

Written evidence submitted by HM Government (from the Ministry of Justice, the Home Office and the Attorney General's Office) INV0020

Executive Summary

1. Rape and sexual violence are horrific and devastating crimes that can impact victims for the rest of their lives. Over the past five years, there has been a significant decline in the number of charges and prosecutions for rape cases, and as a result, fewer convictions for rape. The government needs to better understand why we are letting down victims of rape, and to right this wrong.

2. Our End-To-End Rape Review Report on Findings and Actions ("The Action Plan") was published 18th June and lays out an ambitious programme of work to be undertaken by government and operational partners to bring about systemic change in the way rape cases are dealt with.

3. The government welcomes the Home Affairs Select Committee's focus on this important work. After outlining the programme of work detailed in our Action Plan, we have responded to each of the questions raised by the committee (the questions on organisational strategies and barriers to reporting, charging, prosecuting and convicting are included through the other answers).

The Rape Review Action Plan

4. Our Action Plan outlines an ambitious programme of work to which government and partners (the police, CPS and judiciary) are committed. This will bring about systemic change, improving the support victims receive and the quality and timeliness of cases progressing through the system. We hope that this will build confidence in the system, encouraging victims of rape and sexual assault to come forward and increasing the number of rapists convicted by the courts.

5. In developing our Action Plan, we have worked closely with stakeholders from across the CJS, including those representing victims, the defence community, and operational partners. The Rape Review was informed by their experience and expertise. A Government Social Research report also informed the Rape Review and has been published alongside the Action Plan.

6. The Action Plan commits us to ensuring:

- Every victim has access to the right therapeutic and clinical support, and the right emotional and practical support and that their access to support does not depend on where in the country they are;
- Victims of rape and sexual assault are easily able to understand and access information about their rights;
- A new approach to investigations that shifts the focus away from victim credibility towards the suspect's behaviour and offending patterns and seeks to identify and deal with serial offenders;
- A cultural change in the police and CPS that will assist towards enabling a return to volumes of rape cases reaching court back to pre-2016 levels by the end of this parliament;
- No victim is left without a phone for more than 24 hours, with an ambition that victims have their own phones returned within this period, with replacement phones being provided in a minority of cases, and victims are not asked for information unless it is necessary and proportionate in pursuit of a reasonable line of inquiry;

- Victims receive clear, prompt communication and engagement throughout the process and special measures are available that meet their needs;
- Only evidence about the victim that is pertinent to the case is deployed at court and a victim's credibility is not undermined by pre-conceptions or rape myths.

7. As part of the framework we are putting in place to hold each part of the system to account for its part in driving improvements, the Minister of State for Crime and Policing will lead a monthly taskforce of key CJS leaders to ensure effective collaboration between agencies to implement the review's actions and drive up performance. This will be supported by leadership at the highest level: the Lord Chancellor, the Home Secretary, the Attorney General, and the Prime Minister will all be closely involved. We will publish six-monthly performance scorecard to demonstrate how we are delivering against our ambitions and progress on the action plan, which will also include key metrics of timeliness, quality and victim engagement.

8. Our Action Plan builds on work already underway including through the police-CPS Joint National Action Plan, CPS' RASSO 2025 strategy, and the Joint National Disclosure Improvement Plan. These strategies are strong foundations that will continue alongside the work that has been outlined in the Action Plan. The Action Plan is a part of wider measures, introduced by the government, including the Domestic Abuse Act, the Police, Crime, Sentencing and Courts Bill, the Tackling Child Sexual Abuse Strategy, and Violence Against Women and Girls Strategy we will be publishing later this year.

9. Should the actions in the plan, accompanied by stronger accountability, transparency and leadership, not be enough to improve the outcomes outlined in this Review, then further proposals including reform of the way in which the respective independent operational partners are held to account for delivery of operational improvements will be considered.

Whether victims have access to justice, whether witnesses are sufficiently supported

10. It is estimated that fewer than one in six of those who are victims of rape and sexual assault will report to the police.¹ There are many reasons for this; confidence that they will be supported, and the criminal justice system itself, are critical influencing factors. Reporting of rape and sexual assault has risen since 2015, whilst it is estimated that the prevalence of these crimes has remained stable. However, a much greater proportion of victims who report rape and sexual assault now choose to withdraw from the criminal justice process, with most doing so before a charging decision is made.² Evidence shows that access to early and continuing support is essential in enabling victims to engage, and to remain engaged, in the criminal justice system.

11. This government is investing record amounts in support services for rape victims, including increasing the National Rape Support Fund and ringfenced funding to Police and Crime Commissioners. We have boosted funding for rape and domestic abuse services for 2021/22 by £176 million. This includes a new £27 million national fund to expand the recruitment of Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs)

¹ ONS, March 2021, Nature of sexual assault by rape or penetration, England and Wales: year ending March 2020. Rape and sexual offences are commonly under reported by victims, with many victims choosing not to disclose the offence to the Crime Survey England and Wales (CSEW), police or other individuals or organisations.

