudice the proper administration of justice (stage 2). This is an assessment of the evidence in the wider context of a fair and just trial. If it would significantly prejudice the proper administration of justice, it will not be admissible. This means that SBE that has substantial probative value can still be inadmissible.

Our intention is that the two-stage test will operate to ensure that whenever SBE is necessary for a fair trial, it will be admissible. First, all evidence necessary for a fair trial will meet stage 1 as it will have substantial probative value in order to be necessary for a fair trial. Secondly, the proper administration of justice would be prejudiced if evidence necessary for a fair trial were not admitted. Therefore, such evidence would not be prohibited by stage 2. In fact, its admission would be guaranteed by stage 2.²⁰

1.23 We noted that a majority of consultees agreed with both stages, and explained that stage 2 “comes from the House of Lords decision in *Re A (No 2)* where the Law Lords were explicitly considering the compatibility of SBE restrictions with fair trials” and is also found in the Canadian and Scottish models.²¹ In *Re A (No 2)*, Lord Hope said of section 41:

The element of judicial discretion has been reduced to the minimum. There are risks involved in that choice. It has deprived the judge of the opportunity, in the last resort, of preventing unfairness to the defendant in circumstances where to do this would not significantly prejudice the proper administration of justice.

¹⁹ [Courts and Tribunals Bill Explanatory Notes](#), para 409.

²⁰ FR 420, paras 3.42-3.43.

²¹ FR 420, paras 3.36 and 3.38 and 3.69.

- 1.24 We also noted that “some consultees queried whether stage 2 was needed, suggesting that stage 1 is a sufficiently high threshold, because no admission of evidence with substantial probative value would prejudice the proper administration of justice”. However, we disagreed, finding that,

While substantial probative value is a high threshold..., assessing the impact of the SBE on the proper administration of justice involves broader considerations than its probative value...The admission of evidence that has substantial probative value can still prejudice the proper administration of justice.²²

- 1.25 We referred to a worked example, case law and legislation as “demonstrating that probative value is not the only relevant consideration for the proper administration of justice”. For example, we cited *Wilson*,²³ where the “Court of Appeal accepted that SBE that has substantial probative value could be excluded in some circumstances, without raising potential article 6 concerns”.²⁴ Importantly, we identified a further benefit of the two-stage test, namely that it “encourages consideration of the complainant’s article 8 right as a relevant factor in its own right”.²⁵
- 1.26 In addition, stage 2 incorporates explicit factors to guide judges’ decision making about the evidence in the wider context of a trial that is fair and just, ensuring consistency, transparency, and procedural justice.²⁶ These are important factors requiring explicit consideration of the complainant’s legal rights including respect for their private life and dignity; the interests of justice including the defendant’s right to a fair trial; and the risk of introducing myths. Because stage 2 is not in the Bill, these factors are also absent.
- 1.27 In the final report, we explained that a majority of consultees supported the stage-2 factor concerning the complainant’s legal rights because of the value of explicitly recognising complainants’ rights, even if this does not ultimately result in the exclusion of the evidence.²⁷ Moreover, where evidence is admitted, this factor is also of value in guiding the court’s assessment of which questions should be permitted. These rights are not part of the assessment of the probative value of the evidence in stage 1. Consultees’ main objection to this factor was that it should not be used to justify the exclusion of evidence that is necessary for a fair trial. We acknowledged that “the

²² FR 420, para 3.44.

²³ *R v Wilson and Anor* [2024] EWCA Crim 1514 at [45].

²⁴ FR 420, para 3.45.

²⁵ FR 420, para 3.49.

²⁶ Procedural justice involves participants being recognised and supported, having agency and making informed choices, meaning they are likely to feel better prepared and more resilient, regardless of the outcome. Consultees informed us that procedural justice is an important goal for sexual offence complainants. For example, Claire Waxman, former Independent Victims’ Commissioner for London, told us that a specialist sexual offences court would aim to “improve the treatment of victim-survivors, taking reasonable steps towards the goal of providing ‘procedural’ justice regardless of trial outcome”. See FR 420, para 12.23. See also the discussion of procedural justice in CP 259, para 13.149 citing E McDonald, *Rape Myths as Barriers to Fair Trial Processes* (2020), p 121.

²⁷ FR 420, para 3.75. This received support from a range of consultees including victims’ rights groups, judiciary, law enforcement, and practitioners.

complainant's dignity and privacy will not justify the exclusion of evidence that is necessary for a fair trial" noting that,

cross-examination in the context of a sexual offences trial in an adversarial system will usually be distressing to a degree. Some level of distress and privacy infringement may be unavoidable. However, there is still a role for considering the impact on the complainant's dignity and privacy, as protected by article 8, of the use of SBE to ensure that any such impact is limited, where possible, and proportionate.²⁸

- 1.28 We noted that the majority of consultees supported the stage-2 factor concerning the interests of justice because of the critical importance of safeguarding fair trial rights. Consultees' main critique of this factor was the risk that judges will balance the complainant's legal rights and the defendant's fair trial rights, with the latter prevailing. We acknowledged this risk but concluded that this was not inevitable.

