BEFORE THE INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE

INQUIRY INTO INSTITUTIONAL RESPONSES TO THE SEXUAL EXPLOITATION OF CHILDREN BY ORGANISED NETWORKS (CSEN)

WRITTEN CLOSING SUBMISSIONS BY THE CENTRE FOR WOMEN'S JUSTICE[1]

Contents

[1] Significant work has been undertaken on these written submissions on an unpaid, pro bono basis, as the Inquiry has not granted CWJ all the requested hours to either complete these written submissions or consider all of the recently disclosed evidence. CWJ has made clear to the solicitors to the inquiry their concern that this results in the legal team – both self-employed barristers and solicitors and legal support staff at an NGO – to work unpaid, and undermines CWJ's ability to exercise its entitlements as a Core Participant in this strand of the Inquiry, and assist the Chair and Panel as much as it wishes to.

A. INTRODUCTION AND OVERVIEW

1. Seven years ago, in November 2013, the Office of the Children's Commissioner published its final report following a 2-year inquiry into CSE in gangs and groups. Entitled, *"if only someone had listened."*[2] It is a deeply concerning document to read, and a clarion call to action. The report analysed the scale of sexual exploitation and violence that children and young people were suffering from perpetrators operating in gangs and groups, and its principal finding was that:

> *"Despite increased awareness and a heightened state of alert regarding child sexual exploitation children are still slipping through the net and falling prey to sexual predators. Serious gaps remain in the knowledge, practice and services required to tackle this problem…"*

2. As CWJ made clear on the first day of the oral hearings in this investigation, in its opening statement, its view is that, regrettably, although seven years have passed, this criticism remains accurate.[3] The evidence and submissions heard over the 11 days of this hearing (21st September – 2nd October 2020, and 29th October 2020) have reinforced this, making clear that there are very substantial gaps in the knowledge, practice and services required to tackle the issue of CSEN, at national and local level. Indeed, the scale and features of the issue of CSEN itself are not even understood, which is attributable in part to the absence of rigorous, high-quality information gathering, including disaggregated data based on sex, race, disability and other factors.

3. CWJ made brief oral closing remarks on 29th October 2020. These written closing submissions should be read alongside those oral remarks. For proportionality reasons, and given CWJ's expertise and its national role, these submissions do not delve into the detail of the evidence from each the six geographical areas selected by the Inquiry but instead have a national-level focus, drawing on some of the evidence from the geographical areas where relevant. We also do not propose to go through each of the Inquiry's eight selected themes one by one. In our submission, the evidence heard in this investigation does not fit neatly into the thematic boxes selected by the Inquiry. These submissions will instead focus on key thematic issues identified by CWJ from the evidence as a whole, which we submit should be included in the Inquiry's findings; and the recommendations which we seek.

4. CWJ asks that the Inquiry make both robust findings on this critical issue of CSEN, and make concrete, measurable recommendations, at national level. The report into this strand should not

[2] HOM003339.
[3] Day 1 transcript, page 90.

be yet another report which identifies *"serious gaps… in the knowledge, practice and services required to tackle this problem"* but results in no meaningful change. CWJ's core submission is that it is of the utmost importance that the Inquiry make recommendations directed to securing much-needed change, as a matter of urgency. This must include recommendations directed at both the Crown Prosecution Service ('CPS') and the Home Office given the fundamental failings, laid bare during the eleven days of the public hearings, in how victims and survivors of CSEN are treated in the criminal justice system.

5. In these written submissions, CWJ first addresses some preliminary matters (Section B below), and then turns to key underlying thematic issues which have emerged from the evidence in this strand of the Inquiry (Section C). CWJ then turns to address key thematic issues concerning the criminal justice system, which has been a particular focus of CWJ's throughout this process, in Section D. In Section E, CWJ addresses key thematic issues not related to criminal justice. Section F, critically, addresses the recommendations sought, and Section G contains brief concluding remarks.

6. Throughout these submissions reference is made to appendices, which can be found marked as Section H, and are filed as a PDF attachment to these submissions.

B. PRELIMINARY REMARKS BY CWJ

(i) Definition of CSE

7. The current definition of CSE reads as follows:

> *"Child sexual exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology."*

8. The Inquiry heard extensive evidence regarding the definition of CSE, and in particular whether the concept of 'exchange' contained in the current definition reinforces the idea that children have choice and agency. This issue falls under the Inquiry's themes of empathy and concern for child victims; risk assessment and protection from harm; and partnership working.

9. The witness statement of Amanda Naylor of Barnardo's appears to be what sparked this debate during the hearing. She said the following, on behalf of Barnardo's:[4]

> *11. We have defined child sexual exploitation as child sexual abuse that has occurred outside the family and its immediate networks e.g. friends of family. The concept of exchange is not incorporated in our organisational definition of child sexual exploitation; as we feel that this is misleading, has its roots in victim blaming and does not fully take account of the imbalance of power and coercive approaches that offenders use to sexually exploit children.*

10. Dr Helen Beckett and Dr Sophie Hallett discussed the definition of CSE and the concept of exchange at length in their evidence on day 2.

11. Dr Hallett disagreed with Barnardo's position on the concept of exchange, and thought that it was important that 'exchange' remained as part of the definition. In particular, she thought the concept of exchange *"brings attention to and recognition of the wider context surrounding sexually exploitative relationships and encounters, and positions vulnerabilities and unmet needs as a central part of the problem that requires attention."*[5] Dr Hallett also thought that the concept of exchange within the definition *"allows space to consider and understand young people's sense of agency, however troubling this may be…it is important that we recognise, for example, young people who engage in or who are abused through what they would call survival sex or selling sex as a response to need. It is very clear from mine and others' research involving young people that sexual exploitation can occur because exchanging sex can be seen by a child or a young person as the last resort or the least worst option."*[6]

12. Dr Beckett took the view that the definition is too broad and that in practice the concept of 'exchange' has been *"elevated beyond other features that also define a child or young person's experience of child sexual exploitation or any other form of abuse"*:[7]

13. Dr Beckett also discussed the inclusion of the phrasing "something the victim needs or wants" in the definition. She gave evidence that, in Northern Ireland, they tried to introduce an adapted version of this definition in 2014 and there was significant pushback on the use of this phrase, the essence of which was *"you cannot say in a definition of abuse that a child is getting something*

[4] BRD000275_003.
[5] Day 2 transcript, page 99.
[6] Day 2 transcript, page 100.
[7] Day 2 transcript, pages 93-94.

they want or need, because people won't recognise it as abuse." Dr Beckett commented on this as follows[8]:

> *3 … Now, for me, that's the*
> *4 nub of the problem, that we have created some idealised*
> *5 victim scenario where we can only see a child as being*
> *6 abused if we see them as being entirely groomed,*
> *7 manipulated, controlled by other people. We do, as*
> *8 Dr Hallett says, really need to find a way to recognise*
> *9 that the reality of many children and young people's*
> *10 experiences of abuse is that they are concurrently*
> *11 experiencing horrendous -- horrendous -- harm, but they*
> *12 may be gaining or getting a need or want met at the same*
> *13 time. I don't think we can overemphasise the importance*
> *14 of this, because to just say, we can't talk about what*
> *15 a child needs or wants because, therefore, it is not*
> *16 abuse, means we are going to continue to see Serious*
> *17 Case Reviews that find that children are being written*
> *18 off as making active lifestyle choices, et cetera,*
> *19 et cetera.*

14. This experience of a victim seeming to get something they *"need or want"* was reflected in the evidence of CS-A12:[9]

> *"I felt unwanted and unloved, like I didn't belong. We were shown attention and made to feel wanted by the men in question. They told me they'd look after me and encouraged me to sign myself out of care and I felt more like I belonged with them than I'd ever felt at home or in any placement social care had placed me in. They managed to see what I was lacking in my life and pretended to offer me exactly what I was needing to manipulate me into a position where they could sexually exploit me.*
>
> *…*
>
> *Even when it was in court and I was giving evidence against them, I had such conflicting feelings because I -- to a certain degree, I loved these men; not necessarily as a boyfriend or anything, but for a heck of a lot of years, they were my family and*

[8] Day 2 transcript, pages 109-110.
[9] Day 2 transcript, pages 20-21.

they were the only people that were there when I was upset or that ever paid any attention into my life. Everywhere else, at the care homes and the other placements, I was just part of the furniture, I was just something that came with the job. Whereas these people gave me someone to rely on and someone to basically look after me and, yeah, it came with a lot of other stuff, but I don't think I had a full understanding that that wasn't a normalised situation, that that's not what came for everyone. I just thought it was part of the package, like someone actually loves me and is looking after me, but, yeah, there's this other stuff."

15. Zlakha Ahmed of Apna Haq responded to the evidence from Ms Naylor, Dr Beckett and Dr Hallett regarding the inclusion of the concept of 'exchange' during her oral evidence on day 10. She said: *"in terms of the wording around exchange, there is an assumption, in using that word, that you are starting off from an equal starting point, when you exchange something, and that the victim is in full control and has full agency about what they are exchanging, so there is an issue there."* She added: "*if that type of language is used, it can lead professionals down a certain path and they will not pick up on other children who are being abused when maybe things aren't being -- there isn't an exchange element."*[10]

16. CWJ submits that, while the word 'exchange' may be helpful to understand why victims are drawn into exploitation, what in fact takes place when a child is sexually exploited is not an exchange; it is a technique of manipulation - groomers work out what a child wants or needs, draws them in by offering that to them, and sexually exploits them. CWJ agrees with Ms Ahmed that the word 'exchange' is problematic because it suggests an equality of bargaining power, when the power dynamic between an abuser and their victim is far from equal.

17. With that in mind, the Inquiry is invited to make a recommendation that the definition of CSE is revised so that the concept of exchange is either removed or better explained.

(ii) CWJ's Concerns Regarding Methodology in this Strand

18. CWJ has previously raised concerns regarding the methodology in this strand of the Inquiry - both individually and jointly with other Core Participants ('CPs'), and both orally (including in both CWJ's oral open and closing statements) and in writing. CWJ is aware that the Inquiry considers this matter, effectively, to be closed, but CWJ has not been reassured by the responses provided by the Inquiry's legal team on these issues to date, and these closing submissions would

[10] Day 10 transcript, page 133.

be incomplete without a summary indication of the key concerns regarding the methodology adopted, and how this should now be taken into account by the Inquiry.

19. CWJ's concerns regarding methodology have focused in particular on three closely inter-related matters: (i) the selection of the six geographical areas, (ii) the lack of involvement of victims and survivors, and (iii) the need to effectively test evidence from institutional witnesses.

20. Some of those concerns were ameliorated by the Inquiry obtaining further evidence from a victim/survivor perspective, and from specialist BME organisations including the Angelou Centre and Apna Haq, to address what CWJ identified to be a significant evidence gap in this investigation. CWJ is grateful to the substantial efforts made by the Inquiry's team in this regard.

21. Nevertheless, as we said in opening: *"by fixing the six areas to be scrutinised and making the decision…based on publicly available data and disclosure made to the inquiry by institutions, primarily local authorities and police forces, prior to receiving applications for core participant status from victims, survivors or third-sector organisations, this necessarily means that the decision was made based primarily on material from the very institutions which you're scrutinising and not based on the experiences of victims and survivors."*[11] This, we cautioned in our opening statement, gave rise to three particular matters of concern. First, the risk that the experiences of children who never went into local authority care and were returned home despite obvious red flags remained unaddressed in this strand. Second, the fact that – within the six selected local authority areas – the Inquiry was not hearing directly from victims and survivors, other than CS-A2, the mother of a survivor of CSE from Warwickshire. Third, the fact that – without the voices of victims and survivors from those local areas – the evidence from institutions about their victim-centred policies could not be properly probed and tested by the real-life experiences of survivors.

22. As the beginning of the hearing progressed, these concerns were borne out by the evidence heard. The Inquiry will recall that these concerns were therefore aired again by way of an oral application on day 4 of the hearing by leading counsel for CWJ on behalf of CWJ, PACE, Maggie Oliver and Jon Wedger, which also had the support of CS-A2 and Sarah Champion MP. That application outlined the concerns of non-institutional CPs about the *"profound imbalance in the evidence,"*[12] given the lack of national-level, non-institutional oral evidence, as well as concerns about timetabling and the lack of oral evidence from any witnesses with particular expertise in relation to BME victims of CSE.

[11] Day 1 transcript, page 93.
[12] Day 4 transcript, pages 7-8.

23. CWJ is grateful to the Inquiry that, in response to that application, day 10 – initially reserved for closing statements – was converted to a further day of evidence, giving more time for the evidence of Gregor McGill from the CPS to be probed, and the opportunity for oral evidence to be heard from specialist organisations supporting BME victims of CSE, the Angelou Centre and Apna Haq.

24. However, CWJ does not consider that the reading of timelines concerning individual children, prepared by lawyers from papers provided by the institutions themselves, addressed the fundamental gap in evidence from a victim/survivor perspective. We raised this as a potential concern in January 2020, within minutes of hearing of this proposed timeline approach. This was the final preliminary hearing in this strand, and, importantly, the first and only preliminary hearing at which CWJ had CP status. We said[13]:

> *The second issue concerns the voice of the child and agency. From the summary given, it does not sound as if those children are going to be represented, and there is a key issue for us regarding article 12 of the UN Convention on the Rights of the Child. If those children are to be at the heart of the process, and for this not to be a tick-box exercise, there is a real issue regarding agency and whether they can have any form of involvement other than a group of strangers in Pocock Street examining their cases on the basis of a paper-based exercise.*

25. This strand could not be more important. It affects children across the country. It affects adults who were exploited as children, and were often criminalised rather than protected, and remain blighted with criminal records for long-abolished offences of what was termed at the time 'child prostitution.' However, the children whose timelines were read into the record by CTI are not children with agency, with any involvement in this process. The Inquiry did not hear the voice of the affected child, protected by Article 12 UNCRC, which gives children the right to have their views given due weight in all matters affecting them. Their voices have simply not been given due weight in this strand. Instead, for 10 days, institutions were given a platform to give

[13] Transcript of preliminary hearing on 15th January 2020, page 41.

self-serving evidence about how well they were doing in tackling CSE. The result, in CWJ's view, is that an opportunity for true accountability and effective learning has been missed.

C. UNDERLYING THEMATIC ISSUES

(i) Mismatch between Policy and Practice

26. This is an issue which cuts across all of the Inquiry's eight themes. As we said in our opening statement: *"all too often in this inquiry, chair and panel, in other strands you have heard evidence from institutional witnesses about their policies or practices, how victim-centred they are, how effective their systems are, only for those claims to fall apart when confronted with real-life cases and witnesses who say, "This description on paper bears no relation to my experience in practice". We ask you to bear in mind that, as you do not have the benefit of such witnesses or represented CPs in the geographical areas under scrutiny, we ask that you raise a judicial or inquisitorial eyebrow when probing the institutional evidence, bearing that restriction in mind."* This issue was also highlighted in the 2013 Children's Commissioner report[14] referred to in our opening which found that, although on paper public bodies have been taking the issue of CSE in networks seriously since at least 2009, there was a fundamental mismatch between what the guidance and policies said on paper and what was happening in practice.

27. It was also raised by Harriet Wistrich in her statement to the Inquiry (INQ005168_035) at paragraph 125. She said*: "The experiences that I have had working with survivors and victims of CSE are supported by research. For a long time, we have seen the changes of policy, but have been concerned about how these are implemented in practice given the experience of our clients."* Ms Wistrich quoted in her statement from a research paper by Dr Helen Beckett[15] which found that the majority of measures identified by participants as likely to improve young people's experiences of criminal justice processes, are already recommended or feasible within the current policy and guidance context. However, they are not being implemented consistently in practice.

28. The Inquiry heard evidence about this issue from Dr Beckett on day 2. Dr Beckett commented in her statement to the Inquiry at paragraph 5.3[16] that she and her colleagues *"continue to observe a gap between policy / guidance and practice on the ground"*. When asked about this gap between policy and practice and how it could be plugged during her oral evidence, Dr Beckett said that *"the policy isn't bad in terms of its stated intentions for young people who experience*

[14] HOM003339.
[15] INQ005168_035.
[16] INQ005150_010.

harm" but that training and information-sharing was necessary to properly implement the policies. She cautioned that, by training, "*I don't simply mean put someone on the course, make them read something, I mean training that gets to the attitude and the things behind what's getting in the way of doing this."*[17] Dr Beckett described training undertaken by her Centre at the University of Bedfordshire, in which young people and police were brought together to look at how police could improve responses to CSE.

29. The mismatch between policy and practice was also identified by CS-A2 during her evidence on day 5. CS-A2, when giving evidence about the failings of Warwickshire Police in relation to her daughter, CS-A1, said[18]:

> *16 What was bad was, despite having procedures in*
> *17 place, a wealth of procedures in place that I've seen,*
> *18 they did not transfer into the practical -- into the*
> *19 practice of preventing my daughter experiencing and*
> *20 suffering severe harm and CSE and they did not appear to*
> *21 be proactive, as we would have expected, in these*
> *22 situations; it's more reactive.*

30. Later in her evidence, when discussing the failings of both Warwickshire Council and the police, she said:[19]

> *4 My daughter was not protected and was let down by*
> *5 the local authority and the police. Multi-agency*
> *6 working was ultimately ineffective in preventing CSE in*
> *7 this case. The procedures appear adequate and*
> *8 comprehensive on paper, but in practice they did not*
> *9 work and did not keep her safe from harm. The CSE risk*
> *10 assessment was too late and was wrong. Certain foster*
> *11 placements were inappropriate. Police disruption*
> *12 tactics were generally ineffective and known*
> *13 perpetrators were able to continue to abuse her with*
> *14 impunity.*

[17] Day 2 transcript, page 118.
[18] Day 5 transcript, page 66.
[19] Day 5 transcript, page 67.

