NUJ submission to the Law Commission’s consultation on sexual offence prosecutions.

September 2023

The National Union of Journalists (NUJ) is the voice for journalism and journalists in the UK and Ireland. It was founded in 1907 and has more than 30,000 members working in broadcasting, newspapers, news agencies, magazines, book publishing, public relations, photography, videography and digital media. The NUJ is not affiliated to any political party.

In this submission, the NUJ is commenting on clauses related to the exclusion of the public and restrictions on members of the press attending trials. We are concerned about the impact changes will have on journalists including court reporters facing considerable changes to their ability to report trials if proposals are enacted.

Whilst the NUJ recognises the need for sexual offence victims to be able to give evidence in a supported manner, this must not be at the expense of open justice. Coverage of sexual offence prosecutions are in the public interest, and the NUJ strongly opposes proposals limiting press attendance at trials.

**Consultation Question 52. 7.167 If measures prevent the complainant in a sexual offences prosecution from being seen by the public in the court when they use a screen or live link to give evidence or when their pre-recorded evidence is played, but the public are still able to hear the evidence, should there be an exemption to allow: (1) a member of the press; or (2) any other individual or group to see the complainant?**

An exemption requiring members of the press should always be included, even where members of the public are excluded from viewing complainants. Journalists reporting on trials uphold high ethical standards, ensuring adherence to any rules on confidentiality including on the anonymity granted victims.

**Consultation Question 53. 7.186 We provisionally propose that complainants in sexual offences prosecutions should be automatically entitled to the exclusion of the public from observing the trial while they are giving evidence, whether in court or by live link, or while their pre-recorded evidence is played. As is currently the case under section 25 of the Youth Justice and Criminal Evidence Act 1999, exclusion of the public would not apply to: one named representative of the press; the defendant; legal representatives; any interpreter or other person appointed to assist the witness, all of whom would still be permitted to attend. Do consultees agree?**

**Consultation Question 54. 7.187 If the public are excluded from observing the trial while a complainant in a sexual offences prosecution is giving evidence, whether in court or by live link, or while their pre-recorded evidence is played, should there be an exemption to allow the attendance of any other individual or group, in addition to those listed in the Consultation Question above?**

As outlined in 7.185 of the consultation paper, a provision allowing for the exclusion of the public while the complainant gives evidence could allow for more than one member of the press to attend. The NUJ advocates strongly for this approach noting several difficulties arise if only one journalist is permitted attendance/access. This includes how a mechanism to select a journalist will be identified, who will determine the journalist granted access and how appeals against the decision will be managed.

Excluding journalists from prosecutions would signal a disregard for the principle of open justice, allowing for secret trials with no coverage available to the wider public. This is of particular concern considering the nature of sexual offences and the impact news reporting can have on increasing the likelihood of other victims being more confident to report crimes. Some sexual offence victims feel empowered knowing members of the press will report their stories, and this new proposal would directly impact this experience for victims.

Coverage by court reporters also serves to educate the public on the process of the justice system and this is under direct threat by this proposal. How will victims of crime feel reassured that perpetrators have been brought to justice with limited or no coverage of trials?

Multiple journalists should be allowed to hear evidence provided by complainants. Should only one journalist be permitted, the NUJ is unclear how this process will be properly managed. Press cards can be used to identify bonafide newsgatherers, but this does not aid in determining which singular journalist should be selected at any one time to cover a trial. In addition, the NUJ has grave concerns over risks to inaccurate reporting across the media if errors are made by a journalist, with their notes then disseminated to colleagues for use by members of the press. Any inaccuracies will likely be covered widely, risking significant harm to victims and the possibility of legal action against the journalist.

Strategic lawsuits against public participation (SLAPPs) wielded against sexual offence victims are reportedly on the rise. Legal actions used to silence individuals, it is important journalists are able to highlight the damaging impact of these lawsuits. In these instances, preventing journalists from hearing evidence would only benefit those who seek to use their power and often considerable financial resources against victims.

Should the Law Commission recommend a proposal in its report of one member of the press being permitted, a further consultation on the details of how such an approach would work must be opened, to allow for the provision of views.

**Consultation Question 55. 7.189 We provisionally propose that the current powers to direct the exclusion of the public at pre-trial hearings in sexual offences prosecutions where applications are made concerning personal details about the complainant should continue. Do consultees agree?**

**7.190 We invite consultees’ views on whether, for sexual offences prosecutions, there should be a power to direct the exclusion of the public with the exception of: one named representative of the press; the defendant; legal representatives; any interpreter or other person appointed to assist the witness, from observing the following: (1) The whole trial. (2) The verdict and sentencing hearing. (3) When the victim personal statement is read.**

**7.191 If so, should this power be discretionary, or should the complainant be automatically entitled to such a direction?**

Multiple members of the press should be granted access to observe whole trials to inform reporting, and ensure coverage is accurate and well-informed. Any guidance on confidentiality should always be adhered to, as is already the case for journalists covering family courts. Should measures to restrict press access result from automatic entitlement, the NUJ would stress that powers should be discretionary to protect open justice and the ability of journalists to report on cases.