HOUSE OF COMMONS

Home Affairs Committee

Oral evidence: Investigation and prosecution of rape, HC 193

Wednesday 7 July 2021

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Watch the meeting

Members present: Yvette Cooper (Chair); Ms Diane Abbott; Simon Fell; Adam Holloway; Dame Diana Johnson; Tim Loughton.

Questions 44 - 80

Witnesses

I: Dr Olivia Smith, Senior Lecturer in Criminology and Social Policy, Loughborough University; Professor Betsy Stanko OBE, Academic Lead, Project Bluestone; and Professor Cheryl Thomas QC, Professor of Judicial Studies, Faculty of Laws, UCL.

Written evidence from witnesses:

Professor Stanko (and others) INV0002

Examination of witnesses

Witnesses: Dr Olivia Smith, Professor Betsy Stanko OBE and Professor Cheryl Thomas QC.

Q44 **Chair:** Welcome to this evidence session of the Home Affairs Committee. We are taking evidence this morning as part of our overarching inquiry into violence against women and girls, and particularly our focus on the investigation and prosecution of rape.

We welcome our panel this morning. We have with us Dr Olivia Smith from Loughborough University, Professor Betsy Stanko, who is working on Project Bluestone, and Professor Thomas from UCL. Thank you very much. We are very grateful to you for joining us this morning.

We want to ask a series of questions on some of the research and the projects that you have been working on, on the investigation and prosecution of rape, but we want to also start with some wider, more general questions, beginning with Tim Loughton.

Tim Loughton: Good morning to our panellists. Can I ask each of you in turn to set out your response and description of the Government's end-to-end rape review, whether you think it is ambitious enough or what is missing that could be there? Dr Smith, shall I come to you first?

Dr Smith: Thank you, yes. I would reflect the evidence that you have heard as a Committee already. In that I think there are some very good words and it is good recognition of the problem, but very little translates that into action and meaningful change. That is something that we have had as a problem in this area, where there can be a lot of very good policy and good promises on paper, but it is turning that into real practice that is the problem.

Q45 **Tim Loughton:** It is fine as far as it goes on paper, but you are not convinced about where it goes then in action—is that what you are saying?

Dr Smith: I think it is positive where it is on paper. I think there is a lack of recognition of some of the inequalities in terms of minoritized survivors. That could have gone further. It could also have been a bit more ambitious in identifying some of the underlying causes of the problems but, largely speaking, on paper it is relatively good. It is just that the policy implications are not meaningful because there is not a lot that is actually going to make them action. There is not a lot of accountability, transparency, and clear ambitious attempts to change.

Q46 **Tim Loughton:** You want to see more accountability and transparency. It is all very well for individual constabularies to say, "Yes, that is fine," but how do we make sure they are taking it seriously, implementing it and then being scrutinised to deliver the results that we need at the end of it?

Dr Smith: Absolutely, yes.

Q47 **Tim Loughton:** Professor Stanko, you were nodding. Do you agree with that, or do you think it is over-ambitious?

Professor Stanko: We absolutely must be over-ambitious in this area because we have been under-ambitious since now. Accountability and transparency have to come with good information and the sharing of that information in the public domain. That has not happened. We knew that this problem had been accumulating over time. It has reached an appalling level of outcomes right now. So, in some ways, yes, the end-to-end review is welcome. It is not funded properly. It also does not recognise the impact of austerity on the justice system and the dismantling, in many ways, of some of the specialist services that did appear in policing 10 and 15 years ago, so we are in many ways having to start over again.

The other problem for me is that it fails to diagnose how to translate very differently the outcomes that are needed. That is really what Bluestone is doing, so I'll talk about that later. But I do think that, without a clear recognition of the diagnosis of the problem, it is hard to fix it.

Q48 **Tim Loughton:** You seem to be saying that it is the route map that is missing.

Professor Stanko: Both the route map and a new way of working. It requires a very new way of working, and again I will get into that a bit later. I think it underestimates the mountain that we have to climb.

Q49 **Tim Loughton:** I think we are going to come back to Bluestone, but do you acknowledge that, as some people have said, there is a fundamental shift in mindset that is represented here where the focus is going to be more on the perpetrator rather than an implied suspicion towards the victim? It would be significant if that is going to be the approach. Are you convinced that that really is a transformation, or is it again just some warm words?

Professor Stanko: No, I am convinced that it is transformation. It is important to understand why the rapist rapes.

Q50 **Tim Loughton:** Thank you. Professor Thomas.

Professor Thomas: Thank you for inviting me to give evidence today. In relation to the rape review, I would say—I am sure this is something that everyone here knows—that this is a difficult and complex issue. The research that I do is focused primarily on what happens in court and, in terms of what is in the rape review, from my perspective there is a lack of robust, empirical evidence that underpins the material in the rape review about what happens in court.

I can go into much more detail about this with you subsequently, but I will just raise two things. One is the offence of rape. There is no discussion in the rape review that, in fact, we do not have a single offence of rape in this country. We have at a minimum 10 different

offences, and it rises to almost 26. There is no discussion in the rape review. I am finding it very difficult to understand which particular offences the rape review is addressed to. It says it is concerned with adult rape, but none of the underpinning empirical data makes clear what the source of this data is. Is it only in relation to the very specific offences of rape of females, 16 or over, that is contemporary, not historic? There is just a lack of detail there.

