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Written evidence submitted by *Dr Peter Hills*, on behalf of Bournemouth University, to the *Home Affairs Committee's* call for evidence into *Investigation and prosecution of rape*.

An interdisciplinary team of researchers (including, experimental cognitive, forensic, social, and cyber psychologists, law researchers, journalists, and creative technologists) from Bournemouth University have been extensively researching the impact of the criminal justice service's procedures on the reporting, investigating, trying, and sentencing of sexual assault. Our research speaks directly to the barriers of reporting of rape, and how the advice and guidance that is used to train and educate those involved in the charging and prosecution of rape impacts on whether a trial is fair and victims receive appropriate justice.

Executive Summary

- There is a great deal of misunderstanding about sexual assault held by people that influence their decisions.
- Current legal procedures are not suitable for trying rape.
- Various factors in police practice can influence the likelihood of a victim continuing through the legal process.
- Specialist jury training and judges would improve accurate convictions for rape.

Evidence

1. 83% of the 3.4 million acts of sexual violence (including rape) in England and Wales every year go unreported to the policeⁱ. Due to psychological distress caused by sexual assault, the US Centre for Disease Control estimate that the per-victim lifetime cost of rape is \$122,461. Nevertheless, only 3.4% of rape cases result in a convictionⁱⁱ. Victims of rape are frequently faced with secondary victimisation and mistrust from the criminal justice system (CJS), jurors, and the publicⁱⁱⁱ - unique to rape victims. Throughout the investigation and prosecution, victims of rape are forced relive and recall the traumatic events they have been through. At every step of the process, rape myths (commonly held erroneous attitudes that people hold surrounding rape, for example that if a woman accepts a drink from a man, she is expecting to have sex^{iv}), influence the decisions that are made by investigators, prosecutors, and jurors. There has been a decline of trust in the legitimacy of the CJS because of the existing attitudes (held by the public) that pervade the procedures and policies of the legal system affecting interactions with those reporting rape, deciding which cases to proceed, and how to try the case.
2. Individuals are driven to match what they perceive to be the social norms within society. However, we frequently make errors in these perceptions, typically overestimating the prevalence of negative behaviours and beliefs in our peers, whilst also underestimating the prevalence of positive behaviours and beliefs^v. These misperceptions both fuel and are fuelled by wider societal myths and misconceptions. These misperceptions have been documented in several behaviours and beliefs that relate to sexual violence, including overestimation of peer acceptance of rape myths; underestimation of peers'

discomfort with sexually degrading language and behaviours; and overestimation of peers' willingness to use force to obtain sex^{vi}. In keeping with social psychological theories such as pluralistic ignorance these misperceptions can lead to a situation where most individuals in a group incorrectly believe that the other group members are more judgemental of the victims of rape and sexual assault than is the reality. Such misperceptions have been found to be predictive of both the perpetration of sexual assault^{vii}, and hesitancy in bystander intervention when sexual assault is witnessed^{viii}. **Police officers, CPS lawyers, judges, and jurors will all experience conformity to social norms influencing their decision-making during rape investigation and prosecution.** These social norms can reinforce the victims' attitude not to report cases to the police, or for an officer not to proceed with an investigation, or for a lawyer not to take a case to court, or for a jury panel member to acquit the defendant. **Social norms are therefore a barrier to reporting and serve to limit the victims' access to justice. It has been demonstrated that challenging these misperceptions through media campaigns and other approaches can result in a reduction in sexual assault behaviours and negative attitudes^{ix}.** Unconscious bias training (as is commonplace in organisations) has not been found to be effective in reducing these biases.

