

## **Response template for consultation on “gang” related offences guidance and musical expression in evidence.**

*Are you responding on behalf of an organisation?*

*If yes, please provide your organisation name:*

### **LSE Policy Clinic, LSE Legal Advice Centre**

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### **Introduction:**

The Crown Prosecution Service (CPS) issues guidance to prosecutors on ‘gang’-related offending ([Gang related offences - Decision making in | The Crown Prosecution Service](#)). The current guidance was published in 2020 to support the then Government’s Serious Violence strategy and following David Lammy MP’s 2017 review of disparity in the criminal justice system in ([Lammy Review - GOV.UK](#)). That review, along with subsequent academic research, raised concerns that narratives around ‘gang’ offending may be racially discriminatory. At the same time, other research highlights that ‘gang’-related offending remains a serious social issue.

The CPS is now reviewing this guidance, with a view to a substantive update following the collection and analysis of a full year’s data from a national monitoring scheme on secondary liability (joint enterprise) in homicide and attempted homicide cases. During this work, stakeholders have suggested that the current guidance on ‘gang’-related offending could be improved.

Through this consultation, we are seeking views on how CPS guidance can be strengthened, ensuring it supports fair, consistent decision-making while reflecting the complexities and sensitivities surrounding ‘gang’-related offending.

It is important to note that there are existing legal safeguards about such “bad character” evidence and the admissibility of evidence more broadly. What the prosecution is allowed to present to a Jury can be challenged by defence lawyers and is ultimately a matter for a Judge to rule on. This guidance concerns the manner in which the prosecutor frames the case and presents evidence and legal argument on these issues.

Gangs Guidance questions: (all mandatory)

#### **Question 1**

The CPS guidance on ‘gang’-related offending is intended to emphasise the importance of guarding against unconscious bias and making assumptions based on racial stereotypes. Some argue, however, that the mere existence of guidance on this issue is problematic, in that it may inadvertently reinforce such concepts, and that specifically

drawing attention to the concept in separate guidance might be less preferable than other measures to guard against unconscious bias.

**Question 1: In your view, should the CPS continue to have separate guidance on “gang” related offences? If not, should it address unconscious bias in other guidance, such as the joint enterprise guidance?**

We are a group of law students at the London School of Economics (LSE) Law School who have studied Criminal and Evidence Law, and came of age during the rise of drill music in the United Kingdom. In the areas in which many of us grew up, drill music was a familiar genre, one which we all listened and rapped along to, not paying much mind to its lyrics which rang no truer to us than a Taylor Swift heartbreak song. For us, engagement with drill was an almost humorous exercise, with boys often performatively competing over who could deliver the lyrics the ‘hardest.’ We were oblivious to how the music was to be demonised and manipulated in the courtroom, weaponised against the very same kinds of boys we once called, and still call, friends.

Our response will focus on the questions on musical expression evidence below.

## **Question 2**

The term “gang” (often used interchangeably with “street gang”) can be defined in various ways to describe a wide range of collective behaviour or allegiance in the context of criminal offending - from localised street activity to international organised crime. Stakeholders have adopted different definitions, and some examples are shown below.

**Question 2: In your view, how should the Crown Prosecution Service (CPS) define the term “gang” in its guidance (whether specific guidance, or in its guidance in general)?**

### **Examples:**

<b>Section 34(5) of the Policing and Crime Act</b>	<i>A group that a) consists of at least three people and b) has one or more characteristics that enable its members to be identified by others as a group. Examples include: a common name, emblem or colour, a leadership or command structure, association with a particular geographical area and involvement in particular unlawful activity.</i>
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<b>2009, as amended by the Serious Crime Act 2015<sup>1</sup></b>	
<b>Metropolitan Police Service<sup>2</sup></b>	<i>A relatively durable, predominantly street-based group of young people who see themselves as a discernible group, have identifiable structural features and engage in criminal activity and violence, often linked to specific territories and conflict with other gangs.</i>
<b>Youth Endowment Fund<sup>3</sup></b>	<i>A group of young people who think of themselves as a gang, probably with a name, and are involved in violence or other crime.</i>
<b>HMICFRS<sup>4</sup></b>	<i>Criminal groups concerned with perpetuating a threat of violence or harm across a geographical area related to their main activities. Gangs tend to be less organised or co-ordinated than organised crime groups, but their criminal activity often overlaps with OCGs.</i>

Please see the responses to the questions on musical expression below.

### **Question 3**

The current CPS guidance states that prosecutors should guard against unconscious bias and should not make assumptions about gang membership.

**Question 3: Is this the correct approach for the CPS to set out in its guidance, and if so, what else can be included in guidance to ensure prosecutors guard against racial stereotypes concerning gang membership or affiliation?**

<sup>1</sup> Statutory Guidance, Injunctions to Prevent Gang-Related Violence and Gang-Related Drug Dealing, Revised Guidance

<sup>2</sup> Serious youth violence: County lines drug dealing and the Government response CBP-9264.pdf

<sup>3</sup> Youth Endowment Fund, Children, violence and vulnerability 2024, Report 1 CVV24\_R1\_OverallViolence.pdf

<sup>4</sup> Urban street gangs - His Majesty's Inspectorate of Constabulary and Fire & Rescue Services

Please see the responses to the questions on musical expression below.