It will be for the judge to consider, on a case-by-case basis, the extent to which a piece of evidence may impact on fair trial rights and privacy rights (or other legal rights of the complainant). Including both factors has more than an expressive function; it provides the framework for addressing how both rights are engaged in each case.²⁹

- 1.29 As regards the final factor concerning the risk of myths being introduced into the trial, this was supported by a majority of consultees. We explained that,

This is distinct from the consideration of myths and misconceptions under stage 1. At stage 1 the consideration is whether the probative value relies on a myth or misconception. At stage 2 the risk is whether, despite the individual piece of evidence having substantial probative value, it nevertheless carries a risk that because of the sexual nature of the evidence, it will introduce or perpetuate in the trial myths about sexual violence.³⁰

- 1.30 Some consultees raised concerns about the potential ambiguity of this factor. However, we concluded that judges receive training on myths, and are experienced in applying the law, and there are multiple sources of guidance describing common myths.³¹ We did not think it appropriate to legislate a definition of myths which should be considered as part of this factor because this might be under inclusive, and be too static because myths change and develop over time.³²
- 1.31 Finally, more generally, Clause 8's lack of structure concerning the matters covered by our recommended stage 2 may lead to broader, more open textured decision making in a complex and sensitive area of evidence. Our decision to recommend

²⁸ FR 420, para 3.77.

²⁹ FR 420, para 3.84.

³⁰ FR 420, para 3.91.

³¹ See Judicial College, [The Crown Court Compendium – Part 1: Jury and Trial Management and Summing Up](#) (April 2025 Update) Ch 20; and CPS, [Legal Guidance, Rape and Sexual Offences, "Annex A - Tackling Rape Myths and Stereotypes"](#) (May 2021).

³² FR 420, paras 3.92-3.93.

replacement of the strict gateways of section 41 with a two-stage structured discretion was founded on our model (when taken as a whole) being suitably and proportionately restrictive in practice. When designing it, we considered the risks of a too broad, discretionary approach. We noted that the threshold that preceded section 41 was replaced because of criticisms that it created “too broad an inclusionary discretion”.³³ We surveyed other jurisdictions with broad discretionary models concluding that,

the risks of myths and misconceptions associated with SBE are pervasive and judges are not immune to them. Without more detailed structure in the legislative framework, there is still considerable risk that impermissible reasoning will pervade decision making, or that it will be perceived to do so. Such structure could avoid a discretion model being subject to the same criticism that led to the introduction of section 41.³⁴

Substantial probative value factors

- 1.32 The Clause 8(4)(c) factors for evaluating substantial probative value do not incorporate an explicit requirement for judges to consider the risk that the probative value of the evidence relies on myths, as we recommended. Our general rationale for incorporating factors in the substantial probative value test was to ensure transparent and consistent decision making. We further explained our rationale for including a specific myths factor as follows.

This guides interrogation of whether the value of the SBE is based on the specific facts of the case, or if the relevance and probative value relies on assuming that a myth or misconception must be true. Where the justification for the relevance of SBE is based entirely on a myth, it will not have any probative value and is therefore irrelevant.

- 1.33 Instead, Clause 8(4)(c) which inserts section 41(2A)(f) into the YJCEA 1999 (“factor (f)”) states the suggested probative value of the evidence must be assessed by reference to whether it “relies on the drawing of an inference that does not appear to the court to be one which may properly be drawn”. It falls to the Explanatory Notes and separate policy background information to explain that factor (f) requires judges to consider myths. The Explanatory Notes state that,

[Factor (f)] means the court must consider whether or not the probative value of the evidence relies on so-called rape myths and misconceptions, since the truth of such myths and misconceptions cannot properly be inferred from sexual behaviour evidence. Examples of myths and misconceptions are set out in the policy background of this document.³⁵

- 1.34 The absence of a statutory myths factor in the substantial probative value test, supported by limited detail in the Explanatory Notes and background policy,³⁶ makes

³³ CP 259, paras 4.9-4.12, citing Lord Steyn 22A (*No 2*) [2001] UKHL 25; [2001] 3 All ER 1 at [28].

³⁴ CP 259, para 4.137.

³⁵ [*Courts and Tribunals Bill Explanatory Notes*](#), para 410.

³⁶ For the Explanatory Notes’ policy background on admissibility of evidence, see paras 70-74. This policy section gives an example of myths that may arise in sexual offences proceedings, namely the twin myths. It misdescribes the twin myths as relating to the misconception that rape will always be physically resisted or

the test less understandable, accessible and less targeted to the potential risks posed by this type of evidence. In addition, it may lead to less transparent and consistent judicial decision making.