3. Sexual assault and rape are typically committed by acquaintances^x. This does not match the generally held stereotype. Commonly, people conceptualise 'real rape' as involving an attack committed by a stranger, at night, violently, in a secluded area^{xi}. Whereas the evidence suggests, most attacks occur in the victim's own home and do not involve additional physical violence. Our own work indicates that many people hold this stereotypical belief about rape^{xii} and believe that acquaintance rape is not as serious as stranger rape^{xiii}. **Because the stereotype of rape does not match the usual rape experiences, many survivors do not report rape to the police** and may not identify with the term 'rape' nor identify as a rape victim preferring to use the phrase 'non-consensual sexual experiences^{xiv}'. This presents a challenge for the police to encourage reporting. Some of our research, undertaken with a local sexual assault charity, suggests **some of the barriers survivors face in reporting to police include shame and self-blame (e.g. if they were drunk); fear of and the length of time it takes cases to get to court; and experiences of criminal justice victim-blaming^{xv}.**
4. Our work^{xvi}, in which we used a mathematical model (using Fourier time-series analyses) to predict the impact of police campaigns/external events on the changes in the rate of reporting of rape, established that national media issues regarding rape (such as, the number of cases being dropped in 2016) caused a reduction in the reporting of rape to the police. This may be due to social norms leading victims to believe that their case would not be taken seriously. Indeed, **only two campaigns appear to have impacted positively on the reporting of rape. This work suggests that schools and colleges should publicise definitions of rape, consent, and sexual assault (e.g., any act which is not consented to, or in which the victim is unable to give consent e.g., as they are drunk) and clear guidelines for the reporting of sexual assault by the media need to be provided** (including limiting the amount that is reported). This could broaden awareness regarding what the process entails (e.g., victims may be able to request a female officer and do not have to attend a police station, or can provide evidence without supporting a prosecution) and highlight positive cases (offenders who may have struck again, relief of disclosing to someone) rather than focusing on the

negatives. **The aim would be to create a norm that sexual assault complaints of any kind will be believed, investigated, and properly tried.**

5. Since 2017, we have been researching **why rape cases fail during the police investigation phase**. Using one of the largest samples of rape investigations from two police forces, **we have identified several factors which appear to predict early case failure**. Survivors of rape who have had first contact with a uniformed response police officer are more likely to withdraw their allegation than survivors who had **first contact with a specially trained officer or detective**. The video interview - a crucial element of the police investigation – was also found to play an important role in attrition. Survivors who were not video interviewed within the first three months of making an allegation were significantly more likely to withdraw from the investigation. Survivors were also found to wait an average of 13 days before reporting the rape to the police. In these cases, the potential to secure forensic evidence was sadly lost. **We recommend campaigns to raise greater awareness of the need for early reporting and usage of SARCs (Sexual Assault Referral Centres). Furthermore, police forces should be mandated to secure a video interview with the survivor within 3 months of reporting the offence to retain their lasting support throughout the police investigation.**
6. The benefits of a 'Merit Based Approach', which bases Crown Prosecution Service case building on an objective reading of evidence are clear. As the End Violence Against Women Coalition identified despite *"rapes reported to the police have nearly tripled (up by 173%) between 2014 and 2018, the number of cases charged and sent to court is actually down by 44%."* Moreover, the 'Merits Based Approach', removes any potential for an individual prosecutor to allow their potential subjective preferences or biases, particularly in any rape myth, to prevent a prosecution from advancing. Consequentially, **the Crown Prosecution's decision to remove explicate references to the 'Merits Based Approach' within their prosecutorial instructions or educational materials is deeply problematic for conviction rates.**
7. Whilst in March 2021, the Court of Appeal in R (End Violence Against Women Coalition) v The Director Of Public Prosecution [2021] EWCA Civ 350 held that the Crown Prosecution Service's decision to remove the terms 'Merits Based Approach' from its materials was neither illegal nor irrational under existing legislative framework contained within Section 1 of the Prosecution of Offences Act 1985, this does not mean that the Crown Prosecution Service's current approach is preferable. Rather, it simply means that a "reasonable decision maker" could have educated and instructed prosecutors as the Crown Prosecution service did and stay within the legal power afforded by the law. This judgment is not a normative argument in favour of the Crown Prosecution Service's decision to change policy, rather, it is merely an example of the judiciary staying within its institutional power and recognising the degree of deference provided in Section 1 of the Prosecution of Offences Act 1985 to the Director of Public Prosecutions to issue guidelines to prosecutors. **The solution, therefore, to achieve the judicial review's aims would be to change the statutory law to remove that discretion from the Director of Public Prosecutions/Crown Prosecution Services in relation to serious sexual offences.**
8. **A legislative requirement that the Crown Prosecution Service explicitly educate and instruct prosecutors to apply a 'Merits Based Approach' to case building in**

serious sexual offence cases should be introduced. Moreover, it should be a legislative requirement that the Crown Prosecution Service keep a clear record of the merits considered during the case building process and a rationale be provided by a prosecutor to explain why a particular prosecution lacks the necessary 'Merits'. If adopted, these two legislative reforms will lead to a reversal of the "over-cautious, risk averse approach to prosecutions" identified by the End Violence Against Women Coalition in their recent judicial review of Crown Prosecution Service guidance.

