

Written evidence submitted by Rape Crisis England and Wales (INV0009)

EXECUTIVE SUMMARY

1. This paper is submitted by Rape Crisis England & Wales (RCEW) to the Home Affairs Committee to inform their inquiry into the investigation and prosecution of rape. The submission was authored by Maxime Rowson, a Criminal Justice Consultant working on behalf of RCEW, in consultation with Amelia Handy, Policy Officer, Rape Crisis England and Wales. Contact: policy@rapecrisis.org.uk
2. Rape Crisis England & Wales (RCEW) is the national membership organisation for a network of 39 autonomous member Rape Crisis Centres working across 49 geographical locations in England and Wales. Rape Crisis Centres provide immediate and longer-term specialist trauma informed services for adults and children who have experienced sexual violence and abuse (SVA) at any time in their lives. Rape Crisis member Centres are independent organisations and are registered charities.
3. Rape Crisis centres deal with all forms of SVA including but not limited to: rape, sexual assault, sexual harassment, child sexual abuse (CSA) including child sexual exploitation (CSE), SVA within domestic abuse, institutional SVA. Centres work with a range of survivors including families of survivors, women and girls, men and boys, Black and minoritised survivors and those who require interpreters.
4. We thank the Committee for their interest in this area. For some years now, reports of rape have been increasing, while the number of prosecutions and convictions decrease. RCEW have repeatedly raised concerns with the government, including through the recently published report entitled '*The Decriminalisation of Rape: Why the justice system is failing rape survivors and what needs to change*'¹, to no avail. Many of the points made in this submission can also be found in that report.
5. The most recently published criminal justice statistics show that the situation continues to worsen, despite assurances from the police and CPS that improvements are being made. Two years after the government announced an end-to-end review of the handling of rape cases, we are still waiting for any results. Survivors of sexual violence and abuse - disproportionately women and girls - continue to be let down by the system they are told exists to protect them. It is our view that it is currently problematic to expect survivors of sexual violence and abuse to report their experiences when they are so unlikely to see their case go to court, let alone end in a conviction. The expectation that survivors should report is also ethically problematic, as the justice system is so often experienced as a site of harm, where survivors are likely to face issues which can compound existing trauma.

¹ RCEW et al. (2020). The Decriminalisation of Rape: Why the justice system is failing rape survivors and what needs to change. A report by the Centre for Women's Justice, End Violence against Women coalition, Imkaan, and Rape Crisis England & Wales in response to the England & Wales Government's 'End to End' Review of the Criminal Justice System's Response to Rape. Available online: <https://rapecrisis.org.uk/media/2396/c-decriminalisation-of-rape-report-cwj-evaw-imkaan-rcew-nov-2020.pdf>

6. There are several points in the criminal justice system at which cases can ‘fall out’ of the system, leading to low prosecution and conviction rates:
 - i. Victim-survivors withdrawing their support for a prosecution (pre- or post- charge)
 - ii. Police/CPS not charging a case (police NFA)
 - iii. CPS discontinuing a case which has been charged
 - iv. A jury acquitting a defendant.

7. The reasons for cases ‘dropping out’ at each stage are not always distinct. Many issues overlap and can impact cases at multiple stages of the criminal justice process. Therefore, in this submission we set out key issues which are impacting on rape prosecution and/or conviction rates, in no particular order.

8. In summary, it is the belief of RCEW that the key issues to be addressed to improve the prosecution and conviction of rape (and other sexual offences) are:
 - [Obstacles in prosecuting the \(often private\) offence of rape in an adversarial legal system, including the position of victim-survivors as ‘witnesses’ to cases.](#)
 - [The impact of the Henriques report and the policy of disbelieving complainants](#)
 - [The impact of austerity](#)
 - [The under-resourcing and poor commissioning of specialist sexual violence and abuse support services](#)
 - [Recurring issues at the level of police decision-making, including inappropriate NFA decisions and the misapplication of the law on corroboration](#)
 - [Unequal access to rights and freedoms](#)
 - [Education and awareness of sexual violence and abuse](#)
 - [Recovery and disclosure processes](#)
 - [The merits-based approach to charging](#)
 - [The option to ‘offer no evidence’ in sexual offence trials](#)

Obstacles in prosecuting the (often private) offence of rape in an adversarial legal system
--

9. As set out in the recent report authored by RCEW in partnership with other key VAWG sector organisations,² the very nature of rape – an act usually taking place in private and hanging on the presence (or provability) of consent – poses very specific and significant obstacles for conviction in our legal system. Key issues include:
 - **Privacy:** “Given the sexual nature of the offence, it will often take place in private, the complainant and defendant (or defendants) being the only persons present. There are very rarely any eye-witnesses to the offence itself, able to corroborate either the complainant or the defendant’s account as to what has unfolded. Indeed, there will more often be no independent evidence at all which corroborates the complainant’s account as to the circumstances of the sexual encounter. At best, there may be circumstantial evidence which supports what the complainant is saying: evidence which, for example, provides a picture of the complainant’s physical or mental state before and/or after the attack; or there may be evidence which is broadly supportive of her credibility, or undermines the suspect’s credibility”.³

² Ibid.

³ Ibid, p22.