The other issue is that I was quite disappointed that there wasn't the opportunity taken to address the continuing lack of clarity and confusion over the issue of conviction rates in rape. In this jurisdiction, at present we have four different approaches to how rape conviction rates are calculated. It was over 10 years ago when Baroness Vivien Stern did her independent review of the prosecution of rape, in which she made it very clear that there needed to be work between the Home Office, the Ministry of Justice and the National Statistician to clarify how conviction rates are calculated. She also pointed out—well, I will go into detail subsequently with you if you are interested in exploring the four different ways of calculating rape conviction rates.

Q51 **Tim Loughton:** I think that might come up later. You have mentioned the court processes, and I think the point you made well just then is that we need to have a much clearer, single song sheet about what we are actually talking about, and the agencies should be working together to try to prevent, prosecute and then make sure they get the convictions.

We heard what I thought was some pretty alarming evidence recently, where police are saying to rape survivors as they go through their experience, "Well, it probably won't get anywhere in court and it's going to take a long time and you're going to be exposed," effectively deterring them from proceeding with a rape case so that it never gets anywhere near the CPS or into court in any case, which clearly is a problem, if that is the case, way before we then talk about how the CPS picks it up, whether it does go to court and how it is prosecuted in court. Do you share those experiences that that is part of the problem way upstream in some of these cases?

Professor Thomas: Perhaps Professor Stanko and Dr Smith would be better placed to speak about the police approach to complainants. I would say that it is certainly not helpful if complainants do not have a clear understanding, first, of the court process and, secondly, for instance, if their case does go to a jury what the actual conviction rate in rape is when a case goes to a jury. Unfortunately, in public discourse, the figure of a 6% conviction rate is what is bandied around, when in fact the jury conviction rate in rape is over 50%, depending upon which offence we are talking about. It is at least 58% if not 65%.

Something like that is very helpful information for a complainant to know, that there is a greater chance that the jury will convict than they will acquit. Something like a 6% conviction rate is not very helpful. Perhaps the police are not aware of that as well, so that may—

Q52 **Tim Loughton:** Of course, that is not widely publicised so, once you get it to court, there is a much better chance, but it is all the processes getting there that are at fault. Before handing over, there is one comment you made about historic and contemporary rape cases, and we do have a bit of a backlog in the courts as well.

What is your brief view on the impact of the historic sexual abuse cases which have come out post-Savile? These are all sexual abuses. How much has that helped the current situation, with people acknowledging that they have been sexually abused and then being emboldened to come forward and wanting to see something done about it? Despite all these cases now coming through historically, as you say, the number of cases getting to court—let alone then being successfully prosecuted—is still woefully low.

Professor Thomas: Again, my research is not related to the views of complainants and how they may be influenced by cases like the Savile case. My research concerns in part the views of members of juries, and I would say that it is probably not surprising that, post-Savile and many other high-profile prosecutions of historic rape and sexual offences cases, we find that the majority of jurors do not hold what would be considered myths and stereotypes about rapes and sexual offences. I think there is a much greater understanding in the general public of the nature of sexual offending.

Q53 **Ms Abbott:** I think we are all aware of public concern about the fact that the number of prosecutions for rape seem to have declined so significantly in the last five years. Some people have gone as far as saying it is as if rape is being decriminalised. I want to ask each of our witnesses in turn: in your opinion, why has the number of prosecutions for rape declined so significantly in the last five years?

Professor Thomas: I would like to start by briefly explaining to the Committee what the nature of my research is on this. I have been doing research with and about juries for almost 20 years. I only do research with actual juries at court. One thing I do is I see them post-verdict to explore their views and attitudes on things. The second thing is I carry out a very detailed analysis of all charges, pleas and outcomes in the Crown Court. That is now over a 13-year period.

In relation to your particular question about the decline in charging that has occurred since 2016, I have just recently completed this 13-year analysis of all charging in the Crown Court. This was conducted for the judiciary, and I can tell you that it is not an unprecedented fall in rape charging from 2016. It is a significant drop, but there was a larger fall in rape charging from 2007 to 2008. The charging rate has fluctuated quite significantly, both up and down, over that 13-year period. There is no clear indication of what the reasons are for that.

The other thing I would like to point out is this is not unique to rape charging. The fluctuations in charging over this 13-year period are

mirrored not just in all other sexual offences, but in all offences, so that dramatic fall that we are seeing in rape changing from 2016 is mirrored in all other offences.

Q54 **Ms Abbott:** I am sure that is true, Professor Thomas, but we are here taking evidence on rape. Do you have a view on why the number of prosecutions for rape has declined so significantly in the last five years?

Professor Thomas: As I said, that is really not the focus of my research. My research is to look at what actually happens to cases when they get to court. Our other two witnesses may have much more to say about that in terms of police decision making and prosecution decision making about whether to actually bring those charges.

Q55 **Ms Abbott:** You do not have a view. Can I move on now to Professor Stanko?

Professor Stanko: Yes, I do have a view: 86% of the outcome of rape allegations are determined by police and police decision making. That is a huge, huge influence on what gets transferred to CPS for decision. That is the first step: do the police transfer a case and actually ask for charges? If it is 86% of the cases, and we know that from the evidence, that means that the police largely determine which cases go forward and which do not. That does rest on evidence, but it also rests on a number of things.

The other thing is that 52% of the cases that we studied in Avon and Somerset were dropped by the victims themselves. They somehow disengaged with the process. What we need to know is there is a huge drop in prosecution, yes. I think there was more ambition a number of years ago and, again, we need to take a look at the evidence.

There were more cases being accepted for prosecution before. That has lessened. I think, from the evidence that we gathered in Avon and Somerset, officers feel discouraged. They feel that if they send something forward and it doesn't get charged, it does have a knock-on effect on their decision making earlier on, so maybe they send fewer cases forward. That is another impact as well.