² Home Office, 2020, Police recorded crime and outcomes open data tables, Accessed 29.04.21

and a new statutory duty on local authorities to ensure victims can access support in safe accommodation.

12. The provision of support is inconsistent, often is not tailored to meet a victim's needs, and demand is high. The Rape Review Action Plan sets out a series of measures we will be taking to ensure all victims of sexual violence can access the right therapeutic and clinical support, and the right emotional and practical support, regardless of where they are in the country. This includes consulting on the provision of community-based support for victims of sexual violence and a statutory underpinning for ISVAs in the forthcoming Victims' Bill consultation.

13. Furthermore, a new Victims' Code came into force on 1st April 2021, providing a comprehensive framework to ensure victims receive their rights. We will go further to ensure victims of rape and sexual assault are easily able to understand and access information about their rights. We will use the forthcoming Victims' Bill consultation to explore how to ensure criminal justice agencies are delivering victims' rights, including those in the Victims' Code, and will seek to guarantee these rights and hold agencies to account for delivering them.

Whether there are sufficient safeguards for those who are accused of rape and sexual offences to ensure that they receive a fair trial

14. The right to a fair trial is fundamental to our justice system: every suspect and defendant should be treated fairly and continue to have confidence in the justice system.

15. It is the primary responsibility of the police to investigate allegations of rape and in doing so explore all reasonable lines of enquiry, whether they point towards or away from a suspect. They then provide the required evidence to the Crown Prosecution Service (CPS) who will make decisions whether to authorise the police to charge, based on the full code test. None of the actions we are implementing in the rape review will alter these fundamental roles, rather they will ensure that the police and CPS have the capability to carry out their responsibilities effectively. Our work on disclosure will ensure that investigations gather all necessary and pertinent evidence.

16. The cornerstone of our justice system is the independent judiciary, who are responsible for ensuring a fair trial, which includes listing cases (i.e. deciding in what order they should appear at court and the timings of different stages of a court case); the running of a trial (including deciding what evidence is admissible or not) and directing the jury in their decision making. It is for the jury to decide on the guilt of a defendant. The process of appearing in court can feel intrusive and be re-traumatising for victims; in asking the Law Commission to look at the way evidence about the victim is used at trial, we are seeking to ensure that only information relevant to the case is heard at court, while maintaining the defendant's right to a fair trial.

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

18. While the figures for prosecuting rape cases have always been worryingly low, we have seen a sharp decrease since 2016/17. Reporting of rape has increased in recent years from 24,093 adult rapes recorded by the police in 2015/16 to 43,187 in 2019/20.³ However, only 3% of adult rape offences assigned a police outcome in 2019/20 were given an outcome of charged/summonsed. Our research found that the reasons for the decline in cases reaching court are complex and wide-

³ Office for National Statistics, 2021, Sexual offences prevalence and trends, England and Wales: year ending March 2020.

ranging, including an increase in personal digital data being requested, delays in investigative processes, strained relationships between different parts of the criminal justice system, a lack of specialist resources and inconsistent support to victims.

19. A strong relationship between the police and CPS is critical to the progression of rape and sexual assault cases. The growth of digital evidence, reduced resources and associated increase in workload have put pressure on both agencies, effecting victims' experiences of the process, and public confidence in the criminal justice system. Recognising that change is needed, the police and CPS have taken proactive action via the Joint National Action Plan (JNAP) for rape, published in January of this year. This is being overseen by police-CPS Joint Operational Improvement Board led by AC Nick Ephgrave and the Director for Public Prosecutions. Key activity includes:

- reviewing the 'administratively finalised' terminology and process to significantly reduce the number of cases allocated this outcome;
- improving the early advice process through a shared national standard between the police and CPS to improve case file quality;
- reviewing police and CPS decision-making in those police force and CPS areas that have seen the sharpest rises in the conviction after contest rate;
- promoting closer joint working during the pre-charge stage by identifying best practice models; and
- developing and delivering joint learning and development in key areas including the impact of trauma, decision-making, the offender-centric approach, reasonable lines of enquiry, and the changing nature of sexual behaviours and encounters.

20. Over £200,000 has already been awarded to Avon and Somerset Police to deliver this work as part of Project Bluestone. The pathfinder programme 'Operation Soteria' builds on this to drive systematic and sustainable transformation in how the police and CPS handle investigations into rape and sexual offences.