- **An adversarial system adjudicating criminal allegations:** “At the heart of an adversarial trial is a competition between two advocates, each seeking to convince a jury that they have ‘won their case’. The jury’s role is then to assess the evidence it has heard, which may be limited, and decide whether the prosecution has proven its case. It cannot compel further evidence or in any way investigate deeper”. In contrast, “jurisdictions which have an inquisitorial system approach criminal cases differently: the court, or a part of the court, will be actively involved in investigating the facts of the case. Once the court believes that it has investigated fully, it will decide on its own version of events, and reach a verdict accordingly”.⁴
10. It should be remembered, too, that in our adversarial system the defence does not have the same duty of candour as the prosecution. Although the prosecution will always be arguing just one side of the case at trial – advocating that the defendant is guilty – both the police and the prosecution are actually required by law to ensure that the facts of the case are extensively, and fairly, investigated, and that any evidence available which might assist as well as undermine the defence case is disclosed to the defendant, who may choose to rely on that evidence in court. The defendant’s legal team does not have the same responsibility. While the defendant’s lawyers have a duty not to positively mislead the court by advocating that any evidence is true which they know categorically to be false, they do not have an active duty to investigate whether their client is telling the truth, or make known to the prosecution or the court anything which might undermine the defendant’s account”.⁵
- **Lay juries:** As an ‘indictable only’ offence, rape cases can only be decided by a lay jury, rather than a magistrates’ bench, judge or other specialist assessors. However, “we do not ‘vet’ potential jurors in this jurisdiction, nor is any specialist expertise or understanding required to serve on a jury, no matter what the nature of the case”. “It has been widely accepted by criminal justice bodies that many members of the public continue to believe in long-standing ‘myths and stereotypes’ relating to rape, which do not correspond with reality, result in disbelief of victims-survivors, and are now out-dated in the eyes of the law. One very significant obstacle for the prosecution when seeking to prove its case is therefore that juries may arrive at court with preconceptions – about how a ‘true’ victim will behave in the aftermath of a rape, for example – which may be based on stereotype rather than evidence”.⁶
 - **The burden and standard of proof:** The prosecution bears an exceptionally high burden of proof in rape cases. “Whereas in some other types of legal cases, a court must only be convicted on the ‘balance of probabilities’, the jury in a criminal case must be satisfied that it is sure of the defendant’s guilt. In guidance formerly provided to juries, it was said that they should be sure beyond any reasonable doubt. Taken literally therefore, this test means that it is not sufficient for a jury of 12 decision makers to believe that the complainant is more likely than not telling the truth and the sexual encounter was non-consensual: they must be convinced”.⁷
11. Taken together, these elements of our criminal justice system as we know pose significant challenges for prosecutors in achieving convictions. There is often not a clear correlation

⁴ Ibid, p22.

⁵ Ibid, p22.

⁶ Ibid, p23. See also: Baird et al. (2016). Seeing is Believing: The Northumbria Court Observers Panel. Report on 30 rape trials 2015-6. Available online: <http://www.northumbria-pcc.gov.uk/v2/wp-content/uploads/2017/02/Seeing-Is-Believing-Court-Observers-Panel-Report.pdf>.

⁷ See note 1, p25.

between the merits of a case, and a jury's verdict. What is more, our traditional adversarial system of jury trials effectively requires or at least incentivises Defence advocates to approach rape cases by seeking to destroy a complainant's credibility in as many ways as possible after she has given evidence in the stand. Our system leaves advocates very little choice but to do so, if they are to represent what they believe are their clients' best interests. In some trials, a defendant may not even be called to give evidence, which is his right, in which case it may only be the complainant's account which is subjected to this degree of scrutiny".⁸

The impact of the Henriques report and the policy of disbelieving complainants

12. As set out in the 'Decriminalisation of Rape' report: "the obstacles outlined above have always made it *particularly* difficult for victim-survivors who are already vulnerable or disadvantaged to receive the support of the police and/or CPS in proceeding with a complaint. When a victim-survivor's credibility is considered so fundamental to winning a rape or serious sexual offences trial, victim-survivors who do not fit the 'mould' of a credible victim – because of their age, their outward presentation, their social skills, a disadvantaged background, or a learning/ mental health disability – are the least likely to see justice served...A considerable amount of work has taken place, in previous decades, to tackle that culture. The development – particularly since 2002 – of specialist sexual offences units, staffed by officers trained to respond to complaints of rape appropriately, has helped in that regard. In the years 2011 to 2014, moreover, a series of controversies caused policymakers to take stock of the way in which the criminal justice system responds to the most vulnerable victim-survivors complaining of serious sexual abuse".⁹
13. However, this work is not easy to undo, as demonstrated by the publication of the Henriques report - in particular, Sir Richard's recommendations that police forces abandon the presumption of belief in victim-survivors of serious sexual offences, and abolish the use of the term 'victim' when dealing with such complaints. We strongly disagree with the view that Sir Richard reached, from his review of the Operation Midland investigation, that: *'It is clearly unacceptable practice to falsely state a belief for the purpose of encouraging witnesses to come forward'*.
14. It is hard to imagine how asserting a presumption of belief in the first instance – in other words, at the point of reporting – and thereby encouraging victim-survivors and witnesses to come forward can possibly in itself cause harm. A presumption of belief – in our submission – does not mean failing to investigate the facts, fairly and diligently, after that crime has been recorded.
15. Instead, abolishing the presumption of belief is likely to result in some genuine rape allegations not even being recorded, let alone prosecuted. It is also likely to send a clear message to the police that they should approach complaints of rape and other sexual offences with scepticism which – as history tells us – leads to a high attrition rate and fewer complaints being properly investigated, or prosecuted. As one senior police officer quoted in Sir Richard's report noted:

⁸ See note 1, p23.

⁹ See note 1, p24-26, for a fuller overview.

'If we don't acknowledge a victim as such, it reinforces a system based on distrust and disbelief. The police service is the conduit that links the victim to the rest of the criminal justice system; there is a need to develop a relationship and rapport with a victim (particularly in challenging and complex cases) in order to achieve the best evidence possible. Police officers and police staff investigators through their roles are required to deal with the emotional turmoil often presented by a victim and to determine what is relevant to the complaint that has been made. The term "victim" features in important legislation, statutory guidance, the policies of the police and CPS. To remove this and replace it with the word 'complainant' will have a significant detrimental effect on the trust victims now have in the authorities and fundamentally damage the efforts of many organisations re-built over the years'¹⁰.

16. As set out in our 2020 report: "we believe that Sir Richard's report has already had a damaging impact on the culture within the police, and may explain in part why the rate of referrals by the police in the context of rape and serious sexual offence cases is continuing to decline".¹¹
17. Recent findings that have emerged from Operation Bluestone, where independent academics scrutinised Avon and Somerset Constabulary under the exemplary leadership of Sarah Crew, showed that police forces have a de facto "credibility unit" for those who allege rape. Contrary to the concerns of Sir Richard Henriques, there is evidence of a culture of disbelief from the outset of rape investigations.

