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HOUSE OF COMMONS
LONDON SW1A 0AA

Rt Hon David Lidington MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London SW1H 9AJ

- and -

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

8th January 2017

Dear David and Jeremy,

Re: Government Review of Section 41 of the Youth Justice and Criminal Evidence Act 1999

Thank you for your letter of 14th December about s41 and for your offer to meet. We'd like to take you up on that offer and hope we can meet early in the New Year.

We have to say we are disappointed and baffled by your letter, the Written Statement and the '*Limiting the Use of Complainants' Sexual History in Sex Cases*' report in equal measure.

The background to your commissioning the work was an overwhelming body of evidence that there is a problem in the operation of s41, such that previous sexual history is being introduced in a large percentage of cases. This includes '*Seeing is Believing*' (2017), Lime Culture's report '*Application of Section 41 of the Youth Justice and Criminal Evidence Act 1999*' (2017) and the reports of Rape Crisis Centres and Independent Sexual Violence Advisers (ISVAs) all around the country.

The work you commissioned in response purports to challenge this evidence and you assert in the Written Statement that "these findings strongly indicate that the law is working as it should..."

But the work you commissioned does not challenge the findings of the other evidence because it is completely flawed:

- The CPS do not require caseworkers or prosecutors to note if an application under s41 is made as you acknowledge in your written answer no. 117913 to me dated 13th December 2017.
- Any application made at the start of or during the trial is unlikely to be recorded as in most trials there is not a CPS caseworker present and there's no requirement for the prosecuting barrister to report.

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The numbers in your report are therefore not based on anything which could be regarded as reliable. Yet on this basis you conclude that the law is being correctly applied and does not need amending.

We seriously challenge this. The Domestic Violence and Abuse Bill is an opportunity to amend the legislation in a way which is necessary, an opportunity which might not be available again in the foreseeable future. So we look forward to meeting with you to hear your explanation about why you rely on the findings in your report and to set out to you how we suggest the law is changed to remedy a flaw which lies at the heart of how the justice system treats rape.

In the meantime we would be grateful if you would explain why cases involving guilty pleas were included in your "research". If there's a guilty plea there is no point in a s41 application by the defence since the only role for the defence would be in relation to sentencing. Also can we point out that your statement that "the law makes clear that sexual history evidence cannot be used...to infer that a complainant's sexual experience – with anyone – or sexual reputation made it more likely that they consented", is simply wrong. That is exactly the basis on which the judge in the Ched Evans case allowed the s41 application. The Court of Appeal ordered a retrial because sexual history evidence with men other than the accused 'might support a defence of actual consent'.

Yours sincerely,

Harriet Harman

Rt Hon Harriet Harman QC MP
MP for Camberwell and Peckham
Mother of the House of Commons

WB

Dame Vera Baird DBE QC
Police and Crime Commissioner for
Northumbria