

From: Jonathan King
Sent: 11 February 2020 09:12
To: LegCo Members
Subject: Domestic Abuse Bill 2019: further written evidence of Dr Vizard
Attachments: questionnaire_11pro_online DR EILEEN VIZARD RE AGE OF CRIMINAL RESPONSIBILITY 121010.doc; REFERENCES FOR ISLE OF MAN LEGISLATIVE COUNCIL MEETING 110220.docx; VIZARD LETTER TIMES 271219 ARTICLE FORD TIMES 271219 RESPONSE LORD BROWN TIMES 301219.pdf

From: Vizard, Eileen
Sent: 10 February 2020 20:22
To: Jonathan King
Cc: Ruth Donnelly; Kate Lord-Brennan; Table
Subject: FW: Domestic Abuse Bill 2019: Committee of the Whole Council

Dear Jonathan

I append a pdf containing copies of our recent Times letter, the Times article and Lord Brown's subsequent very supportive letter in the Times, all in relation to raising the age of criminal responsibility. This pdf was accidentally omitted from the previous email. I hope that all these documents will be useful for the Legislative Committee to consider.

Best wishes

Eileen

Dr Eileen Vizard CBE MD (Res) FRCPsych
Consultant Child & Adolescent Psychiatrist
Honorary Senior Lecturer, UCL Great Ormond Street Institute of Child Health
Visiting Professor, New York University, London

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From: Eileen Vizard/Southcombe < >
Date: Monday, 10 February 2020 at 17:32
To: Jonathan King < >
Cc: Ruth Donnelly < >, Kate Lord-Brennan < >, Table < >
Subject: Re: Domestic Abuse Bill 2019: Committee of the Whole Council

Dear Jonathan

Thank you for this information about the Zoom App. I have installed it on my laptop and had a successful trial run videoconference call with Francisca Gale just now. The sound quality is not great but we could understand each other.

In the meanwhile, I append a list of references relevant to the Domestic Abuse Bill, which I have put together at some speed, since I agreed to give evidence. It is not a comprehensive list but it is intended for the information of the Legislative Council and to assist with any subsequent queries they may have when the session is over. I may refer to some of these references during my evidence, if necessary.

I also append my response to the Law Commission's 11th Programme of Law Reform in 2010 where I discussed in some detail the rationale behind raising the age of criminal responsibility from the present age of 10 years old, the lowest in Europe and lower even than the Democratic Republic of Congo. The appended list of references includes a short section at the end in relation to the Age of Criminal Responsibility which has been a long standing concern of mine and which I understand that the Committee may consider at a later stage.

I had a technological query with which Ruth Donnelly could perhaps assist tomorrow morning? You will see that, at the end of reference 1. (Center on the Developing Child) there is a link to a short 2 minute you tube video clip showing the dramatic effect on the body of a child of being in a constant state of 'high alert', which is what happens when children are exposed to Domestic Abuse and unable to escape. I use this clip a lot for teaching since it has an impact and visually conveys a lot of technical information.

So, I wondered if it would be possible at some point during my slot, to *show that you tube clip to the members of the Council, using another device, perhaps a second iPad linked wirelessly or via a USB connection to the large screen*, without cutting off my own audio & video connection via Zoom to the Council? I can follow this clip on my own laptop and talk about it later. If this is not possible, I will still be able to give evidence but I think the you tube video clip would be helpful.

In any event, I assume that I will be asked to answer the 3 previously agreed questions, which I assume you will put before the committee members before I start my slot at 11.15 am.

I will be available tomorrow morning from about 9.45 am onwards.

I look forward to speaking to you tomorrow.

Best wishes

Eileen

Dr Eileen Vizard CBE MD (Res) FRCPsych
Consultant Child & Adolescent Psychiatrist
Honorary Senior Lecturer, UCL Great Ormond Street Institute of Child Health
Visiting Professor, New York University, London

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From: Jonathan King < >
Date: Friday, 7 February 2020 at 17:21
To: Eileen Vizard/Southcombe < >
Cc: Ruth Donnelly < >, Kate Lord-Brennan < >
Table < >
Subject: Fwd: Domestic Abuse Bill 2019: Committee of the Whole Council

Dear Dr Vizard

Thank you for your call just now. Please see information about Zoom below. As I said, I will be in touch on Monday with more information about timings for Tuesday.

Thank you.

Jonathan

From: Ruth Donnelly < >
Sent: Friday, February 7, 2020 12:49 pm
To: 'Rachel.Horman'
Cc: Jonathan King; Kate Lord-Brennan; Table
Subject: RE: Domestic Abuse Bill 2019: Committee of the Whole Council

Dear Rachel

Domestic Abuse Bill 2019: Committee of the Whole Council

As per previous correspondence with Kate Lord-Brennan MLC below are the details for you to join the Legislative Council on Tuesday morning for the Domestic Abuse Bill 2019: Committee of the Whole Council. The meeting is scheduled for Feb 11, 2020 at 10:30 AM

We are going to use an app called Zoom. I don't know if you have used this before, but we have found this to be very reliable and provide excellent sound and visuals. You do not need to create a Zoom account to join the meeting.

To join the meeting by clicking this link at 10:30am - [redacted]

If requested, the Meeting ID is [redacted]

We will connect an iPad to a large television screen so everyone can see you when you are connected. We will position our camera at the President of Legislative Council who will lead proceedings.

If you have never used Zoom before let me know by return of email and I can run through a test with you at your convenience.

