

Written evidence submitted by Rights of Women (INV0017)

About Rights of Women

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women's vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women's understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

Rights of Women is a registered charity 1147913 and Company Limited by Guarantee.

Rights of Women's consultation response

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

Introduction

1. Rights of Women welcomes the opportunity to respond to this inquiry on investigating and prosecuting rape, as part of the Committee's overarching work on violence against women and girls (VAWG).
2. The Committee has already noted a range of statistics in relation to the reporting, prosecution and conviction of rape which make clear that reports of such sexual violence are increasing, but the number of prosecutions and convictions are decreasing.¹
3. The Committee has invited evidence on five points, each of which is addressed in turn below. As a women's legal rights organisation, we confine our answers to those questions on which we have specific expertise and insight, most often derived from the direct experience of survivors who contact our criminal, family, immigration and sexual harassment legal advice lines.² During the three month period 1 January 2021 to 31 March 2021, Rights of Women took 978 calls from women seeking our support across our advice lines.

Rights of Women's Response

¹ See: <https://committees.parliament.uk/committee/83/home-affairs-committee/news/154707/home-affairs-committee-launches-inquiries-into-rape-and-violence-against-women-and-girls/>

² See: <https://rightsofwomen.org.uk/get-advice/>

Whether victims have access to justice, whether witnesses are sufficiently supported, and whether there are sufficient safeguards for those who are accused of rape and sexual offences to ensure that they receive a fair trial

Whether victims have access to justice

4. In answering this question, Rights of Women draws on its experience as a frontline service, providing legal advice to women. We note significant overlap between the question of access to justice and barriers to justice, covered below. We invite the Committee to consider our responses to these questions together.
5. Survivors of sexual violence who contact Rights of Women have generally had little access to justice. Some survivors will have chosen not to report the sexual violence they have experienced to the police, or are reluctant to do so. Of those who have reported, many describe feeling let down, re-traumatised and re-victimised by the criminal justice process. Few describe their experiences as resulting in something approaching justice.
6. Examples of the ways in which survivors of sexual violence are prevented from accessing justice include:
 - 6.1. **Their report not being taken seriously:** Callers often state they feel that their report to the police has not been taken seriously. Survivors often refer to feeling this way because of the attitude demonstrated by the officers involved in her case, their conduct and/or the language used. The way in which their case is handled and progressed can also give rise to this perception. In cases where a suspect has been interviewed by the police, and has denied that the sexual contact was non-consensual, survivors often report feeling that the police have found the suspect's account more persuasive than their account to the contrary, but with little justification for this position or explanation of how this relates to the test for charging.
 - 6.2. **Lack of access to the information they need:** We regularly hear from survivors about cases in which there have been breaches of the Victims' Code³, and where their right to receive information has not been adhered to. This includes information about the existence of the Victims' Code, the availability of the Victims' Right to Review Scheme⁴ and the availability of special measures. The failure to provide such information risks disempowering the survivor and leaving her unaware of her options for holding the police to account and ensuring the criminal justice process responds to her needs. Survivors specifically report that they are not receiving the updates they are entitled to under the Victims' Code. Often, calls and emails are not returned, leading to frustration and anxiety.
 - 6.3. **Experiencing delays in the investigation:** Survivors report delays of many months in their cases being progressed.⁵ While investigations of this nature may take some time, they report to us that feelings of disempowerment and confusion are exacerbated by a lack of regular and effective communication from the police. Even where there has been no progress, an update provides some certainty for

³ See: <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

⁴ See: <https://rightsofwomen.org.uk/get-information/criminal-law/guide-victims-right-review-scheme/>

⁵ Justice Secretary Robert Buckland recently apologised for the delays faced by rape victims, following challenge in the House of Commons. Labour MP Catherine West (Hornsey and Wood Green) asked Mr Buckland for his response to the fact that 44% of victims of rape walk away from the trial after "waiting months for their court date". See: <https://www.standard.co.uk/news/uk/robert-buckland-david-lammy-house-of-commons-government-labour-b939726.html>

the survivor and can assist in managing expectations as to the timeframe for the case.

