

## TERMS OF REFERENCE

The Law Commission will review law, guidance and practice relating to the trial process in prosecutions of sexual offences and consider the need for reform in order to increase the understanding of consent and sexual harm and improve the treatment of victims while ensuring that accused persons receive a fair trial. The project will consider, but is not limited to, the following:

- (1) current law and guidance designed to counter misconceptions about sexual harm (“rape myths”) of jurors in relation to the credibility, behaviour and experience of complainants and defendants in cases involving a sexual offence. In particular, the review will consider mechanisms to counter any such misconceptions including the current use of judicial directions to the jury, whether the prosecution should be permitted to rely on expert evidence and any alternative means of improving juror education;
- (2) the need for reform of the provisions restricting the use of evidence of complainants’ prior sexual history in section 41 of the Youth Justice and Criminal Evidence Act 1999 (“YJCEA”), including:
  - (a) whether any of the individual gateways require reform;
  - (b) the impact of new forms of sexual history evidence via social media, apps and instant messaging;
  - (c) whether the complainant should be a party to the application to admit evidence of their sexual history; and
  - (d) whether a right of appeal should be introduced in relation to decisions under section 41 of the YJCEA 1999;
- (3) the need for reform of the rules and procedure governing the pre-trial disclosure of complainants’ prior medical and counselling records and the admission of such records at trial, including:
  - (a) whether the complainant should be a party to the application to admit evidence of their prior medical and counselling records;
  - (b) whether confidential communications between a complainant and a suitably qualified medical or counselling professional for a therapeutic purpose should be subject to privilege;
- (4) the need for reform of the rules and procedure governing the admissibility of evidence of the character of the defendant and complainant, and judicial directions about this;
- (5) the need for reform of the legislative framework governing the use of special measures for complainants, including alternative arrangements for giving evidence in trials of sexual offences.

1.7 The project will not consider:

- (6) the trial process in respect of sexual offences against children;
- (7) reform of the law relating to offences under the Sexual Offences (Amendment) Act 1992 or contempt of court where the identity of a complainant or victim of a sexual offence has been disclosed, which will be considered in the Law Commission's upcoming project on contempt of court;
- (8) reform of the definition of consent in sections 74-77 of the Sexual Offences Act 2003;
- (9) reform of sexual offences themselves, including offences in the Sexual Offences Act 2003;
- (10) extraction of evidence from complainants' devices (although the use of such evidence will be considered if it falls into categories (2) or (3) above (sexual history evidence or medical or counselling records)).