



Introduction

Stay Safe East is a Deaf and disabled people's organisation (DDPO), providing holistic advocacy and support services to disabled people across London who are survivors of domestic and other forms of abuse and hate crime. Our response to the Policing, Crime, Sentencing and Courts Bill will be informed by the experiences of our clients and over ten years of casework. The response focuses on the experiences of disabled people and how the Bill will affect them. However, we refer to the response from SignHealth¹ for their expertise on the implications of the Bill for Deaf people.

We would like to begin by stressing that we oppose the Policing, Crime, Sentencing and Courts Bill as a threat to the civil and human rights of many different groups, the reasons for which are made clear below. The Bill, as a whole, constitutes a wasted opportunity to work with those most affected by failings in the criminal justice system to bring about positive change.

1. Eroding our right to protest

Stay Safe East are strongly opposed to the increased police powers regarding the right to protest proposed in the Bill. We believe that the below proposals are inconsistent with international human rights standards.

- The linguistic ambiguity around many of these measures, exemplified in the introduction of police powers to crackdown on protesters if they deem said protests to be causing 'serious annoyance, serious inconvenience or

¹ <https://signhealth.org.uk/>

serious loss of amenity', engenders a level of police discretion which is likely to reproduce the systemic racism, disablism and other forms of discrimination within the criminal justice system

- The aforementioned ambiguity is also evident in the proposed police powers to enforce start and finish times on a protest, as well as maximum noise levels, with no explanation as to what constitutes the 'serious disruption' which would result in these measures
- The Bill also introduces police powers to remove individuals who they deem to be preventing vehicles from accessing Parliament, which we believe infringes on the core principles of a democracy through the silencing of citizens' voices in political protest
- The Bill would also mean that protesters would have committed an offence if they failed to comply with a condition they 'ought to have known' about, as opposed to one that occurred 'knowingly'. Again, we object to the ambiguity here and are concerned about the inconsistency in judgement and how this is likely to disproportionately affect groups
- The vague nature of offences protesters 'ought to have known about', and the likely inconsistent judgement of that on a case-by-case basis, has specific implications for Deaf and disabled people, some of for whom their impairments may well mean they are less likely to 'know' such information (this could even be as simple as a lack of access to Easy Read information)
- It is critical to acknowledge that the above measures enable politicians, via the police, to crush protests, which over the years have played an important part in advancing the rights of disabled people, challenging violence against women and girls, countering the prejudices which lead to hate crime against disabled people from minority communities, and other

injustices. The potential force which may be used against peaceful protesters and possible imprisonment may have a disproportionate effect on disabled people already affected by violence.

- Finally, we would like to stress that it is especially important to oppose these measures in view of the police mismanagement of the Clapham Common vigil for Sarah Everard, a case which has further demonstrated the abuse of police power and significantly eroded public confidence in the police

2. Increased police powers to ‘stop and search’

We are *extremely* concerned about the inclusion of the police powers to stop and search people previously convicted of knife crime **without reason or suspicion** in the Bill, likely to result in the repeated targeting of the same individuals. Considering the fact that young Black men are 19 times more likely to be stopped and searched by the police than their white counterparts², it is highly likely that this practice will both exemplify and increase the systemic racism present in the police force.

The introduction of these powers would be shocking in any circumstances, but against the backdrop of the murder of George Floyd in May 2020 and subsequently the Black Lives Matter movement gaining traction, it is especially shameful that the proposal is to extend police powers which are demonstrably abused by those being granted them.

- It is worth noting that the above is being proposed within a context where Black and minoritised individuals have little to no confidence in the criminal justice system, due to racist practices such as stop and search

² <https://www.theguardian.com/law/2020/dec/03/young-black-males-in-london-19-times-more-likely-to-be-stopped-and-searched>

- This institutional racism, paired with the long history of ableism in the police force³, combine to mean that Black disabled people are likely to be disproportionately affected by these ‘stop and search’ powers
- We have also seen instances where disabled people end up convicted of crimes due to coercion as part of gangs, country lines and cuckooing

3. Failure to include VAWG in serious crime

Stay Safe East take issue with the missed opportunity to address Violence Against Women and Girls (VAWG) and include it in serious crime, especially in light of the recent rape and murder of Sarah Everard by serving police officer Wayne Couzens, to which he has pleaded guilty. It is critical that women have reason to believe that their reports of sexual and other violence will be taken seriously and addressed. However, the absence of any mention of women throughout the Bill suggests the opposite. Thus, the failure to include VAWG in serious crime (or even mention it) not only disregards calls from the VAWG sector to do so, but disregards a long history of police-perpetrated violence against women, even with such a recent exemplification of it. That being said, we would like to clarify that this does not belong in this Bill, which is fundamentally flawed.

4. The marginalisation and criminalisation of Roma travellers

Stay Safe East firmly object to the trespass provisions in the Bill, including fines of up to £2,500 and three month prison sentences for ‘unauthorised trespassing’ or encampments. We believe these measures further contribute to the criminalisation travellers’ culture and way of life, and are likely

³ <https://www.disabilitynewsservice.com/black-disabled-people-must-protest-at-invisibility-and-discrimination/>

to have considerable ramifications for this population at large. Ultimately, we believe the below measures are tantamount to the legislative cleansing of Roma travellers.

As an organisation working on hate crime, we deplore the targeting and demonization of one community, and would argue that this encouraging hate crime and may possibly represent a form of hate crime in itself as it demonstrates targeted hostility towards, in this case, a group of people of a specific ethnicity.