The impact of austerity

18. As set out in our 2020 report, the impact of austerity has inevitably had an impact on the ability of publicly funded organisations to carry out their functions with limited resources. "The numbers of rapes recorded by the police have grown steadily over the past three decades, and indeed increased exponentially since 2017, reaching their highest ever volume. Meanwhile, police forces, the CPS, Prosecuting Counsel, frontline sexual violence and abuse services, and courts alike have all had to manage their caseloads with increasingly limited resources, in the aftermath of public sector cuts that have taken effect since 2010, and increasing demand in this period.
19. The effects of reduced resources can be seen at a number of levels, including:
 - Serious under-resourcing of support services – ISVA and therapeutic services, for example – for victim-survivors, due to reduced funding for the women's sector, making it all the more challenging for victim-survivors to report to the police and persist with their complaints (discussed further below);
 - Police forces in some areas closing down specialist sexual offences units, leaving a mix of specialist and non-specialist officers to work on rape cases without sufficient experience;
 - Basic policing errors and investigative steps being missed;
 - Negative charging decisions being made prematurely, and cases 'prioritised' or 'de-prioritised' as a means of coping with overwhelming volumes;
 - Extraordinary delays;

¹⁰ Sir Richard Henriques. (2016). An Independent Review of the Metropolitan Police Service's handling of non-recent sexual offence investigations alleged against persons of public prominence. Available online: https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2019/april_2019/information-rights-unit---the-henrique-review.

¹¹ See note 1, p26.

- A large, and indeed increasing, proportion of victim-survivors withdrawing their complaints because they cannot face persisting in these circumstances when they feel so let down by the police process; and
 - Cases being lost in the system – closed or ‘administratively finalised’ for reasons of delay – and no effort being made to monitor why this has happened”.¹²
20. These issues have only been exacerbated by the impact of the Covid-19 pandemic on staffing levels and court closures. The future economic fallout of the pandemic is also a concern. With public money being utilised to deal with the pandemic, further austerity seems inevitable.

Under-resourcing and poor commissioning of specialist sexual violence and abuse support services

21. Linked to the above point on the impact of austerity, is the need to properly fund and commission specialist sexual violence and abuse support services, to support those victim-survivors who wish to report, through the (increasingly long) criminal justice process.

The importance of specialist sexual violence and abuse services

22. The sustainable and equitable provision of specialist SVA services is essential. Rape Crisis services are specialist because SVA is their primary focus. They are unique and different from ‘general support’ services that may provide support or interventions for survivors or perpetrators.¹³ Specialist sexual violence and abuse services are independent of the state, delivered ‘by and for’ the users and communities they aim to serve and delivered by expert staff with an in-depth knowledge of SVA. Specialist services respond to the needs and experiences of individual survivors by: delivering gender-specific services; upholding rights; providing holistic support that meets survivors’ needs (including those relating to safety, their children, health, housing, finances and justice); and providing unique empowerment. They believe and listen to survivors, and respect their voices within service delivery and development.
23. There is ample evidence to show the importance of specialist support services¹⁴, including the findings of the University of Birmingham’s recent study into the contribution of the voluntary sector to mental health crisis care.¹⁵ The findings identify that the voluntary sector is crucial in any mental health response, plugging gaps in provision of statutory care, and providing a ‘longer-term holistic...compassionate and human’¹⁶ alternative to the poor quality sometimes found in non-voluntary crisis care services:

¹² See note 1, p27.

¹³ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, 11.V.2011. Available online: <https://rm.coe.int/16800d383a>.

¹⁴ See for example: RCEW. (2018). All-Party Parliamentary Group on Sexual Violence report into the Funding and Commissioning of Sexual Violence and Abuse Services. Available online: <https://rapecrisis.org.uk/media/1914/appgreportfinal.pdf>; Women’s Resource Centre. (2011). Hidden Value: Demonstrating the Extraordinary Impact of Women’s Voluntary & Community Organisations. Available online: <https://www.wrc.org.uk/Handlers/Download.ashx?IDMF=4222e0eb-c528-48c8-a56c-d10db4fd3fb0>; Dayson et al. (2018). The value of small: *In-depth research into the distinctive contribution, value and experiences of small and medium-sized charities in England and Wales*. Available online: <https://www.lloydsbankfoundation.org.uk/we-influence/the-value-of-small>.

¹⁵ Newbigging, K. et al. (2020). The contribution of the voluntary sector to mental health crisis care: a mixed-methods study. *Health Services and Delivery Research*, 8.29.

¹⁶ Ibid, p2.

*“...the voluntary sector is attractive and acceptable to people in a crisis; has social value; and can potentially address the complex interactions between mental health, inequality and socio-economic conditions....the voluntary sector can provide a cost-effective alternative to public sector provision, particularly inpatient care. However, the understanding and awareness of the contribution is not fully realised and the voluntary sector can be viewed as ‘a bit player’ in the provision of crisis care”.*¹⁷

24. The report highlights the need for all public sector organisations to give recognition to the expertise within the voluntary sector, as well as the need for sustainable funding in voluntary sector crisis care provision - including user-led organisations and grassroots community organisations who possess local knowledge and engage with their communities.¹⁸
25. Specialist SVA voluntary sector services are perennially at risk within the funding landscape, as explored further below. Specialist services are often undercut by general support services who can compete on cost but not on meeting survivors’ needs. This inevitably impacts on victim-survivors ability to navigate, and continue to engage, with the criminal justice process.

Funding and commissioning issues

26. As set out above, specialist by and for services supporting survivors of SVA are essential. Yet the VAWG sector, and the SVA sector in particular, continues to face a funding crisis. Women in some areas are being placed on waiting lists for counselling in some areas for up to a year, making the new CPS guidance on Pre-Trial Therapy moot. In the year to 31st March 2020, RCEW member centres:
- ❖ Provided over 775,000 sessions of specialist SVA counselling, support and advocacy.
 - ❖ Handled nearly 195,000 telephone and online contacts, for over 66,000 individual survivors.
27. Despite this, there were 8,444 individual survivors on Rape Crisis member centre waiting lists in March 2020.
28. The COVID-19 pandemic will have lasting impacts on the VAWG sector – as women and girls experiencing SVA reach out for help well into the next decade. At present, court backlogs mean that specialist sexual violence and abuse services are supporting victim-survivors for longer, and more intensively, as both the lockdown and the impact of being in the criminal justice system for even longer, takes its toll on individuals.
29. The Equality Act 2010 places duty on local authorities to make decisions of a strategic nature about how to exercise its functions to reduce inequalities - requiring local authorities to ensure appropriate provision of services addressing the needs of those falling within the protected characteristics of the Equality Act 2010.
30. Both the Istanbul Convention and the Human Rights Act 1998 include an understanding of specific forms of VAWG and discrimination faced by women that must be addressed through specialist and dedicated provision. The Convention requires states to deliver, in an adequate geographical distribution, the full range of immediate, short- and long-term specialist support services for all women and children experiencing VAWG – including rape crisis centres as well as refuge services, helplines, therapeutic support, advocacy work, other intensive individualised and group support in women only safe spaces.