31. Ms Sharpling raised this issue of the mismatch between policy and practice with a number of the institutional witnesses and asked them to describe their implementation processes:

    a. On Day 3, John Pearce of Durham County Council, when citing the various ways in which the council was trying to implement policies on CSE, acknowledged that *"in terms of implementation, we still have more to do on that"* and *"given our scale in County Durham, some of those implementation challenges can be difficult".*[20]

    b. On Day 4, Julie Thomas of Swansea Council, said simply that the *"contextual training is at all levels. So it's at a strategic, it's at an operational, it's at a face-to-face level."*[21]

    c. On Day 5, Nigel Minns of Warwickshire Council accepted that there was a gap between policy and procedure and said the key way in which the Council was seeking to address this was by introducing a *"restorative approach, a strength-based approach, to social work".* When asked by Ms Sharpling whether he had encountered any cultural resistance to change, he accepted that he had.[22]

32. On Day 10, the Home Office witness, Christian Papaleontiou, said that progress had been made in respect of the guidance for tackling CSE available for professionals – including the College of Policing and Centre of Expertise on CSA guidance – but acknowledged that *"it's all well and good having this in guidance, what we need to do is translate guidance into practice through training",* such as the *"practice improvement programme which the Centre of Expertise on CSA is driving".*[23]

33. It is notable that the only complainant witness from one of the Inquiry's selected geographical areas (CS-A2) gave clear evidence of the gap between institutional policy and practice on the ground, and the local authority witness was forced to accept that there was such a gap. Of further note is the fact that CS-A2 was an articulate mother who clearly fought very hard for her daughter to be given proper support by Social Services and the police; in an area with a good Ofsted report, as highlighted by CS-A2's solicitor, Ms Harrison, in closing[24]. This begs the mind-boggling question: what hope is there for children without parents like CS-A2, in areas with poor Ofsted reports?

[20] Day 3 transcript, pages 65-66.
[21] Day 4 transcript, pages 102-103.
[22] Day 5 transcript, pages 117-120.
[23] Day 9 transcript, page 60.
[24] Day 11 transcript, page 32.

34. The Panel should bear in mind that this is not like other strands of the Inquiry, in which recommendations are sought on creating new policies in an effort to improve the institutional response to victims and survivors. As we indicated in opening, the Office of the Children's Commissioner identified in its 2013 report that the policies and procedures have largely been in place since 2009, but it is the failure to implement those policies; the mismatch between policy and practice that is the core issue when it comes to responding to CSE.

35. In circumstances where no evidence was heard from complainants from the other geographic areas, the Inquiry is invited to be cautious and sceptical when reviewing the evidence of institutions in which they applauded their myriad policies for tackling CSE, when the reality of how those policies are put into practice on the ground has not been tested in any meaningful way.

(ii) Failure to gather relevant information to inform policy

36. The failure of institutions to gather relevant information or data to inform policy was another key theme that arose from the evidence. This cuts across all eight of the Inquiry's themes.

37. In CWJ's submission, without gathering the relevant data – including disaggregated data – institutions cannot make informed decisions regarding their current and future policies and practices. In our submission, there are multiple obligations under international law which make clear the importance of gathering such information, and this is also reflected in some parts of domestic law, such as section 11, Children Act 2004, and – in some circumstances – the *Tameside* duty in public law. However, we seek a clear recommendation regarding the importance of information-gathering, including disaggregated data; and a specific recommendation regarding section 45, Modern Slavery Act 2015, and a specific recommendation regarding CPS information-gathering.

International Law Standards

38. CWJ submits that there is a clear recognition in relevant international instruments of the importance of information-gathering in the formulation of decisions concerning both how to protect children from CSEN, and how to meet the needs of victims and survivors. In these submissions, we summarise key provisions from the UN Convention on the Rights of Persons

with Disabilities ('CRPD'), the UNCRC and the Convention on the Elimination of All Forms of Discrimination Against Women ('CEDAW').

39. CRPD: One matter which this strand explores is CSEN and children with disabilities. In this regard, CWJ notes the importance of Article 31 of the CPRD. Article 31 is not widely discussed in the literature on the CRPD (its *"low profile"* perhaps being due, as some have noted, to its *"more instrumental rather than substantive character"*[25]) but it is of vital importance and of particular significance to the information-gathering failures and gaps which have been evident in this strand.

40. Article 31 CRPD states that state parties must *"collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the Convention."* Article 31 also states that *"The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights."*

41. Article 31 recognises the basic principle that, without being adequately informed, policy-making and future-facing decision-making is necessarily hampered. We submit that Article 31's requirements supports our request for a recommendation concerning information-gathering and monitoring.

42. Although there is no express equivalent in the UNCRC or CEDAW to Article 31, CWJ submits that both the best interests obligation protected by Article 3 UCNRC and the obligations on State Parties to CEDAW to exercise *"due diligence"* to protect women and girls from violence require procedural safeguards.

43. UNCRC: In relation to Article 3(1) of the UNCRC, the best interests obligation, CWJ draws to the Panel's attention the UN Committee on the Rights of the Child's General Comment 14 of 2013, *On the right of the child to have his or her best interests taken as a primary consideration*. At para. 6(c) the Committee explains that the best interests obligation encompasses three distinct aspects:

"The Committee underlines that the child's best interests is a threefold concept:

[25] Mads Pedersen, 'Article 31: Statistics and Data Collection,' in *The UN Convention on the Rights of Persons with Disabilities: A Commentary* (Springer, 2017).

(a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

In the present general comment, the expression "the child's best interests" or "the best interests of the child" covers the three dimensions developed above."

44. As can be seen from the text of para. 6(c), there are three discrete aspects to the procedural obligation, all described in the text. They are:
    (a) Evaluating the possible impact (positive or negative) of the decision on the child or children concerned;
    (b) Assessing and determining the best interests of that child/ those children;
    (c) Showing that the right has been explicitly taken into account.

This makes clear the importance of process – gathering the relevant information, asking oneself the right questions, considering the information obtained, assessing and determining the best interests of children, and taking account of best interests in then formulating and implementing decisions. For there to be meaningful assessment of the best interests of children who are victims and survivors of CSEN, and the best interests of children who are at risk of being exploited in this way, and for there to be full evaluation of the possible impacts of different courses of action, it is fundamental that the decision-makers are equipped with the relevant information.

45. CEDAW and Violence Against Women ('VAW') Standards: it has been repeatedly affirmed, in international standards and jurisprudence, that the 'due diligence' obligation in respect of risks to life and the non-derogable right to freedom from torture and other inhuman or degrading treatment or punishment is of particular pertinence in the specific context of gender-based violence. This obligation has been specifically affirmed in a series of international instruments concerned with gender-based violence (including CSE of girls within organised networks, falling within this investigation strand), within the Council of Europe and further afield.

46. For example, the issue was addressed in the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence.[26] Article 5(2) of the Convention states that *"[States] [p]arties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors."* Guidance as to the scope and effect of the obligation of due diligence in Article 5 of the Convention is provided in the Convention's accompanying Explanatory Report which states, at paragraph 59:

> *"[T]he drafters considered it important to enshrine a principle of due diligence in this Convention. It is not an obligation of result, but an obligation of means. Parties are required to organise their response to all forms of violence covered by the scope of this Convention in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts of violence. Failure to do so incurs state responsibility for an act otherwise solely attributed to a non-state actor."*

47. The obligation of due diligence in the specific context of gender violence is also recognized in Recommendation Rec (2002) 5 of the Committee of Ministers on the Protection of Women

[26] Convention on Preventing and Combating Violence against Women and Domestic Violence, entry into force, 1st August 2014, CETS 210.

Against Violence[27] which, at paragraph II, recommends that governments of Member States *"[r]ecognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims".*

48. The duty of due diligence is also imposed in international human rights instruments, most notably in CEDAW, ratified by the United Kingdom on 7th April 1986. In General Recommendation No. 19, the UN Committee on the Elimination of All Forms of Discrimination Against Women emphasised the obligation on public authorities to exercise due diligence to prevent violence against women. It states, at paragraph 9, *"[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation*".[28] In July 2017 the Committee adopted the landmark General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19. It elaborates on the due diligence obligation, and also recognises that the prohibition of gender-based violence has become a norm of international customary law.[29] General Recommendation No. 35 makes clear that,

> *"Article 2 (e) of the Convention explicitly provides that States parties are to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. That obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be held responsible should they fail to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women…*
>
> *Under the obligation of due diligence, States parties must adopt and implement diverse measures to tackle gender-based violence against women committed by*

[27] Recommendation Rec (2002) 5 on the Protection of Women Against Violence adopted by the Committee of Ministers on 30th April 2002 at the 794th meeting of the Ministers' Deputies.
[28] General Comment 19, 29th January 1992, Committee on the Elimination of All Forms of Discrimination Against Women, UN Doc. A/47/38.
[29] In addition to the text of CEDAW itself, and the General Comments, there is a body of jurisprudence which has developed pursuant to CEDAW. The due diligence principle has been considered on a number of occasions by the Committee in response to communications concerning the response of emergency services to situations of domestic violence: see e.g. *Jallow v. Bulgaria*, 23rd July 2012, CEDAW Communication No. 32/2011, at para. 8.4; *VK v. Bulgaria*, 25th July 2011, CEDAW Communication No. 20/2008; *Yildirim v. Austria*, 1st October 2007, CEDAW Communication No. 6/2005 (see in particular para. 12.1.5); *Goekce (Deceased) v. Austria*, 21st July 2004, CEDAW Communication No. 5/2005, particularly at paras. 12.1.3 and 12.1.4.

non-State actors, including having laws, institutions and a system in place to address such violence and ensuring that they function effectively in practice and are supported by all State agents and bodies who diligently enforce the laws. The failure of a State party to take all appropriate measures to prevent acts of gender-based violence against women in cases in which its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, to prosecute and punish perpetrators and to provide reparations to victims/survivors of such acts, provides tacit permission or encouragement to perpetrate acts of gender-based violence against women. Such failures or omissions constitute human rights violations."

49. Other international instruments also deal with the obligation of due diligence: for example, see Article 4 of the UN Declaration on the Elimination of Violence Against Women adopted by the UN General Assembly in Resolution A/RES/48/104[30] (States *"should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should: […] (c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons");* and the wording of the mandate of the UN Special Rapporteur on violence against women, its causes and consequences, which expressly refers to the due diligence obligation.[31]

50. The due diligence obligation does not concern only decision-making in individual cases, i.e. cases in which the authorities have actual or constructive knowledge of risks to a particular woman or girl. General Recommendation No. 35 puts this beyond doubt, at paragraph 26:

"The general obligations described above encompass all areas of State action, including in the legislative, executive and judicial branches and at the federal, national, subnational, local and decentralized levels, as well as action under governmental authority by privatized governmental services. They require the formulation of legal norms, including at the constitutional level, and the design of public policies, programmes, institutional frameworks and monitoring mechanisms aimed at eliminating all forms of gender-based violence against women, whether perpetrated by State or non-State actors."

[30] General Assembly Resolution 48/104, 20th December 1993.
[31] See resolution 1994/45, adopted on 4th March 1994, and subsequent extensions; note resolution 2003/45 (2013) which refers to governments' due diligence obligations.

It is also made clear that CEDAW requires that States parties *"are to adopt and adequately provide budgetary resources for diverse institutional measures"* including *"the design of focused public policies, the development and implementation of monitoring mechanisms."* Information, and, indeed, resources, are key to compliance with these requirements.

Domestic Standards

51. There are multiple provisions of domestic statutory law which, indirectly, point to the importance of gathering and analysing information in order to inform decision-making. CWJ notes in particular:

(i) The sufficiency duty: section 22G, Children Act 1989. This places on local authorities a general duty to secure sufficient accommodation for the purpose of meeting their obligations to looked after children. Section 22G is plainly an attempt by Parliament to ensure that local authority duties to provide adequate suitable accommodation are met in practice. In order to comply, and ensure sufficient suitable accommodation is provided, it is essential that local authorities understand the needs of vulnerable children within their areas. Without appropriate information-gathering, this duty cannot be complied with. CWJ considers this sufficiency duty to be particularly relevant in relation to this strand (and agrees with the oral closing submissions on behalf of the London Borough of Tower Hamlets in this regard), although it is not an issue which has been fully explored in evidence. CWJ notes the Children's Commissioner's very recently published reports (11th November 2020) into the plight of *"the children who no one knows what to do with,"* the *"broken system"* and *"the failure of local and national government to take responsibility for these children."* The Children's Commissioner has, in these reports, made clear the connection between CSEN and poor accommodation, and she has found that the government has *"failed to respond to previous warnings that thousands of these children are in danger of becoming victims of criminal and sexual exploitation."*[32]

(ii) The welfare duty: section 11, Children Act 2004. This applies to various public bodies, including local authority children's services departments and chief constables of police (although not central government). Section 11 imposes a general, positive and pro-active duty on certain bodies to safeguard and promote the welfare of children. Although this duty does not give new functions to those agencies subject to it, it does require them to carry out

[32] See further https://www.childrenscommissioner.gov.uk/report/the-children-who-no-one-knows-what-to-do-with/.

their existing functions in a way that takes into account the need to safeguard and promote the welfare of children. S. 11(2) provides that:

Each person and body to whom this section applies must make arrangements for ensuring that—

(a) their functions are discharged having regard to the need to safeguard and promote the welfare of children; and

(b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need.

The *"arrangements"* to be made in order to comply with this obligation necessarily require the public bodies in question to be equipped with relevant information. In addition, section 10 of the 2004 Act and the accompanying statutory guidance makes clear the importance of and need for effective inter-agency working.

(iii) Wider duties to be informed: in addition, depending upon the circumstances, both public law principles and the Human Rights Act 1998 ('HRA') (particularly the procedural aspect of Article 8 ECHR) may require decision-makers to be informed and to ask the right questions prior to making decisions. CWJ notes, in addition, that as the UNCRC, CRPD and CEDAW are taken into account by the European Court of Human Rights when assessing the parameters of the ECHR[33], section 2(1) HRA requires that any domestic court must take account of this jurisprudence when considering domestic cases.

The Evidence

52. The distinct lack of data, and a lack of any coherent approach to gathering that data, was plain from the institutional evidence throughout the eleven day hearing.

53. To give just a handful of examples at the national level:

a. Ms Langdale on behalf of the DfE commented on Day 9 that *"we still have a long way to go in terms of gathering data and evidence and filling data and evidence gaps"*[34];

[33] See, as background, Sir Nicholas Bratza, 'The Best Interests of the Child in the Recent Case-Law of the European Court of Human Rights,' Franco-British-Irish Colloque on family law (Dublin), 14th May 2011; *Neulinger v. Switzerland* (2010) 28 BHRC 706, paragraph 131.
[34] Day 9 transcript, page 32.

b. Mr Papaleontiou on behalf of the Home Office confirmed in his evidence on Day 9 that ONS data does not adequately distinguish between CSA and CSE and fails to reflect the prevalence of CSE in local areas;[35]

c. Neither Gregor McGill of the CPS nor Christian Papaleontiou of the Home Office was able to answer CTI's question on the recording of data on the use of the statutory defence under section 45 of the Modern Slavery Act, nor did they provide any commitment to recording this data, despite a number of reports dating back to 2017 recommending that they do so (see further submissions on this below under criminalisation section);

d. Further, on disaggregation, Mr McGill on Day 10 said he did not think it would be feasible to break down the recording of cases prosecuted according to ethnicity and gender.[36]

54. Zlakha Ahmed of Apna Haq commented on this in her second witness statement to the Inquiry:[37]

> *13. I thought there were a number of unsatisfactory responses from the national institutional witnesses, in particular in relation to data gathering… I am keen to reinforce what I said in my first statement, namely that one of the reasons data for BME children is missing is due to a lack of reporting and professionals not actively looking for CSE in BME communities. The 2013 report by the Children's Commissioner which I mentioned in my first statement said that, when they did their research up and down the country, they found that police forces were simply not actively looking for BME children who were being exploited. I continue to see this lack of proactivity, as I have outlined at paragraphs 32-33 of my first statement.*
>
> *…*
>
> *15. I was very disappointed by the CPS evidence in particular. When Mr McGill was asked (at page 8 of the day 10 transcript) about disaggregating data, and whether it would be feasible and/or helpful to break down the recording of cases prosecuted according to the ethnicity and gender of the victim, he responded that he did not think this would be feasible and appeared to shift the blame to the police for not recording this information when they investigate crime. I thought that Mr McGregor's response was complacent and lacking in substance, and not one I would have expected from*

[35] Day 9 transcript, pages 15-16.
[36] Day 10 transcript, page 8.
[37] INQ006336_003.

someone in such a senior position at the CPS. The fact that the CPS does not have data on the breakdown of prosecutions by ethnicity means that their response to BME victims cannot be monitored. I don't think it is good enough to simply say "this is not feasible".

55. The legal representative for Sarah Champion MP, Mr Suleman, made a similar point in closing on Day 11, noting that:[38]

> *"Proactivity with respect to searching for CSE in BME communities appears to be lacking. Gregor McGill said he simply thought it was unfeasible to break down the recording of cases prosecuted according to ethnicity and gender. We don't accept that position."*

56. Counsel for PACE, Mr Chapman, also commented on the lack of data:[39]

> *2 If I may start with the summary salient features of*
> *3 the evidence, the first observation we make is about the*
> *4 paucity and quality of the data. The gap between the*
> *5 reality of sexually-exploited children's experiences in*
> *6 recent years and the bureaucratic response by statutory*
> *7 services is probably vast. We, frankly, do not know,*
> *8 because the data is so poor, it is blighted with poor*
> *9 collection, definitional problems, and a diversity of*
> *10 approach across the country.*
> *11 If you accepted the overall tenor of the police*
> *12 evidence, you would think that there was little evidence*
> *13 of organised networks, however defined, involved with*
> *14 CSE in the six regions and even less CSE that is*
> *15 accompanied by serious threats of violence. That*
> *16 contrasts so starkly with the reported experiences on*
> *17 the front-line that we suggest that should give you*
> *18 grave cause for concern.*

[38] Day 11 transcript, page 73.
[39] Day 11 transcript, page 35.

