Ministry of Justice

Laura Farris MP
Minister for Victims and Safeguarding

Sir Graham Brady MP, Hanna Bardell MP, Dame Angela Eagle MP and Mrs Pauline Latham MP
Co – Chairs
Public Bill Committee, Criminal Justice Bill
House of Commons
London
SW1A 0AA

MoJ ref: 112756

23 February 2024

Dear Sir Graham, Hannah, Dame Angela and Pauline,

CRIMINAL JUSTICE BILL – PUBLIC BILL COMMITTEE

I am writing to clarify responses that I gave to members of the Public Bill Committee during the fifth to the tenth sittings of the Criminal Justice Bill Public Bill Committee.

11 January, Committee Day 3

When setting out that Clause 14 and Schedule 2 will create two offences relating to the installation of equipment, my statement was:

> *"We are also creating two offences to do with the installation of spycams, which I am afraid we see more and more of in cases going through the courts: an offence of installing, adapting, preparing or maintaining equipment with the intention of taking or recording intimate photograph or film;* ***and an offence of supplying for that purpose.*** *To be clear, it will not be necessary for the image to have been taken; if equipment was installed for that purpose, that is enough to meet the requirements of the offence."*

What I should have said was:

> *"We are also creating two offences to do with the installation of spycams, which I am afraid we see more and more of in cases going through the courts: an offence of installing, adapting, preparing or maintaining equipment with the intention of taking or recording intimate photograph or film. To be clear, it will not be necessary for the image to have been taken; if equipment was installed for that purpose, that is enough to meet the requirements of the offence."*

To be clear, the new offences do not criminalise the supply of equipment which is then used in the course of committing an installing offence.

T +4420 3334 3555
F +44870 761 7753

E https://contact-moj.service.justice.gov.uk/
www.gov.uk/moj

102 Petty France
London
SW1H 9AJ

In responding to a question from the honourable Member for Birmingham Yardley, Jess Phillips regarding her New Clause 20, my statement was:

> *"One of the challenges in adopting a definition of "intimate" that includes, for example, the removal of a hijab is that we are creating a criminal offence of that image being shared. It would not be obvious to anyone in this country who received a picture of a woman they did not know with her hair exposed that* ***they were viewing an intimate image and committing a criminal offence."***

What I should have said was:

> *"One of the challenges in adopting a definition of "intimate" that includes, for example, the removal of a hijab is that we are creating a criminal offence of that image being shared. It would not be obvious to anyone in this country who received a picture of a woman they did not know with her hair exposed that they were viewing an intimate image* ***and if they shared it would potentially be committing a criminal offence."***

For clarity, it will not be an offence to receive or view an intimate image that has been taken or shared without consent – it could be an offence should the person then go on to share that image without consent.

The honourable Member for Birmingham Yardley, Jess Phillips, made the following point in relation to Clause 11:

> *"I was a few minutes late for the sitting this morning because I was in court with one of my constituents in a case—I am afraid to say—where we were on the other side from the Home Office. My constituent literally had to take medication during the court proceedings, such is the mental health trauma that has been caused to her by the Home Office. I wonder how this piece of legislation might be used. I suppose I worry that there is too much opportunity for it to become useful, in that there are so many ways in which institutions and individuals cause people to end up in a self-harm and suicidal situation. I seek clarity on that unless Ministers wish to be found wanting by the Bill."*

In my response I stated:

> *"The point was made about a person having a difficult experience of litigation against the Home Office, and we heard the example of the high-profile case related to the effect of an Ofsted inspection; there could be a number of other scenarios. I think we have to look at clause 11(1)(b) when we are thinking about those. We are not considering simply whether the perpetrator is said to have done an act that is capable of encouraging self-harm. By the way, I think that when that is considered by the court, it is not going to include something unpleasant that makes a person feel terrible and leads them to a bad place. That is not the purpose of the clause.* ***In the context of this legislation, "encouraging" has to mean a direct incitement."***

What I should have said was:

> *"The point was made about a person having a difficult experience of litigation against the Home Office, and we heard the example of the high-profile case related to the effect of an Ofsted inspection; there could be a number of other scenarios. I think we have to look at clause 11(1)(b) when we are thinking about those. We are not considering simply whether the perpetrator is said to have done an act that is capable of encouraging self-harm. By the way, I think that when that is considered by the court, it is not going to include something unpleasant that makes a person feel terrible and leads them to a bad place. That is not the purpose of the clause."*

To be clear, the provision does not require the defendant to directly incite the victim to harm themselves. In fact, as I explained at the outset, the person committing the offence does not need to know or be able to identify the person to whom their conduct is directed.