- 6.4. **Experiencing delays in samples being tested:** We have had numerous calls where survivors have provided samples – which are often intimate and sensitive in nature – and have then been told that they have not been sent to the lab, that there are significant delays or even that the samples have been lost.
- 6.5. **Being unsafe when the abuser is released under investigation:** There is no time limit on suspects being released under investigation, and no provision of conditions as there is with bail. As a result, survivors report feeling unsafe leaving the house and even in their own homes.
- 6.6. **Being unsafe while the abuser is on bail:** While a suspect being released on bail generally provides a greater level of security and safety for survivors because of the ability to place bail conditions on the suspect, we regularly hear reports that bail conditions are breached by suspects – often to the level that reaches the threshold of witness intimidation – and little or no action is taken when they report this to the police. As above, survivors report feeling unsafe leaving the house and even in their own homes.
- 6.7. **No action being taken in their case:** Survivors regularly approach us for support because they have been told by either the police or Crown Prosecution Service (CPS) that their case will not proceed. Most often, they are informed that this is due to a lack of evidence (see Police and CPS Attitudes to Evidence below).
- 6.8. **The lack of rehabilitation for offenders:** A recurring criticism of the justice system is that it fails to rehabilitate offenders such that survivors of sexual violence, and women generally, can feel reassured of a greater level of safety. There is little evidence to support increasing prison sentences as a solution to this, and we cannot expect models of punishment that rely on social isolation to solve the issues which underlie the prevalence of VAWG. These are issues ripe for exploration elsewhere, but Rights of Women notes that “*we can never imprison our way to a safer society. Prisons store up and create problems that come back to haunt our communities in the form of more crime and human misery*”.⁶
- 6.9. **Government failure to address the underlying causes of VAWG:** While this point likely falls outside the issues the Committee is able to examine in detail, it is important to note that survivors have been failed before they ever come into contact with the criminal justice system, because the criminal justice system has not served to prevent the violence they have experienced. Instead, the criminal justice system and other state agencies perpetuate VAWG – both in their complicity in the failures outlined above and in the way women are policed and experience policing.

Whether witnesses are sufficiently supported

7. In answering this question, we again draw on our experiences of advising survivors over our advice lines. In the first instance, we refer specifically to whether survivors are supported by the police, CPS and other criminal justice agencies. We will then consider

⁶ Howard League. *Why the system is broken*. Available at: <https://howardleague.org/why-the-system-is-broken/>.

whether they are able to access support elsewhere, and the barriers to accessing this support.

8. Our experience is that witnesses are not sufficiently supported within the criminal justice system. Much of our reasoning for this is explored both above and below, but for the sake of completeness we re-emphasise that survivors report feeling their account is disbelieved or not taken seriously. They also report experiencing systemic bias whereby the account of a man is considered more persuasive and of higher value than the account of a woman. They also report not having access to information or regular updates about their case. They report being fearful of court processes and doubtful about whether such processes will result in their safety and experiencing a sense of justice.
9. Survivors also report that they are not treated with dignity and respect by the officers handling their cases. This is often due to the way they are spoken to and the problematic attitudes that clearly underlie the apparent acceptance that survivors can be spoken to in this way – whether this is condescending, disinterested or actively aggressive and mocking.
10. Survivors also report that they feel pressured into handing over sensitive information in order for their account to be taken seriously, even where justification for requiring such access is not provided (i.e. full mobile phone⁷ or medical records).
11. Rights of Women note that survivors do not receive the level of legal advice necessary to navigate the complex criminal justice process and to understand how they can protect their own rights where these are in conflict with the interests of the prosecution. While some women are able to access such advice via our legal advice lines, we can only provide support to a small fraction of those who attempt to contact us. There is no wider provision for survivors to be provided with appropriate legal advice prior to the point of report and then throughout the criminal justice process.
12. With regard to the availability and provision of services external to criminal justice agencies, the police are of course right to signpost to these services (i.e. helplines and support organisations, specialist ‘by and for’ organisations, Independent Sexual Violence Advocates or “ISVAs”). However, it should be noted that the VAWG sector has endured many years of underfunding and the essential work undertaken by such organisations has not been fully recognised when it comes to the allocation of funding and resources from Government. This is particularly the case in relation to specialist services run by and for Black and minoritised women.⁸ Such services are not only invariably underfunded but also over-subscribed, and we hear of long wait times for ISVAs, leaving women unsupported in the interim.
13. Even where such services are available, they should not be considered a substitute for the police providing appropriate support, signposting, guidance and information.