21. Capability and capacity in rape investigation and prosecution will also be improved through learning and development. The National Police Chiefs' Council will work with partners to review and enhance training for officers, encourage and monitor its uptake and develop joint police-CPS learning and development. Both agencies will build on this and ensure that training materials and guidance on the effect of trauma on victims are in place. The CPS has also updated its rape legal guidance, including with new content on tackling rape myths and stereotypes and on reasonable lines of enquiry and the disclosure process in rape cases, particularly with relation to digital material. Specialist RASSO prosecutors will also receive training on this updated guidance.

22. In July 2020, the CPS launched RASSO 2025, a five-year strategy outlining a programme of work to help reduce the disparity between the number of rape cases reported and the number of rape cases convicted. As part of this work, the CPS has consulted on revised rape legal guidance for prosecutors, including on challenging rape myths and stereotypes and addressing same-sex sexual violence.

23. When cases reach court they face additional hurdles. Delays in the system mean many victims feel that their chance to recover is put on hold while their case goes through the justice system. Fear of testifying in front of a court, the toll on mental health, and feeling disbelieved or judged also weighed on many victims. These experiences cause a large proportion of victims to disengage all together before justice can be done.

24. The Action Plan sets out what we will do to improve the court experience for victims and increase the speed that cases make it to and through court, including the development of a RASSO Best Practice Framework for the courts which will take a multi-agency approach to understanding what best practice is occurring and seek to replicate this across the country. Our wider work on court recovery will support this: over the past year, we have spent over £250 million to increase capacity and make courts Covid-secure. In the Action Plan, we detail the work we will do to develop a multi-agency best practice framework that will increase the quality of support victims receive before, and at, court.

25. We also recognise the importance that Section 28 has for some witnesses to allow vulnerable victims to pre-record their evidence, avoiding the trauma of giving their evidence at trial. We have already rolled out Section 28 for vulnerable victims in all Crown Courts, and are currently piloting this measure for intimidated witnesses in three Crown Courts and will be extending this pilot to a further three Courts. Subject to evaluation, we will work closely with the judiciary to commence full roll out to all Crown Courts for this cohort, and will consider whether any further legislative change is needed. We also plan to test the use of Section 28 for vulnerable victims and witnesses in the Youth Court.

26. To address concerns about the impact of rape myths and the use of evidence more broadly in rape cases, we have asked the Law Commission to examine law, guidance and practice relating to the use of evidence in prosecutions of serious sexual offences, which is likely to consider the impact of rape myths on juries – in addition to the guidance that is currently in place for judges and the CPS.

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

28. The invasive nature of disclosure has long been an issue for victims, and we heard that the possibility of handing over personal and sensitive data is one of the principal reasons victims withdraw from the process. Rape Review research reported an increase in requests for digital and third-party material, making an already distressing process feel more intrusive. In addition, victims are often left without their mobile phones for long periods, depriving them of an important support mechanism at a time of great vulnerability.

29. Digital and third-party material may provide vital evidence to support an investigation and prosecution and may need to be disclosed to the defence to facilitate a fair trial. However, requests for personal information must be proportionate and made in accordance with reasonable lines of inquiry. Rape review research has found differences in the police and CPS's understanding of requirements and investigative thresholds that need to be met for this material to be deemed necessary.

30. The approach to gathering victims' personal information for the purposes of an investigation can be improved and the rape review outlines a range of measures being undertaken to ensure this. It is our ambition that victims will not be left without a phone for more than 24 hours, with an ambition that victims have their own phones returned within this period, with replacement phones being provided in a minority of cases, and victims are not asked for information unless it is necessary and proportionate in pursuit of a reasonable line of inquiry.

31. We will do this by increasing police capacity to examine digital devices such as smartphones. We are also working with the mobile phone industry to support police efforts to 'swap out' phones to ensure that victims are not left without that vital support mechanism.

32. Of course, while we need to ensure that victims feel supported by the criminal justice system, it is also essential to retain the ability of investigators and prosecutors to fulfil their disclosure obligations and obligations to follow all reasonable lines of inquiry.

33. The revised Attorney General's Guidelines on Disclosure, which came into effect in December 2020, incorporate key elements of the Information Commissioner's Office (ICO) report and the Court of Appeal's 'Four Principles' for reviewing digital communications set out in *R v Carl Bater James*. These promote focused and proportionate assessments of disclosure throughout the criminal justice process. The Attorney General's Office has committed to undertaking an annual review of the Guidelines on Disclosure.

34. The police have replaced their digital download consent form for victims and witnesses with a new Digital Processing Notice to provide consistency between police forces in how they obtain digital evidence. This should improve the culture around the acquisition and use of digital evidence.

35. The Police, Crime, Sentencing and Courts Bill introduces provisions to provide a clear legal basis for the extraction of information from digital devices. This legislation introduces clear privacy safeguards which ensure the use of this power is necessary and proportionate.

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The published version Rape Review and accompanying documents can be found online at gov.uk. Full link here: <https://www.gov.uk/government/publications/end-to-end-rape-review-report-on-findings-and-actions>