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The justice system is failing victims and survivors of sexual violence

Tammi Walker, Alison Foster, Rabiya Majeed-Ariss and Miranda Horvath on a role for psychologists in improving processes and protection around rape cases

The justice system in England and Wales continues to fail survivors of sexual violence. Official figures from the Crown Prosecution Service and Police highlight the ongoing problem of attrition of rape cases from the criminal justice system. Here, we outline the limitations of the endless cycle of reviews in response to the poor treatment of survivors. We argue that solutions which could lead to significant improvements for survivors of sexual violence are possible.

The work of psychologists when it comes to sexual violence is often focused on assessing and treating perpetrators, with the valuable work of the vast numbers who work with victim-survivors and shape the way the system is set up being overlooked. Often those psychologists are isolated, disconnected from other practitioners, activists and researchers, though networks are developing to link people together (e.g. Violence Against Women and Girls Research Network, @VAWGRN, <https://vawgnetwork.mdx.ac.uk>). Psychologists are leading the way in improving services

for victims of sexual violence – as well as offering support in the traditional therapeutic sense, they are also involved in the development of the new CPS guidance for pre-trial therapy (July 2020), meaning guidance that is far more trauma-informed and evidence-based than the previous iteration.

In *The Telegraph* on 6 December 2020 it was reported that publication of the Government's 'End-to-End Rape Review' has been delayed, due to a judicial review hearing scheduled to begin in January 2021. This is the case brought by the Centre for Women's Justice and the End Violence Against Women Coalition against the Crown Prosecution Service (CPS) [see www.endviolenceagainstwomen.org.uk/campaign/rape-justic-fail/]. The case alleges that CPS managers instructed prosecutors to 'drop weaker cases' which was unlawful and violated women's human rights.

Here, we discuss how the criminal justice system continues to fail victims of sexual violence (particularly those from minority groups) and introduce ways in which the system is improving with input from practitioner and research psychologists.

The decriminalisation of rape?

'Rape is an acquired behaviour, an act of normal deviance, found in societies or cultural groups whose social, economic and political structures support sexual violence through the subordination and devaluation of women' (Scully, 1990, p.63)

Thirty years on from Diana Scully's quote, the attrition of rape cases within the criminal justice system (CJS) is still a major concern. The number of rape cases being dealt with by the Crown Prosecution Service (CPS) continues to sharply decline. The CPS charged, prosecuted and convicted fewer cases despite more alleged rapes being recorded by police in the year to March 2019. This data shows charged cases fell by 38 per cent; prosecutions dropped by 33 per cent; and convictions declined 27 per cent (Crown Prosecution Service, 2019). However, alleged rapes recorded by the police increased by 9 per cent in the same period. In effect, there were three convictions for every 100 rape cases recorded by the police in England and Wales in the year to March 2019.

Attrition refers to the process whereby cases drop out of the CJS at one of a number of potential points of exit from that system. The CPS pointed to the police as a leading cause of the growing gap between cases being reported and those going to court, citing police referring fewer cases, cases being more complex and lack of response from the police after requests for further information.

The fall in the proportion of cases charged by the CPS is greater than the fall in the numbers being referred to it. This is thought to be in part a reaction to a fall in the number of successful convictions. The Law Society's Criminal Law Committee (LSCLC) have argued that the CPS has become more reluctant to allow cases to proceed without the strongest evidence (Reyes, 2019). In November 2019, it was alleged that in 2016 the CPS introduced a secret conviction rate target that stated only 60 per cent of rape cases

should end in a prosecution, which may have caused prosecutors to drop weaker or more challenging cases.

The Victim's Commissioner for England, Dame Vera Baird, was unequivocal in her 2019-2020 annual report, stating that 'in effect what we are witnessing is the decriminalisation of rape'. In 2017 changes to the Policing and Crime Act for England and Wales led to more people suspected of crimes (including rape) being released without bail compared to previously. The LSCLC believe this led to cases being left to drift. The CPS disagreed, and the 2019 HM Crown Prosecution Inspectorate investigation into whether the CPS were only prosecuting 'easy cases where a conviction was more likely' could not find evidence of this.

Time for another review?

In England and Wales, the standard response to reductions in prosecutions and convictions for rape is to conduct a review. In the last 20 years there have been multiple reviews by multiple agencies (e.g. Angiolini, 2015; HMIC & HMCPSI, 2002; HMCPSI, 2019, Stern, 2010). In March 2019 the Violence Against Women and Girls inter-ministerial group and the National Criminal Justice Board commissioned yet another review into criminal justice responses to adult rape and serious sexual *offences* across England and Wales (known as the 'End to End Rape Review'), which is ongoing (originally due to be published in 2020, now delayed until 2021). It is hard not to suspect that reviews simply serve the purpose of being seen to *do something*.

Recurrent recommendations from reviews include: the treatment of rape victims is key; there is ongoing need for better training, educational and awareness campaigns to promote understanding of rape myths amongst criminal justice professionals and the general public; there is a vital need for specialists at all stages of the criminal justice process; better monitoring of cases, in particular cases where 'no further action' is taken; and the importance of greater and earlier involvement of other critical agencies, most fundamentally more joint working with improved communication between all agencies. Despite the consistency in the recommendations made, reviews appear to bring about limited change, because the implementation of recommendations is constrained and often incomplete and rarely are the required resources provided. There are no sustained increases in prosecutions and convictions or widespread improved treatment of victim-survivors. The system is in a perpetual cycle of, as Jan Jordan (2011) put it, accepting 'the rhetoric of reform while the underlying realities remain little changed' (p.234).