**Question 4**

**Question 4: Is there anything else you think CPS guidance on “gang related offences” should include to support fair, effective and independent prosecutorial decision making?**

Please see the responses to the questions on musical expression below.

## **Musical expression consultation questions (all mandatory)**

### **Introduction:**

Stakeholders have noted some concerns regarding the use of ‘drill’ music as evidence in some prosecutions. Academic research has suggested that the use of drill music as evidence can reinforce disproportionality and racially discriminatory practices.

The CPS has not previously issued discrete guidance to prosecutors on the use of music as evidence, however, the current guidance on ‘gang’-related offending sets out the following on gangs, drill music and social media:

“Gangs are increasingly using drill music and social media to promote gang culture, glamorise the gang lifestyle and the use of weapons. They may post videos online that seek to taunt rivals, incite violence or glamorise criminality. The videos often show the brandishing of weapons, include incendiary remarks about recent incidents of young people being killed or seriously injured, and threats to stab or shoot specific individuals and members of rival groups. The instant nature of social media means that plans develop rapidly, disputes can escalate very quickly and are seen by a large audience, which increases the need to retaliate in order to ‘win’ the dispute. If such an allegation is referred to the CPS prosecutors should consider whether a substantive offence is disclosed.”

Some stakeholders have noted that including guidance on musical expression within ‘gang’-related offending guidance may reinforce harmful stereotypes about youth culture and contribute to racial discrimination in the criminal justice system. It has been suggested that specific, discrete guidance on the use of musical expression as evidence would provide a clear direction, ensuring that prosecutors are accountable for following the guidance.

### **Question 1:**

**Question 1: What action should CPS consider concerning current content on drill music in the “gang-related offences” guidance? You may also wish to provide your reasons why.**

- a) **Remove** it from the “gang related offences” guidance and create separate, **reframed** guidance on musical expression evidence specifically?
- b) **Keep** it in the “gang related offences” guidance but **reframe** the content?
- c) **Retain** the guidance in its current form, **without making changes**?
- d) **Remove it** entirely from all forms of guidance, as guidance on this issue is counter-productive?

We are a group of law students at the London School of Economics (LSE) who have studied Criminal and Evidence Law, and came of age during the rise of drill music in

the United Kingdom. In the areas in which many of us grew up, drill music was a familiar genre, one which we all listened and rapped along to, not paying much mind to its lyrics which rang no truer to us than a Taylor Swift heartbreak song. For us, engagement with drill was an almost humorous exercise, with boys often performatively competing over who could deliver the lyrics the 'hardest.' We were oblivious to how the music was to be demonised and manipulated in the courtroom, weaponised against the very same kinds of boys we once called, and still call, friends.

This combined academic and lived experience informs our perspective and has made us particularly attentive to the risk of unfair prejudice in criminal proceedings. Considering these concerns, we recommend that the Crown Prosecution Service ("CPS") should remove drill music from its "gang-related offences" guidance and instead develop separate, reformed guidance specifically addressing the use of musical expression as evidence.

The current guidance oversimplifies and inappropriately suggests a connection between drill music and gang crime. The assumption that rap, unlike other forms of artistic expression, is an autobiographical narrative, reflecting the true thoughts and beliefs of the person performing or writing it, misconstrues rap as a form of realism. Musical expression requires a more nuanced approach, separate from the guidance on gangs, recognising the unclear boundaries between artistic expression and reality.

The guidance also does not recognise that other genres can be used as evidence, reinforcing generalisations about drill music being linked to gangs. The guidance should recognise that rap is disproportionately used in criminal cases, while applying to musical expression more broadly. However, within guidance on gang-related offending, prosecutors should be instructed to consult the guidance on musical expression when considering the use of music as evidence.

## **Question 2**

Drill music, while sometimes associated with gang activity, is also a widely accessible and mainstream form of musical expression that often does not relate to real life criminality, providing a creative outlet and a path to success for many artists. Stakeholders and academics have noted that much of the content in musical expression is fictional or exaggerated for artistic purposes. However, there are also

instances where lyrics or videos do relate to actual criminal activity and where it is relevant and admissible evidence.

