

Written evidence submitted by Dr Heather Flowe (INV0005)

About the author

1. **Dr Heather Flowe** is a Reader in the School of Psychology, at the University of Birmingham, where she is lead for the Gender Inequality theme at the Institute for Global Innovation, and Co-Director of the Centre for Crime Justice and Policing, Victims and Trauma. She studies memory in the legal system, with research centred on understanding episodic memory, particularly memory for criminal events, using both experimental and applied approaches. She investigates and advises on methods to improve the accuracy of rape complainant statements and testimony, collaborates with rape survivors to document and preserve memory evidence; and develops novel lineup procedures to increase the accuracy and reliability of eyewitness identification.
2. Her research, alongside collaborators, provides an evidence base that can improve the quality of rape and serious sexual offense investigations and prosecutions, using a victim-centred approach that supports survivors. It aims to counter the worrying trends in conviction rates.

Response overview

3. Per the Home Office's report ([for year ending March 2020](#)), 48% of sexual offences reported to the police are closed due to 'evidential difficulties'.
4. Conversely, given the nature of the crime, sexual offences have a much higher rate of suspects being identified than the norm (85%, compared to an average of 57% across all other offences).
5. The failure to convict, therefore, is not in being unable to identify a perpetrator, but in both a) providing the quality of evidence to support a conviction and b) helping the justice system to understand what makes for high-quality evidence. Investigations and prosecutions usually hinge on memory evidence, or the statements and testimony about the events in question given by complainants and suspects.
6. Therefore, at the heart of most sexual offence cases is memory evidence, and therein lies the problem. Memory evidence is, at best, poorly understood by our justice system. There is a wealth of scientific literature already available to support positive change.
7. In response to the terms laid out in this call for evidence, I argue that:
 - The justice system's current approach to memory evidence is a significant barrier to improving convictions rates of rape and sexual assaults. A full evidence-based review should be conducted into how statements and testimony are gathered and handled in rape and serious sexual offenses in the UK justice system, using the latest peer-reviewed science on memory.
 - We need to investigate and evaluate how memory testimony is taken, and responded to, by the police. The mishandling of interviews can undermine the quest for justice and contribute

the 48% 'evidential difficulties' outcome rate. Current procedures also tend to put survivors in a place where they feel blamed rather than believed.

- The early responses to a survivor of a rape or sexual assault are crucial. An evidence-based suite of training for medical, police, and legal practitioners who interact with survivors of abuse and violence would be helpful.
- A number of myths and misconceptions about rape and sexual assault continue to pervade both the courtroom and wider society. The updated CPS guidelines is a positive step towards helping prosecutors, but more can be done. Government should lead a public campaign to dispel the common myths and stereotypes often repeated in sexual assault and domestic violence criminal investigations and trials.
- Combatting rape and sexual assault is a particularly knotty problem. Government should establish an interdisciplinary taskforce on rape and sexual assault to ensure long-term oversight of reform.

Recommendations

8. **Conduct a full review of how statements and testimony of victims are gathered and handled in police interviews, investigations, and at trial, for rape and other sexual offenses.**
9. The first recommendation is to conduct a full evidence-based review of how memory evidence is handled in rape and other sexual offences in the UK justice system. This review should bring the justice system in line with the science of memory.
10. This review must include reference to the impact of alcohol, drugs and trauma on memory recall – namely that the science does *not* support them being used as legitimate reason to distrust the recollections of a victim or witness.
11. As per *R v Bree [2007]* (in which the Court of Appeal determined that if a victim had temporarily lost their ability to consent, because of the effects of drink and/or drugs, then they were not consenting), we need a similar step-change to remove misconceptions about intoxication on memory undermining justice for survivors.
12. This is something we hope will be incorporated into the next round of CPS guidelines (due in 2021), but it needs to be more widely reflected and supported across the UK Justice system.
13. This should in turn be used to inform a secondary review of the initial interview process for victims of rape or sexual assault (normally by police). Evidence-based interviewing practices are needed to maintain victim engagement, and ensure that complainants are consistently interviewed in the same manner across interview contexts (FME, police).
14. More clearly specified guidelines are required around how to question witnesses to allow them to achieve their best evidence, particularly for groups who may struggle to communicate their experiences clearly (people with disabilities, children, and those who do not speak English as a first language), and those who have been traumatised or have consumed intoxicants.