¹⁷ Ibid, p13.

¹⁸ Ibid, p13.

31. The current funding model for specialist SVA provision is not working. Given the number of commissioners responsible for funding the SVA sector, some issues are specific to each funder, however there are key issues which cut across commissioner type. RCEW authored the recent report of the APPG on Sexual Violence which looks specifically at the funding and commissioning of the SVA sector. For brevity, we do not repeat the key issues here, but would recommend that the Committee absorb this report in its entirety.¹⁹ For summary, key issues are:
- Short-term funding models
 - Commissioners not recognising the social value of specialist support
 - Commissioners not understanding survivors needs
 - Competitive tendering, whereby the ‘by and for’ expert sector are part of the social economy of provision and do not compete on an equal footing in an open ‘market’.
 - Pressures on specialist by and for sexual violence and abuse services to merge with larger, non-specialist, providers or domestic abuse services.
 - Gaps in funding and specialist provision for Black and minoritised women and girls, and women and girls with additional and complex needs.
32. With more survivors speaking out about SVA that ever before, it is vital that there are specialist voluntary sector services available to them at the point of need. To fail, is to unethically ask survivors to come forward to be met by a waiting list of up to 14 months to access specialist support, or worse, a closed waiting list and no way to access support.

Recurring issues at the level of police decision-making
--

33. As set out in our 2020 report, the Centre for Women’s Justice - a legal charity specialising in holding the state to account in relation to violence against women and girls – has, through its work with clients including women’s sector organisations and survivors of sexual violence and abuse, identified a number of *recurring* errors in police decision-making or procedure in rape and serious sexual offence cases. These issues may explain in part why so many rape cases are being ‘NFA’d’ by the police. In summary, the following key issues appear to be common in rape investigations:

- **Police not interviewing complainants, or suspects before reaching a charge or NFA decision;**
- **Police officers failing to follow up on other lines of enquiry;**
- **Police officers taking a sceptical approach at the point of reporting,** which dissuades women from pursuing their complaint, and/ or contributes to lines of enquiry being missed (see also our analysis of the impact of the ‘Henriques report’, above);
- **Police not informing women of the Victims Right to Review procedure or of the reasons for an NFA decision;**
- **Police making NFA decisions inappropriately and not referring cases to CPS for charging decisions.** Legal guidance issued by the CPS reminds police officers that the CPS, and not the

¹⁹ RCEW. (2018). All-Party Parliamentary Group on Sexual Violence report into the Funding and Commissioning of Sexual Violence and Abuse Services. Available online: <https://rapecrisis.org.uk/media/1914/appgreportfinal.pdf>

police, should always be making charging decisions in cases which are evidentially or legally complex – which, arguably, encompasses the majority of rape cases, given that they tend to be inherently ‘difficult’ cases. In practice, however the rate of cases ‘NFA’d by the police, without referring to the CPS, remains alarmingly high;

- **Police routinely misapplying the law on corroboration when assessing whether the case passes the evidential threshold for charge or referral to the CPS.** The law in relation to the need for corroboration is clear. By virtue of Section 32 Criminal Justice & Public Order Act 1994 Parliament abolished the need for the jury to be given a warning about convicting solely on the basis uncorroborated evidence in cases involving sexual offences. A credible account from a complainant can and should form the basis of a criminal prosecution. Moreover, in relation to the assessment of credibility the jury is given directions to counter the risk of stereotypes and assumptions about sexual behaviour and reactions to non-consensual sexual conduct. Therefore, matters such as a delayed report to the police should not be treated by an investigating officer as undermining a complainant’s credibility.
34. In 2020 however, CWJ conducted a review of more than 15 ‘NFA’d’ cases where the law of corroboration had been misapplied. The review found a multitude of examples of the police erroneously stating the law on corroboration incorrectly and justifying lack of corroboration as a reason to take no further action. The misapplication of law highlighted here is linked, CWJ believe, to a broader over-sensitivity and excessive caution about rape and other sexual offences. It is also likely to prevent too many rape cases, which could be prosecuted, from proceeding to trial, given that corroborating evidence is so often lacking in rape cases because of the nature of the Crime”.²⁰
35. We welcome the announcement HMICFRS’ plans to conduct a thematic inspection into rape in 2021/22 and hope that this inspection will uncover and take seriously these issues. However, we note that there are a long list of previous inspections and reports which have commented on the issues we highlight in this paper, with very little action following them to make real improvements.

Unequal access to rights and freedoms

36. Sexual violence and abuse violates the human rights of women and girls disproportionately, and bars them from accessing rights and freedoms on an equal basis with men.²¹ Women and girls are currently not all treated the same, so how they experience violence – and access support, safety and justice – is not the same either. Their experiences will differ according to their background, access to resources, the sectors in which they work and many other factors that define their participation in society. Whilst all women and girls are affected by patriarchy, inequality and discrimination, women and girls will experience this differently according to their race, ethnicity, sexuality, sex, gender identity, disability, age, class, immigration status, caste, nationality, indigeneity, and faith.²²
37. Major reform is needed to tackle the barriers to equal treatment and access that women and girls currently face. The principle of getting it right for Black and minoritised and

²⁰ See note 1, p28-29.

²¹ United Nations Declaration on the Elimination of Violence against Women, 1993.

²² Imkaan. (2018). From the Margin to the Centre: Addressing Violence against Women and Girls. Alternative Bill. Available online: https://829ef90d-0745-49b2-b404-cbea85f15fda.filesusr.com/ugd/2f475d_91a5eb3394374f24892ca1e1ebf2ea2e.pdf

marginalised women and girls ensures that we will get it right for all. Looking at the journeys of women and girls who have experienced SVA and experience oppression as a result of their race, ethnicity, socio-economic status, sexuality, and other identities, we know that far too often they will:

- Face discrimination when approaching statutory services, as their identities can place them in the category of ‘other’, which can result in systemic and perpetual exclusion.
- Receive inadequate provision from statutory services, or be turned away from services feeling judged, discriminated and disbelieved;
- Face greater fears that if they report SVA to statutory services then their children will be taken from them, or they may face deportation, detention and other ‘policing’ and surveillance controls²³;
- Face increased conditions of vulnerability due to these institutional biases and structural inequalities. They are much more likely to face repeat victimisation, further violence and abuse, and trauma.