16 January, Committee Day 4

In my speech proposing that Clause 24 (now Clause 31) stand part of the Bill I said:

> *"Around a quarter of all homicides in England and Wales are classed as domestic. In other words, the perpetrator is* ***a partner or former partner of the victim."***

What I should have said was:

> *"Around a quarter of all homicides in England and Wales are classed as domestic. In other words, the perpetrator is* ***a partner, former partner or relative of the victim***."

I also said:

> *"We have also introduced new statutory aggravating factor for murders involving gratuitous and excessive force, sometimes referred to as overkill. That is something that Clare Wade found to be strikingly prevalent in not only domestic murders, but all the cases she assessed."*

What I should have said was:

> *"We have also introduced new statutory aggravating factor for murders involving gratuitous and excessive force, sometimes referred to as overkill. That is something that Clare Wade found to be strikingly prevalent* ***in domestic murders."***

In reply to the honourable member for Birmingham Yardley, Jess Phillips, regarding her proposed new clauses 27 to 29 I said:

> *"It is well known that this is the Ben Kinsella amendment, which Jack Straw introduced in 2007 in response to a campaign fought very passionately by Ben's sister, Brooke, and his family."*

What I should have said was:

> *"It is well known that this is the Ben Kinsella amendment, which Jack Straw introduced in 2010 in response to a campaign fought very passionately by Ben's sister, Brooke, and his family."*

Commenting on the case of Sally Challen I said:

> *"A new mitigating factor will apply in cases where the victim of an abusive partner or family member has killed their abuser, in recognition of their experience as a victim of abuse preceding the killing, which is exactly what happened in the Sally Challen case. This is consistent with the conclusion of the Court of Appeal—it is essentially taking the court's conclusion and making it a statutory mitigating factor."*

I would like to clarify that the Court of Appeal's conclusion did not suggest that coercive control should be a mitigating factor to a murder conviction: its judgment was concerned with the potential relevance of coercive control in the specific context of new psychiatric evidence and the partial defences of provocation and diminished responsibility.

18 January, Committee Day 5

In my speech proposing that Clause 30 (now Clause 37) stand part of the Bill I said:

> "*We have strengthened the statutory guidance to require agencies to consider discretionary management under MAPPA in all domestic abuse cases. In the last reporting year, we have seen a 30% increase in the take-up of that offer. For that reason, we consider it appropriate to put it in the Bill.*"

What I should have said was:

> "*We have strengthened the statutory guidance to require agencies to consider discretionary management under MAPPA in all domestic abuse cases. In the last reporting year, we have seen a **37**% increase in the take-up of that offer. For that reason, we consider it appropriate to put it in the Bill*."

In my response to the honourable Member for Stockton North, Alex Cunningham, in his speech on Clause 30 (now Clause 37) I said:

> "*I thank the Shadow Minister for his speech and for supporting the clause. In answer to his final criticism that we have abandoned women and girls, the Serious Crime Act that created the offence of coercive, controlling behaviour received Royal Assent in February 2015*."

What I should have said was:

> "*I thank the Shadow Minister for his speech and for supporting the clause. In answer to his final criticism that we have abandoned women and girls, the Serious Crime Act that created the offence of coercive, controlling behaviour received Royal Assent in **March** 2015*."

In answer to a question from the honourable Member for Birmingham Yardley, Jess Phillips, regarding Clause 30 (now Clause 37) I said:

> "*In answer to the Hon. Lady's question, in the data we have, which is from 2022, 566 people were convicted of coercive control, and it is estimated that, as she suggested, around 200 would be serving 12 months or more and would have been eligible for MAPPA management. We simply make the point that the MAPPA framework is used for the most serious offenders; whether it is a sexual, violent or terrorist offence, people qualify for MAPPA if their sentence is one year or more*."

What I should have said was:

> "*In answer to the Hon. Lady's question, in the data we have, which is from 2022, 566 people were convicted of coercive control, and it is estimated that, as she suggested, around 200 would be serving 12 months or more and would have been eligible for MAPPA management. We simply make the point that the MAPPA framework is used for the most serious sexual, violent and terrorist offenders, and those convicted of violent offences must have received a sentence of 12 months' imprisonment or more to qualify for automatic management under category 2."*

I wish to clarify some further additional information from my speech proposing that Clause 31 (now Clause 38) stand part of the Bill.

Specifically, this information references my comments regarding the Secretary of State's decision to apply polygraph testing to individuals in the 'historic terrorism-connected cohort'. I want to confirm that this decision will involve consulting a range of documentation from a variety of sources. This will include the judge's remarks from the time of sentencing, as I mentioned during Committee stage, but could also include the consultation of prosecution documents or other relevant information from operational partners.

I will have a copy of this letter deposited in the Library of the House.

Yours sincerely

LAURA FARRIS MP

T +4420 3334 3555
F +44870 761 7753

E https://contact-moj.service.justice.gov.uk/
www.gov.uk/moj

102 Petty France
London
SW1H 9AJ