My mobile between now and Tuesday if you have any issues is [redacted]

Kind Regards

Ruth

Ruth Donnelly
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Office of the Clerk of Tynwald
Legislative Buildings
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Website: www.tynwald.org.im

SELECTION OF RELEVANT REFERENCES
ISLE OF MAN LEGISLATIVE COUNCIL MEETING ON 11.2.20 AT 10.30 AM

RE: DOMESTIC ABUSE BILL 2019

1. Center on the Developing Child (2020). Three Core Concepts in Early Development: Toxic Stress Derails Healthy Development. *Center on the Developing Child. Harvard University*.
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2. Conti, G., Morris, S., Melnychuk, M. & Pizzo, E. (2017). The economic costs of child maltreatment in the UK. A Preliminary Study. NSPCC & UCL.
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4. Felitti, V.D., Anda, R.F., Nordenberg, D., Williamson, D.F., Spitz, A.M., Edwards, V., Koss, M.P. & Marks, J.S. (1998). Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults. The Adverse Childhood Experiences (ACE) Study. *Am J Prev Med* 14(4), 245-258.
5. HMG (Her Majesty's Government) (2018). Working Together to Safeguard Children. A guide to inter-agency working to safeguard and promote the welfare of children. London. *Department for Education*. July.
6. NSPCC (2019) Statistics on Child Abuse. *NSPCC Learning Pages*. Available from <https://learning.nspcc.org.uk/statistics-child-abuse/>
7. Skuse, D., Bentovim, A., Hodges, J., Stephenson, J. *et al.* (1998) 'Risk factors for development of sexually abusive behaviour in sexually victimised adolescent boys: Cross sectional study.' *BMJ* 317, 175-9.
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<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwalesoverview/november2019/pdf>
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Available from:
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2019>

10. Office for National Statistics (ONS) (2020). Child abuse in England and Wales: January 2020. Available from:
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/childabuseinenglandandwales/january2020>
11. Yu, R., Nevado-Holgado, A.J., Molero, Y., D'Onofrio, B.M., Larsson, H., Howard, L.M. & Fazel, S. (2019). Mental Disorders and intimate partner violence perpetrated by men towards women: A Swedish population -based longitudinal study. PLOS Medicine. December 17. Available from:
<https://doi.org/10.1371/journal.pmed.1002995>

RE: AGE OF CRIMINAL RESPONSIBILITY

SELECTION OF RELEVANT REFERENCES

1. Bateman, T (2012). Criminalising children for no good purpose: The age of criminal responsibility in England and Wales. National Association for Youth Justice (NAYJ) Campaign Paper. Available from:
<https://thenayj.org.uk/wp-content/uploads/2015/06/2012-The-Age-of-Criminal-responsibility.pdf>
2. MSF (The Michael Sieff Foundation) (2009). 1908 – 2008: The Children Act 100 years on. Young Defendants Today. How do we know if young defendants are developmentally fit to plead to criminal charges – the evidence base? Dr Eileen Vizard. The Conference Report. Available from:
3. <https://www.michaelsieff-foundation.org.uk/content/REPORT%20-%20Young%20Defendants%20Conference%2028%20April%202009.pdf>
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7. Vizard, E., Bentovim, A., Blakemore, S-J. & Listowel, F. (2019). Letter to the Times Newspaper re age of criminal responsibility. 27th December.

Dr Eileen Vizard CBE

Consultant Child & Adolescent Psychiatrist

UCL Great Ormond Street Institute of Child Health, 30 Guilford Street, London WC1H 1EH

11th February 2020

Sir, Being close in age to David Aaronovitch I, too, remember *All*

We've updated our comments.



Tap here to see more

return of this excellent programme as it would serve to refresh the memories of us oldies while opening the eyes of the young to what life was like in a pre-digital age.

Nicholas Allen

Ipswich

CALL TO RAISE THE AGE OF CRIMINAL RESPONSIBILITY

Sir, Nine years ago, in [a letter to *The Times*](#) (July 7, 2010), 33 colleagues and I urged raising the age of criminal responsibility in England and Wales. At ten years a child charged with a serious criminal offence can be subject to the rigours of prosecution in an adult court. However, his extreme youth, continued brain and cognitive development and likely adverse childhood experiences mean that he is unlikely to be truly fit to plead to the charges and to conduct his own defence in line with his human right to a fair trial. Such a young child defendant may show the "blanked out" traumatised presentation depicted in the recent BBC documentary *Responsible Child*.

The scientific evidence on brain development has grown in the past decade, and lends even stronger support to our 2010 summary: "Crucially, at age ten, children show marked immaturity in a network of frontal brain regions implicated in social cognition, planning, perspective taking and evaluating future consequences. This psychological and neurodevelopmental immaturity is such that the capacities of a child of ten are not comparable to an older adolescent or adult."

We are calling for the government not to shelve this human rights issue yet again. The Law Commission should be asked to consult on the question of raising the age of criminal responsibility from ten, which is the lowest in Europe.

Dr Eileen Vizard, consultant child & adolescent psychiatrist; **Dr Arnon Bentovim**, consultant child & adolescent psychiatrist;

Professor Sarah-Jayne Blakemore, professor of psychology and cognitive neuroscience; The Earl of Listowel

We've updated our comments.



[Tap here to see more](#)

SIR, ED MILIBAND IS, AS [JAMIE TURNER](#) SUGGESTS (NOTEBOOK, Dec 26), the person most to blame for Labour's dire state. Had he not seized the leadership from his more charismatic brother Labour would have done better at the 2015 election and thus avoided another leadership election. Its finances would have been sounder, too, thus avoiding the need to sell leadership votes to alleged supporters.