The big explanation is victims themselves withdraw. Whatever they experience in the initial reporting means that they cannot engage with justice. The second is the way in which the interface between the police and the prosecution works or doesn't.

Q56 **Ms Abbott:** You are saying it has a lot to do with the decisions that the police make?

Professor Stanko: It has to do with the decisions and the evidence gathered—the quality of the investigation. If the initial investigation focuses first on what the victim did and the evidence that the victim is putting forward, like in her phone or whatever, and the victim says, "I don't want to be the person under investigation. They're not believing

what I say," and if that is one of the major reasons for disengagement, then it happens and victims themselves withdraw.

The knock-on effect is: what do the police think about that? When you were just saying that a police officer might advise a victim not to go forward because the whole system was going to bring her down, basically, that does happen. Sometimes cases fail because of the kindness of the officer worrying more about the mental health of the victim than the justice system itself. We need to think very differently about the way justice engages with victims, and about how it actually supports them procedurally and with justice as well.

Q57 **Ms Abbott:** What could the Government do about these issues? What concrete things could they do?

Professor Stanko: There is no information at this point about the benefits of specialist officers in terms of how much money they cost. One of the things I am finding, again and again, is that resources are undermining the way in which these cases are dealt with. They are complex. They are sensitive and what you need is an officer with enough time to be able to take a look at what that is.

If an officer is holding a caseload of 60, there is no way they can investigate properly, frankly, in my view. The majority of these cases involve offenders and victims who know each other. Those are hard cases in terms of getting evidence, gathering evidence, and presenting it in a way that is viewed in justice as the kind of serious crime that it has to be, because rape is a very serious crime.

There are many obstacles in terms of what austerity has done to the justice system: the availability of the kind of support that victims get, both immediately and through the whole process; and the lack of ISVAs. If you have victims withdrawing because they feel pressure from the offender—who, by the way, they largely know—who is protecting them?

There are lots of issues that are under the radar that many of the feminist groups and rape crisis centres have been saying for years. You do not necessarily have to pass a law, but you do have to enable the support and services that allow victims to sustain the energy to stay in a prosecution.

Q58 **Ms Abbott:** Are you saying this is, largely if not entirely, a resources question?

Professor Stanko: I don't think it is entirely, no. Oh, no, I found that from Bluestone. When we started talking about what we had actually found, it requires a different way of working. That different way of working means that there has to be a real culture change and a transition into taking, at least in my view, policing into the 22nd century as opposed to the 19th century where they began.

Ms Abbott: But do you think it is a resources question at all? That is

what I was trying to reflect.

Professor Stanko: Yes, it is absolutely a resources question. What has happened in the last 10 years with the austerity for policing is they have actually lost many of their specialist services. We don't have rape units much anymore and we used to have them.

Q59 **Ms Abbott:** Thank you very much. Finally, Professor Smith.

Dr Smith: I like that you have given me a promotion, but I am just a doctor.

I think it is important that we go back a second and think about the point that has been made about conviction rates. It is important that we don't start getting bogged down in semantics. When we are talking about conviction rates, what the public and what survivors want to know is, "If I go to the police, how likely am I to get certain outcomes?"

Yes, we can talk about the definitions and how many are charged versus how many get convictions, but what people actually want to know is: where is this going to end? What we can see is that the evidence is that it is largely going to end in a police "no further action" or with the victim themselves withdrawing or something. We need to keep a perspective if that is what we are looking at. Yes, it is important to be clear about definitions but that is also the problem here.

It is also not enough to just say it is not the worst fall in prosecution rates we have ever seen. It is bad. No one is arguing that this is good and the Government, quite rightly, have apologised, so I think it is important that we don't start saying, "Well, it has been worse."

It is also important to recognise that in the end-to-end rape review, the analysis suggests that some of the fall in prosecutions has been specific to those cases where there is more digital evidence. For example, the significant drop in charging after the Liam Allan case was not matched in child offences or in less serious sexual offences where there is less likely to be digital evidence. The analysis team suggested that there is something around digital evidence being used since then that has led to some of the causes.

In the judicial review in January around rape prosecutions, the judge in that case, while saying that the CPS was within its legal remit to do so, also recognised in that finding that there had potentially been a change of policy. It is just that that change of policy was okay legally within its remit.

I think we can accept that there have been changes. There has been a drop. That drop is not acceptable. It is more about having a balanced view about what we do going forward rather than trying to be defensive and saying that there is no problem. That is what I think is good about the end-to-end review; it does recognise there is a problem. It is now just about trying to be a little bit more ambitious going forward.

Q60 **Ms Abbott:** Dr Smith, when you talked about the change in policy, what exactly is the change in policy that you are referring to?

Dr Smith: This is where I don't want to say something—it is very technical in terms of its legalities, so I just want to say that it is best to check the end-to-end rape review, which was conducted by the Centre for Women's Justice and the End Violence Against Women Coalition. There is a judicial review that was done. They argued that there had been a move away from the merits-based approach, which was about trying to be positive, and to look and not second guess what juries might or might not be thinking, as Professor Thomas can talk about. They said that there was maybe a move towards getting rid of the 350 weaker cases in order to improve conviction rates for juries.

That is why I think it is important not to get too focused on conviction rates. By saying, "We, the CPS, need to improve our own conviction rates; therefore, we should get rid of weaker cases," what has happened is that the overall prosecution rates have then dropped, which leads to more cases falling out of the system. Therefore, it is about having a whole-systems approach and a whole-systems understanding rather than trying to pin blame on any one aspect of the system.

Q61 **Ms Abbott:** Just so I am clear, the policy change that you are referring to is a conscious decision to throw out the weaker cases?

