HOUSE OF COMMONS
LONDON SW1A 0AA

The Rt Hon Jeremy Wright QC MP
Attorney General
Attorney General's Office
20 Victoria Street
London
SW1H 0NF

24 October 2016

Dear Jeremy,

We are writing to you to express our grave concern about the precedent set last week in the case of the footballer Ched Evans. As you will know Evans' conviction for rape was quashed when he was acquitted last week by the Court. It is not the outcome of this particular case which we are asking you to address but instead the precedent set by the proceedings and the judge's ruling.

The use of the alleged victim's sexual history in the appeal case of Ched Evans acts to make the prosecution of rape cases in the future harder and reporting of these crimes less likely. The verdict and events in this case sets a dangerous precedent about how a victim of rape, usually a woman, has behaved in the past and can be taken as evidence of the way she behaved at the time of the alleged rape. This will deter victims from disclosing their abuse and will reduce the number of victims presenting their cases to the Police for fear of having their private lives investigated and scrutinised.

Additionally we feel that in an age of social media and online stalking there is a very real likelihood that victims will fall prey to private investigations and the crowd sourcing of information in to their past sexual partners. The ruling will act to encourage defence lawyers in rape trials to effectively apply for an individual's completely legal and private sexual history to be admissible as evidence.

In 1999, Section 41 of the Youth Justice and Criminal Evidence Act curtailed the use of complainants' sexual conduct with other people as evidence of consent. The exception used in the Evans case - s. 41(3)(c)(ii) of the 1999 Act - says that sexual behaviour of the complainant can be used to show consent if it is so similar to the alleged rape that the similarity can't be explained as a coincidence. This subsection was intended to be used only for unusual sexual behaviour.

When it was going through Parliament, Lord Williams of Mostyn, the Attorney General said:

(23 Mar 1999 : Column 1218)

"I turn to strikingly similar and non-coincidental behaviour. The only other circumstance where earlier sexual behaviour should be admissible in relation to consent is provided for in subsection (3)(b)(ii). That is, where the behaviour was so similar in detail to the defence's version of the event when the offence was alleged to have taken place that there is no way that the similarity between the two occasions can be reasonably explained as a coincidence. That might include something along the lines of the Romeo and Juliet scenario introduced by my noble friend Lady Mallalieu, where the circumstances in which the alleged offence took place were so unusual that the jury should know that the complainant had consented in strikingly similar situations in the past.

The term "strikingly similar" does not include evidence of a general approach towards consensual sex such as a predilection for one night stands, or for having consensual sex on a first date. Still less does it include the fact that the complainant has previously consented to sex with people of the same race as the defendant, or has previously had sex in a car, for example, before alleging that she was raped in a car. .....Behaviour that can be admitted under subsection (3)(b)(ii) must be the sort of behaviour that is so unusual that it would be wholly unreasonable to explain it as coincidental."

The only other case where it is known that unusual and similar behaviour has been allowed in under this subsection was quoted in the Evans case and concerned having sex upright in a children's climbing frame.

The prosecution barrister argued in the Evans case to the Court of Appeal that the behaviour had to be unusual but the court said:-

"The behaviour does not have to be unusual or bizarre; it has to be sufficiently similar that it cannot be explained reasonably as a coincidence."

We believe that it is a serious legal error to fail to give effect to the intention of Parliament when it enacted s. 41(3)(c)(ii) of the 1999 Act by leaving out the requirement, agreed by everybody involved in the House of Lords, that the behaviour is unusual or bizarre. It is certainly a huge widening of what has always been seen as a very narrow exception, successfully used only once in 16 years, to a position where ordinary sexual behaviour may be called as evidence of consent in many more cases. The similarities between what Evans said about the alleged rape and evidence about sex from other men were similar words used, alleged enthusiasm by the complainant and adoption of a position nobody suggests to be unusual - and she did not agree with those similarities anyway.

A review four years after the 1999 Act showed that despite the legislation changes, fear of exposure of previous sexual history was still a key factor in low reporting rates. Our concern is that this will worsen following the Ched Evans ruling.

We in Parliament must send a clear message to victims of sexual violence that no matter their history or background the law in the UK is there to protect them from harm. The outcome in the case of Ched Evans will send the signal once again that if you can discredit a complainants' sexual behaviour or draw comparisons with even commonly used sexual practice with events claimed to have taken place in a particular incident to somehow indicate evidence of consent.

We are writing this letter to you and to the Secretary of State for Justice to seek action through legislation or regulation. The easiest solution could be for Parliament to reassert its original intention by clarifying s. 41(3)(c)(ii), e.g. by inserting the words "and so unusual" before "that the similarity cannot reasonably be explained as a coincidence."

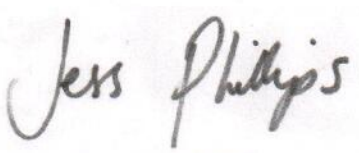
We must act to cease the return to a culture of 'victim blaming'. We believe that the use of a complainants' sexual history should never be used in our courts as evidence of consent.

We are calling on the Government to act. The Women's Parliamentary Labour Party ask that you and the Minister of Justice meet with a delegation from our group to discuss how the Government

will progress on this issue. We offer you our support in working towards a solution and promise our full scrutiny should this not be resolved.

We look forward to hearing from you.

Yours sincerely,



Jess Phillips MP (Chair of the Women's Parliamentary Labour Party)

Rt Hon Harriet Harman MP
Paula Sheriff MP
Louise Haigh MP
Angela Eagle MP
Kate Green MP
Gill Furniss MP
Roberta Blackman-Woods MP
Colleen Fletcher MP
Ann Coffey MP
Helen Hayes MP
Tulip Siddiq MP
Emma Reynolds MP
Shabana Mahmood MP
Susan Elan Jones MP
Helen Goodman MP
Luciana Berger MP
Julie Elliot MP
Angela Smith MP
Rt Hon Gisela Stuart MP
Melanie Onn MP
Joan Ryan MP
Judith Cummins MP
Madeleine Moon MP
Rt Hon Fiona Mactaggart MP
Holly Lynch MP
Stella Creasy MP
Lilian Greenwood MP
Alison McGovern MP
Gloria De Piero MP
Liz McInnes MP
Lucy Powell MP
Karen Buck MP
Julie Cooper MP
Seema Malhotra MP
Diana Johnson MP
Yvonne Fovargue MP