The role of the police, Crown Prosecution Service (CPS) and the courts in reporting, prosecuting and convicting in cases of rape and sexual assault, including the advice

⁷ See: <https://bigbrotherwatch.org.uk/wp-content/uploads/2019/07/Digital-Strip-Searches-Final.pdf>

⁸ See: <https://www.womensaid.org.uk/many-refuge-spaces-have-no-local-authority-funding/>

and guidance that is used to train, educate and support those involved in the disclosure, charging and prosecution of rape

14. The criminal justice system, as it currently exists, is entirely reliant on the police, CPS and courts when it comes to prosecuting sexual violence. The power vested in these institutions is part of the problem faced by survivors seeking safety and justice through the law.
15. It is clearly essential that these institutions have a deep and nuanced understanding of sexual violence, its impact on victims and the gendered nature of VAWG. These institutions must also be self-reflective and committed to exploring their own replication of, and complicity in, the misogyny that perpetuates the structural nature of VAWG. Training is part of this, but if it not widely disseminated and fully integrated into day-to-day practice it will not ultimately benefit survivors of sexual violence.
16. We would also draw attention to the need for effective and accountable multi agency working, in which the rights of the survivor are respected. Survivors talk to Rights of Women about their perceptions of the police and CPS working against each other in some matters, with one institution blaming the other for failures or lack of progress.
17. Rights of Women is aware of training that the police and CPS must undertake around sexual violence and particularly the impact of trauma. This must be regular and ongoing training rather than a one-off event. It is also essential that training and learning is not then undermined by internal pressures relating to performance and targets which discourage charging. However, on the whole, Rights of Women caution against an approach that allows increased training to be used as a fig leaf, obscuring the need for more complex systemic change.

What the barriers are to reporting, charging, prosecuting and convicting rape and sexual assaults

18. Many of the barriers survivors of sexual violence face are covered in our responses to the questions above, and especially the section on the barriers women face in accessing justice. We invite the Committee to consider our response to that question alongside this one. Other barriers to reporting, charging, prosecuting and convicting are as follows:
 - 18.1. **Misogyny as a barrier to reporting:** The embedded misogyny in society as a whole is likely to be the most significant barrier survivors face, and this misogyny is by its structural and systemic nature replicated in criminal justice institutions, including the police, CPS and courts.
 - 18.2. **Trauma as a barrier to reporting:** Many natural reactions to trauma, including shame and guilt, also act as barriers to women reporting sexual violence. Cultural factors may also play a role. This is exacerbated by attitudes and questioning that feeds into these feelings of guilt and shame, such as questioning why a survivor did not report earlier. Connected to this are the rape myths and false perceptions about how rape victims should behave. The London Rape Review conducted by the Mayor of London's Office for Policing and Crime and the University of West London in 2019⁹ found that thousands of rape cases have been dropped by

complainants because of the *“stress and trauma caused or exacerbated by the investigation”*.

- 18.3. **Fear and lack of trust as barrier to reporting:** Many survivors report distrust in the police. This is exacerbated by the disproportionate policing experienced by Black and minoritised communities and police brutality against women. Many of the women we support are fearful of the police due to past interactions, insecure immigration status or a general awareness of the fact that criminal justice processes frequently fail and re-traumatise survivors. The criminal justice system and the way it functions incentivises abusers to deny guilt and the harm they have caused, which often leaves survivors without the recognition that they need. The criminal justice system also allows abusers to perpetuate the cycle of harm by counter-accusing the women they abuse – and women are, of course, convicted of crimes when protecting themselves against abusers. The majority of women in prison are survivors of domestic abuse.¹⁰
- 18.4. **Lack of support in the absence of the abuser:** Years of abuse sometimes leads to survivors feeling they are dependent upon their abuser, financially or otherwise, with little confidence that there are mechanisms in place to meet their basic needs, and the needs of their children, if the abuser leaves her following legal action or is imprisoned.
- 18.5. **Ongoing safety:** Survivors may also fear their abuser and have concerns that the police will not keep them safe – particularly when their abuser becomes aware that they have made a report. This is particularly the case where an abuser is not arrested or is released under investigation, in the absence of any conditions to protect the survivor.
- 18.6. **Lack of police accountability:** Where no further action is taken against an abuser, survivors generally report being unable to secure accountability through the Victims’ Right to Review or the complaints scheme. In some cases this is because they were not provided with information about the Victims’ Right to Review scheme and were then past the three month time limit for requesting a review. In many cases, they are also not made aware of how to submit a complaint against the police. Often, original decisions to, for example, take no further action are upheld on the grounds of a lack of evidence – a potentially problematic determination which we address below (see: Police and CPS approaches to evidence).
- 18.7. **Fear of data sharing:** Survivors may also fear ramifications from other authorities. For example, migrant women may fear that their information will be passed to the Home Office – emphasising the importance of a firewall which prevents such data sharing – and parents may fear involvement from social/children’s services.
- 18.8. **Fear of attending court:** Some survivors report being fearful of going to court and facing their abuser. The court building and processes are intimidating and unfamiliar, and many survivors are aware that cross-examination is likely to be a distressing experience.