Vulnerabilities

Vulnerabilities remain one of the key factors in the inequitable treatment of victim-survivors by the CJS. This is exacerbated by perpetrators of sexual offences who are more likely to target people from vulnerable and marginalised groups – including children, people with mental health difficulties, learning disabilities and substance use issues – because they know it is unlikely that people from these groups will be believed by a jury. Women from Black, Asian and Minority Ethnic (BAME) groups are also less likely to see their case progress through the system (Hohl & Stanko, 2015).

Though the CPS has produced policies in relation to supporting victims with a learning disability, mental health difficulties, and children, there does not appear to be a policy to support BAME victims, despite evidence that BAME women and those who are refugees (Thiara & Roy, 2020) continue to be let down by the CPS. The RASSO 2025 strategy has published a toolkit for prosecutors in relation to lesbian, gay, bisexual and transgender (LGBT) individuals who have experienced sexual violence (CPS, 2020), which is necessary as research suggests that those with non-heterosexual identities are also failed by the CPS (Love et al., 2017). A strategy for BAME groups is not yet available.

Thirty years ago, the issue of sexual violence amongst people with learning disabilities (PwLD) was first brought to public attention (Brown & Craft, 1989). At that time, many treated the notion of PwLD being victims of sexual violence with resistance and denial. Although it is now accepted that rates of sexual violence are higher in PwLD than without, great disparity in reported prevalence figures remained. Majeed-Aris, Rodriguez and White (2020) identified the prevalence of learning disabilities amongst adult clients attending a UK sexual assault referral centre (SARC) to be 8.2 per cent. Only 2 per cent of the general UK population are reported to have a learning disability, demonstrating that PwLD are more vulnerable to sexual violence. Moreover, this prevalence figure only reflects adults acutely reporting sexual violence and attending a SARC for a forensic medical examination, so no doubt the number is higher.

Some amendments exist to improve the CJS process for child victims, such as the intermediary role and the option to give evidence in court via remote-live link. A protocol

to expedite cases involving victims under 10 to court was published in 2015, but in practice, young victims are still waiting at least a year to give evidence. Section 28 of the Youth Justice and Criminal Evidence Act (1999) was also introduced, which allows young witnesses to pre-record their cross-examination ahead of the trial. This is being rolled out nationally after a regional pilot, though roll out was delayed even pre-Covid 19. Services such as The Lighthouse in London and The Meadows in Co Durham are addressing the need for specialist sexual violence services for young victims and their families, offering early intervention and holistic systemic support.

Mental health and pre-trial therapy

Being a victim of sexual violence is associated with mental health difficulties, some of which can be lifelong. 80 per cent of teenage girls who attended a London SARC had at least one mental health problem 4-5 months after the event (Khadr, 2018). Long term effects of sexual abuse include an increased risk of depression, anxiety, Post Traumatic Stress Disorder (PTSD), eating disorders, sleep disorders and suicide attempts (Chen et al., 2010).

The CPS developed guidance on the delivery of pre-trial therapy in 2001 for both children and adults who have experienced sexual violence and are likely to attend court. On 30 July 2020, as part of their five-year strategy on rape and serious sexual offences (RASSO, 2025), they announced a consultation into pre-trial therapy guidance will take place in 2020/2021. The draft guidance seems to address many of the difficulties highlighted by practitioners in the old guidelines – while some ‘therapies’ are still not recommended,

those that have an evidence base such as Trauma Focused Cognitive Behaviour Therapy (TF-CBT) and Eye Movement Desensitization and Reprocessing (EMDR), both of which are named in NICE guidance for PTSD (2018), are now allowed pre-trial. No longer will practitioners have to consider the ethical dilemma of whether to withhold therapy for the sake of a criminal investigation – they are now able to use clinical judgement to determine the most appropriate type of support for the client. Survivors should be able to access the support they need when they need it – encouraging, given that there has been at least one case where psychological support was withheld pre-trial and the vulnerable witness later went on to complete suicide (Simpson-Adkins & Daiche, 2015). However, survivors will still have to contend with long waiting lists for therapy, sometimes up to one year.

Where do we go from here?

The CPS should review their guidance for vulnerable victim groups and work to ensure that people from these groups are not disadvantaged further. They are lacking any guidance on how victims from BAME groups should be supported and how systemic racism in the CJS is overcome.

The updated pre-trial therapy guidance seems to have a greater appreciation of the nature of trauma memories, the need for timely psychological support and questions the need for therapy notes to be accessed by lawyers. It is hoped that this guidance will improve the situation for those needing therapy pre-trial, but there needs to be a knowledge and understanding shift by those working in the system in relation to the nature of trauma memories and how these are recalled. Resources such as NHS Lanarkshire's

video for Police Scotland 'Trauma and the Brain' should be developed with a specific focus on the impact of sexual abuse on memory, with mandatory training required for all those involved in sexual violence prosecutions – Police, CPS, Barristers, the Jury. It would be beneficial for the Judge in jury trials to mention trauma in his or her summing up.

Diana Scully's 1990 research interviewing convicted rapists asked the question 'what do men gain from rape?' and concluded that it's 'a low risk, high reward crime'. Despite many positive changes this is still the case in England and Wales, as is evidenced by the ongoing high levels of attrition of rape cases. How can we change the social, economic and political structures that support sexual violence? Whilst we await the findings of the Governments' 'End to End rape review' and data on the impacts of the Covid-19 pandemic on sexual violence, we call for an end to reviews, and will monitor the progress of RASSO 2025 closely.

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