- The introduction of a new offence, ‘residing on land without consent in a vehicle’, is particularly concerning in view of the fact that there is no mention of providing places for travellers to occupy. It is worth noting that the overwhelming majority of police officers are not in favour of this law change and did not request it, with *Friends Families and Travellers* finding that 84% of police responses did not agree with the criminalisation of ‘unauthorised encampments’, whilst 65% stated that lack of site provision was the root of the issue⁴
- We are also concerned about the police discretion with regards to seizing vehicles/trailers, constituting the increasing displacement of travellers in the absence of provision of places where they can make a home, in effect making people homeless
- These laws are proposed within a wider context of long-standing racism and prejudice towards the traveller community, both from the police and the general public⁵.

5. The 6 month time limit on common assault prosecutions

⁴ <https://www.gypsy-traveller.org/wp-content/uploads/2019/11/FINAL-Police-oppose-criminalising-unauthorised-encampments-and-call-for-more-sites-to-be-published-9am-13.11.19.pdf>

⁵ <https://www.travellerstimes.org.uk/news/2018/06/shocking-new-research-shows-extent-police-discrimination-towards-gypsies-and>

We believe the six month time limit for common assault to the police constitutes a further barrier to accessing justice for survivors. In our experience of working with domestic abuse and hate crime victims/survivors, many cannot come forward within this timeframe due to a myriad of reasons. Such factors include privacy concerns, fear of reprisal, and practical reasons such as their dependency on the perpetrator⁶. The latter is especially relevant for our clients, Deaf and disabled survivors, who may have 'carers' they are reliant on for access to practical support, or who face barriers when for example they need to take part in an ABE interview with a police officer who is Advanced ABE trained (we have had clients who have had to wait four months to make a statement). To this end, we support Yvette Cooper's amendment to the Bill calling for domestic abuse survivors to be able to report abuse up to two years after the offence⁷. However, we do not believe that this flawed Bill is the right place for this issue. This could instead be part of the forthcoming Victim's Bill.

6. The implications for people without capacity

With reference to Section 37, the application of Section 36 for children and adults without capacity, we are particularly concerned about the following:

- Who can provide consent on their behalf?
- There is no elaboration on how 'adults without capacity' are identified, or how the state of being 'without capacity' is monitored; this does not meet the very clear definitions in the Care Act relating to capacity not being a fixed state, but one that may change depending on the issue and time
- We are especially concerned about who can provide permission for disabled adults who are deemed not to have mental capacity and, with no mention of a mental

⁶ <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.2002.tb00968.x>

⁷ <https://www.independent.co.uk/news/uk/home-news/domestic-abuse-six-month-time-limit-extend-b1851514.html>

health professional assessing mental capacity, the real possibility that the person doing so may be unqualified and without knowledge of the Mental Health Care Act (or similar mental health legislation/guidance)

- It is especially important to consider, and ensure it does not become a reality, the possibility that the individual assessing mental capacity may abuse this opportunity for their own gain. This is to say that concluding that the person lacks capacity engenders an opportunistic avenue for coercive control, where the ability to make decisions on their behalf may be abused to control the person

7. Non-compliance with data protection legislation

Section 36 of the Bill states that police officers can extract data from mobile phones or other electronic devices if the user has 1) voluntarily provided it and 2) has agreed to the data extraction. We are sceptical about whether this consent can be freely given and informed, when contextualised within the power dynamic between an individual and a police officer, and with the pressure that not consenting may adversely affect the progression of the case.

- We are also concerned about Section 36's inconsistency with the Data Protection Act 2018, which states that the device owner cannot give blanket consent for the data of other individuals on the device, producing an issue around the data protection of family and friends etc
- There is no mention in the Bill of whether individuals can withdraw their consent later on, a key component of 'voluntary' consent

8. The implications of polygraph testing for disabled people

Stay Safe East has questions around the Bill's introduction of a provision enabling the Secretary of State to add polygraph testing as a licence condition for individuals who are subject to service law convicted of sexual offences or domestic abuse.

- The use of polygraph testing is likely to produce unreliable results for disabled people, especially those experiencing mental health issues such as depression and anxiety disorders, where it is virtually impossible to determine an accurate baseline physiological state as a spirit level to judge a response indicative of lying⁸
- In light of the above, it is especially alarming that the reliance on physiological responses to determine truthfulness could result in the disproportionate prosecuting of disabled people, a group already overrepresented in the criminal justice system⁹
- We are also concerned that disabled men who are perpetrators, in particular, may use their impairment to claim exemption from polygraph testing to escape investigation
- We are also concerned about the ambiguity/leeway around what a 'reasonable adjustment' would be, e.g. in the case of PTSD

9. The implications of increasing the maximum penalty for criminal damage to a memorial to 10 years' imprisonment

Section 46 of the Bill proposes increasing the maximum penalty for criminal damage to a memorial from 3 months to 10 years' imprisonment. This clarification brings sharply into view the reality that monuments are offered greater protection than the perpetrators these statues may represent and, by extension, those who have committed similar offences. This is to say that such provisions would impose far greater penalties for, as an example, defacing a memorial celebrating a perpetrator of violence against disabled people than the perpetrators of said violence tend to receive.

The above sends a clear message to the general public and, in the example provided, to disabled people that our lives and our

⁸ <https://news.clearancejobs.com/2019/08/26/can-depression-and-anxiety-affect-a-polygraph-exam/>

⁹ <https://www.equalityhumanrights.com/en/our-work/news/criminal-justice-system-failing-disabled-people>

experiences of violence are of less importance than a monument celebrating its perpetrator.

Stay Safe East
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