57. Counsel for Maggie Oliver and Jon Wedger, Mr Jacobs, said simply[40]: *"we have no idea of the true scale of problem because the current data is inadequate."*

58. CWJ agrees with Ms Ahmed, Mr Suleman, Mr Chapman and Mr Jacobs' analysis: this simply isn't good enough, and institutions must do better. The Inquiry is invited to make detailed findings and recommendations on data in an effort to plug this significant gap.

(iii) Failure to have regard to and integrate into decision-making an understanding of a wide range of victims

59. This was a clear theme that emerged from the evidence and, as above, cuts across all of the Inquiry's eight themes. It was most clearly demonstrated by the evidence of Sheila Taylor of the NWG Network on Day 2.[41]

60. Ms Taylor had been asked to review the evidence of Rosie Lewis of the Angelou Centre on her topics list, in particular the section of Ms Lewis's evidence regarding the lack of cultural competence within local authorities (on which see further below under "BME-specific issues"). Ms Taylor was asked whether she had read the statement from Ms Lewis and she said she had not. She was then asked whether the lack of cultural competence within local authorities – in other words, the lack of workers with the expertise or knowledge to support the specific needs of women from black and minoritised communities – was an issue that she thinks falls to be considered under empathy and concerns for child victims. Ms Taylor responded[42]:

> *16 A. Yes, I totally agree with that. I think that we --*
> *17 language is really key here. Dehumanising some of our*
> *18 young people in this process is definitely one of those*
> *19 things. So "at risk" rather than talking of them as*
> *20 being significantly harmed. I would expand it past BME*
> *21 communities. I think those young people within special*
> *22 educational needs and those young people exploring their*
> *23 sexuality -- LGBTQ -- have all got issues that we need*
> *24 to explore in terms of being able to recognise them as*

[40] Day 11 transcript, page 48.
[41] As the Inquiry is aware from previous submissions, CWJ did not consider that Sheila Taylor should have been called to give oral evidence, and we were unconvinced that she would add value as an oral witness, in light of the content of her witness statements and the role of the NWG Network.
[42] Day 2 transcript, pages 159-160.

25 well as those from our ethnic minority backgrounds.

61. CWJ was very concerned both by Ms Taylor's failure to read Ms Lewis' statement in advance, despite it being on her topics list, and by this answer, which both missed the central point of the question and treated black and minoritised communities as falling into a generic 'other' category, along with LGBTQ children.

62. Rosie Lewis responded to Ms Taylor's evidence on this point in her supplementary statement to the Inquiry as follows[43]:

> *"In my view, Ms Taylor totally failed to address the points I raised in her response, and instead spoke about language and the dehumanisation of young people, which is not what that section of my statement was talking about. I also found it concerning that, when asked about cultural competence and black and minoritised communities, rather than addressing the specific question, Ms Taylor deflected the question and immediately brought up young people from other minority communities and gave an answer that homogenised all minority people and communities to be in need of the same approach and support. This resulted in her lumping together minorities; categorising as one the 'other' victims outside of what is considered to be the norm (i.e. white, female, heterosexual victims who do not have learning differences.)*
>
> *5. In my view, there is a responsibility for organisations such as the NWG Network to work from an evidence-base and to have an informed understanding about gender-based violence and marginalised communities. I felt this was lacking in Ms Taylor's evidence."*

63. CWJ agrees with and strongly endorses this criticism.

64. Zlakha Ahmed of Apna Haq, who gave evidence alongside Ms Lewis on day 10, had a similar response to Ms Taylor's evidence[44]:

> *"In my view, Ms Taylor's response did not answer the question put to her, or engage with the issue. I thought her response — on behalf of a national organisation seen as an 'expert' on child sexual exploitation (CSE) — showed a lack of understanding of the*

[43] INQ006335_002, paragraphs 4-5.
[44] INQ006336_001, paragraph 4.

particular experiences of BME women and girls, as outlined by myself and the Angelou Centre in our written and oral evidence to this Inquiry. I thought Ms Taylor's response was typical of the sort of generic attitudes Apna Haq encounters from mainstream services…"

65. Ms Ahmed went on to say that she had some experience of working with the NWG Network and she thought that, *"as an organisation, it feels like their engagement with BME-specific issues is surface-level - they occasionally bring in BME speakers or trainers but this expertise is not embedded in the organisation's culture."*[45]

66. A number of other institutional witnesses, when asked about BME-specific services, had similar responses to Ms Taylor and lumped together minorities in the same way. Others made stark admissions that they had not done any specific work to improve the accessibility of their services for victims from BME communities, or other minority groups. For example, Professor O'Brien of St Helens Borough Council noted in her statement to the Inquiry that, through the period about which the Inquiry asked questions of the Council, April 2017 to March 2019, *"We have not completed specific work to improve the accessibility and sensitivity of child sexual exploitation services to children and young people from BME communities."*[46] When Professor O'Brien's colleague, Jim Leivers, was asked during oral evidence whether he had any update on the position, he admitted that: *"we are in the same position today as we were in writing this for 2017-19. It is not an area we have yet addressed."*[47]

67. This is an extraordinary admission for a Council Children's Services lead to make in 2020 - that no steps had been taken by St Helens whatsoever to make their services more inclusive and accessible to minority groups, despite having been explicitly asked about this in advance of giving evidence to the Inquiry.

68. This lack of understanding of the diversity of minority communities and 'lumping together' was, in CWJ's submission, exacerbated by the lack of evidence from non-white witnesses during the hearings.

69. While CWJ is grateful to the Inquiry for seeking written evidence from specialist BME organisations at our suggestion, including in particular the Angelou Centre and Apna Haq, we nevertheless remain concerned that, in a two week hearing - leaving aside the two survivors who

[45] INQ006336_002, paragraph 5.
[46] STH000818_011, paragraph 2.8.
[47] Day 6 transcript, page 53.

gave evidence as their identities are protected, and so we make no comment about their ethnicity - all of the witnesses were white, apart from Ms Lewis and Ms Ahmed, who gave evidence together, in the final slot on the last day of the hearing, having been added in following our application.

70. Ms Lewis commented on the lack of diverse perspective in the evidence before the Inquiry when giving oral evidence on day 10, referring specifically to the evidence of Gill Gibbons from PACE[48]:

> *10 Very finally, talking about Ms Gibbons today, her*
> *11 evidence, it was great hearing about that evidence from*
> *12 the point of view of the parents and that evidence from*
> *13 a very community-centred point of view, but, again,*
> *14 there was no discussion about difference, about*
> *15 marginalised communities, and there wasn't as much*
> *16 discussion about black and minoritised communities and*
> *17 what they need. I think something from the evidence*
> *18 I've seen that I'm sure Ms -- that Zlakha would agree*
> *19 with this, is that, to us, all victims are valid. It*
> *20 doesn't matter their family background, their ethnicity,*
> *21 their race, their class, their gender or their ability.*
> *22 All victims should be valued and it shouldn't be because*
> *23 they come from a certain home that they're valued more*
> *24 than somebody who has been through abuse within the*
> *25 home. Everybody should be tret* (sic) *equitably throughout*
> *1 this system.*

71. Ms Lewis commented further on this issue in her supplementary statement to the Inquiry[49]:

> *"I am very grateful to have been given the opportunity to give oral evidence to the Inquiry on behalf of the Angelou Centre, following submissions by a number of core participants about the Inquiry's lack of focus on black and minoritised victims/survivors. However, as Zlakha Ahmed and I were given a single shared slot on the afternoon of the final day of the hearing, our evidence unfortunately felt somewhat*

[48] Day 10 transcript, page 169.
[49] INQ006335_001, paragraph 2

rushed. As far as I am aware, Ms Ahmed and I were the only two non-white witnesses giving oral evidence in this investigation, and the only two witnesses speaking directly to issues specific to black and minoritised communities. Combined with the lack of attention given by the institutional witnesses to the issues affecting our communities, I would like to point out that this in itself felt like minoritisation."

72. The legal representative for Sarah Champion MP, Mr Suleman, made a similar observation in his closing statement to the Inquiry on Day 11:

1 As you're aware, chair and panel, it was a source of
2 some significant concern to all noninstitutional core
3 participants that the inquiry itself was marginalising
4 the evidence of representatives of BME victims and
5 survivors. Ultimately, following our urgent application
6 in week 1, chair, you agreed to allow two
7 representatives of such organisations to give evidence
8 on the final day. That meant that the only two
9 witnesses in this inquiry speaking directly to issues
10 specific to BME survivors were rushed into a short slot
11 in a single afternoon, and, in our submission, more
12 needs to be done if BME victims and survivors are to be
13 confident that those in authority are doing more than
14 simply paying lip service to the issues they raise.

73. CWJ endorses this submission and remains concerned that the extent of the evidence received from a BME perspective may amount to little more than lip service being paid to BME victims and survivors. (CWJ considers that this in part arises from the methodological concerns which have been noted above.) With this in mind, the Inquiry is invited to consider all of the evidence obtained from specialist BME organisations very carefully, and make detailed findings and recommendations arising out of the same. That evidence includes:

    a. Two witness statements from Rosie Lewis, the Angelou Centre, and her oral evidence[50];
    b. Two witness statements from Zlakha Ahmed, Apna Haq, and her oral evidence[51];
    c. Witness statement of Shehla Khan, EYST[52];

[50] INQ006185, INQ006335 and Day 10 transcript, pages 118-170.
[51] INQ006260, INQ006336 and Day 10 transcript, pages 118-170.
[52] INQ005914.

d. Witness statement of Narinder Kaur Kooner OBE, SWAN[53].

D. KEY THEMATIC ISSUES: CRIMINAL JUSTICE SYSTEM

(i) Criminalisation of Victims of CSE

74. The issue of victims of CSE themselves being criminalised was raised by CWJ in opening and has been borne out by the evidence. As we said in opening: *"These are cases in which the child was failed by the state, not only by the state failing to protect, failing to risk assess, failing to take action against the perpetrators; the state had criminalised the victims themselves."*[54] This theme is closely linked to the issue of the lack of prosecutions for rape and other sexual offences, and the role of the CPS. It falls under the Inquiry's themes of empathy and concern for child victims; risk assessment and protection from harm and audit, review and performance improvement.

75. The Panel heard about CWJ's Rochdale client, 'Daisy', who told her harrowing story to BBC's File on 4 in July 2020, and was referenced in CTI's opening statement on Day 1:

> *4 From age 13, Daisy was well known to the police.*
> *5 She was arrested and charged on a number of occasions,*
> *6 often connected to the abuse that she was suffering.*
> *7 Daisy explains, "It was always like drunk and*
> *8 disorderly, assault, racial abuse. It was always when*
> *9 I was out with Asian men. Never once was anyone ever*
> *10 arrested, only me". Daisy told police officers that she*
> *11 was forced into sex and physically abused, but no action*
> *12 was taken against any perpetrator.*
> *13 At age 14, Daisy became pregnant and had an*
> *14 abortion. She describes being passed around for sex by*
> *15 anywhere between 100 and 150 men. At the same time, she*
> *16 became a regular at the Youth Offenders' Court in*
> *17 Rochdale. Her solicitor tried to explain the abuse that*
> *18 Daisy was suffering, but no investigation was conducted.*
> *19 Instead, Daisy was sentenced to four months in a Young*

[53] INQ006154.
[54] Day 1 transcript, page 95.

20 Offenders' Institution at age 15.[55]

76. The Inquiry also heard powerful evidence from CS-A12 on Day 2, who said that she was prosecuted at least 12 times for criminal damage and assault on staff at care home or the police:

> ***23 Q You raise questions about why the police and the CPS and***
> ***24 the judges failed to see that your behaviour was***
>
> ***25 a result of the abuse, but instead you feel that you***
> ***1 were punished for your own response to the trauma; is***
> ***2 that right?***
> *3 A. Yes. If I ever lashed out or got upset, I was either*
> *4 restrained, arrested or prosecuted. Like I say, one of*
> *5 the incidents, I was prosecuted because I smashed*
> *6 a mirror in my bedroom. Like, I think that's quite*
> *7 pathetic, really, to have someone criminally convicted*
> *8 because they got a bit upset and smashed a mirror.*
> *9 Like, they didn't have no lenience. No matter what you*
> *10 did, they would prosecute you.*

77. In her statement to the Inquiry[56], Rosie Lewis of the Angelou Centre told the story of her client, 'Jennifer', a young Black woman who, as a teenager, was repeatedly picked up and arrested by the police at 'chill parties', while they ignored her white counterparts. All of the girls were being sexually exploited at the parties. Jennifer was also charged with drunk and disorderly offences, the convictions for which remain on her record. This led to a complete breakdown in trust of the police, such that when Jennifer was eventually approached to be a key witness for Operation Sanctuary, she refused. As Ms Lewis put it at paragraph 51 of her first witness statement:

> *"For her, this was the one thing in her life she could control. She believed the police had been racially abusive towards her and dismissed her as a victim. She strongly felt that they didn't have her best interests at heart and so she did not wish to cooperate with them."*

78. The timelines of individual children from the geographic areas which were read into the record also revealed a pattern of victims being arrested and criminalised while their abusers were not.

[55] Day 1 transcript, page 20.
[56] INQ006185_011.

The Inquiry heard that CS-A71, a St Helens child, was arrested at the age of 16 for criminal damage, arson and threatening behaviour towards staff in her placement, such that the Youth Justice Service became involved.[57] CS-A32, a Bristol child, was arrested aged 16 for a property-related offence and, despite telling the police that men had made her two it, and later providing the police with names and addresses of men with whom she had stayed overnight, there was no evidence showing that the police had carried out an investigation.[58]

79. It is clear from these examples that victims continue to be criminalised for behaviour linked to their abuse, by individual police forces and by the CPS. When Gregor McGill, the Crown Prosecution Service ('CPS') witness, was asked about this issue, he said:

> *3 These are sometimes, Ms Hill, really difficult*
> *4 decisions, sometimes amongst the most finely-balanced*
> *5 decisions that prosecutors have to make, because they*
> *6 have to determine whether a person should be dealt with*
> *7 as a perpetrator of crime or as a victim of crime, but*
> *8 sometimes the allegations that they're asked to consider*
> *9 involve young people committing serious crimes,*
> *10 punishable with significant periods of imprisonment,*
> *11 which also can affect other individuals and the*
> *12 communities in which other citizens live.*
> *13 So prosecutors have to balance the competing rights*
> *14 of the rights of a victim and the rights of society at*
> *15 large as to where the balance of those interests lie in*
> *16 deciding whether a person should be a victim or should*
> *17 be prosecuted in the public interest, and those can be*
> *18 very difficult decisions.*[59]

80. Rosie Lewis of the Angelou Centre disagrees with Mr McGill that the issue is in fact *"finely-balanced"*, because the criminal justice system is inherently weighted against people from BME communities, or lower socio-economic groups. In her oral evidence to the Inquiry on Day 10, she said*: "I think that often that fine line is designated according to probably what the perceived*

[57] Day 8 transcript, pages 9-11.
[58] Day 8 transcript, pages 15-16.
[59] Day 10 transcript, page 35.

background of that individual is."[60] She elaborated in her supplementary statement to the Inquiry after the hearing:

> *"I do not think this issue is 'finely-balanced' if a system is inherently biased or has been proven to lack equity. In my view this balance tips, in each case, based on class, ethnicity or other intersecting differences that marginalise minorities - so a black or minoritised girl or young woman is, in my experience, more likely to be treated as a perpetrator whereas the normative white victim is less likely."*[61]

81. A key question for this Inquiry is whether the police and CPS get this difficult balance right. The examples set out above, which in our submission represent only the very tip of the iceberg, suggest they often do not.

82. When asked about this issue on Day 9 the Home Office witness, Mr Papaleontiou said, "*the government is very clear that those who have been criminally or sexually exploited are victims and should be treated as such, rather than as perpetrators."*[62]

83. To probe whether the balance is being correctly struck (using Mr McGill's phrase) and whether the government's very clear view (to use Mr Papaleontiou's phrase) – it is key that data is gathered. Without data, these are simply untestable assertions, and policy is being made in an information vacuum. However, this data is not being gathered.

The use of section 45 Modern Slavery Act 2015

84. The Inquiry will be aware that section 45 of the Modern Slavery Act 2015 – which came into force in July 2016 - provides a statutory defence for people, including children, accused of criminal offences for conduct arising from their abuse. The Act is a critical piece of legislation and the key statutory vehicle by which the UK can comply with its obligations under Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings, preventing the criminalisation of victims of exploitation.

85. However, the 2019 independent review of the Modern Slavery Act[63] found (at 4.1.4) that *"stakeholders presented evidence that victims continue to be prosecuted for offences they were forced to commit."* The review, dated May 2019, also highlighted (at 4.1.3) the lack of data

[60] Day 10 transcript, page 157.
[61] INQ006335_005, paragraph 14.
[62] Day 9 transcript, page 63.
[63] HOM003393.

regarding the use of section 45, noting that it was therefore *"difficult to understand how the statutory defence has been used or potentially misused."*

86. The 2019 independent review of the Modern Slavery Act was not the first time that concerns about a lack of data on the use of section 45 had been raised. In a report by HM Crown Prosecution Service Inspectorate ('HMCPSI') in December 2017, *The CPS response to the Modern Slavery Act 2015* – attached to these submissions as Appendix 1 - the Inspectorate found at paragraph 5.21 that *"There is no data on the number of occasions the defence has been used, or instances where it might have been used and was not considered."* Included in its list of recommendations to the CPS were: *"The CPS should collate and maintain performance data locally and nationally rather than under current ad hoc arrangements"* and *"The CPS needs to introduce a mechanism, with partners, to collate and analyse joint performance data across all strands of modern slavery and human trafficking crime types."*

87. The 2017 HMCPSI report was put to the CPS witness, Mr McGill, by CTI, and he was asked whether the CPS now collects data on the use of section 45, and if so whether it is disaggregated for CSE cases by race/ gender. His response was: *"I simply don't know the answer to that question."*[64] Mr McGill committed to following the question up in writing by way of a further statement.