**Question 2a: When considering the use of musical expression – such as drill music – as evidence in criminal proceedings, what information would assist prosecutors to make informed decisions, whether about context or to assess the reliability of evidence?**

**Question 2b: Should contextual information be provided to prosecutors through guidance? If you think it should, what content would it be useful to include?**

*(For example, should guidance address the broader cultural context within the genre, the artistic intent, or typical uses of language and imagery within the genre?)*

**Question 2a:**

Our core recommendation is the creation of a test for prosecutors to apply before they proceed in presenting musical expression as evidence to the court. The starting position should be that musical expression is not admissible unless its probative value does in fact outweigh its prejudicial effect. However, the terms ‘probative value’ and ‘prejudicial effect’ may be interpreted or applied loosely, in inaccurate or unfair ways. As such, when applying the test, it is imperative that prosecutors:

- Have due regard for the wider socio-legal, institutional and cultural contexts in which musical expression exists, including its linguistic and genre specific conventions;
- Be able to justify the reason for relying on musical expression as evidence, and rule out diverging theories that help to explain the creative expression;
- Be ready to scrutinise and question any narratives and interpretations that are being presented before the prosecutor;
- Instruct an appropriate independent expert to assist in interpreting and contextualising the musical expression when necessary;
- Consider human rights implications. The use of musical expression should not contravene the spirit of the European Convention on Human Rights

**The importance of this test, and the relevant factors and information that would assist prosecutors in applying it, is explained below.**

**A. *Wider Socio-Legal and Institutional Context***

Prosecutors must:

1. Have awareness of the socio-legal interaction between criminal justice institutions and affected communities, and;

## 2. Have regard to implicit bias within the criminal justice system.

Current guidance fails to achieve this awareness, instead inappropriately conflating drill with gang membership. This false equivalency is dangerously ignorant and should be replaced with recognition that they are distinct. As discussed below, the current criminal justice approach to drill music disproportionality targets Black working-class youth and culture.

Rap music (including drill) is often used as evidence in gang based joint enterprise cases, which helps to sway the fact finder to convict (Quinn et al 2023). The danger is that conviction is not on the merits of the evidence, but rather the emotive reaction and moral panic around rap music and gangs that exists within society, diverging from orthodox rational evidential reasoning. It has been suggested that policing and suppressing rap music signals to the public that something is being done to combat gangland and knife crime (Sanghavi 2025). However, policing and suppressing rap only adds to the moral panic and is not founded in empirical research. Rather, the research suggests that suppressing such music can be detrimental to a democratic society due to a chilling effect created by prosecuting types of artistic expression (VICE 2020). For example, the recent uptick of the use of drill to support prosecutorial narratives primarily targeting young Black men and boys, often in the context of serious violence, leads to the further criminalisation of Black British music and sub-culture (Fatsis 2023). This, in practice, is an unfair use of the law to target working class Black youth culture, which is not afforded the same protections as other forms of music.

As the CPS does not operate in isolation, prosecutors must remain attentive to the broader structural and institutional dynamics related to race, class and other social markers. Where such interactions are ignored or insufficiently understood, prejudice risks becoming institutionalised, positioning the CPS as a vital component of the so-called “ethnic hoover”, which disproportionately criminalises Black and minority ethnic individuals (Quinn 2024). Developing awareness of these societal dynamics, together with an understanding of racial disproportionality, implicit bias and insights from cognitive psychology, provides a crucial foundation for challenging ignorance and addressing unfairness. Such awareness also plays an essential role in mitigating the pervasive effects of implicit bias across the criminal justice system.

Upon consulting further research, questions should be devised to assist the prosecutor in determining whether it is appropriate to rely on musical expression as evidence.

These questions could include, inter alia:

- Can evidence from another (cultural) genre be treated similarly?
- Would identical expressive content from a defendant of another background be admitted in the same way?
- What am I, the prosecutor, trying to evoke when using this evidence at trial?
- Is it possible that a fact finder can misinterpret or overvalue this evidence by using prejudicial stereotypes?

- For the fact finder to come to the correct conclusion, what additional information is required to rule out prejudicial influence in reaching the desired conclusions?

### **B. *Relevance, Specificity and Necessity***

To ensure the probative value of the evidence outweighs its prejudicial effect, guidance on musical expression should cumulatively require that:

- Prosecutors adhere to orthodox, rigorous criminal standards of evidential reasoning and gathering;
- Before relying on music as evidence, there should be a proven specific connection between the music and the criminal offence alleged;
- Prosecutors rule out diverging explanations for the supposed links between the music and the criminal offence;
- Prosecutors are able to justify their decision to rely on musical expression as evidence.

Case law shows that traditional doctrinal rules, principles and standards of Evidence Law, such as relevance, probative value and prejudicial effect, have been compromised in the admission of musical expression, namely rap music. In fact, research shows that rap music is rarely relevant or reliable evidence in the case law (Owusu-Bempah 2022). *R v Sode* [2017] EWCA Crim 705, which permitted video gestures of a 14-year-old recorded years before the offence was committed, demonstrates a disregard for cultural participation and seems to sanction a racialised preconception of an archetypal criminal. When viewed in light of the larger context of the criminalisation of Black people and culture (Gilroy 1982), and other sociological racial phenomena, trial fairness is not effectively safeguarded. This is because the defence must argue not only the case on its merits, but also against subconscious and conscious biases that necessarily aids the prosecution case. Ensuring the musical expression is in fact connected to the offence charged and not likely to introduce racial or cultural biases, bolsters the equality of arms principle and strengthens accurate fact finding.