Written reasons for judicial decisions

- 1.35 In addition to our structured discretion model, we recommended that judges should provide written reasons for their decisions on SBE admissibility to provide further structure (due to the removal of section 41's strict gateways), and to ensure transparent and consistent decision making. We recommended that their reasons should address stage 1, stage 2 and all the factors under stage 2 that they are required to consider. This element is not present in Clause 8; the Explanatory Notes state that,

The procedural provisions that apply to applications to admit sexual behaviour evidence by virtue of subsection 43(1)-(2) will continue to apply: the application to admit sexual behaviour evidence should be heard in private, in the absence of the complainant, and then the court must give reasons in open court (but in the absence of the jury) for granting or refusing leave.³⁷

- 1.36 A majority of consultees supported the introduction of written reasons because it will increase public confidence, complainants' confidence in the process, consistency and transparency.³⁸ We concluded that,

this rationale applies most clearly to the factors under stage 2, not stage 1. The key difference is that the factors under stage 2 should be considered in every case; it is important for their efficacy that judges always turn their minds to those factors. However, under stage 1 the factors may help assess probative value if they are present features of the evidence; it is not necessary for their efficacy for the judge to consider every factor regardless of the facts of the case and specifics of the SBE.³⁹

Compensation Evidence – Clause 9

Key recommendations

- 1.37 Victims of violent crimes are entitled to apply for compensation under the Government funded Criminal Injuries Compensation ("CIC") scheme. Criminal Injuries Compensation evidence ("CICE") refers to evidence that a complainant has applied for, or received, compensation under the CIC scheme after reporting a crime.

will result in injury; and that allegations of rape are commonly false. In the consultation paper, we explained the evolution of "rape shield" laws as a mechanism to counter what had been "described in the Supreme Court of Canada as the 'twin myths' that "unchaste' women are more likely to consent to sex and less worthy of belief". See CP 259, para 2.23, citing *R v Seaboyer* [1991] 2 SCR 577 at 604 (McLachlin J). For a full exploration of common myths in sexual offences cases and their impact see CP 259, paras 2.6-2.53. See also CPS, *Legal Guidance, Rape and Sexual Offences*, "Annex A - Tackling Rape Myths and Stereotypes" (May 2021) and Judicial College, *The Crown Court Compendium – Part 1: Jury and Trial Management and Summing Up* (October 2025) 20-1, "Sexual offences – The dangers of assumptions".

³⁷ [Courts and Tribunals Bill Explanatory Notes](#), para 414.

³⁸ FR 420, para 3.179.

³⁹ FR 420, para 3.180-3.181.

- 1.38 CICE can be used in sexual offences cases to reinforce harmful myths, by suggesting that the complainant is motivated to lie about a sexual offence allegation for financial gain. In addition to potentially influencing jury decision making, this can deter complainants from applying for compensation out of fear it will be used against them in court.
- 1.39 We concluded that the most suitable response to the risks posed by CICE is to introduce a higher threshold for allowing this evidence to be introduced and to require greater consideration of the relevant interests. We recognised the need to allow some CICE to be admissible as it may be required to ensure the defendant receives a fair trial. This could be, for example, where there is an inconsistency in what the complainant has said about making a compensation claim, or where there is other evidence which supports an argument that the complainant has lied for financial gain.
- 1.40 Our recommended test for admitting CICE follows a two-stage structure similar to the SBE model meaning that evidence of a CIC claim should only be admissible if:
- (1) the evidence has substantial probative value in relation to a matter in issue in the proceedings that is of substantial importance in the context of the case as a whole (“stage 1”); and
 - (2) its admission would not significantly prejudice the proper administration of justice (“stage 2”).
- 1.41 As the guiding factors for stage 1 CICE would need to be different to the factors for SBE, and we did not consult on them, we recommended that a non-exhaustive list of factors should be developed by the Government to aid in the assessment of the probative value of the evidence.
- 1.42 For stage 2, we recommend that the judge should consider the following factors when determining if admission of the Criminal Injuries Compensation evidence would significantly prejudice the proper administration of justice:
- (1) protection of the complainant’s legal rights, including respect for the complainant’s private life and dignity;
 - (2) the interests of justice, including the defendant’s right to a fair trial; and
 - (3) the risk of introducing or perpetuating myths or misconceptions in the trial.⁴⁰
- 1.43 As with stage 2 of the SBE test, these factors are not exhaustive, and their relevance will vary depending on the individual case. Importantly, no single factor automatically determines admissibility; instead, judges must consider them together.
- 1.44 We also recommended that judges be required to explain their decisions in writing, addressing the test and the factors under stage 2. We considered that providing

⁴⁰ FR 420, Recommendation 24, paras 5.80-5.82.

written reasons explaining decisions on CICE applications would promote transparency and consistency.⁴¹

Key areas where the Bill departs from our recommendations

Stage 2 and its factors

- 1.45 For further details on the absence of stage 2 and its factors, see my comments on Clause 8 above.

Substantial probative value factor

- 1.46 For further details regarding the absence of an explicit statutory myths factor in the substantial probative value test, see my comments on Clause 8 above.⁴²

Written reasons for judicial decisions

- 1.47 For further details regarding the absence of judicial written reasons, see my comments on Clause 8 above.