But others must share the guilt: people such as [Jeremy Corbyn](#) and Len McCluskey, for example, for continuing to peddle the fantasy politics that most of us of similar vintage grew out of in the 1980s.

But even I played a small part in the catastrophe. Having just lost Labour's last seat on Cheltenham borough council in 2008, for the one and only time in my life I was interviewed live on television. The reporter asked if Gordon Brown was to blame for my loss. I knew that he was in part (he lacked the essential appeal to swing voters) but I loyally trotted out waffle about other factors that had led to my defeat. Had I been more truthful maybe David Miliband would have been emboldened to stage a coup, [Labour](#) would have done better in the 2010 election, the EU referendum would never have happened and Mr Corbyn would still be happily and harmlessly showing off his leftie credentials from the back benches. Sorry.

Brian Hughes

Cheltenham, Glos

MIT OF THE NORTH

Sir, Your report of the plan to build a new university in the north (possibly Leeds) makes no sense ("[Proposal to repay voters by building 'MIT of the north'](#)", Dec 23). With all due respect to Leeds and its two existing universities, we already have a world-leading technology university in the north: the University of Manchester. This has more active Nobel laureates than any other UK university and is already of a scale and

MENU THURSDAY JANUARY 23 2020

Call to raise age of criminal responsibility to 12

Richard Ford, Home Correspondent

December 27 2019, 12:01am, The Times



The Scottish government has already raised the age of criminal responsibility to 12.
ALAMY



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The government's official advisers on youth justice are calling for a full review of the age of criminal responsibility in the hope that it will be raised by at least two years.

They are also urging ministers to consider making the Department for Education, rather than the Ministry of Justice, responsible for children who get into trouble with the police.

A paper from the Youth Justice Board said that the recent trend had been for countries to raise the age at which children are deemed responsible for committing a crime, but in England and Wales it had remained at ten.

The board's recommendation to follow the trend, submitted to the Commons justice select committee, coincides with [a letter](#)

to The Times today from two leading child psychiatrists, a psychologist and a crossbench peer who claim that the present age of criminal responsibility is a breach of human rights law.

The Scottish government recently raised the age of criminal responsibility north of the border to 12, although some campaigners had pressed for it to be pushed to 14. Youth justice campaigners argue that children as young as ten caught committing a crime should receive welfare interventions rather than being dealt with by the justice system and getting a criminal record.

Increasing the age of responsibility to 12 would have meant that children such as Robert Thompson and Jon Venables, who were ten when they killed James Bulger, two, would not have faced criminal proceedings.

Many countries have raised their age of responsibility, partly because of pressure from the UN Committee on the Rights of the Child, which states that setting the age at below 12 is considered “not to be internationally acceptable”, according to the Youth Justice Board.

The board added that research on brain and childhood development showed that children have a concept of right and wrong from a young age, but that other aspects of their development limited the possibility of criminal intent.

“Behavioural and emotional development means younger children typically have more difficulty controlling impulsive actions or resisting the influence of peers,” it said.

The board, which is a non-departmental public body advising Robert Buckland, the justice secretary, did not explicitly suggest a minimum age of criminal responsibility in its paper, but campaigners have called for it to be set at least at 12 and some want it higher.

In their letter, Eileen Vizard and Arnon Bentovim, both consultant child and adolescent psychiatrists, Sarah-Jayne Blakemore, a psychology professor at Cambridge University, and the Earl of Listowel said that children as young as ten were “unlikely to be truly fit to plead” and to conduct a defence “in line with his human right to a fair trial”.

Hundreds of young people aged ten to 12 were sentenced or given a youth caution in 2017-18. No other EU state has an age of criminal responsibility as low as that in England and Wales. Germany sets it at 14, Sweden at 15 and Portugal at 16.

Law

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Comments are subject to our community guidelines, which can be viewed [here](#).

Comments (80)

LETTERS TO THE EDITOR

DECEMBER 30 2019, 12:01AM, THE TIMES

Times letters: changing the age of criminal responsibility



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Sir, The letter from Dr Vizard and others ([Dec 27](#)) arguing for an increase in the age of criminal responsibility compellingly makes the case that a ten-year-old's mental capacities "are not comparable to an older adolescent or adult". I would also add that criminalising these youngsters, while they are still developing their identities and self-esteem, damages their prospects of growing up to lead a law-abiding life. If society brands them as criminals that is how they will come to identify themselves.

Whatever their wrongdoing, the substantive disposal of these cases will not be markedly different whether they are convicted under the criminal justice system or subjected to the corrective welfare process. If they need to be detained securely, they will be. The Bulger case, tragic and appalling as it was, continues to cast its long shadow over this issue.

It is time that a more enlightened approach was adopted. I suggest that the question be considered by the proposed new Royal Commission on Criminal Justice.

Lord Brown of Eaton-under-Heywood

Retired Justice of the Supreme Court

Sir, I agree that the brain is far from mature aged ten, 12 or even 25, but that does not mean that the ten-year-old child is not aware of actions that are right and wrong. The problem is more in the rather rigid manner in which our legal system pursues the investigation and prosecution of the offence, applying the same processes to every age of defendant. Raising the age of responsibility simply gives the child licence to believe that he can carry on doing the same thing that he knows is wrong for another couple of years.

Hedley Piper

Dartmouth, Devon

Sir, As a retired criminal lawyer, I find it interesting that the debate about the injustice surrounding the age of criminal responsibility in our jurisdiction is being rekindled for the umpteenth time since I started my career in the late 1960s.