Dr Smith: That was the debate that was being had in court and the judge eventually did say—actually the CPS did not dispute any of the facts—that in 2016-17 there had been training by the director for legal services at the time from the CPS who went around the country and said, "If we were to get rid of 350 weaker cases we would be in a position where we could have a better conviction rate," so there was a move towards having higher scrutiny.

In the light of some of the problems with disclosure that were highlighted in at least four cases, and then in the wider review of disclosure that followed in 2018, that led to a much greater focus on increasing digital evidence and what would have led to this idea of digital strip searches as a kind of over-correction of some legitimate problems that were being had.

Q62 **Chair:** Thank you. I have a quick follow-up question. Professor Thomas, I think you referred to some of the research that you have done looking back over time, for the judiciary I think you said. Is that research public?

Professor Thomas: It is not yet. It will be. It has been submitted to the judiciary for review, so I hope to be able to share some of that with the Committee fairly soon.

Chair: That would be brilliant. As and when you are able to, that would be wonderful. If there is likely to be any delay in publication, if there was any way you could ask permission to be able to send any relevant things to us in advance, that would be hugely welcome. Thank you very much.

Q63 **Adam Holloway:** First, I find that expression "digital strip searches" rather horrifying. I have not heard that before.

Anyway, to Professor Stanko: the Government's rape review emphasises the importance of taking a new approach to investigation, with more of a focus on the alleged perpetrator and less of a focus on the credibility of the victim. Do you have a view on why police investigations may not currently have an adequate focus on this?

Professor Stanko: Yes. What we found in Avon and Somerset was that the police start with the victim, with the allegation from the victim. They begin to collect evidence. They may be doing an ABE as well. Because 90% of victims and offenders know each other, in this digital world much of the evidence is contained in these kinds of things, our phones, so the victim is undergoing digital strip search, so to speak.

What we found in our review of the cases in Avon and Somerset is it took sometimes 100 days, maybe 200 days, to talk to the suspect. By then if the suspect was not willing to hand over any of his digital evidence you can note it in the file, but they basically needed to be asked, "The victim knows you. This is what happened. What is your side of the story?" I am afraid that they were not talking to the offenders, nor were they actually looking at whether the offenders were repeatedly named by different victims or even the same victim for the offence. So, what you have is quite a lot of evidence about the suspect contained in the police files and in police systems, which were not being used to find out, "Who is this suspect? Is it somebody who also deserves the kind of credibility examination that we might be asking about the victim?"

What we are saying is, "Put that further forward in the inquiry, and ask the suspect, 'What did you do? This is how she said that she met you.'" When you begin to see similar names starting to come up on Tinder—"I met him on Tinder"—and you get three different victims who are reporting, in a world where only one in five victims report anyway, when you get the same name coming up time and time again you would expect there might be a pattern.

In the context in which police are currently working—large constraints and omnicompetent investigators, no specialists, so they are investigating a rape alongside a burglary or alongside a fraud case—do we need specialist information to sensitively question victims? Yes, we do. We know that. We know that from victims' voices over the past four or five decades telling researchers what their lived experience is.

Q64 **Adam Holloway:** You would have thought it would be fairly easy and obvious for the police to flag names that come up a lot in the context of dating apps.

Professor Stanko: You would. I am not justifying it. What we are trying to do is to get the police to refocus in their world of busyness and to say, "Okay, let's just settle here. This a really good way of approaching this. Your own evidence tells us that, surprisingly, 60% of the offenders have

previous offending histories and a quarter of them previous sexual offending histories." That would lead me, even as a member of the public, to ask questions about why that is not taken into consideration.

Q65 **Adam Holloway:** One of the other things you said earlier, which quite startled me, was how victims withdraw because of kindly intended police officers. I wonder whether the opposite could happen. Obviously, it is important that prosecutions happen but it is also important that convictions are sound and just. Would there be, at the other end of the spectrum for police officers, a temptation perhaps occasionally if they feel pressurised to get stuff to prosecution to—how shall I put it?—give the most compelling information possible to the CPS in order to secure a trial; therefore, perhaps increasing the risk of injustice?

Professor Stanko: We always have to be concerned about the risk of injustice. My experience and research tells me, in our long history of trying to interrogate what the data say, that the proportion of false complaints is extremely low. If they are 3% to 7%, yes, absolutely, interrogate that evidence. However, please do not just hand a file and the CPS say, "Let's prosecute this person." A lot of it gets knocked back. A lot of the cases that police put forward are knocked back.

The other thing that is important to think about is that the legal narrative we need to use is not just about consent in rape cases; it is about grooming, exploitation, control and coercion, and sexual exploitation. Those things happen to adults, too; they do not just happen to children. What we have learnt from the institutional sexual abuse cases and the child sexual abuse cases is that that thinking has not been taken and applied to adults. Therefore, it is increasing the imagination of a police officer, the creative investigative mindset, to a rape situation to understand, "This is actually what happened. This is grooming. This is exploitation." Those narratives need to be taken into the Crown Prosecution System and used.

Test in a court of law, absolutely. We are not saying go outside the justice system. We are saying make the justice system responsive to what is happening in today's world.

Adam Holloway: Lovely, thank you very much.

Q66 **Dame Diana Johnson:** I want to ask some questions on an issue that has already been referred to around disclosure and privacy.

Dr Smith, you have already spoken about the impact this can have, as I think other witnesses have as well. Could you say something about what the specific impact is on survivors and victims of having to engage with their digital devices and give them to the police? Could you say something as well about the concerns that have been raised about Chapter 3 of the Police, Crime, Sentencing and Courts Bill and whether you think that is the best way forward? That will be really helpful, thank you.