15. We know from people who have experienced the interview process that they often feel disbelieved, and pressured to remember even minute details of the incident itself – believing that failing to remember everything casts doubt on the accuracy of the memories they do report.
16. Complainants expressing that they do not remember or know the answer to a given question, which in fact shows honest memory reporting, is often used to undermine the whole of the complainant's testimony. In reality, it is the legal process of how witnesses are questioned that undermines the testimony. When people freely report their memories, [even if they were intoxicated during memory encoding](#), research has shown that they are more than 90% correct in the information they provide. When they are subject to focused and repeated questioning about details they do not know, accuracy drops.
17. This needs to be combatted by addressing certain myths about how memory actually works and what victim expressions of their certainty actually tells us, and adapting the investigative and other legal processes accordingly.
18. Furthermore, being treated with dignity and respect by the criminal justice system aids survivor engagement with the legal system and recovery.
19. This second review should also address the need for improved data collection to support future research and policy decisions (e.g. request for consent that anonymised interviews can be used for research and evaluating police interview practices). The better we understand the questions being asked in interviews, the better we can provide training to interviewers on avoiding bias.
20. **Enable a suite of training for practitioners who interact with survivors of abuse and violence**
21. The academic community have the expertise to support a suite of training on memory, statements, and testimony to aid prosecutors. The interaction between academia and justice exists already, but barely in terms of the evidence-base around memory. Support for a UK-wide programme would help prosecutors to access this information.
22. As with recommendation 3 (below, on myths and stereotypes), further suggestions are made that unconscious bias training within police forces is expanded to include common preconceptions about rape victims based on their sexual history, intoxication at the time of the attack, and what is deemed to be 'promiscuous' behaviour. None of these factors are reasons to doubt the witness' ability to remember details about their attacker – but anecdotal evidence from support organisations suggests that these are commonly used in interviews to cast doubt on testimony, which can lead to victims withdrawing their allegation.
23. Training for first responders is important and included in this are health professionals who are often at the frontline of supporting survivors. This should extend into volunteer support organisations (SARCs, etc). A review of the available guidance suggests serious inconsistencies in how people first discuss the incident with a victim. Standardised training

across these disparate groups could both better support victims *and* help with improving the quality of witness accounts.

Combat myths and stereotypes around rape and sexual assault

24. The CPS' [revised guidelines](#) contain good information to help prosecutors combat common myths about rape and sexual assault.
25. This extends beyond misconceptions about memory testimony.
26. These myths are pervasive and dangerous. [In a recent study into eyewitness testimony](#) we showed how exposure to news articles/media that prop up these myths can influence how people report detail about an incident. Participants who had previously read such an article on the inaccuracies of eyewitness memory were more likely to mediate the information given when they reported their memories about the incident.
27. Even within this call for evidence, there is an early reference to “whether there are sufficient safeguards for those who are accused of rape and sexual offences to ensure that they receive a fair trial.” This is unquestionably important, but also reflective of an imbalance in our approach. In 2019-20, police recorded 55,130 rapes in England and Wales, and many more sexual assaults. Of those *reported* rapes, only 1.4% were convicted. We must ensure a fair trial for the accused while acknowledging that a real-world conviction rate of less than 1% of sexual offences necessitates an overhaul of how we prosecute. Furthermore, by embracing the recommendations above and improving our approach to memory testimony in line with science, it would serve to improve the quality of all investigations – helping to protect those who are victim of a false accusation.
28. There are plenty of studies available that dispel the common myths and stereotypes often used by defence lawyers. To truly counteract them it needs a broader community campaign beyond the justice system, fronted by the UK Government, to tackle the deeply-held misconceptions about rape that are perpetuated in media and wider society.
29. **Create of an interdisciplinary, and multisectoral taskforce on rape, sexual assault, and domestic violence**
30. Creating a UK-wide taskforce is crucial, to cover the support for survivors and judicial response to rape and sexual assault, building on Scotland's “Taskforce for the improvement of services for adults and children who have experienced rape and sexual assault”.
31. This taskforce should be a long-term initiative that aims to improve both outcomes for survivors and prosecution rates. Input should come from the justice sector, policy makers, voluntary support networks, academia, and **crucially** survivors themselves. It is pleasing to see survivors invited to contribute to this consultation, but this must continue through the planning phase, the implementation of new policies, and into the evaluation of designed interventions.

32. Recommended questions for the Home Affairs Committee to put to Government

- Does this government agree that our justice system requires a step-change in how testimony of rape survivors is collected, handled and understood?
- Will this Government support a full review into the protocol for 'first responders' to victims of rape and other sexual assaults, including an evidence-based and survivor-centred review of the initial interview process?

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