38. Whilst these issues will dissuade marginalised women and girls from reporting their abuses in the first place, they will also impact on their ability to stay engaged with the criminal justice system. For example, in recent research into the experiences of people with learning disabilities who report rape or sexual assault to the police, it was found that without specialist support from properly trained professionals and intermediaries, victim-survivors with learning disabilities were unlikely to be seen as ‘credible’ or ‘reliable’ witnesses, impacting hugely on case outcomes.²⁴ To ‘solve’ the crisis in rape investigations and prosecutions for all victim-survivors, structural change is needed to tackle the barriers faced by some victim-survivors.

Education and awareness of sexual violence and abuse

39. We welcome the recent changes to Relationships and Sex education in schools. The changes are long overdue and will go a long way in shifting attitudes and cultures of tolerance, normalisation and acceptance of SVA as part of women and girls’ everyday lives. Education and awareness raising also needs to go beyond schools however. Without educating people, there will be no changes to conviction rates, as jurors deciding cases are ordinary members of the public. And before a case even gets in front of a jury, there are a lot of people to bypass with decision-making power over how a case progresses. If these people – police officers, prosecutors, solicitors, barristers, support workers, social workers and so on - are not fully aware of the dynamics and impact of sexual violence and abuse, it is unlikely that a case will ever make it to trial, as the current criminal justice statistics show. All professionals need proper training.

40. As set out in our recent report, we recognize “the judicial system as part of wider patriarchal society that frequently perpetuates the hyper-sexualisation of women and girls along with

²³ We refer the Committee to the Victims’ Commissioner’s recent report, which further analyses these issues and makes recommendations for change under a new Victim’s Law: Victims Commissioner. (2021). Victims Law Policy Paper: The Victims’ Commissioner’s proposals for a Victims Law. Available online:

<https://victimscommissioner.org.uk/published-reviews/victims-law-policy-paper-the-victims-commissioners-proposals-for-a-victims-law/>

²⁴ Jobe, A. and Williams, H. (2020). Evaluation of the experiences of people with learning disabilities who report rape or sexual assault. Available online: <https://rctn.org.uk/wp-content/uploads/2020/09/Full-Report-Evaluation-of-the-experiences-of-people-with-learning-disabilities-who-report-rape-or-sexual-assault.pdf>.

myths about women and girls through misreporting, misrepresentation, and through poor public education. This is compounded by the victim-blaming, gendered and racialized stereotypes that exist when women interact with other support services such as health, social care and mental health. The example below shared by a 'by and for' specialist support service reflects the racialised and gendered assumptions which lead to a specific form of institutional scrutiny of Muslim women's behaviours, assuming that sexual violence and abuse in certain communities is only perpetrated within a familial/interpersonal context:

*"A young Muslim woman we are supporting disclosed that she had been sexually assaulted at a party by a stranger. When she reported this, they kept questioning the fact that she had gone to a party as a Muslim woman wearing a hijab. She felt that her disclosure was not taken seriously/believed because of the environment in which it took place."*²⁵

41. The 2013 CSEW found that 28% of victim-survivors of rape or assault by penetration did not tell anyone because they did not think they would be believed.²⁶ With attitudes like the above from police, this is understandable. Until there is a culture shift, there will be no improvement in the handling of sexual violence and abuse cases.

Recovery and disclosure processes

42. Issues surrounding the recovery and disclosure of sexual violence and abuse victim-survivors third party and digital material have a huge impact on the investigation and prosecution of reported rapes. Not only can current processes delay some cases by years while reams of irrelevant material are requested and reviewed from various agencies, but through the process of reviewing such material many of the issues that we discuss in this paper become clear, for example the scrutiny of victim-survivors credibility and the invocation of myths and stereotypes based on the 'rapeability' of women and girls who have a history of mental ill health, alcohol or substance misuse.

43. Key issues include:

- **Reasonable lines of enquiry** - Prosecutors frequently insist the police follow lines of enquiry that police investigators do not consider reasonable, or else a charge will not be made/a case will be dropped. Often requests for information are speculative and unrelated to the facts of the case, as evidenced by the independent evaluation²⁷ of a pilot of Sexual Violence Complainants' Advocates (SVCAs) in Northumbria, which sought to support complainants around recovery and disclosure issues.

'The Attorney General has said: Speculative searching of a person's 3rd party material 'shouldn't be encouraged' and 'it is entirely proper and reasonable to search voluminous material obtained in the investigation (such as digital media) via the use of key word searches or other reasoned strategies. An invitation to the defence is proper in order to establish any key words or strategies they might wish us to use'. This is NOT being done. The CPS routinely ask us to obtain peoples 3rd party, medical, counselling and phone records

²⁵ See note 1, p57.

²⁶ Office for National Statistics. (2017). Sexual offences: appendix tables. Available online: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/sexualoffencesappendixables>.

²⁷ Smith, O. and Daly, E. (2020). Final Report: Evaluation of the Sexual Violence Complainants' Advocate Scheme, p22. Available online: <https://needisclear.files.wordpress.com/2020/11/svca-evaluation-final-report-1.pdf>.

regardless of whether a legitimate line of enquiry exists or not. Further to that they insist that we check the voluminous data in its entirety. This is usually PRE-CHARGE.’ (Quote from a police officer involved in the SVCA pilot).²⁸

- **Consent:** despite there being a need for complainants to give informed consent for police to access their personal third party material, not all officers understood this.

‘We have never asked for anything like that [consent for 3rd party material] in the past... If we don’t get 3rd Party information the CPS won’t charge any cases.’ (Quote from a police officer interviewed about the SVCA pilot).²⁹

- **‘Undermining material’ and impact of third party and digital material on assessments of victim-survivor credibility:** As set out above, our legal system is set up in a way that invites defendant attacks on victim-survivor credibility. This is clearly seen in recovery and disclosure processes, whereby material suggesting that complainant is not ‘saint like’ is frequently used as a reason not to charge or progress a rape cases as it is unlikely to look good in front of a jury (the issues with this ‘bookmaker’s approach are discussed later in this paper).