Threshold applies to compensation claim evidence arising from the charged offence

- 1.48 Clause 9 limits the threshold's application to compensation claim evidence in relation to the *charged offence*. Clause 9(2) inserting section 43A(1)-(2) states that the threshold applies to "any relevant claim made by the complainant". A relevant claim is defined as "any claim or application for damages or compensation in respect of injury, loss or damage resulting from the sexual offence with which the accused is charged."⁴³
- 1.49 In contrast, in the final report, we explained that our recommended threshold applies in a sexual offences prosecution to a compensation claim in relation to the *charged offence, or any other offence*. We explained that it applies in respect of,
- a CIC claim made by the complainant in relation to either the offence that is the subject of the prosecution or any other offence. We only consider the application of a higher threshold for CICE where it is introduced in sexual offences prosecutions because there is a greater risk that the jury will be inappropriately influenced by misconceptions about false complaints than in cases involving other offences.⁴⁴
- 1.50 Our rationale for this conclusion was as follows. Where a previous claim for compensation (unrelated to the charged offence) has been made, an argument which

⁴¹ FR 420, Recommendation 27, para 5.104.

⁴² The substantial probative value threshold inserted by Clause 9(2) inserting s 43A(5) requires regard only to the "extent to which the suggested probative value of the evidence relies on the drawing of an inference that does not appear to the court to be one which may properly be drawn from the evidence". The Explanatory Notes state that an inference cannot be properly made if it includes myths. See [Courts and Tribunals Bill Explanatory Notes](#), para 420.

⁴³ Our recommendation was limited to CICE, whereas Clause 9(2) is broader. Although we recognised the threshold could apply to other types of compensation evidence, we did not have enough information about the impact of this, or that other types of compensation evidence are regularly adduced in sexual offences trials. See FR 420, paras 5.83-5.86. Contrastingly, Clause 9(2) inserting Section 43A(2) into the YJCEA 1999 applies to any type of claim for compensation.

⁴⁴ FR 420, para 5.5.

could be advanced by the defence is that the fact of this previous claim on its own is indicative that the complainant was aware they may be able to make a CIC claim, and the current sexual allegation has therefore been fabricated for the purposes of financial gain. For example, *North (Mark)* concerned evidence from social services files regarding the complainant's previous CIC claim.⁴⁵ Due to Clause 9(2), the enhanced relevance threshold for compensation claims evidence would not apply to this scenario, as it is limited to compensation claim evidence in relation to the *charged offence*. In our view, an enhanced relevance threshold should apply in this scenario given the risk that evidence of a previous CIC claim could be used to infer that the complainant has lied about the present sexual offence allegation on the sole basis of the misconception that complainants often lie for financial gain.

Previous allegations of offending – Clause 10

Key recommendations

- 1.51 Previous allegations by the complainant that they have been the victim of sexual offending may be relevant in a sexual offences trial. Evidence that a complainant has previously made a very similar allegation that was proven to be false can be important evidence for the jury to consider. Evidence that the complainant made a previous allegation that is not false may also be relevant to a fact in issue.
- 1.52 Whether said to be false or not, evidence of a previous allegation of a sexual offence also carries the same risks as SBE given its sexual nature: the risk of distracting the jury from the issues in the case; of causing unjustified distress to the complainant; and of introducing myths and misconceptions about sexual conduct and sexual violence (including the pervasive myth that allegations of sexual offending are commonly false).
- 1.53 In addition, there are concerns that the “falsity” of previous allegations is not robustly scrutinised in this context. These concerns relate to arguments, usually by the defence, that a previous allegation was false when there is insufficient evidence that the allegation was in fact false.
- 1.54 Where it is evidence of “reprehensible behaviour”, false allegations evidence (“FAE”) is a form of bad character evidence (“BCE”). The use of BCE relating to the complainant (or any witness) is restricted under the Criminal Justice Act 2003 (“CJA 2003”) because of its inherent risk of prejudicing the jury. As FAE will likely involve content of a sexual nature, it can also fall within the definition of sexual behaviour and therefore be subject to SBE restrictions (currently under section 41 YJCEA 1999 described above).
- 1.55 Where the evidence is about the lies told by the complainant, rather than the sexual behaviour itself, it should be considered under the BCE framework instead of the SBE framework. In practice it is not always clear which threshold applies. The two frameworks are different, and it is not straightforward to apply both in one application. If a party seeks to admit FAE only through the BCE provisions (instead of the SBE

⁴⁵ See *North (Mark)* [2011] EWCA Crim 88. On the particular facts of this case, the Court of Appeal considered this evidence admissible to rebut the complainant's assertion in evidence that he had not been told of his ability to make a claim. However, it demonstrates that compensation evidence may be introduced concerning a previous claim unrelated to the charged offence. For further discussion of this case see CP 259, para 6.40.

provisions) there should be a “proper evidential basis” for asserting that the allegation is false.