88. Mr McGill provided a further statement to the Inquiry dated 20th October 2020. At paragraph 32[65], he confirmed that the CPS does not collect this data, and did not give any commitment to the CPS attempting to do so. He suggested that section 45 applies in such a broad range of circumstances that *"any data is unlikely to present a complete picture."*

89. Mr Papaleontiou, the Home Office witness, was also asked about this topic on Day 9. At the hearing, when pressed by CTI, he was unable to answer whether the Home Office collects data on the use of section 45, and said that this information would be provided to the Inquiry in a further statement.

90. In a further written statement to the Inquiry dated 21st October 2020,[66] Mr Papaleontiou confirmed (at paragraph 4) that the Home Office does not collect data on the use of the Section 45 defence, but *"we continue to engage with the police and Crown Prosecution Service (CPS) to monitor and assess how it is being used in practice across all stages of the criminal justice*

[64] Day 10 transcript, page 40, lines 23-24.
[65] CPS005009_006
[66] HOM003397

system".[67] This is clearly inadequate given that the CPS does not collect or record data, and has no intention to do so.

91. Mr Papaleontiou went on to say at paragraph 5 of his statement:

> "*This follows the Independent Review on the Modern Slavery Act (22 May 2019) (Exhibit H0/1) which considered the effectiveness of the defence following concerns about its use being raised by the police and the CPS. The Review concluded that the current legislation achieves the right balance between the need to protect victims from criminal prosecution and preventing abuse of the defence. The Government Response to the Independent Review (9 July 2019) (Exhibit H0/2) accepted this finding and noted that the Government would continue to monitor use of the defence, working with operational partners - and that the Independent Anti- Slavery Commissioner (IASC) would also work with criminal justice agencies to better understand what is happening on the ground*."[68]

92. Mr Papaleontiou is correct that the Independent Review concluded that the current legislation, case-law, and the system of trial by jury achieves the right balance between the need to protect victims from criminal prosecution and preventing abuse of the defence. This finding was reached in the context of the concerns by stakeholders that the statutory defence could be used as a 'loophole' for defendants and that disproving a claim of slavery and trafficking beyond reasonable doubt could be challenging.[69]

93. However, the question put to Mr Papaleontiou was about the data collected by the Home Office – if any - regarding the use of section 45. It is surprising, therefore, that he neglected to mention in his statement recommendation number 78 of the Independent Review[70]:

> *"78 The accurate collection of data on the use of the statutory defence [for victims of modern slavery] is vital.* ***As a priority, we recommend that the police, the CPS and HM Courts and Tribunals Service record data on how the statutory defence is being used by adults and children.*** *The overall use of the defence needs to be captured; as well as cases where the defence has been appropriately deployed, where it has been*

[67] HOM003397_001.
[68] HOM003397_002.
[69] HOM003393_017 at paragraph 30.
[70] H0M003393_028.

claimed and subsequently disproved, and instances where it, arguably, ought to have been deployed earlier on."

94. As for Mr Papaleontiou's comment in the second half of paragraph 5 of his statement that "*the Government's Response to the Independent Review accepted this finding and noted that the Government would continue to monitor use of the defence, working with operational partners - and that the Independent Anti- Slavery Commissioner (IASC) would also work with criminal justice agencies to better understand what is happening on the ground*" – it is correct that the Government accepted the Review's finding about the balance being struck in the current system between the need to protect victims from criminal prosecution and preventing abuse of the defence.[71]

95. However, his statement again omitted to mention the Government's response to recommendation 78**,** on data, which was as follows:

> *87. Further assessment is required before the Government is in a position to accept or reject these recommendations. We are currently liaising with operational partners and with HMCTS on the feasibility and proportionality of introducing additional data requirements to the existing criminal justice data returns. In addition, the Independent Anti-Slavery Commissioner will work with criminal justice agencies to establish what data could be collected.*

96. The Independent Review of the Modern Slavery Act published its report in **May 2019.** At that stage, it was said the collection of data on the use of the statutory defence was **vital** and that it should be addressed **as a priority.** The Government's response – in which it refused to accept the data recommendation and said that it was "*currently liaising with operational partners and with HMCTS on the feasibility and proportionality of introducing additional data requirements to the existing criminal justice data returns"* is dated **July 2019** – well over a year ago.

97. Nevertheless, the shortcomings on data remain: Mr McGill confirmed in his third statement to the Inquiry that the CPS is still not collecting any data on the use of section 45. The extent of Mr Papaleontiou's commitment is that the Home Office *"will continue to work closely with CJS partners to determine the practicalities of this".*[72]

[71] HOM003394_022-023, at paragraph 78.
[72] H0M003397_002, at paragraph 7.

98. We have not had a satisfactory answer from the CPS or the Home Office as to why they have failed to comply with recommendations on data from 2019 (and, in the CPS's case, 2017).

99. The Inquiry is invited to make a recommendation that the Home Office, the CPS, the police and HMCTS work together to collect this data. This is not a matter which should be left to those bodies to consider and take forward. This was urgent in 2017. It was urgent in May 2019. It is now long overdue and exceptionally urgent, in November 2020. The Inquiry must take action.

Criminalisation into adulthood

100. Criminalisation of victims of CSE continues into adulthood - convictions lead to criminal records which can be disclosed under the DBS. This issue is currently before the courts in the case of *R(QSA, Broadfoot, ARB) v Secretary of State for the Home Department & Secretary of State for Justice* in which the claimants were groomed, prostituted and trafficked as children and young women; over 25 years after exiting prostitution and their exploitation their criminal records continue to be disclosed because of the multiple conviction rule.[73] This case illustrates the issue of how children and young women who were being exploited ended up with criminal records and we are aware that this continues to happen today in relation to other criminal offences (see, for example, the campaign started by Sammy Woodhouse, a high-profile victim of CSE in Rochdale, who is calling for the enactment of "Sammy's Law", which would give CSE victims the right to have their criminal records automatically reviewed, and crimes associated with their exploitation removed). CWJ is currently in the process of setting up a project to assist women and girls whose lives continue to be blighted by the impact of criminalisation arising from their experiences of CSE.

101. CWJ requested that a question was put to Mr Papaleontiou on this issue, given that the Home Office is responsible for the DBS. We are grateful to CTI for putting this question. Mr Papaleontiou was not able to provide any detail on the issue in his oral evidence, other than that *"we will look at criminalisation of children and, indeed, the importance of how that translates through to criminal records checks."*[74] He agreed to provide further written evidence to the Inquiry on this issue.

[73] By way of very brief, summary background: the issue of disclosure has been resolved in the claimants' favour in that case, although currently this only assists the individual claimants and not the wider cohort of those affected, of whom there are many thousands. A Statutory Instrument is due to be laid to address this. The ongoing litigation in the QSA case concerns the Home Secretary and the NPCC's retention of records for 100 years; whilst records can be filtered for disclosure purposes, they remain on the Police National Computer and elsewhere for a century.
[74] Day 9 transcript, page 64.

102. Mr Papaleontiou has purported to address this issue in his second witness statement to the Inquiry, at paragraphs 8-10.[75] These paragraphs deal briefly with the procedure for seeking a Royal Pardon, applications to the Criminal Cases Review Commission for a referral to the Court of Appeal and the regime for disregarding certain convictions through provisions in the Protection of Freedoms Act 2012. At paragraph 9, he says that *"Developing a policy to disregard the convictions of child abuse victims could be problematic due to the challenges of demonstrating that the crime had been committed as a result of exploitation or coercion."* At paragraph 10, he explains the DBS process and the fact that *"It is only in those roles working most closely with children and vulnerable adults that certain spent convictions and cautions will be disclosed."*

103. Mr Papaleontiou appears to have entirely missed the point of, or has deliberately avoided, the questions put to him by CTI, at CWJ's request. The first question put to him by CTI was[76]:

> *5 MS HILL: Thank you. The second topic, please: convictions*
> *6 which result from the exploitation of victims then*
> *7 result in those victims having criminal records which*
> *8 can be disclosed under the DBS. Can the Home Office*
> *9 comment on whether the issue of criminalising children*
> *10 in that way is being considered?*

104. The further questions were:

> *MS HILL: Is there anything further that you can say about the extent to which those records which some children have which relate to exploitation and prostitution, which was a crime until 2015, or exploitation by organised networks prior to the Modern Slavery Act are being removed, those criminal records?*
>
> *MR PAPALEONTIOU: Sorry, I don't want to provide any misleading advice. Is it okay if I come back to you on that?*
>
> *MS HILL: Also, perhaps, on the issue widely of whether other criminal convictions should be deleted if they occur in the context of CSE or CSEN? Perhaps you can reflect on those issues and provide some written evidence to the inquiry. Is that all right?*

[75] H0M003397_002-003.
[76] Day 9 transcript, page 64.

MR PAPALEONTIOU: Yes, of course.[77]

105. Mr Papaleontiou did not engage whatsoever with the harm caused to victims of CSE having criminal records, nor give any commitment to reform in this area.

106. It is clear from the evidence that, despite the government being *"very clear that those who have been criminally or sexually exploited are victims and should be treated as such",* victims of CSE continue to be criminalised and have to carry criminal records into adulthood.

107. The Inquiry is invited to make findings on this issue and recommendations that ensure not only that victims of CSE who commit offences arising out of their exploitation are not prosecuted, but also that – if they are – they have the opportunity to have their criminal records expunged.

(ii) *Lack of Victim Care Through the Criminal Justice Process*

108. The lack of care shown to victims and survivors at all stages of the criminal justice system was a recurrent theme running through the evidence heard during the oral hearings. It falls under the Inquiry's themes of empathy and concern for child victims, as well as CSE problem profiling and disruption of offenders.

109. Dr Helen Beckett described in her witness statement that criminal justice responses to CSE by organised networks is *"perhaps the most frequently identified source of dissatisfaction with institutional responses to CSE, both by children and young people themselves and those who car for/work with them."*[78] This was a key area in which Dr Beckett observed a mismatch between policy and practice, as set out above. She said in her statement[79]:

> *"Across our criminal justice programme of research, we have observed examples of improving and promising practice in terms of how police (and prosecutors) engage with those who experience CSE, and officers who do clearly demonstrate empathy, concern and respect in both their attitudes and actions. However the absence of the same is equally observable in others, and we continue to observe a gap between policy/guidance and practice on the ground…"*

[77] Day 9 transcript, page 65.
[78] INQ005150_010.
[79] *Ibid.*

110. Dr Beckett's observation was borne out by the evidence given by both survivors on Day 2, both both of whom provided powerful accounts of the failings they experienced at the hands of the criminal justice system. CS-A12 described giving evidence in two trials, a year apart, because the first trial was a mistrial. When asked how she found the experience, she said[80]:

> *21 A. Horrible. The first time, there -- because there's*
> *22 meant to be rules in place for how they question victims*
> *23 of rape and child abuse. The first time, the barristers*
> *24 representing the perpetrators pushed their boundaries.*
> *25 One of them was extremely aggressive with me, caused me*
> *1 to have a panic attack. I was accused of being a slag,*
> *2 I was spoken to like garbage, I was told, like, it was*
> *3 all my fault and I had wanted it all, and I was*
> *4 literally torn apart on that stand by at least one of*
> *5 the barristers. He got three verbal warnings in court*
> *6 about getting kicked out of court if he carried on*
> *7 questioning me the way he did, but he shouldn't even*
> *8 have been given three warnings. He should have got one*
> *9 warning, and then, when he carried on, he should have*
> *10 been removed.*
> ***11 Q. Is that from the judge? When you say "a warning", you***
> ***12 mean from the judge?***
> *13 A. Yes, from the judge. Multiple people put complaints in*
> *14 over how he questioned me, including Victim Support and*
> *15 my own barrister. They all put in complaints over it.*

111. CS-A371's experience was similar. She said[81]:

> *3 It was -- it felt like a very -- very much like I was being*
> *4 bullied. At one point, I think there was -- I mean,*
> *5 quite a few of the barristers was Asian, so that,*
> *6 like -- that kind of scared me a bit as well, and then,*
> *7 when they was questioning me, they wasn't questioning*

[80] Day 2 transcript, pages 49-50.
[81] Day 2 transcript, pages 84-86.

me, they was, like, shouting at me, like I was a child,
and then I was trying to answer the questions and they
was, like, talking down to me. The judge had to step in
a couple of times.
Q. You say, in paragraph 66 of your witness statement, that
they accused you of being confused, of being racist, of
being a slag?
A. Yes.
Q. You were repeatedly told by the defence barristers that,
"I had wanted sex with these men and had lied to them
about my age in order to deceive them into having sex"?
A. Yes.
Q. Is that the sort of questioning you got over several
days?
A. I did.

112. CS-A371 said her experience was so bad that, if she experienced sexual abuse or exploitation again, she wouldn't report it: *"Like, if something was to happen similar or like that again, I wouldn't report it because I wouldn't want to go through a trial again. I don't think I would manage to go through it*."[82]

113. Vikki McKenna of Catch-22, also described her experience of supporting children through the criminal justice process, and spoke of the lack of communication with the victim from the prosecution, as well as delays in the system, which sometimes lead to young people *"waiting around all day"* to give evidence, only to be called back the following day because things have overrun. Ms McKenna said this was *"not always helpful for a victim".*[83]

114. Simon Alexander, of HMICFRS, also spoke of delays when he was asked about victims' dissatisfaction with the criminal justice process. He said: *"what we see in cases is drift in (sic) delay, so from the initial report to the time an officer goes to speak to a child and their parent, there are delays and, by that time, that disclosure isn't forthcoming or the support for further investigative activities isn't there from the family. On occasions, children aren't spoken to at all and cases are closed."*[84]

[82] Day 2 transcript, page 87.
[83] Day 5 transcript, page 6.
[84] Day 9 transcript, page 157, lines 7-14.

115. When victims' dissatisfaction with the criminal justice system was put to Mr McGill, the CPS witness, he did not acknowledge or address Dr Beckett's research, which was echoed in the evidence set out above. Mr McGill first cited examples of *"ground-breaking"* and *"revolutionary"* changes that had been made to the criminal justice system over the past 20-30 years. However, despite the introduction of these changes, he described a system that was nevertheless – to use his term -*"brutal"*[85]:

> *19 I do think, though, that we have to truly understand*
> *20 the system in which we are working, and we have to*
> *21 understand that the criminal justice system is, at its*
> *22 heart, an adversarial system, and I suppose -- I don't*
> *23 say this to dismiss concerns, but an adversarial system,*
> *24 which the criminal justice system is, is bound to leave*
> *25 some people who experience it somewhat bruised because*
> *1 it is, by its very nature, adversarial and can be quite*
> *2 a brutal system because you're dealing with difficult*
> *3 subjects but you're also dealing with the guilt or*
> *4 innocence of accused people.*
> *5 So cases are strongly contested and*
> *6 cross-examination can be quite fierce because the stakes*
> *7 are quite high for everyone in the system.*
> *8 So I suppose I accept that we have made significant*
> *9 efforts to make the system easier, better, more humane,*
> *10 more empathetic for vulnerable victims within it, but in*
> *11 any adversarial system, sometimes it's going to feel*
> *12 quite brutal for those who experience it.*

116. Rosie Lewis, the Deputy Director of the Angelou Centre, when giving oral evidence on Day 10, described Mr McGill's description as *"really, really disturbing".* She added: *"surely there needs to be a shift in culture if we are really going to be able to safeguard children."* [86]

117. In his oral closing statement to the Inquiry on Day 11, Sarah Champion MP's legal representative, Mr Suleman, said: *"who could fail to have been astonished by the acceptance by Gregor McGill*

[85] Day 10 transcript, pages 25-28.
[86] Day 10 transcript, page 167.

of the CPS that an adversarial system will always be brutal, however mitigated, and is bound to leave victims bruised. That simply isn't acceptable."[87]

118. Mr Chapman, acting for PACE, said similarly in closing: *"the process is brutal for children who have to give evidence…For children who have already been traumatised, it represents further trauma and, too often, no end to what they have suffered."*[88]

119. CWJ agrees with Ms Lewis, Mr Suleman and Mr Chapman. The agencies responsible for the criminal justice system, including the CPS, the police and HMCTS must do better. The system cannot continue to fail victims and survivors in this way. As Mr Suleman put it in closing: *"Not supporting victims and survivors leads to offenders not being prosecuted."*[89] That is unacceptable and must change.

120. A young woman who had a particularly *"brutal"* experience of the criminal justice process was CWJ's client, Amber. Amber's story was described in some detail in Ms Wistrich's statement at paragraphs 72-76.[90] It is worth repeating in full:

> *72. Amber's abuse occurred against the backdrop of a troubled and complex childhood containing a number of significant incidents which, local authority social services found, placed her at risk of harm. Amber was first abused by the grooming gang from around 2007 onwards, aged 14 years old.*
>
> *73. In 2008, another child associated with Amber made allegations to GMP, reporting multiple crimes by several abusers against a number of victims (including Amber). In the course of this investigation, in March 2009, Amber was arrested on suspicion of inciting girls aged 13-17 (including her sister) into prostitution. This marked the beginning of the treatment by GMP of Amber as a "co-conspirator," culpable in the abuse of other young girls, rather than the victim of abuse herself. The abuse against Amber continued until around 2010.*
>
> *74. Throughout February and May 2011, over five extensive interviews with the police, Amber provided the names of approximately 45 abusers, with addresses and phone numbers. She also attended a VIPER identification parade and went on a drive round*

[87] Day 11 transcript, page 71.
[88] Day 11 transcript, page 36.
[89] Day 11 transcript, page 72.
[90] INQ005168_020-021.

with police officers to identify key locations of abuse. She continued to message officers with intelligence to assist the operation.