I remember training for the implementation of the Children and Young Persons Act 1969, section 4 of which provided that a person could not be charged with a criminal offence, except homicide, by reason of anything done or omitted while he was a child (meaning under 14 years of age). Instead of prosecuting children aged 10-13 years for criminal offences, the act allowed the police to commence care proceedings in the juvenile courts and made the commission of a criminal offence a ground for bringing such proceedings, which were civil in nature and could lead to the court making a supervision order or, if necessary, a care order.

That provision was never implemented and is rarely referred to in these debates. It was a flawed provision because it excluded homicide, but it went a long way to address the injustice that persists to this day.

Morris Cooper

Ashby de la Zouch, Leics



**Law
Commission**
Reforming the law

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Dear consultee

The Law Commission regularly consults on new law reform projects to be included in its programmes of law reform. We are grateful to you for proposing an item for inclusion in the Law Commission's Eleventh Programme of law reform. Please use this questionnaire to tell us what you are proposing and why. The more you can tell us, the better able we will be to understand and assess your proposal. So please give us **as much information as you can**, even if you cannot answer all the questions. If we need to know more about your proposal at any stage, we may get back in touch with you.

What we need to know

We ask you to think carefully about whether your proposal is appropriate for the Eleventh Programme. The projects that will be taken on by the Law Commission must, of course, **relate to the law**, and will focus on issues that:

- are **systemic**,
- are caused by laws or policies that are **complex** or **hard to understand**,
- have **widespread discriminatory impact** or **cause disproportionate costs**, or
- arise from laws or policies that are **inconsistent with modern standards**.

The Commission also considers the **costs and benefits** of all of its recommendations for reform. Please tell us what you can about the economic and other impacts of your proposal.

What the Commission cannot include in its Eleventh Programme

There are some social and policy issues that the Law Commission will not normally consider because they are more appropriate for government to consider directly. These include highly controversial or political issues, such as the laws relating to abortion, immigration and the Human Rights Act, or issues of established government policy, such as the tax rate.

The Commission cannot consider individual problems, such as the way a case has been decided or unsatisfactory dealings with a local or central government authority. And finally, the Commission is not able to consider problems that arise in Scotland or Northern Ireland.

What happens next?

We will review all the proposals that are made to us before drawing up a list of potential projects, where appropriate working closely with the relevant government departments. As set out in the Law Commissions Act 1965, the Lord Chancellor will decide the final contents of the Eleventh Programme. We expect this to be during 2011.

We understand you may be disappointed if your proposal is ultimately not taken forward, but please be assured we are grateful for your contribution. If you have any questions about the consultation process, please contact us on 020 3334 0255 or via eleventhprogramme@lawcommission.gsi.gov.uk.

Thank you again for taking the time to complete this questionnaire and help us in our aim of making the law fair, simple, clear and cost-effective.

Kind regards

The Law Commission

Please send us your response no later than **Friday 15 October 2010**.

Eleventh Programme of Law Reform consultation response

Please answer as many of these questions as you can, as fully as you can. If necessary, continue on additional sheets. Please also indicate where you are not able to provide an answer.

Please tell us about yourself:

Name: Dr Eileen Vizard FRCPsych

Address:

Email:

Member of the public	☐		
Third sector/voluntary sector	☒	Commercial sector/business	☐
Nature of third sector/business organisation: Michael Sieff Foundation Trustee			
Lawyer	☐	Academic	☒
Specialist area:		Specialist area: Forensic Child Psychiatry; Juvenile Crime;Child Abuse	
Member of the judiciary	☐	Civil servant	☐
Specialist area:		Department:	
Local authority staff member	☐	Parliamentarian	☐
Other (please state): Consultant Child & Adolescent Psychiatrist			

*The Law Commission is a signatory to the Government's **Code of Practice on Consultation** and we carry out our consultations in accordance with the Code criteria, which are set out on the last page of this questionnaire.*

*We treat all responses as public documents in accordance with the **Freedom of Information Act** and we may name respondents and attribute comments, if we publish details of this consultation. If you want your submission to remain confidential, you should contact us before sending your response. (Please note that we disregard automatic IT-generated confidentiality statements.)*

1. In general terms, what is the problem that requires reform?

1. The age of criminal responsibility in England & Wales is far too low at age ten years old and needs to be raised significantly.
2. If the age of criminal responsibility is raised, there will need to be associated, significant changes in the youth justice system to allow adjudication of the facts, without a formal trial, as well as a hearing to address the welfare issues behind the offending.
3. Even if the age of criminal responsibility is raised, criminal legislation needs to include the concept of 'developmental immaturity' as a normal aspect of child and adolescent development. This would allow older children's competence to be assessed against developmental norms for their age and an opinion to be given about their 'fitness to plead' to charges, based on child norms, not adult criteria.

2. Can you give an example of what happens in practice?

For example, if you are a solicitor or barrister, you might describe how the problem affects your clients.

1. Young defendants aged ten years old do not understand the charges facing them, the medium and long term consequences of their pleas or the full impact of their offending on the victim(s)

2. Because they are developmentally immature (by dint of their young age) young defendants cannot instruct their solicitors properly, cannot participate fully and fairly in their own trial and cannot give competent evidence in their defence. Most young defendants are 'sitting out' the criminal trial with no real idea of their central role in the process nor the implications of the trial for the rest of their lives.

3. There is no regulation of the way that defence solicitors conduct the trials of young defendants. For instance, in Children Act proceedings, the use of multiple experts to assess young children repeatedly on the same issues is not allowed, to avoid the impact on children of going through traumatic material repeatedly, to avoid the Court needing to read repetitive expert accounts of the same issues and to save costs. Jointly appointed experts are preferred in Children Act proceedings with disclosure of all such expert reports to all parties being the default position.