‘I wish they told me that signing a form to give the police access to my phone meant they would be examining my consensual sexual relationships and sexual history. I didn’t realize my relationships with my ex’s, how many friends I have, how often I go out, is relevant to being raped by a school teacher.’ (Quote from a survivor supported by an SVCA).³⁰

‘They asked for my entire medical history, even though I only dated my rapist for 5 weeks - and said that they were asking for my complete records because the CPS will demand to see them, which sounds like nonsense given that the CPS are overwhelmed and irrelevant information will only add to their workload. They ‘let slip’ that any sign of drug abuse or depression in my medical history could influence the CPS’s decision. Can addicts and the mentally ill not be raped?’ (Quote from a survivor supported by an SVCA).³¹

- **Impact on victim-survivors confidence in the criminal justice system:** In 2019, Synergy Essex, a partnership of Rape Crisis centres, conducted a dip sample of 2,268 rape cases reported in 2018/9. In 317 of these cases survivors withdrew their support for their investigation. 77% of these survivors stated that they withdrew support due to concerns around disclosure and invasion of privacy. This is a shocking finding, suggesting that urgent work is needed to prevent fishing expeditions for ‘damaging’ third party material. In no other types of case are complainants scrutinised to the same degree as rape victim-survivors.
- **Independent legal representation:** We submit that independent legal representation (ILR) is needed to ensure that SVA complainants’ Article 8 ECHR rights are being fully upheld and communicated, particularly with regard to recovery and disclosure processes. Rape Crisis member centres tell us that investigators and prosecutors continue to subject survivors to ‘digital strip searches’ and request excessive third party material. Some police officers are also willing to admit that this is the case, with one officer interviewed as part of the Northumbria Sexual Violence Complainants’ Advocates (SVCA) pilot evaluation commenting on ‘*ludicrous*

²⁸ Ibid, p22.

²⁹ Ibid, p21.

³⁰ Ibid, p22.

³¹ Ibid, p23.

requests from the CPS' for 'blanket information'.³² This officer stated that the SVCA pilot led to a 'change in the attitude of the CPS', and allowed police officers to follow reasonable lines of enquiry only.³³

The CPS must return to a merits-based approach to charging

44. The Committee will undoubtedly be aware of the recent judicial review of the CPS, brought by the End Violence against Women (EVAW) coalition.³⁴ As set out more fully in the 'Decriminalisation of Rape' report, it is our belief that the CPS has moved away from a merits based approach, towards a bookmakers approach to charging, in an attempt to improve their conviction rates. Whilst the judicial review case was unsuccessful, there is an incredible amount of evidence demonstrating a change in practice, coinciding with an alarming drop in rape cases resulting in charge in 2017/18. It is our belief that many of the issue identified in this paper are likely to be "symptomatic, of this change in approach, and the resulting perception of police officers and rape prosecutors that senior management at the CPS simply does not support the prosecution of challenging sexual offence cases".³⁵
45. The dangers of a bookmakers approach to prosecuting rape are many. Prosecuting only the cases which will likely 'win' in front of a jury essentially means sifting cases through the lens of the 'real rape myth' and other rape myths and stereotypes. In turn, the only cases that society will hear of are these stereotypical rape cases, entrenching the idea that an attack by a stranger in a dark alleyway on a perfectly 'innocent' victim is what rape is, and any differing allegation is a lie. The more entrenched this idea becomes, the more likely that victim-survivors of other presentations of sexual violence and abuse will stay silent and refuse to report their experiences. This vicious cycle of attrition is dangerous and the exact scenario that the merits-based approach seeks to avoid. That all reference to such an approach has been removed from the CPS website is disappointing at best.
46. At the time of writing, there are no plans to change the oversight or governance structure of the CPS. The fact that the CPS took weaker cases out of the system to artificially improve the conviction rate is undisputed by the CPS and yet there are currently no mechanisms in place to deter the CPS from dropping cases again, or to hold them accountable. It is unacceptable that the CPS still have the prerogative to effectively decriminalise rape.

The option to 'offer no evidence' in sexual offence trials should be abolished

47. Whilst we are aware that there will be cases that do not meet the Full Code test, we are concerned at the CPS practice of offering no evidence post-charge due to their inability to obtain survivors consent to access third party/electronic material in particular. This is especially concerning where the third-party material is arguably not relevant to the case, and is required to scrutinise the survivor's past, for example.
48. The Northumbria SVCA pilot gives one example of a case where the CPS consider offering no evidence unless they were permitted to access a complainant's full records from the age of

³² Ibid, p53.

³³ Ibid, p53.

³⁴ Centre for Women's Justice. (2020). Evidence of CPS Failure on Rape. Available online: <https://www.centreforwomensjustice.org.uk/news/2020/6/29/1pti6p5e19unqglo7wd9mm68d621b7>

³⁵ See note 1, p34.

18, despite her being decades older. The complainant, with SVCA support, did not give consent as she did not feel the request was reasonable, nor the records requested relevant to the case. The CPS responded to say:

“It is clear from the material provided that there is a history of alcohol and substance misuse which extends back to the complainant’s early adulthood. In light of this, it is necessary to broaden the parameters of the search, and obtain and review material over a longer period of time to determine whether there are further incidents which fall to be disclosed on the basis that they may assist the defence. I note your request for an application to be listed in front of the Trial Judge, but it really is a matter for the police and CPS to determine what is a reasonable line of enquiry...If we are unable to pursue this line of enquiry we will have to advise the Court that we have been unable to discharge our disclosure obligations and this will inevitably lead to us having to offer no evidence in a case we believe should be prosecuted.” (Quote from CPS contained in an SVCA case file).³⁶

49. We are also aware of another case where the CPS were confused about a survivor’s mobile phone records as she had been in contact with a friend of the same name as the defendant. Rather than engage with the survivor and her SVCA, as requested, to iron out the misunderstanding, the CPS went to court the next morning to offer no evidence, leaving the survivor with no way to explain or reopen the case.
50. Offering no evidence removes a survivor’s options to have CPS decisions independently reviewed and cases reopened. We feel that this is a draconian measure which hinders the proper administration of justice and the process should be reviewed urgently.