75. Despite this assistance, Amber was subsequently 'dropped' as a witness on the basis that she would not be credible, and was not called as a witness in the trial in May 2012, a decision which was not explained to her. Instead, and unbeknownst to her at the time, Amber was named on the indictment as a 'co-conspirator alongside the men who had abused her, and in this way her evidence was incorporated into proceedings.

76. During the trial, where Amber's real name was used (although subject to an order restricting reporting) she was nicknamed the 'Honey Monster' and portrayed as a 'pimp' or 'madam' who had procured other young girls for the abusers. No charges were brought (or crimes recorded) in respect of the sexual crimes against her personally. She did not discover that she was named on the indictment until some months after the trial, in late 2012, and the reasons why were never formally explained to her.

121. Amber's horrific story was also referenced by Maggie Oliver in her opening statement to the Inquiry:

15 Ms Oliver's evidence shows that senior police
16 management and prosecutors have been too far removed
17 from the issues to see exploited children as the victims
18 of serious crimes. They don't see CSE through the lens
19 of the exploited child, but through the prism of budgets
20 and spreadsheets. There is no better illustration of
21 this cruel detachment than the police treatment of
22 the girl known nationally, through the BBC "Three Girls"
23 documentary drama, as "Amber".
24 Amber was one of the victims in the Rochdale
25 grooming cases. She was interviewed by the police as
1 a victim of repeated exploitation by organised
2 paedophiles, but told that she would not be called to
3 give evidence at the trial of her abusers.
4 Astonishingly, instead, the police and CPS chose to
5 add her to the indictment as a member of the Rochdale
6 grooming gang. This was a cynical action done in secret

7 as a tactical way of bringing her evidence into the
8 trial, but it betrayed a fundamental lack of empathy and
9 understanding. We say that, without exception, every
10 exploited child is a victim of serious crime.
11 Amber was never told that she'd been added to the
12 indictment, and not only was she hugely traumatised when
13 she eventually found out, but she nearly lost her own
14 children to Social Services care as a result. Ms Oliver
15 is aware that Amber is not an isolated example of this
16 practice.

122. At CWJ's request, a question on this issue was put to Mr McGill, the CPS witness. Mr McGill was referred to Ms Wistrich and Ms Oliver's evidence and asked whether the CPS has made tactical decisions to place victims and survivors on an indictment to enable their evidence to be adduced in court; whether that approach is appropriate; whether it is still used; and the implications of doing so on the anonymity of victims and survivors. His response was[91]:

17 A. I think sometimes this is caused by a misunderstanding
18 of actually what the law allows prosecutors to do in
19 these circumstances.
20 The case that we were talking about I think there is
21 specifically Operation Span, I think that Maggie Oliver
22 dealt with. I think we need to realise what the legal
23 document, the indictment, is about.
24 The allegation is, I think, from Maggie Oliver that
25 the CPS criminalised the young person by putting them in
1 the particulars of the indictment. I don't accept that
2 there was any element of criminalisation there because
3 you have to remember what the offence was, and the
4 offence was an offence of conspiracy. Of course, all
5 acts in furtherance of a conspiracy are admissible to
6 prove that conspiracy, and so there was no element of
7 criminalisation of the young person there because the
8 indictment sets out at the top of the indictment who is
9 charged on that indictment, and the young person wasn't

[91] Day 10 transcript, pages 79-81.

10 charged. They were included in the particulars of
11 the indictment because they had carried out acts, but we
12 had made a decision that it wasn't in the public
13 interest to prosecute them. That doesn't stop us
14 putting them in the particulars of the indictment. It
15 is not criminalisation; we are legally entitled to do
16 that under the law relating to conspiracy.
17 And, of course, it goes to what we discussed earlier
18 on: prosecutors sometimes have to make very difficult
19 decisions. They have to balance those conflicting
20 rights, the rights of the suspect, the rights of
21 the complainant and the rights of the public, and in
22 Span, we were dealing with very serious criminality, and
23 there was a significant amount of public interest in
24 bringing those perpetrators of those serious offences to
25 justice and a decision had to be made.
1 So I don't accept that it was criminalisation. It
2 was a proper, proportionate and reasonable response to
3 the balance that we had to make in ensuring that these
4 serious criminals were brought to justice.

123. At CTI's request, Mr McGill provided a third witness statement to the Inquiry dated 20th October 2020, which further addressed this issue at paragraphs 7-15.[92] The Inquiry is invited to read Mr McGill's third statement carefully and in full, but of particular note in relation to this issue are the following points:

(i) *"The evidence showed that 'Amber' played an active role in assisting the defendants to sexually exploit the other girls. Nonetheless, it was also recognised that 'Amber' had been exploited and that she too should be treated as a victim. As a result, 'Amber' was not charged with any offences relating to this matter."*[93]

(ii) *"The reviewing lawyer, however, considered that the evidence from three of the girls, all of whom referred to the coercion exerted by 'Amber' to have sex with the defendants, needed to be reflected in the prosecution case so that the jury could understand how the offending came about. It was effectively part of the 'story' which shaped the offences. It*

[92] CPS005009_002-003.
[93] CPS005009_002 at paragraph 9.

was for this reason that a decision was taken to name 'Amber' as a co-conspirator in one count of conspiracy to commit sexual offences against these girls."[94]

(iii) *"Whilst there is no CPS guidance which endorses naming a child on an indictment in this way, it would appear that this was a fact specific decision taken in this case to ensure that the role played by 'Amber' was understood by the jury."*[95]

(iv) *"Enquiries have been made with the Reviewing Lawyer and she confirmed that 'Amber' was not informed that she was named on the indictment. Prior to the trial the CPS successfully applied for an order under section 39 Children and Young Persons Act 1933 to prevent 'Amber' being named in the proceedings because although 'Amber' was aged 19 at the time of the trial, there was a possibility that her identification might lead to the identification of her younger sister."*[96]

124. CWJ is profoundly disturbed by Mr McGill's evidence regarding what happened to Amber, and is appalled by his lack of apology to her, or any acknowledgement whatsoever of the deleterious impact that naming her on the indictment had – and continues to have - on Amber.

125. First, while it is accepted that Amber was not technically 'criminalised' in the sense that she was not charged with a crime and does not have a conviction, CWJ considers that Mr McGill's conceptualisation of 'criminalisation' is extremely narrow, and fails to recognise the severe stigmatisation of Amber that arose from being named as a co-conspirator to an offence and where the jury had effectively been informed that she was an offender, despite her being a victim of serious and prolonged child sexual exploitation. The fact that Amber was added to a Crown Court indictment remains public knowledge, and has impacted on her access to education and employment, and on her family life. Most notably, Amber's children were almost removed from her care when Children's Services applied (ultimately without success) to court for a care order on the basis that she had been known to conspire in the sexual abuse of children. Children's Services relied on the fact that she had been named on the indictment.[97]

126. It is also documented that Amber is still terrified of leaving her home unaccompanied, and of going into public spaces alone, largely because she is afraid of being vilified as an enabler of the grooming gangs. This is all because she was added to the indictment and because she was portrayed at trial and widely reported in the media as being "the honey monster".[98]

[94] CPS005009_002-003 at paragraph 10.
[95] CPS005009_003 at paragraph 12.
[96] CPS005009_003 at paragraph 13.
[97] Documented in *Three Girls* BBC series in 2017, no longer available on BBC iPlayer
[98] Documented in *Three Girls* BBC series in 2017, no longer available on BBC iPlayer

127. Second, Mr McGill appears to assert in his oral evidence that Amber had committed criminal acts, despite the fact that she was a 15 year-old victim of horrific sexual abuse and exploitation, including multiple rape by organised networks of men.

128. Third, even if it was necessary to explain to the jury how Amber was used to entice other girls into prostitution and this was an "essential" part of the narrative that the jury needed to understand, CWJ does not accept that she needed to be added to the indictment as a co-conspirator in order to achieve this.

129. Fourth, Mr McGill states that the order made under section 39 Children and Young Persons Act 1933 was made only to protect the identity of Amber's younger sister, not because she was recognised as a victim of serious sexual offences for which she should have been granted lifelong anonymity under section 1 Sexual Offences (Amendment) Act 1992 in her own right.

130. Fifth, Mr McGill fails to deal with the fact that the CPS reneged on their assurance to Amber that she would be treated as a victim. This assurance enabled Maggie Oliver to spend many hours working to gain her trust and provide key evidence that led to the successful prosecution of this case.[99]

131. Counsel for Maggie Oliver said in his closing submissions to the Inquiry on day 11:

> *5 Chair, Mr McGill's third statement provides an*
> *6 astonishing, current and appalling example of*
> *7 institutional victim blaming. The lead witness from the*
> *8 CPS entirely fails to engage with our point that every*
> *9 sexually-exploited child is a victim of crime, not*
> *10 complicit in, or responsible for, the crimes committed*
> *11 against them. Mr McGill says that there is no CPS*
> *12 guidance which endorses naming the child on an*
> *13 indictment in this way, but it would appear, he says,*
> *14 that this was a fact-specific decision taken in the case*
> *15 to ensure that the role played by Amber was understood*
> *16 by the jury.*
> *17 Chair, this evidence, we say, is truly compelling*
> *18 because it represents brazen victim blaming from a major*

[99] INQ004959.

19 institutional core participant in this investigation
20 today. The CPS continues to demonstrate, and continues
21 to seek to justify, institutional, embedded victim
22 blaming.

132. CWJ entirely agrees with this submission. Amber's case not only demonstrates an unacceptable lack of victim care through the criminal justice system, but Mr McGill's response, we agree, has entirely failed to grapple with the impact of naming Amber on the indictment, instead taking a narrow, formalistic approach to CWJ's question by denying Amber was criminalised by this course of action.

(iii) Lack of Prosecutions for Rape and Other Sexual Offences

133. This is another key issue for CWJ and falls under the Inquiry's themes of empathy and concern for child victims; risk assessment and protection from harm; partnership working on CSE; and audit, review and performance improvement.

134. On 24th July 2020, Harriet Wistrich, Director of CWJ wrote a letter to the Inquiry regarding the evidence provided by Mr McGill in the Lambeth strand. We attach the letter to these submissions as appendix 2.

135. In particular, the letter raised concerns to Mr McGill's evidence to the Inquiry in the Lambeth strand that the CPS is *"more successful in prosecuting these cases than we have ever been"*, when in fact the statistics – as set out in CWJ's letter to the Inquiry demonstrate a precipitous decline in rape prosecutions. As Ms Wistrich's letter sets out:

> *In the Rule 9 statement that I provided to the Inquiry for the CSEN strand, at paragraphs 99 to 106, I gave details of a legal challenge that the CWJ had brought on behalf of End Violence Against Women coalition (EVAW) against the Director of Public Prosecutions (DPP). As indicated in my statement, less than 1.5 % of reported rapes are now charged by the CPS. The number of rape cases charged in 2017/18 was lower than in any other year since 2009/10, and in 2017/18 there was a fall of 23% in cases charged since the 2016/17 volume. Another way of looking at this is to highlight the falls in actual numbers of cases prosecuted: In 2016-17 the police referred 6661 cases to the CPS. They charged 3671 of those cases which amounted to 55.5% of cases referred. In 2017-18 the police referred 6012 cases of which the CPS charged 2822, amounting to 46.9% of cases referred. By 2018-19 5114 cases were referred by the*

police to the CPS, of which 1758 were charged, representing only 34.4% of cases referred. In terms of the volume of cases charged by CPS it amounts to a drop of 52% in two years. This must be viewed against a substantial increase in the number of rape cases actually being reported to the police: there was a 173% increase in reports made to the police between 2014 and 2018.

136. Ms Wistrich's letter goes on to set out the EVAW challenge to what they say is a change in CPS approach to the prosecution of rape and other sexual offences, which has led to this alarming drop in the number of rape cases prosecuted.

137. Dr Ella Cockbain has given evidence to this Inquiry that, when conducting research interviews for her 2018 book *Offender and Victim Networks in Human Trafficking, "police participants did not suggest that* they *did not believe victims [of CSE], but rather that the victims were not or would not be credible in the eyes of the CPS and jurors".* Her statement continues[100]:

> *"Worryingly, police participants gave examples of numerous similar or linked incidents where the CPS had dropped charges, including ones where there was clear-cut forensic evidence showing a much-older suspect had abused a 13 year-old (this case was later re opened but I still find it very troubling that it was not considered to meet the public interest and evidential tests). Even more worryingly, police on one operation told me that so many charges they had put to the CPS had been discontinued that they had all but given up putting such cases forward. Somewhat ironically, therefore, the prosecutors I interviewed were less likely than the police participants to say that a change in organisational culture was needed. Those prosecutors who did argue for change, described approaches to assessing victim credibility in the CPS as all too often being 'cynical', 'paternalistic' and 'black and white'."*

138. Mr McGill's evidence on this issue is deeply unsatisfactory.

139. First, it is clear from his second written statement to the Inquiry, which he provided to respond to Ms Wistrich's statement and the issue of the ongoing judicial review between EVAW and the DPP[101] that Mr McGill was backtracking on the language he used in Lambeth strand. Claiming that the *"CPS is more successful than ever"* in prosecuting these cases is simply not correct, as

[100] INQ006279_008-009, at paragraph 18.
[101] CPS005004.

the figures demonstrate, and tends to mislead. In his second statement he states that *"The CPS recognises, and shares Ms Wistrich's concern that there is a growing gap between the number of rape offences reported, and the number of cases going to court."*[102] This is clearly an implicit acceptance by Mr McGill that the CPS is not *"more successful than ever"* at prosecuting these cases. Nevertheless, when Mr McGill was asked by CTI whether he needed to revise his evidence in the Lambeth strand given the figures presented by Ms Wistrich, he said: *"I absolutely and utterly stand by everything that I said."*[103]

140. Second, in his second statement and in his oral evidence, Mr McGill deflected attention from the detailed concerns raised by Ms Wistrich regarding the change in the CPS approach, instead speaking in *"general terms"* and emphasising the *"whole system"* issues and the fact that police decision-making also reveals a drop in the number of cases charged.[104]

141. CWJ agrees with this. Both the CPS trend and the police trend are deeply concerning and, in our submission, they are linked, as per the evidence of Dr Cockbain. Mr McGill was, however, contemptuous and dismissive of Dr Cockbain's detailed and careful academic research. When her research was put to him by CTI – at CWJ's request – he first said *"I haven't seen that evidence. That evidence came in late. I haven't seen the statement."* He then added[105]:

> *13 In the limited amount of time that I have had to*
> *14 make enquiries about that, and from what you have*
> *15 already told me, there is no data there, there is*
> *16 nothing to identify how I would make any enquiries about*
> *17 what was said there.*
> *18 It seems to be anecdotal evidence from police, and*
> *19 I can't rebut that because I don't know what cases*
> *20 they're talking about, I don't know what evidence they*
> *21 have got. It's so vague as to be almost impossible for*
> *22 me to be able to comment on.*
> *23 I would say that I don't understand what point is*
> *24 being made there, but what I will do, if it helps, is,*
> *25 I will read the statement and comment in a further*
> *statement, if that would help the inquiry, but there is*

[102] CPS005004_002 at paragraph 7.
[103] Day 10 transcript, page 60.
[104] CPS005004_002-003 and day 10 transcript, pages 20-25.
[105] Day 10 transcript, pages 21-22.

2 the caveat that I'm not sure what I can say because
3 there is a lack of any real tangible data or evidence
4 that I can go to to rebut what is said there.

142. When CTI informed Mr McGill that Dr Cockbain – a respected academic - was relying on her own research in her evidence, and invited to comment on what she reported back from her interviews with prosecutors, Mr McGill said[106]:

25 A. I don't think I can because I haven't seen the statement
1 and I don't know what prosecutors she talked to. So,
2 again, I'm in some difficulty in commenting on that.
3 There is no specificity there as to who she spoke to and
4 in what circumstances.

143. Mr McGill commented further on Dr Cockbain's research in his third witness statement to the Inquiry.[107] Again, he was contemptuous and dismissive of her research, responding only in *"general terms"*[108] and stating *"It is impossible to offer any meaningful comment on the observations of Dr Cockbain without knowing details of the specific cases / police operations about which the police interviewee(s) were referring."* He then gave a general overview of the Victims' Right to Review scheme.[109]

144. Again, Mr McGill's response here was unsatisfactory. First, dismissing anonymous whistle-blower concerns raised to a respected academic is simply not acceptable.

145. Second, as indicated in our oral closing statement, CWJ draws to the Inquiry's attention the fact that similar concerns in relation to the CPS's approach to charging decisions in rape/serious sexual offences generally (a category of crime which includes CSA and CSE) have been raised by identified and named senior police officers. In particular, we attach as Appendix 3 an article from *The Independent* in November 2018, in which ACC Ben Snuggs of Hampshire Police is quoted as saying that the bar for charging *"had become very high",* such that *"I'm concerned about the impact that may be having on victims' confidence"*; and an article from *The Guardian* in July 2020 in which DCC Sarah Crew, Adult Rape and Sexual Offences Lead for the NPCC said she was *"bitterly disappointed"* by the drop in the number of rape convictions and that there

[106] Day 10 transcript, pages 22-23.
[107] CPS005009.
[108] CPS005009_005 at paragraph 28.
[109] CPS005009_005 at paragraph 30.

was concern among police that there had been a change in the level of evidence needed to bring a charge. We also referred in our oral closing to a similar statement from DCC Sara Glen of Hampshire Police, who was interviewed for the Channel 4 series *Crime and Punishment.*[110]

146. So Mr McGill's dismissive statement that *"there is a lack of any real tangible data"* because there were no names given in Dr Cockbain's statement does not address these very public concerns. These are not anonymous critics; they are senior police officers who have gone on the public record. This begs the question: why has Mr McGill failed to address their concerns?