In contrast, with young defendants, the defence solicitor is able to instruct a series of child experts to assess his client, either for fitness to plead or for pre-sentence purposes. If the defence do not like Dr A's report which indicates, for instance, that their client may be both dangerous and vulnerable, hence in need of a secure disposal with treatment facilities, the defence can simply discard this expert report and 'shop around' until they find another less balanced, more favourable (to their client) expert. In this way several expert reports can be commissioned and discarded before the defence find one which suits their purpose.

This situation is, in my view, deeply unethical, in that the child defendant is being required to sit through unnecessary re-assessments by experts some of whose reports never see the light of day even although they may contain highly relevant observations and recommendations about that child's future welfare, placement or treatment needs.

4. There are no agreed liaison procedures between the criminal courts and the family courts in cases where a young defendant is simultaneously the subject of criminal proceedings and care proceedings. For very young defendants facing serious charges, this is almost always the case since that small sub-group of children between ages 10-14 years old are known to be highly disturbed, usually from extremely deprived and abusive family backgrounds and in need of a welfare response as well as a disposal in the criminal courts.

One result of this lack of liaison is that expert reports on the offending child within care proceedings may not be released to the child expert in the concurrent criminal proceedings. Hence, valuable care proceedings assessment material on that same child is not then available to the child expert on the criminal side. The defence solicitor will always refuse permission to disclose his child expert report to other experts, particularly if he does not intend to 'rely upon' that report. This situation can and usually does result in the two sets of experts trying, through their lawyers, to get permission from both courts to speak to each other about the assessment of the same child. Complaints will be made by the defence solicitor if 'his' expert attempts to speak to the care expert or to others involved in the care proceedings. I have been threatened with being reported to the General Medical Council because another child expert whose report was not 'relied upon' (the defence did not like it) rang me to speak about a child defendant case.

5. There is no agreed or CPD certified training in child development, child mental health or communication with children for defence solicitors, members of the Criminal Bar or Sentencing Judges. This is, in my view, entirely inappropriate and counter-productive since well trained lawyers and Judges are likely to deal with child defendant cases more efficiently and fairly than those without training. This is the case with family lawyers, members of the

Family Law Bar Association and Family Division Judges who are all required to have training in these issues relating to children. These family lawyers are now very well trained and informed in most matters relating to child development, child mental health and communication with children. This training makes a tremendous difference in giving the correct level of instructions to a child expert, in the understanding of the child's emotional and welfare needs in care proceedings and in understanding the rationale for sharing relevant reports pertaining to the child.

In my view it should not be possible for an entirely untrained (in child matters) defence advocate or Judge to take on a case involving a very young child defendant. The defendant child should have the right to be represented and heard in Court by individuals who are trained to understand his developmental immaturity and how this will impact on his participation in the trial.

6. Following the criminal trial of a young defendant who has been convicted or acquitted of a serious offence, there is a persisting problem about the disclosure of expert reports prepared on that child for the criminal proceedings.

Even if the child becomes subject to a full care order, it is still possible for the 'not relied upon' expert report(s) on that child to be retained by the defence and not disclosed to the Local Authority who hold the care order. I believe that this is seriously wrong and unethical and goes against the spirit of the Children Act 1989 which puts the best interests of the child first.

There are pressing reasons why those who are left with the care of such a disturbed child, post trial, should have access to all the relevant criminal expert reports including those which did not enter the criminal proceedings. These reasons relate to subsequent care planning for that child and the need for the Local Authority to know about the level of risk posed by that child to others. An assessed high level of risk is very often one of the reasons why the defence decides to discard a child expert report in criminal proceedings but it is just this sort of assessment some months previously which is essential for care planning purposes.

In fact there are similar problems in the Local Authority or psychiatric services subsequently accessing child expert reports even when those reports were used in criminal proceedings, expert evidence was given and the issues are then on the public record to some extent.

This is because there is a perception amongst local services that the status of reports used in criminal proceedings is somehow more 'protected' than reports used in care proceedings and that they are unlikely to be allowed to be released. The reason that this issue is relevant is that the mental state, risk factors for delinquency and child abuse and the attitudes of most very young child defendants are likely to be crucial for any prediction of their future life chances. In practice, it is very difficult indeed to gain subsequent access to any defence expert reports on young defendants if the client or his carers do not consent to that disclosure. Arguments are put forward that disclosing these reports will infringe the young defendant's human rights to privacy and these arguments seems to 'trump' any considerations about risk and public protection. This unsatisfactory situation can leave major gaps in the understanding of the young person by those responsible for subsequent care planning.

3. To which area of the law does the problem relate (please tick)?

Administrative or public law	☐	Criminal law	☒
Property or land law	☐	Family law	☒
Trusts and wills	☐	Commercial or contract law	☐
Consumer law	☐	Regulatory law	☐
Planning and environment	☐	Don't know	☐

Other (please state): Human Rights Law

4. How did you come across this problem?

For example, do you work in a government department that has identified the problem in the course of work on a particular project?

I work as a Consultant Child & Adolescent Psychiatrist running a multi-disciplinary, non residential, specialist assessment and treatment service for children and adolescents who perpetrate serious sexual and violent offences against other children and adults. My work is forensic with instructions coming in from all agencies including the Local Authority, Health, Courts, Defence Solicitors and Barristers and Family Practitioners.