- 1.56 The admissibility of evidence of previous allegations of sexual offending not said to be false would currently be considered either under the general relevance threshold, or under section 41 of the 1999 Act if the evidence falls within the definition of “sexual behaviour”.
- 1.57 In addition to the confusing distinction between FAE and SBE, we were concerned that the application of the bad character framework alone for FAE is unsatisfactory. This is because the BCE threshold is easier to meet than the SBE framework, and is not designed to address the same risks.
- 1.58 We concluded that there is a useful distinction between the SBE and BCE frameworks that should be retained. In our view, if the evidence of an allegation does fall within the definition of “sexual behaviour”, the SBE framework should apply. If not, then either:
- (1) the bad character framework will apply where the evidence of an allegation is said to be false, amounting to reprehensible conduct; or
 - (2) the relevance threshold will apply if the evidence of an allegation is not said to be false, or is not being used as evidence of the complainant’s misconduct.
- 1.59 We therefore recommended that the use of evidence of a previous allegation (false or not) should be regulated by the SBE framework where the evidence sought to be introduced, or questions sought to be asked, fall within the definition of “sexual behaviour”.⁴⁶
- 1.60 We were concerned that within the BCE framework there is currently no express provision for consideration of the particular risks associated with the sexual nature of previous allegations. We also heard concerns from some consultees that courts do not always properly scrutinise whether a prior allegation was false. To better interrogate falsity, we recommend that certain facts should not be treated as sufficient evidence of falsity on their own.
- 1.61 We therefore recommended that when evidence of a previous allegation is being considered under the bad character framework that judges should be required to consider the risk of introducing or perpetuating myths and misconceptions, similar to the requirement to consider the risk of introducing or perpetuating myths and misconceptions in our SBE framework.⁴⁷
- 1.62 We recommended that on their own, the following should not constitute a “proper evidential basis” that a previous allegation of sexual offending is false:
- (1) raising and not pursuing a complaint;

⁴⁶ FR 420, Recommendation 21, para 4.40.

⁴⁷ FR 420, Recommendation 21, para 4.40-4.41.

- (2) a decision to take no further action, not to charge or not to prosecute; and
- (3) an acquittal.⁴⁸

Key areas where the Bill departs from our recommendations

Distinguishing categories of evidence and considering myths in BCE

1.63 The Explanatory Notes state that,

Clause 10 inserts new section 100A into the [CJA 2003 framework regulating non-defendant BCE]. This section provides that an allegation that a complainant has made a previous false complaint that they were a victim of a sexual offence is not admissible unless there is a proper evidential basis for asserting that the allegation was (a) made and (b) untrue. This test must be met in addition to the test for the admission of this evidence as non-defendant bad character evidence at section 100(1) of the 2003 Act.⁴⁹

1.64 Section 100A(4) defines the proper evidential basis condition that must be met before such evidence is admitted, namely that “there is material before the court on the basis of which the court or jury could properly conclude that (a) the complainant made the previous false allegation; and (b) the previous allegation was false”. In addition, under section 100A(5)-(6) such evidence is not to be regarded as meeting the proper evidential basis condition merely because the previous allegation was (a) not reported to the police; (b) the complainant did not support the prosecution; (c) the alleged perpetrator denied the alleged offence, was not prosecuted for it or was acquitted of it.

1.65 Therefore, Clause 10 implements our recommendations to the limited extent that it addresses the concern that that courts do not always properly scrutinise whether a prior allegation was false under the BCE provisions. In the final report, we explained that the proper evidential basis test is used by the courts to determine whether the FAE is considered under BCE alone, “by assessing if there is a sufficient evidential basis on which to suggest the evidence goes to falsity rather than the sexual behaviour of the complainant.”⁵⁰ We noted concerns that previous allegations for which there is no proper evidential basis of falsity are still being admitted as FAE.⁵¹ To better interrogate falsity, we recommended that certain facts should not be treated as sufficient evidence of falsity on their own, and these broadly align with the proper evidential basis condition in Clause 10.

1.66 However, Clause 10 does not implement our recommendations in two key respects.

- (1) It does not implement our recommendations regarding distinguishing the different categories of evidence and the thresholds that should apply where

⁴⁸ FR 420, Recommendation 22, para 4.55.

⁴⁹ [Courts and Tribunals Bill Explanatory Notes](#), para 427.

⁵⁰ FR 420, para 4.42.

⁵¹ FR 420, para 4.44, referring to the following campaign, which is reflected in Clause 10: CWJ, End Violence Against Women, Imkaan, RCEW, Rights of Women, [Unfair use of “bad character” evidence against rape victims: How unrelated previous disclosures of rape are used to discredit survivors: Joint Briefing for House of Lords](#) (May 2025).

there is a previous allegation of sexual offending. Nor does it address the confusion about whether FAE should be subjected to the BCE or SBE frameworks. As set out above, in our view, if the evidence of an allegation does fall within the definition of “sexual behaviour”, the SBE framework should apply. If not, then the bad character framework will apply, or the relevance threshold will apply if the evidence of an allegation is not said to be false or is not alleged to be misconduct.