Dr Smith: Absolutely. There is a lot I could say. I am aware of time so I will try to be brief. I can always follow up with written evidence.

When we are talking about disclosure, to be really clear, legally speaking there are different things. When we are talking about disclosure we are talking about both the access of the police and the CPS to digital evidence, to sensitive third-party evidence, and the disclosure to the defence of unused material, which includes those things. Often in this debate we are conflating disclosure with access. I understand we need to talk about both but that is to clarify.

The impact appears to be—we have lots of relatively small-scale studies that are telling us about this—that this evidence can be really relevant but is often used at the moment in a way where it is not relevant. I did some interviews with police and the CPS, as well as survivors themselves. What I found was that the police were really frustrated they were being asked to gather everything—"You are going to download the whole phone. You are going to look at texts. You are going to look at media searches. You are going to look at video. You are going to look at what pictures they have; have they got any intimate pictures?"—even if it is nothing related to the case, as well as medical records, school records and those kinds of thing.

That goes against the current guidance. The current guidance already says it should be relevant and proportionate, it should be strictly necessary. The problem is making sure that is interpreted correctly. The problem is not that we allow or recommend there is, as I said, a digital strip search—I understand that is a contested term—the problem is that the guidance is not being followed.

We have new digital processing notices that are about making sure complainants understand what is going to happen if they hand their phone over. However, the reality in my research is that the police thought they were explaining it well, but the survivors had no idea what they were handing over and what was going to happen. When we say, "We just need to consent," which is what is happening in the policing Bill—chapter 3 says it is about voluntarily providing the phone—technically speaking that is what is happening now. However, in reality, it is not voluntary because there feels to be no alternative and it feels like there is no choice, because otherwise your case will be dropped—that is how it is said—and people do not really understand or even remember signing their consent.

Therefore, this idea of, "It is about providing it voluntarily," is not a safeguard, it is just stating the basics that should be done. What I think the Bill needs to do is to use this opportunity to make sure there are safeguards, and to ensure that voluntariness is freely given and is truly informed. For me, that requires independent and free legal advice. I think the review does recognise there is a need for that, but there is a question of how it is going to happen.

We can look internationally. We are falling behind most countries on this. Most other adversarial countries in particular do provide some form of legal support around privacy rights, so we need to look elsewhere to see what works in those countries. That is what my report, which I have provided to the Committee, did.

There was another part of the question, wasn't there, sorry?

Q67 **Dame Diana Johnson:** It was really asking you—I think you have covered it—about the impact on victims and survivors, and what the Bill was going to deliver.

You have moved on there to talk about the need for independent legal advice and for someone to be on the side, I guess, of the complainant so that they fully understand and acknowledge what is being asked of them. I want to ask you about the Sexual Violence Complainants' Advocate. We heard about the scheme in previous sessions. The Victims' Commissioner, Dame Vera Baird, told us she was deeply disappointed that in the rape review there had not been national rollout of the pilot that had been taking place in the area where she was the police and crime commissioner at that time.

I wondered if you could say something about whether you think that is a sensible way forward—to roll that out nationally—or whether there are other options we could look at in terms of how to ensure victims and survivors feel fully involved and understand what is being asked of them.

Dr Smith: I was very surprised that it was not rolled out. The evaluation demonstrated there was a remarkable amount of cultural change. I cannot think of many policy changes that felt very simple that had that level of cultural change. Everybody agreed there was a change around thinking about relevance. All participants agreed there was no impact on the defendant's right to a fair trial, which is really important, and there was largely greater efficiency. When we are talking about resources that is an important factor because people were not going through and dealing with irrelevant issues.

There was also survivor satisfaction. They felt that there was somebody on their side and it was important that it was a legally qualified person. ISVAs, who I am sure you will have heard about, are absolutely essential but they are not legally qualified and covered by legal privilege. They are not the right people to be providing legal support and advice; they should be doing their own important, separate, job. The CPS, also, should not be the ones doing this. They should not know all the privacy data the survivor might have. They should be focused on the balance of fair trial rights of the defendant. Giving over space to a complainant's lawyer allows the CPS to focus much more on balancing those rights more effectively than if we are saying, "You must also consider the complainant's privacy rights and you are the only person doing it," which is too much pressure.

Like I said, I did a review of adversarial countries—other jurisdictions. There were only three, other than England and Wales, which do not offer support for some form of privacy rights. Those were New Zealand, which has much stricter rules on the evidence as well as specialist courts; South Africa, which also has specialist courts; and South Sudan, which is a developing criminal justice system. Therefore, England and Wales are falling behind the rest of the world in terms of their best practice by not providing this.

My estimate, if we rolled out compared to the pilot, of the annual cost was £4.2 million for the scheme. That makes a lot of savings. The estimated cost of the emotional and wellbeing responses is about £9.8 billion per year according to the Home Office, although that is 2015 figures. We are talking about £9.8 billion in lost income, in health outcomes and those sorts of things. International evidence shows us that legal advocacy can help with those outcomes. Therefore, we can make savings in that huge spending that is happening, provide better due process and ensure that the CPS is freed up to balance the defendant's rights better for the cost of £4.2 million a year, which felt to me like a fairly obvious win. I was very surprised that it did not come out.

Q68 **Dame Diana Johnson:** Those figures are very stark. It seems to be an obvious win-win. Why do you think it was not included? Dame Vera Baird said she thought it might have been worth piloting in different types of police forces—inner city, rural, whatever—to get a range of evidence. Were you surprised it has just been dismissed or there is no record of it being in the report?