Summary & Recommendations

51. There have been numerous strategies and plans published by key organisations over the years, most recently for example, the CPS RASSO 2025 Strategy, and the Joint National Disclosure Improvement Plan. Yet even where these strategies agree on what the issues are, there does not appear to be any real appetite for change. The time truly has come to move beyond paying lip service to these issues.
52. RCEW has previously made several recommendations to the government regarding necessary improvements in the handling of sexual violence and abuse cases, as have other organisations within the sector, along with the Victim’s Commissioner. For the sake of brevity, we refer the Committee to the recommendations contained within our recent report, co-authored with other organisations in the sector³⁷, as well as to the comprehensive recommendations set out in our recent submission to the government in respect of a new VAWG Strategy (Appendix 1).

June 2021

³⁶ See note 27, p44.

³⁷ See note 1.

APPENDIX 1: Summary of recommendations made to the government with regards to the new VAWG Strategy

RCEW recommends that the new VAWG Strategy:

1. Is designed to centre women and girls who experience SVA, and **tackle the systemic barriers** facing women and girls, including Black and minoritised women and girls, migrant women, Deaf and disabled women and girls, LGBTQ+ survivors and women facing multiple forms of disadvantage.
2. Sets out the government's intention for **policy and funding reform to deliver equal protection for all women and girls** – including: reversing the effective decriminalisation of rape and ensuring access to justice for all SVA survivors.
3. Clearly defines the **specialist SVA sector as expert providers and critical strategic partners** whose participation is essential for effective local, regional and national VAWG partnerships.
4. Ensures that the **public sector equality duty and equalities impact assessments** are routinely and effectively used by local authorities and other statutory agencies to ensure that women and girls are treated equally in all decision-making processes that affect them.
5. Recommends that **funding structures are designed around a comprehensive approach to addressing SVA**, which means long-term sustainability enabling specialist organisations to plan and deliver appropriate provision for women and girls.
6. Incentivises and encourages **local areas to work together** to respond to the changing nature of all forms of SVA in their area.
7. Encourages **local areas to recognise the diversity of survivors' experiences**, understand their local population and the specific needs of their communities, so that they are adequately meeting their needs, particularly the needs of minoritised and marginalised survivors.
8. States the government's expectation that **Coordinated Community Responses** should not just deliver a crisis response to SVA, but work to identify SVA early on and prevent it from happening in the first place. Responses must be informed by survivors, data driven, intersectional and mindful of the multiple barriers and discrimination faced by different survivors.
9. Clarifies the legal responsibilities of the government and public bodies to **sustainably fund specialist voluntary sector SVA services**, including for women and children, as per Article 22 of the Istanbul Convention.
10. Acknowledges the **Rape Crisis England and Wales National Service Standards**, based on the MoJ Cope and Recover service outcomes. The RCEW National Service Standards mark the difference between a generic provider and a specialist SVA provider.
11. Considers criminal justice responses proportionately, with the **therapeutic needs of survivors** given more priority urgently.

12. Highlights the importance of CCGs and local authorities, among other agencies, funding therapeutic provision for SVA survivors, in order to **end the current hierarchy of care**.
13. Is delivered alongside a **secure, national multi-year funding settlement for the specialist SVA sector**. This settlement should ensure that all forms of service provision are resilient for the future and should be delivered by all government departments responsible for SVA/VAWG. Funding should include ring-fenced funding for specialist services led 'by and for' Black and minoritised women, women-only services, Deaf and disabled survivors, survivors with learning disabilities, and LGBT+ survivors.
14. Promotes the **systematic reform of the current competitive funding and commissioning landscape** to ensure that specialist voluntary sector SVA services can fairly access funding. This requires: returning to long-term grant funding model for provision; ending competitive tendering where it is not required; ensuring all funding and commissioning processes for SVA recognise and value specialist support provision as required under the Istanbul Convention; adopting established quality standards in the SVA sector as the basis for funding; and delivering core funding to organisations so that services genuinely access full cost recovery for the support they deliver.
15. Requires that local and regional funding and commissioning processes adhere fully to the **Equalities Act and Public Sector Equality Duty**, and are led by partnerships, which reflect and represent the populations they serve – requiring the full inclusion of the specialist by and for sector in commissioning processes and outcomes.
16. Ensures that all **public funding supports women-centred, trauma-informed, needs-led, holistic, wrap-around support services**, as the sustainable way of addressing intersecting need and preventing further repeat victimisation and exposure to further risk. This requires moving away from a focus on funding through criminal justice outcomes, valuing women's recovery more holistically and comprehensively, and ensuring women have a voice in the support they can access.
17. Confirms that **funding for men and boys' support services should be proportionate**, and not removed from pots of funding for the support of women and girls.
18. Sets out the government's intention to **action all recommendations of the APPG on Sexual Violence³⁸ with regards to funding and commission SVA services**.
19. Sets out the government's intention to create **enforceable national standards and commissioning guidance**, especially if the direction of travel is to continue to devolve commissioning responsibilities locally. At a minimum, commissioners must abide by the National Statement of Expectations. Separately, RCEW would welcome the opportunity to be consulted upon to strengthen the Home Office National Statement of Expectations so that it is appropriate to meet need.
20. Requires all **PCC commissioning officers to engage in thorough SVA training** provided by RCEW and rolled out by the APCC.

³⁸ RCEW. (2018). All-Party Parliamentary Group on Sexual Violence report into the Funding and Commissioning of Sexual Violence and Abuse Services. Available online: <https://rapecrisis.org.uk/media/1914/appgreportfinal.pdf>.

21. Sets out the government's expectation that local authorities will consider the additional demand placed on voluntary sector specialist VAWG services in their areas, when stipulating **planning gains** for housing developers under s106 Town and County Planning Act 1990. Funding for specialist voluntary sector services should be included in any new planning gains.
22. Set out the intention to create **cross-government pooled budgets** to fund a national SVA sustainable funding model, as mentioned in Conservative manifestos and the recent No 10 Hidden Harms Summit.
23. Commit the government to providing funding of at least **£195 million/year to Rape Crisis centres** so that they can be fully and sustainably funded to meet increasing demand.
24. Emphasises the need for **commissioners to provide full cost recovery**, to take into account the additional 'behind-the-scenes', 'back office' and consultancy work provided to commissioners and government departments – data-capturing, data analysis, endless requests for data and monitoring requests. This work is currently completed by Rape Crisis Centres and RCEW, unfunded.
25. Sets out the government's commitment to provide **specific funding to be awarded to specialist Rape Crisis centres and others to work with hidden survivors**, such as those in rural areas who struggle to access statutory and/or voluntary services, survivors in the Deaf community, survivors for whom English is a second language, survivors with learning disabilities, and survivors who do not use speech.
26. Sets out plans for the creation of an independent national **Sexual Violence and Abuse Commissioner**.
27. Names a **ministerial lead** who will have responsibility for the response to SVA.
28. Fully reflects the requirements of the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) and the recommendations of the CEDAW Committee.
29. Commits the government to ratifying the **Istanbul Convention** as a matter of urgency.
30. Commits the government to satisfying the Istanbul Convention by ensuring the required levels of specialist SVA support – **one Rape Crisis centre per 200,000 population of women**.
31. Embeds **prevention and early intervention** throughout the strategy and its delivery, committing to critical change across all systems including schools, communities, health, welfare and social services, as well as the CJS.
32. Recognizes the integral role of, and ensures that prevention work is not done without, specialist by and for **SVA services who need to be sustainably funded for their prevention and community work**.
33. Recognizes that **specialist Rape Crisis SVA counselling is to be understood as prevention work** and as such these services must be included within the prevention element of the VAWG Strategy.