HMCPSI report, December 2019

147. Ms Wistrich's letter to the Inquiry in July 2020 made reference to the December 2019 HMCPSI report, which was critical of the CPS in some respects.[111] The same report was put to Mr McGill by CTI during his oral evidence a number of times.

148. However, it was reported in the *Guardian* in March 2020[112] that the CPS had conducted a secret internal review that exposed its failings in rape cases, but failed to share it with HMCPSI inspectors who were conducting an official inquiry for a major government investigation into rape. Both the inspectorate and the government told the *Guardian* that they were unaware of the existence of the report until January 2020, after the publication of the HMCPSI report. According to the *Guardian* – who had obtained a copy of the unpublished internal report – it examined 200 unprosecuted rape cases and found that in the majority of cases prosecutors were overreaching by making "disproportionate" and "unnecessary" requests for additional information.

149. This *Guardian* report was put to Mr McGill by CTI during his oral evidence and he was asked to comment. Again, his response to this was unsatisfactory: *"not with any specificity"*[113] and agreed to respond to CTI's question in his follow-up statement. In CWJ's submission, it is inconceivable that Mr McGill, the most senior lawyer at the CPS, would not have had any specific knowledge relating to the CPS's very recent internal review of rape cases, particularly when this was reported in the national press just a few months prior to his evidence, and was a cause for public concern.

150. Mr McGill purported to respond to this question at paragraphs 33-35 of his third statement to the Inquiry.[114] Firstly, he is entirely dismissive of the significance of the findings of the internal

[110] No longer available on All4 - https://www.channel4.com/programmes/crime-and-punishment.
[111] INQ005625.
[112] Attached as appendix 5.
[113] Day 10 transcript, pages 65-66.
[114] CPS005009_005.

report, as reported in the *Guardian*, instead referring to its findings in vague, general terms: *"the internal review made recommendations to improve the quality of our action plans."*[115]

151. Second, Mr McGill's answer is inconsistent with the Guardian report – he says at paragraph 35 that "*HMCPSI were made aware of the existence of the report prior to the commencement of their inspection".*[116] This is not what the inspectorate nor the Government told the *Guardian.* In CWJ's submission, Mr McGill is – yet again – misleading the Inquiry, and attempting to cover the fact that the CPS's failure to share this internal report with HMCPSI was a grave omission.

(iv) Use of Children as Covert Human Intelligence Sources

152. This is an important issue that arose during the oral hearings on day 4, when the witness for South Wales Police made reference to the use of covert human intelligence sources (CHIS).[117] It falls under the Inquiry's themes of CSE problem profiling and disruption of offenders, and risk assessment and protection from harm.

153. A Home Office Minister, writing to a House of Lords committee, in 2018 said, *"Given that young people are increasingly involved, both as perpetrators and victims, in serious crimes including terrorism, gang violence, county lines drugs offences and child sexual exploitation, there is increasing scope for juvenile CHIS to assist in both preventing and prosecuting such offences."*[118]

154. The House of Lords Secondary Legislation Scrutiny Committee expressed grave concerns about the use of children as CHIS in these contexts, stating, *"The Minister's reply gives some examples of how such a juvenile CHIS might be used, citing terrorism, gang violence and drug offences as well as child sexual exploitation. These are serious, violent crimes and we have grave concerns about any child being exposed to such an environment. He was unable however to give any information on the number of juveniles so authorised, a fact we find surprising given the ongoing review he mentions."*[119]

155. On day 9, the Home Office witness was asked, at CWJ's request, whether the Home Office considers it appropriate to permit the use of child CHIS in CSE cases.

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[115] CPS005009_006, at paragraph 34.
[116] CPS005009_006.
[117] Day 4 transcript, pages 165-166.
[118] The House of Lords Secondary Legislation Scrutiny Committee, 35th Report of Session 2017-19, attached as Appendix 4, pages 11-12.
[119] *Ibid*, page 3, paragraph 7.

156. Mr Papaleontiou responded by stating that *"juvenile CHISs are used in extremely rare and exceptional circumstances".* He went on to say that he was "not in a position to confirm or deny the specific circumstances for which juvenile CHIS have been deployed, given that that's a sensitive operational matter", but he did state that: *"juvenile CHISs are not tasked to participate in criminality where they are not already involved in".*[120]

157. Not only was Mr Palaeontiou's answer vague and evasive, but his statement that children not being asked to be involved in *"criminality that they aren't already involved in",* was, in our submission, entirely inappropriate language, as he was suggesting that children in a CSE context are criminals, not victims. This is a precise example of the mismatch between policy and practice which we have highlighted above: Mr Papaleontiou stated in terms earlier in his evidence that "*the government is very clear that those who have been criminally or sexually exploited are victims and should be treated as such, rather than as perpetrators"*[121]*;* yet minutes later he was using language to suggest that victims of CSE who commit offences arising out of their exploitation are perpetrators, not victims.

158. Rosie Lewis of the Angelou Centre, at paragraph 13 of her supplementary statement to the Inquiry, commented on Mr Papaleontiou's evidence regarding CHIS as follows[122]:

> *"One other issue I wanted to mention was the Home Office witness's response to a question about the use of children as Covert Human Intelligence Sources, or CHIS. I didn't think that Mr Papaleontiou properly explained this extremely concerning use of children as CHIS. I think the use of children as CHIS is particularly concerning from the perspective of marginalised communities who already have extremely distrustful relationships with the State. This greatly exacerbates the issue, as does the use of enforced petty criminality on CSE victims as a means of controlling and threatening victims. Mr Papaleontiou also commented that: "Juvenile CHISs are not tasked to participate in criminality where they are not already involved in". I found this comment deeply offensive; a child victim of CSE is not "already" a criminal. They're not a criminal at all."*

159. CWJ entirely agrees with Ms Lewis's statement.

[120] Day 9 transcript, pages 40-42.
[121] Day 9 transcript, page 63.
[122] INQ006335_005.

160. It might be thought that this language by Mr Papaleontiou was a mere slip of the tongue but we say that it was not. The Inquiry is reminded that, while Mr Papaleontiou did not read from a script for the vast majority of his evidence, he plainly did so in response to this question given the fact that the issue of child CHIS was due to be heard by the Court of Appeal the following week, a fact which he referenced in his evidence. His words were therefore carefully crafted ahead of time, but nevertheless displayed a fundamental mismatch between the Home Office's policy and their attitudes and practices on the ground.

E. OTHER KEY THEMATIC ISSUES: NON-CRIMINAL JUSTICE

(i) The Need to View CSE Through a Gendered Lens

161. This is a key theme that came out of the evidence during the hearings. It falls under the Inquiry's themes of empathy and concern for child victims; risk assessment and protection from harm; and male victims.

162. Rosie Lewis of the Angelou Centre provided critical evidence to the Inquiry on this issue, and highlighted the need to understand the interconnectedness of CSE with other forms of abuse when analysing the institutional response to CSE. At paragraph 12 of her first witness statement to the Inquiry, Ms Lewis said[123]:

> *"We don't have a standalone C/SE project because we do not encounter C/SE as a standalone issue. The women and girls who are supported by the Angelou Centre have usually experienced family abuse, institutional abuse, sexual violence and honour-based violence/abuse, as well as sexual exploitation, and all of those forms of abuse are often intertwined. Alongside this, women and children often present with complex immigration, child protection and civil/criminal court matters, which also affect their levels of safety*."

163. At paragraph 17 of her statement, she added: *"It seems to me that there is a disproportionate focus on 'saying the right thing' in a race-based analysis of C/SE, without approaching it from a gender-based analysis. The fact that perpetrators are often viewed as particular communities, but not generally seen as men, is problematic, as the reality is the vast majority of perpetrators are men."*[124]

[123] INQ006185_003.
[124] INQ006185_004-005.

164. Ms Lewis elaborated on this during her oral evidence to the Inquiry, and noted that the lack of a gender-based analysis of CSE does not just have a deleterious impact on women and girls, but also: *"that lack of gender-based analysis impacts on boys too and it impacts on men who are also victims in terms of believability, in terms of ability to disclose."*[125]

165. Sheila Taylor, the director of the NWG Network, provided oral evidence to the Inquiry on Day 2 regarding the approach to male and female victims. While giving evidence, Ms Taylor confirmed what she had said at paragraph 6.3 of her first witness statement to the Inquiry, which was the following[126]:

> *"The NWG strongly advocates that any assessment or response to CSE for boys and men should be viewed in exactly the same way as for girls and women. In reality in many cases the assessment and response is not replicated. NWG have been asked if there should be a specific risk assessment for boys and men, we have responded negatively recognising it is the culture and perceptions of professionals which should change, a specific assessment for boys and men would create a further a gap around LGBTQ and Transgender."*

166. CWJ strongly disagrees with this statement and invites the Inquiry to reject it. Ms Taylor's statement was put to a number of witnesses during the hearing, all of whom disagreed with it. Furthermore, Ann James of Bristol City Council gave evidence that *"it doesn't work in exactly the same way as it does for girls within our system"* in that they have a *"reduced threshold"* for boys who may be vulnerable to CSE to access their specialist services, in recognition of the inaccurate *"social mores about boys being troublesome rather than troubled."*[127]

167. Amanda Naylor, who gave national evidence on behalf of Barnardo's on Day 8, also confirmed that *"we need to do something different in terms of gender"* because of the *"different ways that potentially boys may experience CSE and also the behaviours that might result of experiencing CSE."*[128]

168. When Ms Naylor was asked by CTI – at CWJ's request – whether she agreed with Ms Taylor's statement about the response for boys being exactly the same as for girls and women, she said:

[125] Day 10 transcript, page 158.
[126] INQ005149_023.
[127] Day 8 transcript, page 76.
[128] Day 8 transcript, pages 176-177.

"*in terms of recognising that boys are as at risk of CSE as girls, I think it is absolutely important for us to see vulnerability for both, and for all genders across the gender spectrum."* She added: "*[I]t is not as easy as saying we need to see them all the same. There are some very different approaches across the sector around how we see boys and young men and how we see girls and young women in terms of vulnerability, and we need to address those differences and have individual approaches to children to make sure that they get the types of services that they need."*[129]

169. Similarly, at paragraph 3 of Rosie Lewis of the Angelou Centre's second statement, she commented on Ms Taylor's evidence to the Inquiry as follows:

> *"I am very concerned that such an analysis has come from a key witness to the Inquiry and the head of a national organisation. There is simply no evidence base supporting such an approach whatsoever, nor does her statement correlate with an informed understanding of gender-based violence and the additional structural and social barriers that women and girls face…. This approach is, in my view, inconsistent with a contextual safeguarding approach in terms of looking at wider risks and centring the needs of victim-survivors. The approach advocated by Ms Taylor is also dangerous in terms of victim-survivor recovery, it sets in place an exclusionary framework that is not fit for purpose and does not address intersectional differences."*[130]

170. CWJ agrees with Ms Lewis and Ms Naylor's analysis of these issues, and with Bristol City Council's different approach to girl and boy victims of CSE, in recognition of their different vulnerabilities and presentation.

171. In this regard, we consider that the CPS's *"gender-neutral"* approach to victims of CSE is not the right approach. On Day 10, when the CPS witness, Mr McGill, was asked about its approach to male victims, he said: *"we are gender neutral in the way that we approach these cases, because they are looked at by the same prosecutors, they are looked at -- they are specially trained, and they will approach cases involving male victims in exactly the same way as they will approach cases involving female victims."*[131]

172. Counsel for Sarah Champion MP summed this issue up neatly in closing on Day 11, recommending to the Inquiry that *"CSE needs to be viewed through a gendered lens. Without*

[129] Day 8 transcript, pages 178-179.
[130] INQ006335_001-002.
[131] Day 10 transcript, pages 45-46.

this approach, the power imbalance will never be properly understood and corrected."[132] CWJ agrees with and endorses this submission and invites the Inquiry to make findings and a recommendation in recognition of this.

(ii) BME-Specific Issues

173. A number of issues specific to black and minoritised communities arose from the evidence. These issues fall under the Inquiry's themes of empathy and concern for child victims, and risk assessment and protection from harm.

Lack of cultural competence

174. The issue of a lack of cultural competence in statutory services was raised by Rosie Lewis of the Angelou Centre and subsequently commented on by a number of other witnesses. Ms Lewis described this in her first statement as *"the lack of workers with the expertise or knowledge to support the specific needs of women from Black and minoritised communities"*.[133]

175. Zlakha Ahmed of Apna Haq, when giving oral evidence to the Inquiry described a culturally competent worker as *"somebody who understands different communities, different cultures, is aware of the issues, the barriers and is able to engage with that young person and that family in a way that that family and young person is able to open up, feel that they're being believed and that they can trust that professional, and that professional is then able to offer them a range of support and services that helps them to disclose what's happened, gain appropriate support. So it is the beginning of a journey, almost – I mean, it can never be the same, but parallelling the specialist services that we provide, which is why women and girls engage with us."*[134] Ms Ahmed also gave evidence that the consistent message given by families in BME communities is "You don't trust white professionals because of racism"[135] – a key reason why cultural competence is necessary.

176. This lack of cultural competence, described Ms Lewis, leads to a lack of understanding by the police and Children's Services of the specific cultural dynamics present within BME families and communities experiencing CSE. Ms Lewis provided a number of examples of this, including that higher expectations are placed upon women from BME communities around their parenting by Children's Services and their cases are dismissed by the police as being a family or cultural issues. She added:

[132] Day 11 transcript, page 78.
[133] INQ006185_006, at paragraph 22.
[134] Day 10 transcript, page 164.
[135] Day 10 transcript, page 145.

"I think the problem faced by Black and minoritised women who have been exploited or have faced abuse when they try to access statutory services including by reporting to the police is that they are invisible, they are neglected, and they are not assessed properly, meaning they are not supported properly. Black and minoritised women and girls fall through institutional discriminatory gaps, but systemic racism informs them remaining so."[136]

177. Ms Ahmed's description was similar:

"It feels as though BME women and girls are shrugged off by statutory services, which are staffed by predominantly white individuals. When it comes to Asian children in particular, a lot of white workers bury their heads in the sand - and then we are blamed as a community for not coming forward."[137]

178. At the root of this lack of cultural competence within statutory services is not merely a lack of training on BME-specific issues but, according to Ms Lewis[138]:

"5.. true cultural competence can only come
6 from, like, a specialist service because it is not about
7 having that one worker, it is about looking at this
8 systemically and often institutionally. So I talked
9 about the need for a diverse workforce, very important.
10 And also for the statutory agencies to work with and
11 support led-and-by-for agencies and recognise their
12 expertise, their specialism and their ability to provide
13 the gap that often their services aren't able to
14 provide. Also, that idea about being an independent
15 service away from institutions for communities that have
16 been consistently discriminated against or have felt
17 discrimination and inequality is very, very important.
18 So I think that within that cultural competence --
19 because it is a very big -- although we use it as
20 a band-all phrase, we are a bit hesitant as well because
21 it has become a real go-to to say we are culturally

[136] INQ006185_008, at paragraph 27.
[137] INQ006260_007, paragraph 36.
[138] Day 10 transcript, page 165.

22 competent or we have had the training. But it is not
23 about that. It is really is about an embedded culture
24 shift, a diverse workforce, recognising specialist
25 services, working with specialist services and also
1 letting them lead on this work with the victims."

The need for specialist BME services

179. There was a unanimous view in the evidence from BME organisations that specialist BME services are necessary to support victims of CSE from those communities, and that proper funding for these specialist services is essential.

180. Ms Ahmed recommended in her statement that *"every town with a reasonable BME population should have a specialist organisation like Apna Haq for supporting survivors of CSE or other forms of abuse. That specialism is missing - in all the agencies, in local authorities, the police."*[139]

181. Ms Lewis described this in her first witness statement to the Inquiry at paragraph 56:

> *"the support needed for women who have been sexually exploited, abused, and traumatised within a discriminatory institutional system is not available as intensive wrap-around support is needed and an integrative model of care has not yet been invested-in or developed. This area of work remains inadequately funded and Black and minoritised women's services - who are often best-equipped to do this specialist work - are not proportionally funded for C/SE work. Much of this work is mainstreamed through safeguarding agencies who are unable to provide independent support."*

182. She elaborated on this in her oral evidence:[140]

17 MS LEWIS: Yes. I just want to quickly say about specialist
18 services that we are led by and for, we're multilingual.
19 At a very simple level, this is often overlooked by
20 professionals. But women walk into centres like ours
21 and see themselves reflected. They instantly trust.
22 They know that we are going to understand where they are
23 coming from. There is that trust, that belief, that

[139] INQ006260_010, paragraph 48.
[140] Day 10 transcript, page 147.

24 cultural competence. We provide holistic wrap-around
25 support. So, again, going back to those interconnecting
1 forms of harm and violence that go on, often, around
2 sexual exploitation for black and minoritised victims,
3 but also thinking about those wider barriers that many
4 women and children will face in terms of immigration,
5 child protection, et cetera. We have got to be able to
6 provide meaningful, long-term support.

183. Shehla Khan, the chairperson of Ethnic Minorities and Youth Support Team ('EYST') in Wales, said in her statement to the Inquiry: *"while generic services exist, such as those run by NSPCC, there is insufficient targeting and focus on the BAME community, and current services are not culturally appropriate."*[141]

184. Narinder Koor Khan, the co-founder and executive director of the Sikh Women's Action Network ('SWAN') said: *"In order to protect victims of abuse, I think there has to be specialist BME support services. This would ensure that victims and their families can relate to service providers and feel comfortable that their cultural concerns would be understood. Sadly, many local authorities are decommissioning specialist services and providing generic support service to communities."*[142]

185. As well as funding for specialist BME services, Ms Lewis, Ms Ahmed, Ms Khan and Ms Kaur Kooner all agreed that more BME workers are needed within statutory services, and that proper training is required for non-BME workers in statutory services. [143]

186. The Inquiry is invited to make recommendations around funding for specialist BME services to support victims of CSE within those communities, as well as to increase representation of BME workers within statutory services by taking positive action under sections 158 and 159 of the Equality Act 2010, for example by increased advertising for job vacancies within BME communities.