- (2) It does not address the concern that within the BCE framework there is currently no express provision for consideration of the particular risks associated with the sexual nature of previous allegations, as we recommended. This risk arises even though there is nothing in the evidence which falls within the definition of sexual behaviour due to the similar nature of the evidence. Our model does this by introducing into the BCE framework an explicit requirement for judges to consider the risk that the FAE will introduce or perpetuate myths. Without implementation of our model for distinguishing which threshold should apply (see (1) above), SBE may be considered more frequently under the BCE framework. As a result, the introduction of a myths factor into the BCE framework is even more important.

Propensity to commit offences involving domestic abuse – Clause 11

Key conclusions

- 1.67 In the final report, we considered the position where a defendant has engaged in previous misconduct such as controlling or coercive behaviour, other forms of domestic abuse, violence or sexual misconduct, but this misconduct has not resulted in a conviction.⁵² Stakeholders told us that the prosecution do not often seek to introduce this type of non-conviction evidence, and this evidence is not often admitted even when they seek to do so.
- 1.68 We concluded that the BCE framework in the CJA 2003 allows for non-conviction bad character evidence to be admitted where appropriate,⁵³ subject to judicial scrutiny and safeguards to prevent unfairness to the defendant and we therefore did not recommend reform. In our view, underuse of this evidence is due to issues in the investigation and case building, which are already being addressed via updated guidance.⁵⁴
- 1.69 Under sections 101(1)(d) and 103(1) of the CJA 2003, the defendant’s BCE may be adduced under gateway (d) (“propensity”), if relevant to “an important matter in issue”,

⁵² We only explored the operation of the BCE framework in the context of sexual offences cases; Clause 11 would apply in all cases.

⁵³ We noted that non-conviction BCE can appropriately be adduced, is subject to safeguards regarding its admissibility, and if admitted can be challenged by the defence via cross-examination. We also considered the risks of adducing non-conviction BCE. Consultees noted that because the misconduct is unproven, “the risk of prejudice to the defendant is consequently very high, while the potential probative value could be limited”. We further explained that where the defence contests it, “there is greater risk of [non-conviction evidence] distracting the jury with satellite litigation. The jury must be persuaded that the BCE is proved to the criminal standard of proof, which may draw their attention away from the central issues within the trial”. See FR 420, paras 6.36-6.45.

⁵⁴ FR 420, paras 6.7-6.54.

which includes their “propensity to commit offences of the kind with which [they] are charged”. BCE includes a prior conviction or evidence of prior misconduct that did not result in a conviction (sections 98 and 112(1)). Under sections 103(3), propensity can be established by a conviction of the same description or category (with categories defined in the CJA 2003 (Categories of Offences) Order 2004). However, this evidence may be excluded first, under section 103(3), where it would be unjust “by reason of the length of time since the conviction or for any other reason”. Secondly, it may be excluded under section 101(3) where it would have such an “adverse effect on the fairness of the proceedings” that it ought not to be admitted.⁵⁵

- 1.70 Consultees raised with us a very specific reform designed to make it easier to adduce BCE as evidence of propensity under gateway (d) which is aligned to what is now in Clause 11. The Centre for Women’s Justice (“CWJ”) argued that “in the context of alleged sexual offending against a partner, evidence of previous misconduct against previous or current partners is and should be admissible through gateway (d) to support an argument of propensity”.⁵⁶ Its suggestion was that intimate partner violence should be added to the CJA 2003 (Category of Offences Order 2004), meaning that a previous offence in this group would automatically establish propensity to commit sexual assault against an intimate partner under gateway (d).
- 1.71 We rejected this suggestion because whilst we agreed that “non-sexual misconduct against a partner may sometimes demonstrate propensity, we did not think that there was “a clear enough connection that it should automatically demonstrate propensity”.⁵⁷ We were also concerned it would “invite satellite litigation into the specific context of each prior conviction, to establish that the criteria of the statute were met”.⁵⁸ Overall, we considered that CWJ’s suggestion “would inappropriately expand the type of previous misconduct that is deemed to demonstrate propensity to commit a sexual offence, thereby risking the admission of irrelevant and prejudicial evidence” (despite the presence of exclusionary safeguards).⁵⁹

Key areas where the Bill departs from our conclusions

Automatic propensity

- 1.72 Clause 11 is aligned to the suggestion that we rejected (see above). The Explanatory Notes state that,

Subsection 2 amends section 103(2) of the 2003 Act to provide that a ‘domestic abuse offence’ is capable of demonstrating a defendant’s propensity to commit offences of the kind charged for the purposes of its admission as bad character evidence, if it is alleged that the offence with which the defendant is charged amounted to domestic abuse.⁶⁰

⁵⁵ For further details, see FR 420, paras 6.7-6.9 and 6.16.

⁵⁶ FR 420, para 6.26.

⁵⁷ FR 420, para 6.31.

⁵⁸ FR 420, para 6.32.

⁵⁹ FR 420. Para 6.33.

⁶⁰ [Courts and Tribunals Bill Explanatory Notes](#), para 437.