34. Commits the government to a **long-term, government-backed, public campaign** on consent, rape, child sexual abuse within the family and the surrounding myths and stereotypes.
35. Commits the government and all its departments to **work with RCEW** to solve the current funding crisis and ensure the needs of SVA survivors are met. This includes engagement from the Home Office, MHCLG, the Department for Health and the Department for Education in particular.
36. Sets out the government's intention to create a **fund for SVA national membership organisations (NMOs)** to enable the capacity needed to properly engage with the government. At present RCEW receives little funding, yet is expected to advise the government on their terms, often at short notice, and with no funding.
37. Raises the profile of **domestic sexual violence and abuse**.
38. Acknowledges the need to **disaggregate data to show sexual violence within domestic abuse**, and encourages organisations such as the CPS and police forces to do so.
39. Commits to **funding specialist SVA services for the sexual domestic abuse work** that they currently undertake with no dedicated funding attached.
40. Fully considers and reflects the needs of **adult women survivors of CSA**.
41. Incorporates the findings and recommendations of the recent Joint Targeted Area Inspection (JTAI) of the **multi-agency response to CSA**³⁹.
42. Fully incorporates the **needs of girls** as well as women.
43. Flags the need for the review and improvement of professional responses to **'harmful sexual behaviour'**.
44. Commits to the full implementation and further promotion of **Sarah's Law**.
45. Commits to ensuring **local commissioners prioritise the needs of girls** in accessing specialist SVA services. Rape Crisis Centres who are providing specialist children's, young people's and non-abusing family member SVA services need local commissioner acknowledgement and funding, ending the heavy reliance on large national children's charities without a local footprint.
46. Gives **proportionate attention to 'new and emerging' ways of offending**/accessing victim-survivors, acknowledging that the impact on survivors of SVA and their support needs is the same no matter how the offence was committed.
47. Commits the government, particularly the Department for Education, to **engage with RCEW as a National Membership Organisation (NMO) in rolling out any proposed changes to education** around SVA and consent in schools.

³⁹ HMIP, HMICFRS, CQC & Ofsted. (2021). The multi-agency response to child sexual abuse in the family environment: Prevention, identification, protection and support. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/862454/Multi_agency_response_to_child_sexual_abuse_in_the_family_environment_joint_targeted_area_inspections_JTAIs.pdf.

48. Sets out plans to ensure **universal delivery of a ‘whole school approach’** across educational settings.
49. Commits the government to **responding to perpetrators across all forms of VAWG**, including by supporting the development and safe testing of a range of interventions and multi-agency responses across different cohorts of perpetrator.
50. Commits the government to establishing a **national quality assurance system for perpetrator interventions**, ensuring accreditation for all programmes funded from national government and public bodies.
51. Emphasises the need to **monitor protection orders**, such as Sexual Harm Prevention Orders, more closely and efficiently.
52. Acknowledges and sets out plans to urgently improve the **abysmal criminal justice statistics** for the prosecutions of rape and other sexual offences, and sets out plans to improve the experiences of survivors of SVA within the CJS. A comprehensive set of recommendations which overlap with those found in this submission can be found in “The Decriminalisation of Rape”, a report that RCEW co-authored alongside CWJ, Imkaan and EVAW.⁴⁰
53. Sets a date for the publication of the results of the government’s **end-to-end Rape Review** and engage meaningfully with RCEW as a National Membership Organisation (NMO), to act on issues identified.
54. Sets out the government’s intention to undertake a complete review of current **recovery and disclosure processes** in sexual offence cases. This exercise should be conducted in partnership with the Information Commissioner’s Office, RCEW as an NMO, and other professionals in the SVA sector. The review should seek to clarify the laws around recovery and disclosure, assess the impact on SVA survivors of current processes, and make recommendations for urgent improvement.
55. Sets out the government’s intention to follow in the footsteps of most other jurisdictions and commit to creating a national scheme of **independent legal representation** for SVA complainants.
56. Sets out the government’s intention to **review the process of ‘offering no evidence’** in sexual offence cases, and the impact this has on SVA survivors’ access to justice.
57. Encourages the CPS and police forces to better publicise and promote the availability of a **case review** to all survivors whose cases are not progressed through the CJS.
58. Requires that the CPS and police **publish data** detailing how many cases are submitted for **review**, how many are accepted/rejected, and the reasons for the decisions. This data should be disaggregated by gender, case type, ethnicity and other variables. This will allow greater transparency of the system and enable analysis of which complainants do/do not ask for reviews.

⁴⁰ Centre for Women’s Justice, End Violence against Women Coalition, Imkaan and Rape Crisis England and Wales. (2020). The Decriminalisation of Rape: Why the Justice System is Failing Rape Survivors and What Needs to Change. Available online: <https://rapecrisis.org.uk/media/2396/c-decriminalisation-of-rape-report-cwj-evaw-imkaan-rcew-nov-2020.pdf>.

59. Sets out the government's intention to review current **sentencing guidelines** for sexual offences, to ensure sentence lengths reflect the severity of offences committed.
60. Reiterates the importance of judges giving **Victim Personal Statements** due attention and weight, and making enquiries with prosecution barristers where a statement has not been provided.
61. **Review the charging and sentencing guidelines for attempted rape**, to reflect the severity of the offence, the intention of the perpetrator and the impact on the survivor.