Further, music should be looked at holistically, and not cherry-picked to fit a particular narrative, and there should be consideration for the lapse of time between the alleged events and the musical expression. Musical expression should not 'bolster a weak case', and if there is insufficient evidence to make a case without the music, the prosecution should be discontinued.

Prosecutors should be able to rule out diverging explanations which may contradict their own case. If alternate explanations remain, and the prosecution cannot adequately discredit opposing views, the music should not be used in the prosecution case.

If, after addressing the requirements above, and considering the socio-legal and institutional context, the prosecutor believes that the probative value of the evidence outweighs its prejudicial effect, and that it is necessary to use it, they should be able

to justify their decision. There are several benefits to having a record of justifications. For instance, it would help to comply with section 149 of the Equality Act's Public Sector Equality Duty, aiming to eliminate discrimination, advancing opportunity and fostering good relations. This would be achieved through the transparency afforded by a record of decisions and the reasons that underpin them, allowing a targeted approach to tackle biases in decision making. It would thus help create a fairer and more accountable environment regarding musical expression as evidence.

### **C. Experts and Police Officers**

If prosecutors apply rigorous standards with due regard for the context outlined above and below, they are less likely to proceed with irrelevant, unreliable and highly prejudicial evidence. This can save the expense and resources of instructing experts for the prosecution and/or the defence. Where prosecutors seek to rely on musical expression evidence, diligent defence lawyers should instruct experts on the form of creative expression, which often comes at an increased cost to the public budget.

However, to ensure that creative expression meets the required criteria and threshold for admission, expert assistance may be needed. If so:

- To be considered an expert, the area of expertise must be directly related to the genre of musical expression at hand;
- Police officers should never be used to provide 'expert' evidence of musical expression;
- Prosecutors should readily scrutinise and question interpretations of music.

An expert's area of expertise should never be transferred to another activity. When using rap/drill as evidence, a 'drill expert' should be viewed as distinct from a 'gang expert'. The false equivalency currently pushed by the guidance should be changed to highlight that they are not interchangeable.

By reference to Intellectual Property (IP) Law, *Confetti Records v Warner Music UK* [2003] EWHC 1274, specific experts should be used on the genre of music, such as drill. In the case, Lewison J held that Garage song lyrics, despite their use of English, were for practical purposes treated as a foreign language justifying the use of experts to explain their meaning. In line with judicial understanding regarding garage songs, drill should be considered as distinct and requiring expert knowledge to accurately understand the meaning of the lyrics and imagery.

Police officers should not be afforded the status of 'experts' given the issue of institutionalised prejudice (Macpherson 1999; Casey 2023). With current policing practice accommodating confirmation bias (Rassin, Eerland and Kuijpers 2010; Ask and Granhag 2005), which necessarily makes use of prejudice, it is too great of a risk for prosecutors to use police officers as experts when decoding musical expression. This is because it cannot be guaranteed that, for drill specifically, racial bias has not impacted the case's construction and subsequent prosecution. Failure to robustly challenge such prejudicial narratives renders fact finding not only inaccurate

but also threatens its legitimacy within the working-class Black community who feel the law's application is targeted and unfair. The already poor community relations are worsened when prosecutors remain silent in challenging racist stereotypes as there is no independent scrutiny to deeply flawed presentations.

Additionally, such so-called 'expertise' has led to unjustifiable conclusions and miscarriages of justice. This deficiency has been highlighted in cases such as *Rashid* [2019] EWCA Crim. 2018, where police, inappropriately viewed as experts, gained information from social media and undisclosed sources. Failure to challenge this weak collection of data, with no regard for conflicting theories amount to a lazy interpretation that survives the entirety of the criminal justice system due to unconscious bias. When layering the racialised origins and nature of drill music in particular, concerns of the influence of race becomes heightened. With no attempt to challenge misguided assumptions and beliefs, police officers inherently cannot discharge the requirement of Criminal Procedure Rules as to provide unbiased opinion.

As the practice of calling police to testify amounts to 'no more than the prosecution calling itself to give evidence' (JUSTICE 2021), prosecutors should not use police officers to help clarify musical expression, unless it is shown by a public inquiry that institutional problems no longer exist and affect policing practice.

When engaging with musical expression, prosecutors should actively and critically interrogate both the interpretations presented to them and those they themselves develop, rather than accepting such interpretations unreflectively, as all too often occurs in current practice (Owusu-Bempah 2022). *R v Oni and Others* [2025] EWCA Crim 12, in which the Court of Appeal quashed Ademola Adedeji's conviction for conspiracy to commit grievous bodily harm, provides a further illustration of the flaws inherent in the current approach. The reliance on a nine second video clip as well as the dubious mistaken identification from a police officer raises legitimate concerns about the operation of cross-race bias affecting policing. If prosecutors fail to rigorously challenge mistaken identification or speculative interpretations, there is a risk that fact-finding becomes distorted, the innocent are inadequately protected, and institutional racism is inadvertently reinforced.