All the offending children seen have multiple social, emotional, psychiatric and behavioural problems. Most have been or will shortly be the subjects of care proceedings and their behaviour is such that few are still living at home. A significant minority of our child clients show callous-unemotional attitudes towards their victims and our research has indicated that these children have psychopathic traits. These children are likely to offend repeatedly over a longer period of time than other child criminals (Vizard et al 2007).

Other research suggests that their lifelong use of social and psychiatric services plus the costs of housing them in secure custodial settings in adult life means that they will incur high costs for the public purse (Utting et al 2007). Arguably, decriminalising such high risk/high harm children offers the prospect of reducing some of these public costs with a cheaper, more effective welfare disposal.

5. We will be looking into the existing law that relates to the problem you have described. Please tell us about any court or tribunal cases, legislation or journal articles that relate to this problem.

For example, you might be able to tell us the name of the particular Act or a case that relates to the problem.

'The assumption that a ten year old can face charges is widely discussed in the media in terms of whether or not that child can 'understand the difference between right and wrong'. In our view the question is more complicated – most ten year olds can understand that difference. Rather, as set out in *R (TP) v West London Youth Court* [2005] EWHC 2583 (Admin) the test is whether the defendant's intellectual capacity is such that he could not effectively participate in the proceedings and accordingly have a fair trial. It is for the defendant to establish this inability on the balance of probabilities. The European Court of Human Rights found that an 11 year old was unable to participate in his trial in the Crown Court (*SC v UK* (2005) 40 EHRR 10) even though he was fit to plead in the adult legal sense.' (Extract from (longer version of) the letter to the Times re the Age of Criminal Responsibility on 7th July 2010, Dr Eileen Vizard and 33 others from law, medicine, neuroscience, academia the House of Lords and the voluntary sector).

More recently, the Judge in the trial at the Old Bailey of two very young boys charged with rape has questioned whether such cases should be brought to the Crown Court or diverted to more remedial paths.

The past Chair of the Criminal Bar Association, Paul Mendelle QC has also questioned whether such very young children should be tried in adult courts.

6. Can you give us any information about how the problem is approached outside England and Wales?

You might have some information about how overseas courts or tribunals approach the problem.

A helpful summary of a range of other judicial systems dealing with youth crime can be found in the Scottish Law Commission discussion paper (Scottish Law Commission 2001; Appendix E, 'Comparative Legal Material on Some Juvenile Justice Systems, pps 52-55).

A list of the various ages of criminal responsibility within different jurisdictions can be found in the 2002 Report of the Michael Sieff Foundation, Child Defendants. Is the Law Failing them? Appendix 1. (A Comparative Study about the Age of Criminal Responsibility in Other Jurisdictions, by Benjamin Dean). **

<http://www.michaelsieff-foundation.org.uk/content/conference.pdf>

The Children's hearing System in Scotland does offer an alternative welfare based approach to dealing with the offending child, the antecedents to his offending, the family context and a disposal which is developmentally appropriate.

Alternative legal approaches, as well as the scientific evidence about child development, children's competence in Court and other matters, are reviewed in a report on Child Defendants which I wrote with other colleagues for the Royal College of Psychiatrists (Royal College of Psychiatrists 2006).

I understand that a Restorative Justice approach is now being developed in Northern Ireland and that this type of approach has been used in Australia and New Zealand for some years.

**It should be noted that the age of criminal responsibility in most other jurisdictions is usually significantly higher than in England & Wales. In those countries, such as Scotland, where the age of criminal responsibility has been lower, that has usually been offset by the use of a more welfare based approach to the causes of the crime.

7. Within the United Kingdom, does the problem extend beyond England and Wales? If so, where?

For example, does the problem also arise in Scotland or Northern Ireland?

Yes, but see the answer to 6. above. Arguably, a more satisfactory, welfare based system pertains in Scotland which has recently raised the age for prosecution to 12 years old and in Northern Ireland, there have been recent recommendations for a system based more on restorative justice.

8. Can you identify particular costs that occur as a result of the problem? In particular, please identify any costs that affect the following groups:

- **government**
- **businesses and the private sector**
- **non-governmental organisations or charities, and**
- **the general public.**

For example, if the problem is one which must usually be resolved in court, court fees might be payable. If it involves consulting a solicitor or barrister, legal costs might be relevant. Or, if the problem was one which caused significant costs to businesses, you might be able to tell us how much time or money businesses would need to spend.

1. As mentioned earlier in this submission, the duplication inherent in concurrent criminal and care proceedings for young defendants means that there is considerable, avoidable cost to the public purse. For instance, 2 sets of solicitors, defence and family law, are instructed, 2 Barristers, 2 Judges, 2 sets of experts, 2 sets of court staff in criminal and family courts, 2 sets of very large Bundles of evidence, some of which covering background issues (case conference reports and the like) will be duplicates etc.

The costs of paying duplicated sets of people to deal with the offending behaviour of a disturbed small boy must be very considerable. These costs could be reduced substantially if young children were taken out of the criminal justice system until an older age. Their offending behaviour would then be dealt with in one context, in a non criminal manner in a family court (perhaps like the Scottish Children's Hearing System) at a much lower cost overall.

2. The criminalisation of children at age ten years old means that, if convicted, they face a criminal custodial disposal with the likelihood of a long term 'career' in and out of the criminal justice system (Prison Reform Trust 2010). A low age of criminal responsibility is likely to contribute to recidivism and a consequent burden on the public purse. By raising the age of criminal responsibility and in effect de-criminalising younger children, they could be removed into welfare disposals which, although still costly, are nowhere near the cumulative costs of a 'career' in crime and long term residence in the secure estate (Utting et al 2007). Also, a welfare approach to the behaviour of ten and eleven years which did not label children as criminals would be more likely to achieve rehabilitation with further savings to the public purse.