⁹ See: https://www.london.gov.uk/sites/default/files/london_rape_review_final_report_31.7.19.pdf

¹⁰ See: <https://www.gov.uk/government/publications/female-offender-strategy>

18.9. **Procedural barriers:** Another barrier to successful prosecution may be that cases are not appropriately escalated to the CPS but instead the police use their discretion to take no further action before the case can be reviewed by a specialist prosecutor.

18.10. **Police and CPS approaches to evidence:** In Chapter 2 of the current CPS guidance “*Applying the Code for Crown Prosecutors to Rape and Serious Sexual Offences*”¹¹, it clearly recognises that “*many RASSO cases will feature limited or no corroborative evidence*” and:

*“it is essential that prosecutors do not introduce a requirement for corroboration in their review process or identify the ‘one versus one’ feature of the case as a negative in their assessment of the evidence. One person’s word can be sufficient to provide a realistic prospect of conviction. A jury can and does convict in such cases. The issues may be lack of consent or reasonable belief in consent. Even in these cases, it is not unusual that the evidence consists of more than merely two opposing counts of equal credibility.”*¹²

Despite this clear guidance, many survivors report that the police or CPS took no further action in their matter because it was “her word against his”. This mindset undoubtedly prevents prosecutions taking place, when a more appropriate way to proceed is for those accounts to be tested in court.

18.11. **Lack of legal support:** A lack of legal advice for survivors also means that a worrying proportion think they need a solicitor and are worried because they can’t afford one. This lack of legal advice also means their interests are not protected where there is a conflict between their interests and the interests of the prosecution (i.e. mobile phone extraction, disclosure of medical records, intrusive questions around sexual history). Many survivors who speak with us have not been given any information about the processes involved in a criminal case including the trial process and the availability of protections such as special measures, leaving their anxiety to build.

18.12. **Lack of emotional support:** Many women are not able to secure the emotional support they need to make a report to the police, especially as many support organisations for survivors of domestic abuse are over-subscribed.

18.13. **Lack of resource:** Rights of Women is aware of resourcing issues which aggravate many of the problems explored above. The criminal justice system has been under-resourced for decades. However, the issues surrounding the lack of rape prosecutions cannot be put down to resource. There are many complex factors which result in so few rape reports resulting in prosecution or conviction, and it would be a disservice to survivors for this to be viewed as a resourcing issue.

18.14. **Being exposed to misogynistic myths around sexual violence:** As covered above, callers report being asked questions around why they did not report sexual

¹¹ See: <https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-2-applying-code-crown-prosecutors-rape-and-serious>

¹² Ibid

violence earlier and why they didn't take more "preventative" action before, during and after the attack. While it is important that the police are able to gather evidence and a full picture of the attack in question, it is essential that they recognise the impact of trauma on survivors and the ways in which this can manifest itself. There is no "right way" for a victim of sexual violence to behave.

- 18.15. **Not having their trauma recognised:** Linked to the above, survivors report to us that their trauma and the impact this has on their account and evidence is not recognised or understood by the officers they have contact with.
- 18.16. **Being put under pressure to disclose sensitive information:** Survivors report feeling under pressure to disclose private information, including medical records, records from counselling and/or therapy and the content of their mobile phones. From the calls we have with survivors regarding mobile phone extraction, it would appear that the forms DPNa and DPNb¹³, which should be provided to survivors and witnesses to help them understand why their phone is required and what will be taken from it, are rarely used. These forms were intended to implement the principles set out in the *Bater-James* judgment concerning mobile phone extraction¹⁴ and address the concerns raised in the Information Commissioner's investigation report into Mobile Phone data extraction.¹⁵
- 18.17. **Over-reliance on criminal justice mechanisms:** Rights of Women takes the opportunity to point out that further investment in the criminal justice system does not prevent VAWG. While it is important that the criminal justice system is funded at a level that ensures cases are dealt with fairly and expeditiously, and that survivors are not further victimised through these processes, the Government too frequently takes an easier, criminal justice focused approach to VAWG (i.e. creating new criminal offences and increasing sentences). There should instead be renewed focus on reducing offending in the first instance, requiring community-focused solutions and the addressing of social inequalities.