It should be recognised that juridical actors work in an atmosphere removed from working-class and minority sub-cultures. Thus, their ability to accurately understand other sub-cultures can be severely limited, rendering them as 'street illiterate' (Ilan 2020). Consequently, greater efforts should be made to understand the cultural context in which drill arises, and a more conscious effort to challenge presumptions.

#### **D. Human Rights Risks**

Guidance on musical expression should address human rights implications.

When considering the admissibility of music as evidence, prosecutors must be guided by the United Kingdom's human rights obligations, particularly the right to freedom of

expression under Article 10 of the European Convention on Human Rights (“ECHR”), incorporated domestically through the Human Rights Act 1998 (“HRA”) (S6 obligation in particular). The routine or uncritical use of musical expression as criminal evidence risks undermining this fundamental right and creating a chilling effect on lawful artistic speech.

Article 10(1) states that “*Everyone has the right to freedom of expression*”, a right that extends not only to information and ideas that are favourably received, but also to those that “*offend, shock or disturb the State or any sector of the population*” (*Handyside v United Kingdom*). As Strasbourg jurisprudence has repeatedly affirmed, freedom of expression would be hollow if it protected only inoffensive or agreeable speech. Lord Justice Sedley encapsulates this principle clearly: “*freedom only to speak inoffensively is not worth having*” (*Redmond-Bate v DPP 2000*). This is especially relevant in the context of music genres such as drill, which are intentionally provocative, emotive and disruptive of mainstream sensibilities.

The framing of drill music as repressible or inherently suspicious behaviour is therefore incompatible with the spirit and purpose of Article 10. Treating artistic expression as evidence of criminal propensity risks collapsing the distinction between speech and conduct. This is particularly concerning where lyrics are not directly linked to a specific criminal act, but are instead admitted as “bad character” or contextual evidence to imply violent disposition, gang membership or moral deviance. Such practices risk penalising individuals not for what they have done, but for what they have said, or more precisely, for how their speech is perceived through racialised and classed assumptions.

The “chilling effect” of these practices must be taken seriously. As explored in recent scholarship and commentary, the criminalisation of drill discourages young people, particularly Black and working-class youth, from engaging in lawful artistic expression for fear that their lyrics may later be weaponised against them in criminal proceedings. This chilling effect does not merely limit expression; it actively suppresses cultural participation and silences marginalised voices, reinforcing existing inequalities within the criminal justice system. When artists are aware that their creative output may be retrospectively scrutinised as evidence of criminal intent, freedom of expression becomes conditional and precarious rather than protected.

Strasbourg jurisprudence has repeatedly emphasised that artistic expression enjoys heightened protection even where it contains violent or disturbing themes. In *Karataş v Turkey* (1999), the Court held that aggressive poetic language referencing violence constituted an expression of “deep distress” rather than a call to action, stressing that artistic form and limited impact reduce the likelihood that such expression can justify criminal sanction. This reasoning is directly applicable to drill music, where metaphor, exaggeration and performative bravado are central to the genre.

Article 10(2) does permit restrictions on freedom of expression, but only where such interference is prescribed by law, pursues a legitimate aim and is necessary and proportionate in a democratic society. Prosecutors must therefore rigorously assess

whether the admission of music evidence genuinely meets this high threshold. The mere presence of violent imagery or aggressive language (common across many musical genres) cannot, on its own, justify interference with free speech. Without a clear, specific and direct nexus between the lyrics and the alleged criminal conduct, reliance on music risks failing the proportionality test and infringing the defendant's human rights. Prosecutors should therefore proceed on the presumption that artistic expression attracts strong Convention protection, and that reliance on music as evidence will be exceptional rather than routine, requiring clear justification grounded in necessity, relevance and proportionality.

As Barnes argues, "we would all be shocked if the criminal courts permitted the use of a painting as evidence of propensity to commit a crime", yet rap lyrics are routinely treated differently, as illustrated by Skengdo & AM, whose performance of a song constituted a breach of a Criminal Behaviour Order, an approach Barnes characterises as a "flagrant breach of Article 10 of the Human Rights Act 1998" and emblematic of the racially selective limits placed on freedom of expression (Barnes, 2021).

It should also be recognised that drill music, Multicultural London English (MLE) and/or Black British English (BBE) are deeply interconnected. Lyrics are often delivered through linguistic codes, metaphors, exaggeration and performative bravado that are culturally specific and not intended as literal statements of fact. Allowing such expression to be reinterpreted through a prosecutorial lens, without proper cultural understanding or expert input, risks compounding institutional racism and classism. The selective criminalisation of drill stands in stark contrast to the treatment of other musical genres that depict violence, criminality or deviance, and therefore raises serious concerns about discriminatory enforcement.