It is worth noting that raising the age of criminal responsibility would be likely to increase our success in breaking the cycle of disadvantage from one generation to the next. Instead of paying to lock up children who offend, more of them would be helped to get into employment and to pay taxes, hence offsetting the crime costs incurred by young offenders at the present time.

3. Children entering the criminal justice system at age ten years old will already have incurred significant mental health costs and they and their family(ies) of procreation will go on to become regular users of increasingly specialist and expensive mental health services in adult life.

The evidence is that children convicted of serious offences who are then caught up in the criminal justice system are amongst the most disturbed and disadvantaged children in the country. They have been ill served by their abusive families, their moral, intellectual and social development has been avoidably impaired by their upbringing which has been characterised by multiple well known risk factors for later criminality (Vizard et al 2007; Utting et al 2007; Prison Reform Trust 2010).

As well as incurring significant costs from their incarceration during childhood, the research evidence shows that, by young adult life, the more serious and persistent child offenders will have acquired several psychiatric diagnoses including at least one personality disorder, usually Anti Social Personality Disorder (APSD) (Vizard et al 2007). A subgroup of the most disturbed children showing psychopathic traits will embark on a life course persistent criminal pathway and will be responsible for a disproportionate amount of violent crime in adult life (Farrington &

West 1993; Vizard et al 2007; Utting et al 2007).

Many of these psychopathic child offenders will grow into adult psychopaths who are known to show much greater recidivism for prolific, persistent violent offending (Hodgins 2007). The government funded DSPD (Dangerous People with Severe Personality Disorder) programme set up a decade ago in the wake of the Michael Stone murders currently houses the most dangerous, persistent and remorseless psychopaths in the UK. The costs of housing an adult psychopathic offender in a top security DSPD unit for many years are extremely high and recent research suggests that therapeutic efforts with these men have not been successful to date (Mullen 2007).

These dangerous, personality disordered adults all have childhood histories and criminal pathways similar to those described earlier. None of them were given an effective welfare input at an early age and most of them were allowed to enter the criminal justice system at age ten years old. It is clear that few of them will ever escape the criminal lifestyle and the public purse will have to support the costs of a lifetime of top security incarceration.

9. What is the scale of the problem?

This might include information about the number of people affected this year, or the number of cases which were decided by a court or tribunal in a given period.

Children and young people under 21 years of age are thought to be responsible for up to one third of all crime. However, research also shows that the bulk of youth crime is perpetrated in mid to late adolescence and is of the 'adolescence limited' variety meaning that most adolescents will desist from this (mostly) peer group instigated behaviour when they mature. However, by that time around 30% of the adult males in any Western society are likely to have a criminal record for less serious offences (Moffitt et al 1993; Utting et al 2007). The much more serious, possibly psychopathic, offenders who show persistent, prolific offending patterns can be identified early in childhood and show a 'life course persistent' pathway to adult crime which carries a high price tag for the public purse in terms of care and incarceration costs (Moffitt et al 1993; Hodgins 2007; Utting et al 2007). Longitudinal research has also noted that 6% of a population of young boys followed up in the community were responsible for half the criminal convictions by age 32 years old (Farrington & West 1993).

However, the number of children between ages 10-14 years old who are convicted of very serious offences such as murder, attempted murder, rape etc has remained at a constant, low level over the last fifty years of recorded crime statistics. This is not a cause for complacency since the profiles of these early onset child offenders suggests that they may well, in due course, fall within the 'life course persistent' category of offender. It seems obvious from the research and from clinical practice with these potentially prolific, persistent and recidivist offenders, that they should be removed from the criminal justice system at the earliest possible opportunity to effect their rehabilitation to a normal life whilst they are young enough to benefit.

Part of this process could be raising the age of criminal responsibility to a realistic level (between ages 14-16 years old) so that they are not drawn further into the criminal justice system. It is likely that rapid intervention with this small sub-group of dangerous children would allow effective help to be given and would raise the chances of them being rehabilitated in a more appropriate way.

10. Does the problem affect certain groups in society, or particular areas of the country, more than others? If so, what are those groups or areas?

As an example, if the law relates to agricultural issues, it might affect farmers and their families more than the general population.

This issue (raising the age of criminal responsibility) affects a very important sub-group of the population - the children in the UK aged 10 - 17 years old who are defined as children in terms of the Children Act 1989. The problem is not geographically defined in that it affects all children aged 10 - 17 years old in England & Wales. Also the problem is equally relevant for children in all ethnic and other sub-groups in society.

11. What do you see as the benefits of reforming this area of the law?

This might be in terms of economic benefits, such as saving government money or reducing the impact on frontline services. Or it might be a social or environmental benefit such as making the law clearer, or modernising an outdated approach to a particular social problem.

Saving Government Money (See also answers in section 8.):

Decriminalising children from age ten to 14 years old would save a considerable amount of money for the public purse in the following ways: Savings from ceasing the duplication involved in two separate judicial systems (criminal & family) operating concurrently in relation to the same child; Savings from diverting young offenders away from a likely adult life of crime by providing an age appropriate welfare disposal & intervention; Savings from potential victim costs when offending is prevented and savings from family of procreation costs incurred when the young offender subsequently damages his own children and partner(s).