[141] INQ005914_001, paragraph 5.
[142] INQ006154_008, paragraph 51.
[143] INQ006185_015 at paragraph 65; INQ006260_010 at paragraph 49; INQ005914_003 at paragraph 12; INQ006154_005 at paragraph 29.

Barriers to disclosure within BME communities

187. Another theme arising from the evidence from BME organisations was the unique cultural barriers to disclosure for victims and survivors from BME communities, that do not necessarily exist for white victims and survivors.

188. Ms Ahmed of Apna Haq in particular gave compelling evidence of these cultural barriers to disclosure at paragraphs 26-27 of her first statement[144]:

> *"We regularly get young women coming to us who don't want to report their exploitation or abuse because of shame and honour; they don't want to lose their families. There is also an attitude of victim-blaming amongst many BME communities: their families will say it is their fault for being out late, or for having a boyfriend in the first place. Then they will forbid the young women from reporting the abuse for fear of bringing shame on the family.*
>
> *In our experience, the families of BME women and girls sometimes respond to disclosures of CSA/E by forcing them into a marriage, to 'protect' them from further exploitation or abuse."*

189. Ms Khan of EYST echoed Ms Ahmed's evidence that *"shame and guilt factors stops families and BAME girls from coming forward"* and added that the lack of female BME workers in schools and workplaces was an additional barrier to disclosure.[145]

190. Ms Kaur Kooner described having worked on many cases in which *"the initial abuse was never reported in order to protect the honour/izzata of the family. In many cases, the family felt that as long as the child was separated from further abuse from the perpetrator, then there was no need to report the offence to the authorities, especially when it was a close family member."*[146]

191. Another key barrier to disclosure for women and girls from BME communities is insecure immigration status and/or their being subject to the "no recourse to public funds" condition. Ms Ahmed described this in her oral evidence:

> *9 In our experience over the years, we have*
> *10 supported many older women, older as in 18-plus, who*

[144] INQ006260.
[145] INQ005914_001 at paragraph 2.
[146] INQ006154_004 at paragraph 19.

11 have gone through various forms of sexual abuse but they
12 have not wanted to report because of their insecure
13 immigration status. And so, in terms of -- for many of
14 these women, in terms of -- in the communities that they
15 live, if they go on to become parents in the future,
16 their reactions, if they come across their children
17 being abused, may not be as helpful as maybe otherwise.
18 So there's a whole group of women that because we don't
19 give them the support that they need at the moment,
20 because of the immigration issues, are being impacted
21 adversely.

192. Ms Ahmed expanded on this at paragraph 19 of her supplementary statement to the Inquiry, concurring with some of the evidence of Pragna Patel in the Child Protection in Religious Organisations and Settings hearing. She noted that not only does insecure immigration status act as a barrier to disclosure, but it also increased vulnerability to exploitation, creating a double risk[147]:

> *I also agree with what Ms Patel said (at pages 78-79 of the transcript) about immigration issues acting as a barrier to disclosure, as many women with insecure immigration status fear detention, deportation and destitution. Similarly, I agree with what was said about women with no recourse to public funds, and the fact that those victim/survivors are often economically dependent on their partners or exploiters for their existence, and so leaving their abusive situation would plunge them into destitution and endanger them further. We have supported numerous women with insecure immigration status who have been exploited and abused, and their abusers have taken advantage of the fact that they have insecure immigration status and no recourse to public funds. It's important to be aware that precarious immigration and economic status makes many BME women and girls a target for exploiters.*

193. It is striking that none of these barriers to disclosure were mentioned by any of the white professionals who gave evidence to the Inquiry, emphasising the lack of cultural competence within those institutions, and the urgent need for better understanding of BME communities within statutory services, as well as the need for safe spaces for BME victims and survivors to be able to disclose.

[147] INQ006336_004-005.

194. One of Ms Ahmed's proposed solutions to addressing these deeply embedded cultural barriers to disclosure is to provide funding for specialist organisations such as Apna Haq to raise awareness of CSE within different BME communities, including in schools, with young men, faith leaders and young mothers[148]. Ms Ahmed gave detailed evidence in her first statement to the Inquiry about Apna Haq's "Train the Trainers" programme[149]:

> *"a certified course to equip professional BME women to change the conversation within their communities and in other agencies about CSA/E in minoritised communities and to increase the capacity of BME women to engage in conversations about CSA/E in their social networks and workplaces. Our model – which we feel is successful - is to go in, train those professionals, and create a ripple effect where they are then able to train others. I have been struck by the lack of equivalent programmes in the past: on our programme we have had attendees in senior positions of responsibility, for example the manager of a Rape Crisis service, and a safeguarding manager from Doncaster. These are women who were leading organisations, and yet they didn't feel they had had the opportunity to discuss or explore the silence around CSA/E within our communities. Whatever expertise or formal training they had had, they still felt ill-equipped to do this work within our communities, so our Training for Trainers programme empowered them to do so."*

195. This highlights the important role that specialist BME organisations like Apna Haq can and should play in awareness-raising about CSE within different BME communities, and why proper funding for such specialist organisations is essential.

Problems with generic risk assessments

196. In her witness statement to the Inquiry, Amanda Naylor of Barnardo's highlighted at paragraph 20 that Barnardo's analysis *"has identified clear causal links between risk assessments and screening tools that screen out of service marginalised groups of children experiencing abuse, particularly boys, disabled children, LGBTQ children, younger children and children from diverse cultural and religious backgrounds. Children from these groups are often not identified by current CSE indicators included in practice tools."*[150] In her oral evidence on day 8, Ms Naylor added that *"the majority of referrers into services at Barnardo's use risk assessments that were developed mainly from practice and mainly from observing CSE that had happened to white*

[148] Day 10 transcript, page 136.
[149] INQ006260_003-004, at paragraph 17.
[150] BRD000275_005.

girls, particularly girls that were in the looked-after system and particularly girls that were 13-plus. So risk assessments, in terms of identifying levels of risk for children, have been developed mainly from that demographic".[151]

197. In response to this, during her oral evidence, Ms Ahmed of Apna Haq drew upon the work Apna Haq had done on an NHS CSE Toolkit in 2017, as set out at paragraphs 23-25 of her first statement.[152] In order to develop a toolkit that was *"fit for purpose"* for BME communities, Apna Haq held a focus group in Rotherham of Asian girls and young women to obtain their perspective on the proposed questions for the toolkit. In her oral evidence, Ms Ahmed also highlighted that, when developing risk assessments or toolkits that are inclusive of BME communities, *"it's really, really important that when we talk about BME communities, we remember that we are not one homogeneous group, there are different communities among the subset, and we need to make sure that whatever materials we are developing take into account those young women, those young men's experiences and then the resources are developed."*[153]

198. Ms Lewis, in her oral evidence, said she welcomed Ms Naylor's observation that risk assessments had been developed with a white female victim in mind and said that, in her view, this meant that intersecting needs were not being met within the risk assessments. She added that the Angelou Centre had done some work with the police in 2017 in which they found that markers for honour-based violence were not included on risk assessments as forms of abuse, but instead were recorded by the police as *"family" or "cultural issues"*, such that the Angelou Centre had to do a lot of work with the police to get them to include honour-based violence as a marker on their risk assessment[154].

199. Ms Lewis gave further evidence in response to Ms Naylor's observation in her second witness statement to the Inquiry. Her observations are worth setting out in full[155]:

> *"...I agree with Ms Naylor's observation that this is problematic. In itself, this positioning of the white girl victim as normative in risk assessments is evidence of a lack of cultural competence or equalities focus. At the Angelou Centre we tailor these generic risk assessments, because they miss out key questions affecting black and minoritised communities, including, for example, detailed chronologies of their lives if*

[151] Day 8 transcript, page 186.
[152] INQ006260_005.
[153] Day 10 transcript, page 151.
[154] Day 10 transcript, pages 152-154.
[155] INQ006335_002-003, paragraphs 6-8.

they have migrated or experienced other forms of violence or abuse. This enables us to fully assess dynamic risk and how this has impacted on their vulnerability and is inclusive of other barriers the victim-survivor may face.

7. I would like to reiterate that risk assessments are dependent on the breadth of knowledge, experience and expertise of the person who makes the assessment. They can therefore be subjective and partial to the inadequacies of the individual or institutions responsible for making the assessments. If the people assessing have no black and minoritised staff, have limited contact with communities of colour and have not been adequately trained or evaluated in meeting equalities and cultural competence standards their assessments may be biased and will fall short of identifying or addressing the risk or needs of the victim-survivor. If the assessor as well as the institution in which they work fail to approach assessments of marginalised communities with a specialist knowledge and do not work within an equalities or VAWG framework then the victim-survivor is not being treated with equity. An assessment of marginalised communities that does not recognise nor include an assessment of these issues will also fail to understand how they intersect with other forms of structural discrimination of inequality which can act as a barrier to engagement. This can therefore lead to a lack of focus on the needs of the victim-survivor, appropriate recovery support and result in possible repeat victimisation. If the risk assessment is myopic and limited in scope and understanding, how will the appropriate support be provided?

8. Ultimately, in my view, CSE risk assessments should be used as part of a toolkit but instead they are often used as the defining document. I don't know how consistent they are nationally, and I have certainly seen different emphases from different local authorities, but I think the fact that they are often supposed to be stand-alone `CSE risk assessments' is in itself problematic, because of the lack of recognition of the ways in which CSE intersects with other forms of violence, abuse and often an exclusion from safety and protection. Risk assessments need to also take into account extended family, social and community dynamics for all victim-survivors of CSE, not just black and minoritised women, girls and communities."

200. The need for "*professional curiosity"* was a phrase that was used frequently when institutional witnesses were giving evidence about risk assessments. Ms Ahmed, in her second witness statement to the Inquiry, commented on the impact of a lack of cultural competence on the ability

to exercise professional curiosity, again highlighting the importance of cultural competence to recognising and assessing risk[156]:

> *"One of the witnesses from Ofsted, Ms Ghaffar commented with reference to risk assessments (at page 175 of the day 9 transcript) that assessment of risk requires "professional curiosity". I agree with this comment and would like to reiterate that Apna Haq has found that, in the absence of cultural competence, or at the very least specialised training for professionals on BME-specific issues, professionals tend to fall back into using stereotypes coming from the media. To give a recent example that Apna Haq encountered of stereotyping (though not specifically related to CSE): we support a Kurdish young woman who was wearing hot pants when she first reported domestic abuse to the police. At a multi-agency meeting attended by the young woman's support worker from Apna Haq, a number of white professionals insinuated that she could not be suffering domestic abuse because she was a Muslim woman wearing hot pants — the assumption being that she was in control of herself and couldn't therefore be a victim of abuse or coercion. This is a prime example of a lack of cultural competence, and reductive stereotyping, that needs to be rectified before any discussion can be had about professional curiosity."*

201. The Inquiry is invited to accept the evidence of Ms Naylor, Ms Lewis and Ms Ahmed, and make findings that the current risk assessment models prevent children from BME communities from being identified as victims of CSE. The Inquiry is invited to make recommendations that risk assessments should be developed with the input of specialist BME organisations to take account of specific risks for BME children and young people and that risk assessments should take into account extended family, social and community dynamics for all potential victims of CSE.

(iii) Lack of Empathy and Use of Victim-Blaming Language

202. The Inquiry heard extensive evidence on the lack of empathy and use of victim-blaming language by institutions in response to CSE, given that *"empathy and concern for child victims"* was one of the investigation's eight themes.

203. As set out above, in our opening statement, we made reference to the 2013 report from the Office of the Children's Commissioner, *"If only someone had listened"*[157]. We said[158]:

[156] INQ006336_003 at paragraph 14.
[157] HOM003339.
[158] Day 1 transcript, pages 90-91.

22 That 2013 report also
23 highlighted the language of victim blaming, describing
24 repeatedly hearing from local authorities and police
25 forces references to children putting themselves at
1 risk, rather than the perpetrators being the risk to
2 children. You similarly heard that this morning from
3 Mr Fullbrook, reading from CS-A372, and you hear that
4 from Harriet Wistrich, the founder and director of
5 the Centre for Women's Justice, in her statement. She
6 describes "judgmental language where young people feel
7 they are being held accountable for the safeguarding
8 themselves: 'She has put herself at risk'".

204. The Inquiry heard powerful evidence from CS-A12 on Day 2 of the hearing. When asked what sort of language was used about her during Return Home Interviews, she said[159]:

2 A. They used to roll their eyes and say, "Good luck with
3 that one. You've got your hands full with her", and
4 stuff like that to my mum, just basically saying that
5 I was a bad child, that I was the issue. They never,
6 ever looked into what I was saying. They just put me
7 down as being a volatile teen, and that me and my mum
8 had a volatile relationship, and that I was rebelling
9 against my boundaries.

205. Ms Lewis of the Angelou Centre provided a case study in her first witness statement of a young woman, "Jennifer", who had been sexually exploited as a teenager. Ms Lewis described reading Jennifer's social care records and noting that *"Children's Services describe Jennifer as being a bad influence on her friend and that her behaviour was wilful."*[160]

206. Dr Helen Beckett of the University of Bedfordshire said at paragraph 4.4 of her witness statement that in her research she still observes the presence of victim-blaming language and actions within institutional responses to CSE; and that a consequence of this is a failure to identify and respond

[159] Day 2 transcript, page 9.
[160] INQ006185_010 at paragraph 42.

to CSE[161]. Dr Beckett was asked during her oral evidence on day 2 what could be done to improve this situation. She made it clear that superficial training is not sufficient – any training needs to get to the heart of the underlying attitudes, not just the use of language[162]:

> *6 What I would say is, actually, in the training*
> *7 work we do, we do see a real difference when we engage*
> *8 in that. So I don't think it is about simplistic*
> *9 resources saying, "Don't use this word, use this word*
> *10 instead". It has to be more nuanced than that. When we*
> *11 train -- we do a lot of training professionals. When we*
> *12 do that, we try to unpack what's going on behind that.*
> *...*
> *25 So we try to actually -- if done well, training and*
> *1 education does help unpack that, and also helping people*
> *2 recognise the implications of using that language. So*
> *3 it influences how other professionals respond.*
> *4 If one professional uses victim-blaming language, we*
> *5 see that in the case files, that has a knock-on effect*
> *6 for how other people read or hear what is being said and*
> *7 how the young person is experiencing it.*
> *8 Particularly importantly, and young people*
> *9 repeatedly tell me this, over the years in research, it*
> *10 makes them not want to engage. And fair play to them:*
> *11 why would you? If I come to talk to you about what's*
> *12 going on and I think you think it is my fault or you use*
> *13 language that somehow suggests it is my fault, of course*
> *14 I am not going to want to engage with you. So actually,*
> *15 this use of blaming language, inadvertently,*
> *16 purposefully, whatever it is, I think it is very often*
> *17 inadvertently, but it is creating a barrier to young*
> *18 people being able to receive the support they need from*
> *19 us. It is creating a barrier to us being able to see*
> *20 the problems of what are going on.*
> *21 So I think it is about training and education, but*
> *22 it has to not just be simply about changing language, it*

[161] NQ005150_006.
[162] Day 2 transcript, pages 112-113.

23 has to be about understanding attitudes.

207. This is a point that was repeatedly made by Ms Sharpling in her questions to institutional witnesses and CWJ agrees: a plain language guide or a training session alone will not be enough to get to the heart of the underlying attitudes behind this victim-blaming language.

208. Throughout the institutional evidence – particularly during the local authority evidence - examples of victim-blaming language from their documentation (dated 2017-2019) were put to the witnesses. Their answers were consistent: *this was a problem in the past, but not any longer, thanks to the various policies we now have in place.* Given the lack of direct, contemporary complainant evidence from the geographical areas, it was impossible to probe these assertions. Based on the documents put to the witnesses, however, it was clear that victim-blaming language had been used very recently, and so the Inquiry is urged to treat the evidence from institutions claiming that such language is a relic of the past with extreme caution.

209. Further, at least two of the geographical institutional witnesses themselves used victim-blaming language while giving oral evidence to the Inquiry, or in their written evidence. This demonstrates how deeply embedded the use of this language is, and the extent of the cultural change that is required.

210. On Day 4, while Daniel Richards of South Wales Police was giving evidence, paragraph 4.11 of his witness statement[163] was brought up on screen during questioning about return home interviews. Paragraph 4.11 of his statement contains the following sentence (our emphasis):

> *"The Return home Interviews are conducted by the Barnardo's Advocate; the children he or she debriefs are the ones on the CSE protocol, persistent mispers* ***or children who have engaged in risky behaviour whilst missing****".*

211. Despite this clear use of victim-blaming language by the witness appearing on screen, and being read out by CTI[164], CTI did not question Mr Richards about this at first. When this was raised with CTI by CWJ via email, CTI later addressed it with the witness, for which we are grateful[165]:

> ***2 MS HILL: Mr Richards, on more than one occasion in your***
> ***3 witness evidence, I think you referred to "risky***

[163] SWP000151_044.
[164] Day 4 transcript, page 138, lines 20-23.
[165] Day 4 transcript, page 173.

4 behaviour meetings" and "risky behaviour". Would you
5 now accept that that sort of language is not appropriate
6 in this context?
7 A. So when I visited the Swansea CSE team last week,
8 I walked into the office and one of the DCs was reading
9 a 40-page document on appropriate language in relation
10 to adolescents that had been supplied to them by
11 Barnardo's, and I think my knowledge and my awareness
12 regarding terminology such as "risky behaviour" has been
13 well educated by my participation in this process.