Accordingly, prosecutors must consider the human rights implications of admitting drill music as evidence. This includes weighing any claimed probative value against the fundamental right to freedom of expression, assessing whether its use is truly necessary and recognising the broader systemic harm caused by normalising the criminalisation of cultural expression. Failure to do so not only risks unfair trials, but also perpetuates the long-standing association between Black cultural production and criminality, undermining public confidence in the justice system and eroding the protections afforded by human rights law.

Secondly, the admission of music as evidence raises concerns under Article 6 ECHR, which guarantees the right to a fair trial. Presenting music divorced from its artistic and cultural context risks unfairly prejudicing juries, encouraging them to conflate artistic performance with personal conduct or criminal intent. This is particularly problematic when such evidence is not directly relevant to the alleged offence but is instead used to construct a narrative of bad character or dangerousness. The reliance on cultural misunderstanding and racialised assumptions compromises evidential fairness and risks convictions being influenced by moral panic rather than objective proof. In this sense, music evidence may undermine the presumption of innocence by inviting jurors to infer guilt through cultural stereotyping.

Thirdly, there are serious implications under Article 14 ECHR, which prohibits discrimination in the enjoyment of Convention rights. The disproportionate scrutiny of drill music reflects broader patterns of racialised policing and prosecution. Other musical genres that contain violent or transgressive themes (such as rock, punk or heavy metal) are rarely subjected to the same level of criminal suspicion. This selective enforcement suggests that it is not violence per se that is being policed, but rather the racialised cultural form through which it is expressed. The historical pathologisation of Black culture means that drill is more easily “alchemised” into evidence of criminality, reinforcing discriminatory associations between Blackness and danger.

The ECtHR has recognised that discrimination may arise where ostensibly neutral practices disproportionately impact racialised groups. In *D.H. and Others v Czech Republic* (2007), the Court confirmed that indirect discrimination can be established through patterns of disproportionate impact. The selective scrutiny and criminalisation of drill music, overwhelmingly associated with Black youth, risks engaging Article 14 when read in conjunction with Articles 10 and 6.

Finally, these practices intersect with broader cultural rights, including the right of minority communities to participate in cultural life without fear of criminalisation. When an art form rooted in lived experience, community and social marginalisation is treated as inherently suspect; the state risks further alienating already disadvantaged groups. This not only exacerbates distrust in the criminal justice system but also undermines the legitimacy of legal institutions tasked with upholding equality and justice.

Therefore, educating prosecutors on the cultural, social, and artistic dimensions of drill music and any other genre of creative expression that might be used in criminal proceedings is not merely a matter of best practice: it is a human rights imperative. Without such understanding, the use of music as evidence risks infringing freedom of expression, compromising fair trial rights and perpetuating racial discrimination, ultimately deepening the very structural inequalities the justice system is meant to address.

### **Question 2b:**

Given that most recent cases involve the use of drill music as evidence, as opposed to other forms of creative expression, it is fundamental that guidance provides prosecutors with the cultural context in which drill music emerges. This is because, without fully understanding the cultural context behind drill music, prosecutors may draw stereotypical links between Black and minority ethnic individuals and crime/gangs, thus failing to accurately assess whether probative value outweighs prejudicial effect (Quinn 2024). Prosecutors routinely cherry-pick lines from drill music to construct the ideal criminal in front of the jury. In doing so, they perpetuate harmful stereotypes about Black and minority ethnic people, risking miscarriages of justice, and resulting in drill music ‘often seen as outward manifestations of an ‘out-law culture’ (Hooks 1994), that is perceived as dangerous, if not outrightly criminal (Fatsis 2019).

Thus, when deciding whether to rely on musical expression as evidence, prosecutors should be directed to a reference framework of the cultural roots, genre specific conventions, and social significance of drill and rap music.

The reference framework should cover the following points.

### **A. Cultural Roots**

Drill music developed from South Side Chicago rap in the 2010s and was mixed with US trap to form a genre of creative expression which migrated to the UK to achieve great popularity and success. As a creation of the wider US hip-hop scene, drill music has roots in being an expression against racial segregation, social isolation and poor housing and economic conditions. This basis forms an integral part of how UK drill music is created and performed today. It remains an expression of Black struggle and is an important form of recognition and empowerment within Black British community and culture. Despite the genre forming a safe place of respite for rappers and listeners, rap music has historically been heavily policed, from house parties being raided for playing rap music, police disproportionately singling out music video scenes for police attention, to the outright banning of musical performances (Fatsis 2019). This historic struggle against censorship of musical expression has formed today's drill music in a 'feedback loop' (Ingram 2021), as rappers make music to express their creative responses to harsh policing and criminalisation of the Black identity.