Challenges around disclosure and whether the current disclosure arrangements affect the reporting, investigation, prosecution and sentencing of rape cases

19. We refer the Committee to our responses above which concern disclosure, and in particular disclosure of mobile phone data and sensitive medical records. This issue is also covered in our response to the success of organisational strategies and plans (see below).
20. Rights of Women note that the recent disclosure crisis following the case of *R v Allan*¹⁶. It is imperative that disclosure processes function correctly in order to secure justice and fairness in any given case, and it should be noted that the implications of this crisis have had a severe and negative impact on survivors as well as those accused of sexual violence.

¹³ See: <https://news.npcc.police.uk/releases/police-replace-processing-notice-used-to-obtain-agreement-from-victims-and-witnesses-to-search-for-relevant-material-on-digital-devices>

¹⁴ [2020] EWCA Crim 790

¹⁵ The Commissioner's investigation found "no evidence" of police officers considering less intrusive alternatives to mobile phone extraction", and expressed concern that "considerations of necessity, proportionality and collateral intrusion were not, based on what we saw, sufficiently or routinely documented". See: https://ico.org.uk/media/about-the-ico/documents/2617838/ico-report-on-mpe-in-england-and-wales-v1_1.pdf

¹⁶ See: <https://www.cps.gov.uk/sites/default/files/documents/publications/joint-review-disclosure-Allan.pdf>

21. While we make no comment on any particular case, we note that a failure to disclose material (for example, a prior sexual relationship or contact following the alleged act of violence) does not indicate that no sexual violence took place. However, media coverage of such cases often feeds into a general and damaging myth that women regularly lie about experiencing sexual violence.

The success of organisational strategies and plans, for example the Joint National Disclosure Improvement Plan and the CPS' RASSO 2025 strategy.

22. Rights of Women are participants in the CPS VAWG External Consultation Group, and have had the opportunity to feed into the consultation process around the CPS RASSO 2025 strategy.
23. While it would be premature at this stage to comment on its efficacy in practice, the Committee will note our concerns above regarding whether such policies and procedures are followed by relevant criminal justice agencies. If such guidance is not followed – and it is our experience that it often is not – then a new strategy will have no impact on the way the system functions or outcomes for survivors.
24. Some of the positive features of the new strategy, if they do translate into practice, include the emphasis on trauma-informed responses and addressing myths and stereotypes, and the acceptance of the gendered nature of sexual violence. While a renewed commitment to these goals is positive, it is also worth noting that such approaches were quite rightly in place prior to this strategy, but the experiences of survivors would suggest they were not embedded into practice and that problematic responses to sexual violence at the point of report and beyond are rife.
25. Taking one example – the use of mobile phone extraction in cases of sexual violence. The strategy currently states as follows:

“CPS guidance is clear that searches of digital devices should not be pursued as a matter of course in every case. It is crucial that only reasonable lines of enquiry are pursued to avoid unnecessary intrusion into a complainant’s personal life. Where a review of electronic communications is necessary, a staged approach should be considered. Enquiries should be focused, using search terms and date parameters.”
26. In reality, survivors report to us that their phones are taken for months at a time, with all content downloaded and no justification provided for this approach. They do not receive information about searches being in any way restricted by use of search terms or dates, and are told that their cases will not continue if they decline to share their phone to protect their privacy.
27. Rights of Women also notes that strategies and guidance for use by police and CPS generally avoid engaging with the role of the police and CPS in creating an environment in which survivors do not feel safe or willing to come forward and report sexual violence.

Conclusion

28. The response above outlines a non-exhaustive range of factors which lead to survivors of sexual violence struggling to obtain justice through our current legal system. It is particularly important to note that structural inequality is the overarching context which frames the way in which criminal justice institutions perpetuate patriarchal approaches to justice which ultimately re-traumatise and re-victimise survivors. Responses to sexual violence and VAWG must recognise and undertake to address the discriminatory nature of the approaches taken by such institutions, and the wider social injustice which allows for a culture where VAWG is both prevalent and inadequately addressed.

29. Rights of Women looks to a future where women can feel safe from all forms of violence, and government responses address the underlying causes of such violence. We would encourage the Committee to hold the Government to account for its poor record of addressing the structural causes of VAWG and the lack of funding for the VAWG sector, particularly organisations run by and for Black and minoritised women.

June 2021