- 1.73 The effect of these provisions is that where the charged offence involves behaviour amounting to domestic abuse, where the defendant also has a previous conviction amounting to domestic abuse, this may be admitted under gateway (d) to establish propensity to commit offences of the kind charged. This would be subject to the prosecution proving behaviour amounting domestic abuse regarding the charged offence and the previous offence. It would also be subject to any relevant exclusionary provisions.⁶¹
- 1.74 Overall, Clause 11 implements a change which we ultimately considered unnecessary in sexual offences cases. This is because we concluded that this type of evidence is already admissible under the BCE framework under gateway (d),⁶² along with gateway (c).⁶³
- 1.75 Whilst Clause 11 does not create a category of automatic propensity by adding intimate partner violence to the CJA Act 2003 (Category of Offences) Order 2004 (a suggestion we rejected), it does create a route for establishing propensity very easily. Once behaviour amounting to domestic abuse has been established in the previous offence and the charged offence, propensity would automatically be established and the BCE would be admitted, unless one of the exclusionary rules applied. In the context of sexual offences, we were concerned about automatically equating non-sexual misconduct against a partner with propensity to commit a sexual offence (see above). In addition, Clause 10 raises the prospect of satellite litigation regarding whether the charged or previous offence amounts to domestic abuse.
- 1.76 Finally, we note that Clause 10 applies broadly to all types of proceedings, not just sexual offences. It could also establish propensity in relation to broad categories of people, it expands CWJ's suggestion beyond intimate partners to domestic abuse within the meaning of sections 1 and 2 of the Domestic Abuse Act 2021. It therefore only requires the defendant and the other person to be "personally connected", and this could include parental relationships and relatives.

Special Measures Directions – Clauses 12-14

Key recommendations

- 1.77 Currently, complainants in sexual offences prosecutions are categorised as "intimidated" witnesses who are in fear or distress about testifying.⁶⁴ The prosecution must apply for them to be allowed to use measures and must demonstrate to the judge that the requested measure would improve the quality of the complainant's evidence.⁶⁵
- 1.78 The current system often requires complainants to explain why they need support, which can be intrusive and stressful. Since most applications for measures are

⁶¹ See CJA 2003, ss 103(3) and 101(3) and the Police and Criminal Evidence Act 1984, s 78.

⁶² See *R v Balasz* [2014] EWCA Crim 937 and FR 420, para 6.26.

⁶³ See *R v C* [2012] EWCA Crim 2034, [2013] *Criminal Law Review* 358 and FR 420, paras 6.13-6.15.

⁶⁴ Under YJCEA, s 17 sexual offence complainants are automatically eligible for special measures as intimidated witnesses.

⁶⁵ See YJCEA, s 19.

granted anyway, this requirement is unnecessary. An entitlement model better reflects the reasons these measures exist: to help complainants give their best evidence and to treat them with dignity. It also recognises that complainants are often vulnerable simply because of the nature of the offence, not because of personal characteristics.

1.79 We therefore recommended a new entitlement model for complainants in sexual offence cases, where they can use standard measures to help them give evidence, without needing to prove that this will improve the quality of their evidence. However, there are two important limits: each relevant measure must be available in the court, and the measures selected must not stop the defence from being able to effectively test the evidence.⁶⁶ We explained that these limits would only arise very exceptionally, such as where the measure is not available and there are no reasonable alternatives, or where the measure would mean that the defence cannot effectively test the evidence.⁶⁷

1.80 The measures we recommended should be included within the entitlement model are:

- (1) The complainant gives evidence from behind a screen so they are shielded from seeing the defendant.⁶⁸
- (2) The complainant gives their evidence outside the courtroom over a live video link.
- (3) The complainant gives their evidence before the trial, which is recorded and then played to the jury during the trial.
- (4) A complainant is accompanied by a supporter (such as an Independent Sexual Violence Adviser) while they give their evidence.
- (5) The public is excluded from the court during the complainant's evidence. The judge has discretion over who is excluded, but the following people may be allowed to remain: those directly involved in the case (like the defendant and legal representatives); all bona fide members of the press; academic researchers with ethical approval from a university research ethics committee; a supporter for the complainant (if requested); and anyone else the judge allows in the interests of justice.⁶⁹
- (6) Judges and barristers in the court remove traditional court dress while the complainant gives evidence.

⁶⁶ FR 420, Recommendation 42, paras 9.56-9.57 and Recommendation 49, paras 9.165-9.166.

⁶⁷ FR 420, paras 9.40-9.50.

⁶⁸ We also recommended first, that when the complainant gives evidence using a screen, using a live link or is pre-recording their evidence, the effect of those measures should be that the defendant cannot see the complainant. Secondly, we recommended that when the recording of the complainant's pre-recorded evidence is disclosed to the defence or played back at court, the defendant should be permitted to see the complainant in the recording when watching it. See FR 420, Recommendation 47, paras 9.117-9.118.

⁶⁹ See also FR 420, Recommendation 48, paras 9.148-9.149. The exemption in Recommendation 48, para 9.148 is reflected in Clause 14.

- (7) The complainant can use an accessible entrance and waiting room that is separate from members of the public and the defendant.