### **B. Aims of Drill**

The purpose of drill and rap music is not to inspire its audience to follow the action of the music's protagonist. Much of the 'problem genre' arguments that regard drill music as an instruction to partake in criminality assume that the genre is setting an example. However, when viewed through an understanding of the cultural roots of the genre, it becomes clear that drill music represents a response to, rather than an endorsement of, social adversity and the racialised narratives of Black criminality to which it is often wrongly linked. Rappers are not inherently criminals, and drill music is not gang music. Rather, rappers are 'organic public intellectuals' (Fatsis 2019) who empower and represent hardships that are common throughout Black British culture.

### **C. Genre Conventions**

Rap and drill music is filled with coded references and artistic tropes which most prosecutors will be unaware of. These devices make surface readings of lyrics insufficient to establish factual relevance, although case law shows that this does not stop prosecutors from including evidence of lyrics based off surface level readings, such as in the case of *R v Awoyemi* [2016].

At the same time, compared to other music genres within rap, drill music uses less metaphors and punchlines in its lyricism, making it more of a 'deadpan' representation of street life (Farje 2022). This makes it a more prevalent breeding ground for

misinterpretations by prosecutors. Drill music glamorises poverty by artists showing stereotypes and caricatures of Black culture for musical success. This will often include direct violence in their lyrics, such as gunplay, drug deals and probation violations; and it is this aspect of musical expression that allows for prosecutors to make mistaken assumptions that intent and guilt of violent criminal activity can be proved through music (Quinn 2024). An understanding of the lyrical conventions within drill is needed as rappers often blend portrayals of reality with fiction to convince audiences of their authenticity which is integral for success as a drill artist (Beer 2014). Additionally, rappers will often write lyrics in Multicultural London English (MLE) or Black British English (BBE) which, as above, is another feature of drill that requires prosecutors to seek expert information to avoid misinterpretations of drill's lyricism.

#### **D. Structure and Form**

While drill music differs in structure and form from artist to artist, the common elements lay bare the violence of what their lyrics represent, which is often social exclusion, and they hint at the social and political violence done to those who are represented in their music, the Black British community. By combining the spoken word in the public space with craft and commercial spirit, rap music is an intellectual, socio-cultural and political statement (Fatsis 2019). These common elements of its structure and form show that drill is a source of hope which addresses issues of criminalisation of Black British Music, rather than it being evidence of criminality itself.

#### **E. Community and expression**

##### **1. Community**

Prosecutors should be informed that drill music is a way of socialising or forming a community based on an art form.

*'Over the past 13 years, hundreds of youth clubs have closed across the UK, spending per child in state education has fallen, mental health services have been dismantled' (Thapar 2023).*

The youth have been left behind, living in fractured communities. Drill music offers this sense of community: a form of 'creative escapism from the violence that surrounds young people. It is a reflection of their reality. Not something to be censored' (The Children's Society 2021). Ilan also suggests that censoring drill does more harm than good, 'further alienating marginalised communities and ultimately exacerbating the conditions which lead to urban violence in the first place' (Davis BBC 2021).

Drill music helps young individuals, especially young Black males who are stigmatised in society, find community and belonging. It plays a wider social function of cohesion in a community where young Black males are often left behind and is not solely an indication of crime or aggression. Prosecutors should be made aware of this, especially in today's divided society.

## **2. Expression**

Prosecutors should also be provided with the information that Drill music is a way of expressing emotion and built-up anxieties about harsh realities. Black culture has often been seen as incompatible with mainstream norms and values, often constructing 'the black presence' as a 'threat' to the 'homogenous, white, national 'we' (Fatsis 2019).

*The pathologisation of Black British culture and the framing of its musical exports as 'symbols of trouble' (Cohen, 1988) becomes "even more eerily interesting in its capacity to alchemise culture into crime by eventually merging the two together through 'dangerous associations' (Williams and Clarke, 2016) between 'blackness' and 'criminality'(Gilroy)" (Fatsis 2019).*

Drill music is effectively criminalised, when, in reality, it is a way to express emotion and views, with the studio being a place for the 'purification of the spirit' and the 'storytelling of a voiceless cohort' (Thapar 2023). Comparing it to the amphitheatre in ancient Athens where people would go to watch tragedies, Thapar explains that 'stories told in art can serve a moral, social and even medicinal function' (Thapar 2023).

Rap, including drill, can be used as a way of expressing and engaging with societal issues. For example, after winning British Album of the Year and British Male Solo Artist at the Brit Awards 2018, Stormzy rapped: 'Yo, Theresa May, where's that money for Grenfell? What, you thought we just forgot about Grenfell? You criminals and you got the cheek to call us savages, you should do some jail time, you should pay some damages' (Guardian News 2018). Music like this converts harsh realities into relatable art for individuals to listen to. It provides an outlet for discussion of topics or issue affecting stigmatised groups in society.

Therefore, by bringing drill music into the courtroom, prosecutors are not only contributing to the demonisation of Black culture (by making stereotypical claims that the music proves gang association or criminality), but they are criminalising a form of public speech. Prosecutors should be made aware that drill music is a culture rooted in some parts of the country, and to label it as gang involvement seriously misunderstands the art form's history and development.