Dr Smith: Yes, I was surprised. I think there is a promise to explore how to give best support and legal advice, not legal support and advice, and that is an important distinction.

We can learn a lot from the previous case law in Scotland. There is also a pilot study in Northern Ireland at the moment, which started in April, so we can learn from them as well.

I understand the benefit of widening to maybe four or five other forces, just to understand the true rollout requirements. However, I was very surprised at this idea that we need to think about what format it is done in best because that evidence exists. There is an evidence base. Like I said, internationally this has been done for decades so it is not an unusual thing.

Dame Diana Johnson: Thank you.

Q69 **Simon Fell:** I would like to consider the role of myths and stereotypes. I am planning on directing these questions to you, Professor Thomas, but if either of our other panellists would like to come in, please indicate and I will bring you in.

Professor Thomas, first, I am interested in your opinion on the part myths and stereotypes play and how prevalent they are.

Professor Thomas: The rape review looked at the role of myths and stereotypes at different stages of the process. My research has focused on the role of myths and stereotypes in relation to juries so I am very happy to speak about that. I do think the rape review highlighted some interesting points about the role myths and stereotypes about rape and sexual offences may play with the police and with prosecution in their decision-making. However, that is not part of my research so I will just focus on the research I have done with juries.

The petition to Parliament in 2018, which called for training of all jurors in rape cases, received enough signatures that the Government had to provide a formal response, as I am sure you know. Part of the response was the commissioning of myself to do research with juries who had just deliberated and reached a verdict before they left court, exploring the extent to which they held commonly associated myths and stereotypes.

That research was commissioned in part because the petition to Parliament made allegations or statements that jurors are biased in rape cases against female complainants. Therefore, I explored with a very large number of actual juries, post-verdict, their views. What we found was, contrary to what was found in public opinion polls and research that had used volunteers to act as juries, in those people who had served on juries and deliberated to reach a verdict there were very low levels of belief in commonly held rape myths and stereotypes. For instance, the overwhelming majority of serving jurors do not believe that rape will leave marks and bruises on people, that a victim will always fight back, or that the way someone is dressed or their behaviour somehow contributes to rape, and there is not a very strong belief as well that people will always immediately report a rape allegation. We found the vast majority of jurors do not believe a lot of these factually based issues.

This is quite important. It relates to a question your colleague raised earlier about the impact of historical sexual offences cases. Jurors are members of the public. They are exposed to knowledge of what is going on in the criminal justice system. It is very interesting that there has been a strong view that juries must be biased against rape complainants, particularly female rape complainants, which is not borne out in the research.

Q70 **Simon Fell:** Thank you. I have picked up that Professor Stanko and Dr Smith want to come in.

Before I come to them, if I have read your research correctly you are saying about one out of every jury has some form of presumption around rape and sexual assault. I may have that wrong; please do correct me. You are nodding away.

Professor Thomas: What I am saying is what the research showed was that the small proportion of serving jurors who held factually incorrect views in relation to rape and sexual offences amounted to less than one

person on a jury. For instance, if 3% of over 1,000 jurors believed in a rape myth or stereotype, it is going to be less than one person on any one jury.

Q71 **Simon Fell:** My apologies. That was my poor reading of your excellent research.

On that point, a judge obviously has the ability to explain more around these issues to juries. When that happens, in your studies have you found that has impacted that less than one jury member and changed their views or are you seeing that figure holds out, whether the judge intervenes or not?

Professor Thomas: That is the second part of my research, which is currently ongoing. I think it is very important to point out that judges have the ability to direct juries in relation to rape myths and stereotypes. They have had this ability for a number of years. They receive training on this in serious sexual offences training, which they all undergo. The Crown Court Bench Book compendium provides sample directions for judges, depending upon the particular circumstances. Those directions to the jury cover a wide range of issues, from whether it is the way someone dressed or behaved, whether it is a question of a late report or delayed report, or whether it is about the level of emotion that is displayed when giving evidence. All of those are provided to juries by judges in their directions.

The one thing I did highlight in my research and report was that there were two particular issues where we found enough uncertainty on the part of jurors to suggest they may benefit from additional guidance. Whether you are more likely to be raped by a stranger than someone you knew; the majority of jurors believed, correctly, you were more likely to be raped by someone you knew, but there were enough jurors who were confused, or who said they were not sure, to indicate that better guidance might be helpful. Also, the issue of the level of emotion that will be displayed when giving evidence in court about a rape. Jurors were very split, almost equally split, about the extent to which they thought someone would necessarily be emotional when giving evidence about a rape compared to those who were uncertain and those who felt it was not necessarily the case. Those two issues do indicate that perhaps some additional guidance might be helpful.

Q72 **Simon Fell:** I have one last question on that particular piece. Do you have any comparative data across other offences? Is this level of presumption unique to rape and sexual offences or do you know if we are seeing it in other areas as well?

Professor Thomas: You mean the extent to which jurors may believe certain myths and stereotypes and that sort of thing?

Simon Fell: Yes.

Professor Thomas: The only comparative research I have done is in relation to race of the defendant. We have done a very extensive amount of research, going back to research that was commissioned post the Stephen Lawrence inquiry, to look at whether there was any direct or indirect discrimination in the jury system. We have looked at every single jury verdict in every court in the country over 13 years.

There is no significant difference in the jury conviction rate based on the race of the defendant. We have looked at the extent to which individual jurors may hold particular stereotypes in relation to defendants and their race. Again, there is no consistent pattern of discrimination that occurs there.

Both of those are probably very surprising to people, but certainly the very detailed analysis on jury verdicts confirms what jurors are saying to us post verdict.