Relationship between the Bill and our recommendations

Our entitlement model

1.81 Clause 12(3) implements our recommendation regarding the effect of the complainant using a screen.⁷⁰ Clause 14 implements our recommendation regarding exempted categories of individuals who may attend when the public are excluded during the evidence of the complainant in a sexual offences trial.⁷¹ Clauses 15 and 16 on editing pre-recorded evidence and the application of special measures to victim personal statements also implement our recommendations.⁷²

1.82 The Bill creates two presumptions regarding special measures. First, for witnesses who are automatically eligible for special measures under section 17, Clause 12(2) inserts a new section 22B into the YJCEA 1999. Section 22B creates a presumption that a screen will be used, where live link or pre-recorded evidence has been directed,⁷³ unless such a direction is contrary to the interests of justice (taking account of whether the screen likely to improve the quality of the evidence given by the witness, or might inhibit effective testing of the evidence by a party). It is also assumed that the screen is likely to improve the quality of the witness' evidence. The Explanatory Notes state:

Where a direction allows evidence by live link or pre-recorded cross-examination, screens must also be provided unless this would be contrary to the interests of justice. In deciding this, the court must consider, in particular, whether screens would improve evidence quality, and whether screens would prevent the effective testing of evidence. These factors are not an exhaustive list: the court may also consider any other matter relevant to the interests of justice.⁷⁴

In addition to the screen preventing the witness from seeing the defendant, it may also prevent the defendant from seeing the witness when they are giving evidence in court, via live link, or when pre-recording.⁷⁵

1.83 Secondly, for all witnesses, Clause 13(1) which inserts section 22C into the YJCEA 1999, creates a similar presumption that the court will direct that an independent supporter (such as an Independent Sexual Violence Adviser (ISVA)) accompanies a witness, unless this is contrary to the interests of justice.⁷⁶ It is also assumed that the

⁷⁰ See above, regarding Recommendation 47, paras 9.117-9.118.

⁷¹ See above regarding Recommendation 48, para 9.148.

⁷² See FR 420, Recommendation 45, para 9.99; and Recommendation 43, para 9.63.

⁷³ Which under section 19 requires consideration of whether the use of live link or pre-recording is likely to improve the quality of the evidence; any view of the witness; and whether the measures might inhibit effective testing of the evidence.

⁷⁴ [Courts and Tribunals Bill Explanatory Notes](#), para 448.

⁷⁵ See Clause 12(3) inserting s 23(1) into the YJCEA 1999 and [Courts and Tribunals Bill Explanatory Notes](#), para 449.

⁷⁶ The interests of justice are not defined in Section 22C.

presence of the independent supporter would be likely to improve the quality of the witness' evidence. The Explanatory Notes state:

Subsections (1) – (4) of section 22C provide that, where a party to proceedings applies for an eligible witness to be accompanied by an independent supporter, the court must make the special measures direction applied for, unless it would be contrary to the interests of justice to do so.⁷⁷

1.84 As a result, Clauses 12-14 do not reflect the entitlement model we recommended which would have allow complainants to choose from a set of standard measures. For many remaining special measures, the court must still assess under section 19 whether the measure is likely to improve the quality of the complainant's evidence.⁷⁸ In the final report, we noted consultees' general agreement with our entitlement model, and explained its value, stating it:

- (1) Explicitly recognises "that complainants have a right to be protected and treated humanely when giving evidence, even where it can be shown that the use of these measures is not necessary to improve the quality of their evidence".⁷⁹
- (2) Is centred on the complainant's needs and wishes and gives complainants greater autonomy over how they give evidence, which is an important component of procedural justice. With an entitlement, complainants can choose which measures they would like to have without needing to demonstrate that they are likely to improve the quality of their evidence.⁸⁰
- (3) Minimises disproportionate stress by avoiding the complainant having to supply information to the court regarding the impact of the measure on quality of evidence. It also gives "greater clarity to complainants on which measures they may receive".⁸¹
- (4) Should ensure consistent practice.⁸²
- (5) Would be supported by our recommendation that sexual offences complainants should receive independent legal advice on their choice of special measures, further facilitating individual assessment of the complainant's needs.⁸³

⁷⁷ [*Courts and Tribunals Bill Explanatory Notes*](#), para 451.

⁷⁸ Including the use of a screen in court under section 23; the use of live link under section 24; the witness being accompanied by a supporter under section 24A, as inserted by Clause 13(2); evidence being given in private under section 25; removal of wigs and gowns under section 26; and pre-recorded evidence under section 28.

⁷⁹ FR 420, para 9.28.

⁸⁰ FR 420, para 9.29.

⁸¹ FR 420, paras 9.31-9.34.

⁸² FR 420, para 9.36-9.37.

⁸³ FR 420, para 9.38.

Further enquiries

1.85 If further information is required, please email criminal@lawcommission.gov.uk.

A handwritten signature in black ink, reading 'Penney Lewis', is centered on a light gray rectangular background. The signature is written in a cursive, flowing style.

Professor Penney Lewis

Commissioner for Criminal Law

26 March 2026