### **F. Violence as a commodity in the economy of authenticity**

In 2021, the BBC described drill as "the sound of the global youth" and it has proven to be a genre that garners a huge popular following amongst young listeners of all ethnic backgrounds. For example, internationally known artist Central Cee achieved over one billion Spotify streams in a single year, with his album reaching the US Billboard top ten. It is therefore unsurprising that several academics have argued that a career in drill can be a lucrative one: Fatsis (2023) observes that drill rappers consciously mobilise stereotypes of violence, gangsterism and 'ghetto life' as a desirable commodity, consumed online by audiences whose clicks, views, likes and shares can translate into material rewards (Stuart, 2020). In fact, a central impetus for drill artists is the aspiration to achieve success as a means of escaping poverty, often expressed as

“making it out of the hood.” Young and Hulley (2024) note that young people locked out of the illegal drug economy turn to the ‘attention economy’, hoping to transform videos littered with boasts about criminal activity and violence into lucrative record deals (Stuart, 2020). Thus, despite its violent nature, the financial gains derived from drill can, ironically, make it an attractive alternative to participation in the criminal exploits that many rap about, allowing those from neglected sections of society to seek change (Owusu-Bempah, 2022).

Notably, the prospect of commercial success and financial reward shapes much of the content of mainstream rap music, including the continuing prominence of violent themes (Stuart, 2020). Prosecutors must not neglect the fact that drill rappers are highly attuned to the commercial considerations that shape their work, and thus intentionally deploy hyperbolised, ‘confession-like’ admissions of violence and crime which are known to be marketable and are expected features of drill as a form of fictionalised artistic expression, whose relationship to literal truth is often abstract and rhetorical.

The prosecution should situate musical expression within the broader linguistic traditions of rap. As Stoia et al. explain, ‘boasts about one’s strength coupled with metaphorical threats against one’s enemies have been a defining feature of rap lyrics since the genre’s inception’ (2018) and, therefore, is not a new, frightening phenomenon that prosecutors have framed it to be. Rather, UK drill draws heavily on earlier ‘gangsta rap’ traditions, in which artists adopt a ‘badman’ persona and typically speak in the first person about criminal exploits involving violence, drug dealing, and gangs (Quinn, 2005). Whilst such references are often performative, success within the genre requires the appearance of authenticity (Ilan, 2020), an appearance that prosecutors appear to take at face value, as much as, or perhaps more than, the young listener. Drill artist Loski, who has signed to Sony Music and amassed nearly fifty million views on YouTube, illustrates this paradox during his trial for a weapons offence, where he explained:

*“I have to sound as real as possible otherwise you don’t get far. It’s all about YouTube views. If you say something, everyone talks about you and you get more views. Rap doesn’t always have to make sense, it must rhyme. I don’t look scary so I have to say something that looks more than I am” (Taylor, 2020).”*

The case of *R v O* [2010] further illustrates the failure of prosecutors to consider the economy of authenticity. In this instance, they relied on a YouTube video in which O appeared ‘rapping with many others and using words which were said to relate to guns and gangs.’ Not only was there nothing in the judgment to indicate that the video had any connection to the specific circumstances of the offences charged, but the Court of Appeal paid little mind to O’s explanation that the video was an attempt to ‘*gain attention in the commercial music market*’ and that “*references to guns and violence were metaphorical*”, supporting Stoia et al’s observation discussed above.

These two testimonies demonstrate that when defendants write or perform drill music, references to violence are frequently deliberately exaggerated, and in some

cases entirely fabricated, to satisfy the commercial and aesthetic expectations of the genre. As Young and Hulley (2024) note, even before a defendant reaches court, the ability of police officers to distinguish between rap content intended to incite real-world violence and content that artistically dramatises life 'on road' for entertainment or economic reward remains questionable. In 2018, Metropolitan Police Commissioner Cressida Dick opined that drill music was all "[. . .] *about glamorising serious violence: murder, stabbings.*" This statement is symptomatic of a broader prosecutorial failure to acknowledge that the braggadocio present in drill operates as a deliberate aesthetic convention rather than a literal claim to violence. As Hancock (2018) observes, drill functions as a defiant musical artform that broadcasts the pressures of inner-city life, or 'ends', reflecting the mundane pain experienced by young urban communities living with poverty and social exclusion. For many artists, participation in the genre therefore represents a perceived route out of the very conditions it depicts.

Prosecutors must treat drill with the same interpretive caution afforded other genres, recognising that its hyperbolised violence is performative rather than confessional - a product of commercial necessity within an economy of authenticity.

By weaponising Black musical expression as evidence while granting other genres artistic license, the system perpetuates a racialised double standard. Drill demands engagement as art shaped by economic survival, not dismissal as criminal confession.

### **Conclusion**

Creative expression, and drill music in particular, should not be used as an easy route to conviction. We hope that you will take our recommendations into account and make meaningful change with this consultation, as it could save the lives of many young people who are roped into prosecutions based on stereotypes.

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