212. Another example is Jim Leivers, the witness for St Helens Council on Day 6. Mr Leivers, like other local authority witnesses, gave extensive evidence about the steps the council is taking to eliminate victim-blaming language. For example, he said[166]: *"the audits that we are now conducting are telling us that there is little, if any, evidence that we are using language which is not appropriate and isn't victim sensitive and victim orientated."*

213. Despite this assertion, while giving evidence on another theme, Mr Leivers used victim-blaming language. The first occasion was when he was discussing the lack of suitable placements available for children in care. He said (our emphasis)[167]:

17 You're very often [as a local authority] faced with a situation
18 where the only vacancy that you can find is vacancy X,
19 and inevitably that isn't always going to meet the needs
20 of that young person. Therefore, that young person is
21 always exposed to the difficulties and challenges of
22 disappearing, of leaving, of what we called in time gone
*23 by absconding, **and placing themselves at risk when they***
24 do so.

214. Later, when responding to questions about a specific child – CS-A26 – Mr Leivers said (our emphasis)[168]:

7 A. Yes, I think the risks here were very much exaggerated

[166] Day 6 transcript, page 57.
[167] Day 6 transcript, page 85.
[168] Day 6 transcript, page 112.

8 by the fact that the young person concerned went missing
9 on a large number of occasions ***and was placing***
10 themselves in situations of vulnerability, really.

215. CTI did not draw Mr Leivers' attention to his use of language on either occasion.

216. Counsel for St Helens Council, Mr Dunlop, responded to our criticism in his closing submissions on Day 11 by saying that Mr Leivers' words had been *"snipped out of context"*, and in fact, *"the context on each occasion was Mr Leivers explaining why the absence of good quality establishments led to missing episodes and to children being at risk. He was not blaming the children, he was blaming the quality of the establishments."* [169]

217. This is simply not accurate. On the first occasion, when looking at the context, Mr Leivers was indeed lamenting the lack of good quality establishments, but he nevertheless said in terms that, in running away from those establishments, young people are *"placing themselves at risk"*[170]. On the second occasion, again when looking at the context, Mr Leivers was being asked about a specific child, CS-A26, and the fact that she had multiple missing episodes in her initial care placement. When asked to respond to this, Mr Leivers did indeed lament that: *"Very often…the child is not placed in an ideal situation; they are placed in what's available"*, but nevertheless, he described the risks to CS-A26 as having been exaggerated by her large number of missing episodes and said that, when she went missing, she *"was placing themselves* (sic) *in situations of vulnerability"*.[171]

218. In CWJ's submission, it is plain from the evidence how deeply embedded victim-blaming language is into institutions' attitudes and culture. As Sue Williams of the Metropolitan Police Service (MPS) put it on Day 7, a *"cultural shift"* is necessary. Ms Williams took the view that the MPS is *"in the midst of"* this cultural shift[172], but when asked by Mr Frank how far along the cultural shift spectrum the MPS is, Ms Williams was unable to put a timescale on this.[173]

219. The Inquiry is invited to find on the evidence that a lack of empathy and the use of victim-blaming language towards victims of CSE remains a significant problem, despite years' worth of reports and guidance counselling against the use of such language. This is a key example of the mismatch

[169] Day 11 transcript, pages 113-114.
[170] Day 6 transcript, pages 83-86.
[171] Day 6 transcript, pages 111-112.
[172] Day 7 transcript, pages 150-151.
[173] Day 7 transcript, pages 171-172.

between policy and practice referred to above: most, if not all, of the institutions giving evidence had clear policies in place to avoid the use of victim-blaming language, but the evidence pointed to inconsistent practice on the ground; to the need for a *"cultural shift"* that has missed its deadline by many years. That cultural shift is needed now as a matter of urgency. It is hoped that recommendations will be made by the Inquiry to address this gap between policy and practice so that victims are no longer blamed for their own exploitation and abuse.

220. Of course, the deplorable language used is a symptom of an underlying substantive attitude which fails to either protect children from CSEN, or appropriately address the needs of victims and survivors of CSEN. CWJ notes in this regard that CEDAW's General Recommendation No. 35, referred to above, stresses the need to change social norms and stereotypes that support gender-based violence. The victim-blaming language which we have highlighted is indicative of precisely such a social norm and stereotype that supports gender-based violence, in the form of CSEN. It is imperative that this issue is robustly addressed.

(iv) Services for Children in Transitional Period

221. The lack of comprehensive services for children in the transitional period to adulthood (i.e. between the ages of 16 and 18) was another theme that arose from the evidence, which falls under the Inquiry's theme of missing children, return home interviews and looked after children. Evidence of the *"cliff-edge"* of support for children becoming adults highlighted the need for proper transition services, in particular in light of evidence from organisations such as Changing Lives, which suggests that many young women who are being sexually exploited as adults were also sexually exploited as children.[174]

222. In her oral evidence on Day 6, Vikki McKenna of Catch-22 recognised this to be a problem. CTI quoted paragraph 5(d) of Ms McKenna's statement to her, in which she said: *"Young people who are 16-17 tend to be overlooked, plans are put in place but there seems to be an apathy that intervention is too late."*[175] She was asked by CTI to whom she was referring when she referred to apathy to intervene. Ms McKenna said[176]:

> *10 A. I think in terms of various agencies. There is no*
> *11 particular one agency. But I think, you know, 16- to*
> *12 17-year-olds, 16- to 18-year-olds across the country,*

[174] INQ005901_001 at paragraph 4.
[175] INQ004924_002.
[176] Day 6 transcript, page 11.

13 they're deemed to be legal to engage in sexual
14 intercourse, they're deemed legal -- they can live on
15 their own. You know, so it's -- they're probably our
16 most riskiest cohort of young people that we are working
17 with. So it's just about making sure that, from
18 Catch22, all agencies are aware that they need support
19 as well, in terms of supporting our 16- to 18-year-olds.

223. Rosie Lewis of the Angelou Centre commented in her oral evidence on Day 10 that, from the evidence she had seen, there was a *"lack of attention to the transitional age"*, despite this being a *"high-risk age".*[177]

224. Warwickshire Council demonstrated good practice in their efforts to avoid the "cliff-edge" for young people transitioning from Children's to Adult Services. On Day 5, the Warwickshire Council witness, Mr Minns, indicated that transition to adult had been *"a particular concern"* for him and that he was *"deeply concerned that, actually, victims of CSE and actually exploitation, wider criminal exploitation too, would not meet, very likely, the criteria for support from adult social care under the Care Act, and, therefore, there is a risk that, as soon as they turn 18, they are lost to the system."*[178] With that in mind, Mr Minns confirmed that Warwickshire Council has recruited to *a "transition post to support these young people",* and that practitioner started in January 2020.

225. Pete Hill, the witness on behalf of Warwickshire Police, echoed Mr Minns' evidence and said:[179]

> *"it's something for us all to keep in mind, really, that when a child goes from 17 and 364 days into 18, we just need to make sure that they don't fall off a cliff edge and they do receive appropriate support, which, again, is why children's services put a member of adult services in the child exploitation team to deal with those kind of cliff-edge type issues."*

226. In their oral closing statement to the Inquiry, counsel for Bristol City Council, Ms Rayson, said[180]:

3 Transition into adult services. Our young people do

[177] Day 10 transcript, page 169.
[178] Day 5 transcript, pages 94-95.
[179] Day 5 transcript, page 149.
[180] Day 11 transcript, page 165.

4 not cease to require support and safeguarding when they
5 reach the age of 18. We would welcome national guidance
6 and the provision of resources to enable properly
7 supported transition into adulthood. Bristol is able to
8 draw on best practice which has been developed locally,
9 including maintaining relationships with young people
10 we've already created. Bristol will continue to support
11 young people by ensuring the provision of a wrap-around
11 package of care and support.

227. CWJ supports this submission and invites the Inquiry to make a recommendation that funding is provided to local authorities to recruit someone into a specific transition-to-adulthood post, similar to the model that has been employed by Warwickshire Council.

(v) Lack of Access to Mental Health or Trauma Support Services

228. It was clear from the evidence that victims and survivors of CSE are not able to access mental health treatment or trauma support services, either via the Child and Adolescent Mental Health Service ('CAMHS'), or otherwise. This important issue falls under the Inquiry's themes of risk assessment and protection from harm; and partnership working.

229. Amanda Naylor of Barnardo's raised this issue in her witness statement, at paragraphs 26-28:[181]

> *26. With increased pressures on commissioners' budgets and higher numbers of children being referred into Barnardo's services, many of our services report that the length of time commissioners are prepared to fund services for individual children is reducing. It is currently at an average of 12 — 26 weeks. This has meant that for some children support has been available only during the criminal justice process or safeguarding process, and longer term recovery work that leads to sustainable outcomes has been reduced significantly.*
>
> *27. Barnardo's is concerned that this commissioning approach is short sighted and may see some children being exploited multiple times due to long term, sustainable protective networks and safety structures not being fully operationalised by the point of case closure. By failing to address the trauma impact that exploitation has on*

[181] BRD000275_008.

children we have seen increased adverse outcomes in later years in relation to mental health, substance misuse, school exclusion and offending behaviours.

28. This is coupled with the increasing disconnect between the severity of the impact of trauma that children accessing Barnardo's services are experiencing and the available mental health offer for children who have experienced abuse and exploitation, from our health partners. The biggest concern from Barnardo's frontline practitioners is the lack of access to CAMHS that children who have experienced sexual exploitation face. The key reason that many referrals are declined is that children are often presenting with 'trauma symptoms', and CAMHS criteria in most areas excludes this as an eligible condition of referral.

29. Although Barnardo's specialist services work therapeutically with highly skilled project workers, there are many children who present with suicidal ideation, life threatening self-harm and dis-associative behaviours that are far too complex for our staff to manage, particularly within the timescales that support is commissioned, and instead require an intensive mental health response. However, Barnardo's thinks that children who have experienced trauma should not be subject to a purely medicalised model of mental health and advocates instead that social model mental health pathways are established. These would recognise that children who have experienced sexual harm are not mentally ill, but instead require intensive and specialist support on trauma recovery models.

230. Rosie Lewis of the Angelou Centre acknowledged in her first statement that this was also a problem that she has encountered in the North-East[182]:

Another key issue faced by the Black and minoritised victims of C/SE that we support at the Angelou Centre is their lack of access to CAMHS (Child and Adolescent Mental Health Services) and/or CYPS (Children and Young People's Services). In our experience, it is difficult to get any of our clients over the CAMHS or CYPS threshold as they are told they don't meet the criteria. Even in cases where the girls have serious mental health and trauma issues, we provide the therapeutic support to them as they cannot access NHS mental health support via CAMHS or CYPS or they are deemed as not meeting their service criteria. There remains a lack of funding for specialist therapists and this is a huge gap for victims of C/SE in the North-East.

[182] INQ006185_009 at paragraph 30.

231. Both Ms Lewis and Ms Naylor's experiences were reflected in the evidence of CS-A2 on Day 5. CS-A2 was asked about a reference in her statement to a consultation with CAMHS in 2017 in which, although it was recognised that her daughter, CS-A1 was at risk of CSE, that CAMHS could not support her due to her life being chaotic and engaging in drug use. CS-A2 said[183]:

> *25… We'd waited so long for that.*
> *1 It almost, you know, appeared my Holy Grail, that was*
> *2 the thing that was going to help her, that she would*
> *3 have that support that she absolutely so desperately*
> *4 needed, and then to be found that, because she -- her*
> *5 life was chaotic and she was engaging in drug use, that*
> *6 the support couldn't be given. I just couldn't believe*
> *7 it.*

232. Vikki McKenna of Catch-22 also gave evidence to the Inquiry of the lack of access to CAMHS for vulnerable children and young people in need of mental health treatment. She said that the waiting list for an assessment can be three or four months, and that *"doesn't necessarily mean the child will be accepted for CAMHS support."*[184]

233. It was clear from Barnardo's evidence that they are working hard to try to plug the gap in mental health support by adopting a trauma-informed approach across the UK in all of its services. As Amanda Naylor outlined in her evidence on day 8:[185]

> *14 In relation to that, what we are trying to ensure*
> *15 our workforce is able to do is to understand and*
> *16 recognise trauma in children and trauma responses in*
> *17 children so that their behaviours are seen in light of,*
> *18 and in context of, the experiences that they have had.*
> *19 That's really important in order for us to be able*
> *20 to get the right intervention and the right response.*
> *21 We want to respond to it at that individual level,*
> *22 with the child in front of us, but we also want to*
> *23 structure our services in ways that mean that children*

[183] Day 5 transcript, pages 20-21.
[184] Day 6 transcript, pages 28-29.
[185] Day 8 transcript, pages 177-179.

24 can access us. So what often happens, in terms of
25 children who are traumatised, they may not want to
1 access services at certain times, they may struggle to
2 keep appointments, they may struggle with office hours.
3 What they do need is somebody there that they can trust
4 that's going to be persistent and consistent and go and
5 find them if they find it too difficult to get into
6 services and reach out and be there for them and be able
7 to manage challenging behaviours and be able to manage
8 incidents of dissociation and trauma and significant
9 emotional distress and to be able to support them
10 through a journey to a point where they feel that,
11 actually, they have the skills and the abilities and the
12 support to be able to manage positively.
13 That's a huge undertaking for any service that has
14 a limited resource and often limited operating hours,
15 and so, for us, it has been around restructuring where
16 we deliver our services, how we deliver our services and
17 the consistency and persistency which we have in helping
18 children engage in those services.

234. However, as much as Barnardo's should be applauded for undertaking this important work, they can – in CWJ's submission – only provide a sticking plaster to cover what is clearly a gaping wound. What is needed for children and young people who are in need of mental health support and treatment as a result of CSE is proper funding for CAMHS, as well as a change to the threshold to gain access to CAMHS.

235. This was articulated as a recommendation by Mr Sharland QC on behalf of Warwickshire Council in closing submissions on Day 11. Mr Sharland's submissions are endorsed by CWJ, and the Inquiry is invited to make a recommendation in relation to the CAMHS criteria:[186]

6 The third suggested recommendation concerns CAMHS.
7 It is clear that children at risk of, or being harmed
8 by, CSE often have significant mental health
9 difficulties, either as a result of childhood trauma

[186] Day 11 transcript, pages 105-106.

prior to the CSE or as a result of the CSE itself. Such children need swift and effective mental and emotional well-being support. Unfortunately, often children are unable to access such support when they need it. CS-A2 explained the practice of CAMHS to decline to help children who use alcohol or drugs or who have a chaotic lifestyle. Of course, this excludes a significant proportion of children at risk of, or currently being harmed by, CSE. As the panel heard, perpetrators frequently use alcohol and drugs to sexually exploit children. Such children often regularly go missing and, unfortunately, rarely lead stable lives. However, such children are often the most in need of mental health support and it's simply not good enough that such children are regularly denied the support they so need. The county would therefore ask that the panel recommend that CAMHS alter its practice and prioritise support for children subject to or at risk of CSE rather than simply focusing on the least-challenging cases so that all children and young people in need of mental health intervention receive it.

F. RECOMMENDATIONS SOUGHT

236. We set out below a list of proposed recommendations. We urge the Inquiry to consider making recommendations as soon as possible. CWJ also seeks specific, detailed recommendations, with tangible, specific targets; CWJ does not wish to see recommendations which are simply vague exhortations to 'do better'.

(i) Funding for Children's Services Departments

237. There have been catastrophic cuts to funding for children's services across England and Wales over the past number of years, as part of the Government's austerity programme. Many of the concerns identified in these submissions and which emerged from the evidence concern or are at least partly linked to funding shortfalls: chopping and changing of social workers, lack of placement stability for children, inadequate risk assessments, not conducting return interviews when children go missing from care. We consider it essential that the Inquiry recommend to

central Government that this funding crisis for children's services be resolved.

(ii) Definition

238. A recommendation that the definition of CSE is revised so that the concept of exchange is either removed or better explained.

(iii) Data

239. A general recommendation regarding the importance of information-gathering by local authorities and police forces, concerning the incidence of CSEN, including disaggregated data.

240. A recommendation that the Home Office works with the CPS, the police and HMCTS to ensure data is recorded on how the statutory defence under section 45 Modern Slavery Act 2015 is being used by adults and children, including specific information about its use in respect of child sexual exploitation.

241. A recommendation that the CPS breaks down the recording of cases prosecuted according to the ethnicity and gender of the victim, and records whether or not the victim has a disability.

(iv) Criminalisation, including into Adulthood

242. A recommendation that children and young women who have clearly been victims of abuse by grooming gangs and other organised networks should not be arrested, charged, prosecuted or named on indictments because they are seen as being used to recruit other girls for the gang.

243. A recommendation that children and young women who were convicted of offences contrary to section 1, Street Offences Act 1959 and other relevant prostitution related offences should have these records removed from their criminal records and from the Police National Computer.

244. A recommendation for the introduction of a process for expunging the criminal records of those of children/ young adults whose crimes occur in the context of having been sexually exploited.

(v) Specialist BME organisations and cultural competence

245. A recommendation that every local authority should have a specialist BME organisation for supporting survivors of CSE and other forms of abuse.

246. A recommendation that the representation of BME workers within statutory services is increased, for example by those services taking positive action under sections 158 and 159 of the Equality Act 2010.

(vi) Risk Assessments

247. A recommendation that risk assessments should be developed with the input of specialist BME organisations to take account of specific risks for BME children and young people and that risk assessments should take into account extended family, social and community dynamics for all potential victims of CSE.

(vii) Transition to Adulthood

248. A recommendation that funding is provided to local authorities to recruit someone into a specific transition-to-adulthood post.

(viii) CAMHS

249. A recommendation that CAMHS alter its practice so that children exhibiting trauma symptoms are eligible for their services.

G. CONCLUSION

250. We ask the Inquiry to make detailed findings, encompassing the matters set out in these submissions, and to make robust recommendations, as quickly as possible. CWJ has come forward as a specialist NGO to assist the Inquiry with its work. CWJ seeks real, tangible change so that women and girls are protected and do not have the devastating experiences which this Inquiry has heard evidence of.

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18th November 2020

H. APPENDICES
See attached.