9. Trial by jury is considered the gold standard in UK Crown Courts^{xvii}. However, jurors are subject to the same biases as members of the public. **Jurors are influenced via external considerations including rape myths^{xviii}** - these are myths about the victim, the event, or the perpetrator that do not have any bearing on rape^{xix}. The aforementioned issues with understanding that acquaintance rape without violence is more far common than violent stranger rape, can influence juror decision making. While some researchers may suggest this does not occur^{xx}, such evidence is plagued by response desirability biases from participants who do not want to admit their biases: In interviews, participants are unlikely to admit that they were influenced by rape myths and social norms. **Overwhelmingly, the statistical evidence demonstrates acquaintance rape is less likely to result in conviction than stranger rape, and extensive research evidence^{xxix} highlights this juror bias exists.** Judicial direction (instructions delivered via the judge to the jury, typically at the end of the trial) and expert testimony are designed to negate these societal beliefs and may have some impact^{xxiii}. However, whilst these directions address common rape myths^{xxiv} they are not compulsory in sexual offence trials^{xxv}, and it is hard to imagine that a paragraph of text will negate attitudes built up over a lifetime. **Our own work^{xxvi} has found that potential jurors are more likely to find non-consensual sexual scenarios as rape if they are first asked about whether they contain consent than without this instruction.** This highlights that potential educational tools might help increase convictions if judges and prosecution provide this information. We suggest **investment in the development of evidence-based specific juror training that counteracts widely held societal beliefs** would be beneficial for a fair trial. Such research, directed by the Home Office, should be **conducted by a diverse set of researchers** from across the country rather than focused solely on establishment contributors. Furthermore, **judicial directions or the use of expert testimony should be compulsory.** Investigating worldwide court proceedings for rape would establish if better practice exists or insight can be gained from elsewhere. Such work could be conducted by the Home Office, supported by researchers from across the country, including ourselves.
10. Within rape trials, jurors need to ensure the defendant had reasonable belief that the victim consented to the sexual act to acquit them. This is particularly difficult in sexual assault and rape cases because the sexual act is usually not debated; both parties agree that sex occurred however one denies consent was present. Therefore, forensic evidence is not useful in most rape cases. Given that sex is typically a private act, there is usually no witnesses nor additional evidence surrounding whether consent has been provided. Prosecutors and defences use circumstantial evidence to help support their cases, that can include past relationship information. This would be not typically be sought in other cases. Our own work has shown that potential jurors would like to see forensic evidence despite this not providing any additional information suggesting a misunderstanding of rape cases by jurors. The entire nature of rape makes trying them

using the guilty/not guilty dichotomy very difficult. **A different verdict structure (such as the inclusion of “not proven” verdict that is stronger than the one used in Scotland’s legal system) might be beneficial to provide closure for victims, increase the amount of cases that result in something other than not guilty verdicts, and provide an adequate deterrent.**

11. Other practical implications identified in our^{xxvii} and other research^{xxviii,xxix,xxx} include to improve the prosecution of rape:

- specialised sex crime courts similar to family-court trials;
- making judicial directions compulsory allowing judges to challenge rape myths in court in order to educate;
- train jurors; and
- inclusion of rape-myth and trauma-informed training.

12. In conclusion, our work has demonstrated that **there are significant societal issues that provide barriers for victims to report sexual assault and rape. These barriers also have the consequence of potentially affecting the success of trials for sexual assault and rape.** We have made recommendations to modify court practices that would increase accurate verdicts surrounding sexual assault and rape though these require significant changes to the way these cases are tried.

13. We are available to provide further detail and give oral evidence if this would support the Committee’s inquiry.

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Related web information:

- <https://www.bournemouth.ac.uk/research/projects/projects-aimed-reducing-sexual-violence-misogyny>
- <https://staffprofiles.bournemouth.ac.uk/display/phills>

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