Simon Fell: Thank you. Dr Smith, you wanted to come in?

Dr Smith: Thank you. I would like to reiterate that Professor Thomas's work is ground-breaking in terms of being able to speak to people who have been on a jury. It would be great to see that widened out to other researchers, which is really important.

There are a number of questions that her methodology raises, which I will submit in written evidence because it is too long here and I know you might have other questions.

The most important thing is to recognise that there is a difference between abstract and applied myths. What we can see in research—from Canada and New Zealand, a PhD study going on at the moment by Charlotte Herriott, my own research, Vanessa Munro's and Louise Ellison's—is when asked in a survey, "Do you believe in this?" or, "How accurate is this?" they would say, "It's not," or, "I'm not sure," but they would then, in conversation, still bring those things up. Therefore, there is something we need to do. Unfortunately, Cheryl was not allowed to talk to people about their verdicts—obviously not all of them were a sexual offence case—because of the laws here. That means we do not know what was happening in those courtrooms. We know people know not to say yes or no, but we do not know what is happening in that deliberation. I will send some research that unpacks that a little bit more.

It is important also to say it is not just about outcome. We want due process. We want a fair procedure. Regardless of whether or not it impacts on the jury, we do not want to be seeing rape myths brought up, which is something we do see. Significant amounts of relatively small-scale research is really consistent over time and place that rape myths are being brought up, as well as wider stereotypes such as racism, stuff around migration status, gender and sexuality. Even if those have no impact on the jury, they are not fair procedure and, therefore, we need to make sure they are addressed.

I will send everything in more detail.

Simon Fell: Thank you, we would greatly appreciate that. I see, Professor Thomas, you are jumping up and down in your chair. I will come back to you. Professor Stanko, you are indicating.

Professor Stanko: If I could come in here, it is important to know that what academics and researchers can offer justice is systematic tracking over the long term of outcomes and what happens. What we learnt under Covid was that it was absolutely important for the health service to understand symptoms as well as outcomes of good health with the information and ability to track when somebody was positively diagnosed whether they went to hospital, what race they were and what their occupation was.

We could have a flow—an end-to-end flow—of information in this country but we do not because you cannot actually link police data with CPS data, with court data, with outcome data, with prisons and with tracking back unless we know that a suspect has reoffended. It is possible to do this.

I have been working in this area for decades. One of the things we know about researchers is that we can be systematic about asking the kinds of questions you are asking us today. It is possible to have, moving forward, an understanding of outcomes based on the real experience of the people who report crime in England and Wales. We do not have that. That was not something the end-to-end review over two years could have delivered. We do not know the difference between who the victims are, because we do not have good victim work—we do not know who they are. The data are often incomplete and do not enable us to say whether or not people who are minoritised get a different service because we do not have complete data to tell us that. In a system where we want to have fair and respectful justice, you would think we would be able to tell that now in 2021. Tesco can tell you the difference in its customers, justice cannot. I think that is a real failing. It is a failing both in enabling researchers to have access to the information to provide to you, the legislators, whether or not there is fairness. We could provide that, but what we need—what we all need—is the information that will enable us to say that. That does exist, but it does not exist in the way that we can get access to it.

It is not that we want to expose bad practice. We want good practice. We want good policing. We want fair justice. At this point we should not be responding in a crisis to say, "My little piece of research that I got £10,000 to fund is telling me this." We are able to have systematic outcome information, but we do not. That is an important question, both about resource as well as the enabling of the justice system to know what it does for a living.

Q73 **Simon Fell:** On that point, what are the barriers to those particular parcels of data you need being shared?

Professor Stanko: I can tell you—as someone who is currently trying to work with researchers who are doing very complicated DPIs and DSAs, and every other letter you would like to have in terms of the access to the information—they are barriers in and of themselves. The funding potential to enable researchers to work on research projects means they have to be bought out of universities—their time has to be paid for. That is expensive. Their expertise can be applied to real-world problems but their expertise is often separated from the information that will enable them to do that.

Thank goodness for Acting Chief Constable Sarah Crew. She opened her doors to enable us to actually see what they were doing, how they were doing it and what the information said. We were using that information—not stuff we were making up but their own data—to act as a mirror to focus back and say, "Look, your information is telling us this. You're running a victim credibility unit rather than a suspect investigation unit. Your information is telling us that 50% of your ethnicity data is missing so we can't tell you whether black and minoritised victims are getting better or different service than anybody else. Your information is telling us that victims don't know what the process is." The fact that that door was open meant we were inside and able to say, in a calm and respectful way, "There is a way forward."

We are going to track outcomes now in Avon and Somerset. We are going to know whether what we have suggested to them is going to make a difference. I think it will. As we noted before, you do not even know how many of your suspects are repeat suspects because you do not have the analysts you need to have and, because you do not have the time, investigations are disrupted because you are suddenly dealing with a riot in the centre of town, having to investigate quickly who pushed a statue over versus the rape of some of the people who live in your town. We can do better on this. It is not necessarily law; it is about enabling us to better know, in a deep way, what is happening, why it is happening and how we can work differently.

Q74 **Simon Fell:** Thank you. I would like to go back to Professor Thomas but I wonder whether you might be able to supply for us, perhaps in writing, some detail around what data would be helpful—what is not being shared, what markers are not being recorded—and where there are gaps in the system that would benefit researchers like yourselves and benefit the system as a whole in terms of what is recorded and how it can improve outcomes, if you do not mind.

Professor Thomas, you looked like you wanted to come back on this point.