Modernising an outdated approach:

The age of criminal responsibility has been set at age 10 years old in England & Wales in a purely arbitrary manner. There is no scientific or clinical evidence that children aged ten years old can function at the same intellectual, emotional, social or moral level as adults. Indeed common sense confirms that this assumption is nonsensical and society has long set specific, much older ages at which children are thought fit to have sex, drink alcohol, drive a car and join the army. Family law defines all people under the age of 18 years old as 'Children' in terms of the 1989 Children Act. The present law needs modernising to take on board long established scientific evidence about childrens' cognitive, emotional and social development as well as more recent evidence from neuroscience showing that the functioning abilities of certain crucial areas of the brains of ten year old children are not comparable with those of adults.

If the age of criminal responsibility is raised to mid adolescence, say 14 - 16 years of age, there will still be several years of brain maturation to follow. However, the available scientific evidence strongly suggests that, by age 16 years old the child's developing brain is significantly more competent at balancing competing concepts, making accurate moral judgments and following complex arguments. These are some of the reasons why children are currently by law allowed to have sex, drive cars and join the army in the later teenage years. Hence, it follows that older children in mid adolescence 14-16 years of age will be much better able to understand the charges which they face, to follow complex legal arguments and to give accurate and informed instructions to their solicitors to ensure a fair trial.

Taking on board all of the scientific evidence on children's development including their brain development will allow developmentally appropriate concepts to be incorporated into new, modernised law. A relevant concept is 'developmental immaturity' which assumes that a child is, by nature a 'work in progress', i.e. he is a developmentally immature young human being, like all young animals, with years to go before he achieves full maturity. Modern law needs to take on board evidence from scientific and other research in order to meet the needs of all members of the society which it serves and not just the adults.

12. In your view, why is the Law Commission the appropriate body to undertake this work, as opposed to, for example, a government department, Parliamentary committee, or a non-governmental organisation?

It is my view that the Law Commission is the best body to address this issue. This is because there is considerable legal complexity in this area which needs a rigorous legal examination. If the law is to be modernised in this area, all aspects of the duplication (mentioned in my previous answers) between the criminal and the family courts will need to be examined. Also an exposition of the pros and cons of alternative, international approaches for child defendants in other jurisdictions will be best undertaken by the Law Commission.

I do not think that government departments, parliamentary committees or NGOs are best placed to undertake this specialist review. Apart from anything else, I am concerned that political considerations (to avoid controversy with certain elements of the Press) would influence government bodies doing this work.

Once the Law Commission has completed this review there might well be a place for an Inter-Governmental working Group to consider how any recommendations should be implemented.

13. Have you been in touch with any part of the government (either central or local) about this problem? What did they say?

Over the last three decades in my work with children who offend, I have repeatedly approached central government departments, ministers and senior civil servants both verbally and in writing with requests to review the age of criminal responsibility. I have also mentioned this issue when I responded to the Law Commission's recent review of the Law of Murder. When I have had the opportunity at conferences, for instance, I have mentioned the problem with the low age of criminal responsibility to members of the judiciary and the senior criminal bar.

Government departments (the Home Office, the Ministry of Justice, the Youth Justice Board and the Department of Health) have all said that it was not government policy to review the law on the age of criminal responsibility. This has been the response of successive Conservative and Labour administrations. When I have asked for further particulars, I have been told that the public would not accept such a review. I have never been given good evidence that this is the case for the entirety of the UK public although I accept that this has been the view from certain sectors of the press.

However, I understand that Kenneth Clarke, the Lord Chancellor in the new Coalition government, may be prepared to consider this issue. I am trying to arrange a meeting with Kenneth Clarke to raise these issues, along with other senior colleagues and signatories to a recent letter I published in the Times (7th July 2010) calling for the age of criminal responsibility to be raised.

14. If the problem you have described has been previously considered by the government, why would it be appropriate for the Law Commission to look into this problem?

The problem of the low age of criminal responsibility has not been formally considered by any recent government. Rather, the suggestion to do so has been rejected out of hand.

15. Is any other organisation such as the government or a non-governmental group currently considering this problem? Have they considered it recently? If so, please give us the details of their investigation of this issue.

The only organisation which I am aware of which is actively considering the issue of the age of criminal responsibility, and which has done so for over a decade, is the Michael Sieff Foundation which is a child care charity. I am a Trustee of the Michael Sieff Foundation and I am submitting this consultation response on behalf of the Foundation.

I append a copy of (the longer version of) a letter which a substantial number of senior colleagues and I wrote to the Times and which was published on 7th July 2010.

There was sign up to this letter, calling for the age of criminal responsibility to be raised, from several charities including other children's charities, which have always taken this view.

If the Law Commission proceed to review this issue I very much hope that evidence will be called for from the office of the new Children's Commissioner, Maggie Atkinson, whose remit covers the needs of all children in England. Evidence on the age of criminal responsibility could also be sought from the other UK children's commissioners in Wales, Scotland and Northern Ireland.

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Thank you for your response. Please send it to us by Friday 15 October 2010.

Government Code of Practice on Consultation

The Seven Consultation Criteria

1. When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. Duration of consultation exercise

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible

3. Clarity and scope of impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments and suggestions

You are invited to send comments to the Law Commission's Consultation Co-ordinator about the extent to which the criteria have been observed and to suggest ways of improving our consultation process. Contact Phil Hodgson, Consultation Co-ordinator, Law Commission, Steel House, 11 Tothill Street, London SW1H 9LJ. Email: phil.hodgson@lawcommission.gsi.gov.uk

Full details of the Government's Code of Practice on Consultation are available on the Department for Business Innovation and Skills' website at: <http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>

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