Professor Thomas: Yes, I would like to come back on the point Professor Stanko has raised, which is an absolutely crucial point about the inability to marry up the myriad datasets that may exist out there. There is also a wider issue about the personal resource to carry out that analysis. That is a really important point.

It goes back to the point I was making at the very beginning, which is that in relation to what happens at court we do have very robust data that does allow us to track things from every single individual charge in the Crown Court all the way through to outcome, with very detailed markers on that. That is in the Crown Court. I would add that is not necessarily the case in the magistrates court.

My point to the Committee—I am conscious of time and so on—is I think the Committee has an opportunity here in its inquiry to bring about clarity on some of the issues in relation to what happens at court. There are a lot of statistics that have been bandied around about charging rates, conviction rates and so on. There is an opportunity to bring clarity to this, which was not achieved in the rape review.

The use of misleading statistics on this issue does not help anyone in the criminal justice system. I do hope the Committee will take the opportunity to make sure the statistics that are used in describing what happens at court in relation to rape and sexual offences with women and girls is done in a robust way.

Simon Fell: Thank you.

Q75 **Chair:** Thank you. I have a few follow-up questions.

Professor Stanko, on Project Bluestone, what are you now expecting the Government to do in terms of rollout? Our understanding is that this is a small number of additional forces. Are you directly involved in those rollouts? Are they trying to replicate what you have been doing and so on? What is your understanding of the next steps on this?

Professor Stanko: I am absolutely involved in the next steps. There are four forces. We are going to replicate the methodology and use the five pillars to take a look at what is happening in those forces. That will enable us, at the same time, to feed back nationally, "Here is learning that we have." We are going to set up a national network that I can tell you already has had an uplift in many forces. We are mirroring in Avon and Somerset, where many other forces are also operating, so they have picked it up.

Q76 **Chair:** Obviously, that interactive, detailed partnership working is clearly valuable—hopefully other insights and so on will develop as you work with other forces in that intensive way as well—but presumably there are also things that you have already identified that, frankly, all forces could be getting on with now. Some of the things look like the sort of common-sense things that, to be honest, I certainly would have hoped the police were already doing in terms of investigations.

What would you say would be the key things that have come out of Project Bluestone already that all forces could now get on with doing?

Professor Stanko: One of the biggest wins is a recalibration of the relationship between ISVAs and the police service, to begin to think about how their relationship can facilitate better care and understanding of

victims. We have already produced a booklet of information for victims, which can be nationally rolled out. Thinking about the way in which forces harness their own information and thinking about repeat suspects, I can almost guarantee that after the feedback from Avon and Somerset, many forces went back, looked at their own information and went, "Uh-oh, we are not doing that either." I have seen that some forces have mapped the learning from Bluestone on to their way of working and are already picking up ways, because there is a real desire out there to do better.

One of the things we can harness is that the police themselves felt stymied about how to improve. All of the products we have from Bluestone are available nationally. We are going to set up—I hope we will get the funding because it is not funded yet—a national network to help bring rape investigators together. One of the other things we found, which was really key to this, is about reflective practice. Officers need to learn what they are doing, how they are doing it and why they need to improve.

Q77 **Chair:** On that, what is your assessment of the scale of the reduction in specialist rape investigators and rape teams within police forces?

Professor Stanko: I think it has been massive. I cannot quantify it at this point, but certainly even Bluestone, which was the leader in the 'noughties', has had to cut back because of austerity so it did not have specialisms in recent years. That has made a major difference. The Met is under pressure right now. How can you have a specialist with a caseload of 30 to 60 cases? What kind of specialisms are you offering, aside from exhaustion?

What the Bluestone work enabled me to do—this is 40 years of work both in the police as well as an academic—is basically to pause, stop and recalibrate, stop, do it differently. You can do that but the other part, which I mentioned to Diane Abbott, is that there is a serious resource issue. If we want good policing, frankly, we need to pay for it.

Q78 **Chair:** As the number of police officers increases—notwithstanding they are still obviously overstretched with other pressures and so on—should more forces be restoring specialist teams to do rape investigations?

Professor Stanko: The answer is yes, we recommend specialisms be reintroduced.

Q79 **Chair:** Thank you. Dr Smith, on the lack of rollout of the legal advice, do you have a sense of how much that would cost per police force and whether, therefore, this is something that is worth police forces themselves, or police and crime commissioners themselves, looking into and what the returns would be for them in doing this?

Dr Smith: Labour has taken up the call for this and published it. In its response to violence against women and girls, one of the annexes is my calculation of, in terms of reporting rates per force area, what that would

equate to in staffing costs. I have also worked out per case the expenses and advocacy rates, so you can calculate it. It is very easy to calculate.

Q80 **Chair:** If you send us that information as well, that will be brilliant.

The final question for all three of you—I am really looking for about a one-sentence answer—is: if you start from the Government's rape review, what would be the one additional thing you would like, either in terms of implementation of something that is in there, or something additional that is not in there? What would be top of your list? Appreciating you may have a zillion things, what would be the top thing on your list that would make a difference?

Professor Thomas: In one sentence, a clear and honest assessment of the current state of what happens at court in relation to prosecution and conviction in rape and sexual offences cases.

Dr Smith: I would want to see a move away from a focus on criminal justice outcomes and a look at sustainable funding for specialist, independent buy-in for services.

Professor Stanko: I agree with Dr Smith. I also would bring in her research and bring in independent legal advice. I am really confident the police are on their way, so let's bring in one more piece and let's do it.

Chair: Thank you very much, all our panellists today. We very much appreciate the evidence you have given us this morning. Thank you, as well, for the expert work you are all doing in this field. It is hugely appreciated. Thank you very much. That ends our evidence session today.