



Independent Legal Advice and Representation for Survivors of Sexual Violence and Abuse

Prepared by Centre for Women's Justice, Rape Crisis England & Wales, Rights of Women, and the End Violence Against Women coalition, May 2023

*"...we will use the upcoming Victims' Bill as a vehicle for fundamental change. Our ambitions are to ensure that victims who want to engage in the criminal justice process feel able to do so, to support them at every step, and ensure that they receive the rights to which they are entitled. **It means...ensuring that victims can access support and legal advice to understand and challenge disclosure decisions**"*

- The End to End [Rape Review](#), June 2021 (emphasis added)

Summary points

- 1) There is a fundamental loss of faith in the criminal justice system for rape and sexual abuse survivors. 5 in 6 women who are raped don't report – and the same is true for 4 in 5 men
- 2) Attrition rates have risen to staggering levels: the government 'scorecards' for January to December 2022 has this figure at 62%.
- 3) Victims and survivors of sexual violence and abuse are faced with a wide range of intrusive and often unlawful practices by the police and Crown Prosecution Service (CPS), and require independent legal advice and representation to uphold their rights
- 4) Independent legal advice and representation can provide an important mechanism and layer of accountability which results in improved police and CPS policies and procedures.
- 5) Independent legal advice has been piloted successfully already in Northumbria, and exists in many other jurisdictions, including most European countries, Australia, California and Ireland
- 6) Evidence clearly indicates that independent legal advice and representation can operate well alongside the rights of defendants to a fair trial
- 7) This proposal does not propose changes to the role of victims/survivors in the criminal justice process or the rights of audience that currently exist, nor does it change the adversarial system that we have in the UK
- 8) Independent legal advocacy was promised by the Rape Review, and has been recommended in other major reviews.

- 9) Experts in sexual violence and abuse are calling for free and independent legal advocacy to be included within the Victims and Prisoners Bill for survivors of rape and other sexual offences

Introduction and context

It is widely understood that the experience of victims and survivors of sexual violence and abuse with the police and the criminal justice system is too often negative and re-traumatising. In June 2021 the government admitted in the Rape Review that “victims of rape are being failed”. The government’s Rape Review, multiple Inspectorate reports, and key reviews have detailed that police and/or prosecutors are failing victims and survivors, and that workplace cultures, lack of training, support, specialism and expertise, have led to inappropriate and poor investigations, and even unlawful processes.¹

In 2020, we wrote a report, [The Decriminalisation of Rape](#), where we explain that “Rape and sexual abuse is still treated with a worrying form of exceptionalism in the justice system; in no other crime type are prejudices about a victim centred in the investigation and prosecution.” Central to the way in which criminal justice agencies manage rape and sexual abuse cases, are decisions around how credible a victim/survivor is deemed to be. At every stage of the process, manifestations and pre-emption of rape myths and stereotypes that attempt to undermine the credibility of victims and survivors play a major role in whether a case is taken forward or not. Operation Soteria² found in their [year 1 findings](#) that:

“The use of ‘victim credibility’ within the context of an investigation was often used as an absolute factor not to proceed an investigation, rather than critically assessing whether it had any bearing on the veracity of the allegation and conducting a full and appropriate investigation of the full facts.”

These ways of working which seek to undermine victims and survivors rather than investigate and scrutinise suspect behaviour, is directly at odds with the interests of the victim, as well as justice outcomes. Victims and survivors consistently state that they experience the criminal justice system as an additional harm and trauma that compounds the harm and trauma of the sexual violence and abuse they were subjected to. **The intense focus on victim’s credibility means that victims often feel that they themselves are under investigation**, and infers that victims and survivors are responsible for what happened to them, or are untruthful. Sometimes this is stated more directly, as it has been by the CPS in letters justifying discontinuation of cases based on victim-blaming assumptions:

“there are difficulties with the evidence including that you did not lock your door to prevent the suspect from entering the room and carrying out the rapes”³

And:

“you were in a relationship with the suspect. The jury would be aware that you had enjoyed an adventurous sex life with the suspect before this incident”⁴

¹ Examples: Stanko, Betsy OBE (December 2022), Operation Soteria Year 1 findings, Joint National Action Plan (NPCC and CPS, January 2021), A joint thematic inspection of the police and Crown Prosecution Service’s response to rape - Phase one (Criminal Justice Joint Inspection), The end-to-end rape review report on findings and actions (HM Government, June 2021), Baroness Casey Review (October 2022) Interim Report on Misconduct; HMICFRS (November 2022) An inspection of vetting, misconduct, and misogyny in the police service; College of Policing and NPCC (October 2022), Violence against women and girls: Themes, learning and next steps following police forces’ reviews of police-perpetrated violence against women and girls

² Operation Soteria is a major research programme funded by the government to improve policing and prosecution of rape.

³ Direct quotes from CPS letters to survivors, collated in a [dossier of evidence](#), used in EAW’s Judicial Review against the CPS.

⁴ Ibid

And yet despite wide acceptance of these egregious failures, victims and survivors have no access to the necessary specialist legal advice to challenge the injustices they face when their rights are undermined and disregarded. Confidence in the criminal justice system is understandably low: 5 in 6 women who are raped don't report – and the same is true for 4 in 5 men.

This situation is untenable and cannot remain the status quo. As a group of experts working to tackle sexual violence, we know from experience that the provision of independent legal advice and representation can help to protect the rights of victims and survivors, address the profound loss of faith of victims/survivors of sexual offences in the criminal justice process, and ultimately help to reverse this trend. The call for independent legal advice is not new, it has featured in many recommendations, including within the government's Rape Review, which strongly suggested that independent legal advocacy be within the Victims Bill. This promise must be kept; the Victims and Prisoners Bill provides an ideal opportunity to legislate for such change.

This proposal does not propose changes to the role of victims/survivors in the criminal justice process or the rights of audience that currently exist. Lawyers assisting victims/survivors would not play a role at trial or represent their client before the court other than in applications for disclosure of third party materials that contain sensitive personal data about the victim/survivor⁵. We only propose legal advice to victims 'behind the scenes' and sometimes representation in their dealings with police/CPS on limited matters specific to sexual offence cases.

This briefing sets out why this is essential to provide confidence and justice for survivors through independent legal advice and representation.

The clear need for legal advice and representation

Legal advice and representation is required for two purposes:

1. To ensure victims/survivors' rights are respected where their interests diverge from the interests of the police, the CPS, and other criminal justice agencies.
2. To boost the confidence of victims/survivors when engaging with the criminal justice process through access to a legal professional who is 'on their side'.

In the course of rape and sexual offences being reported to the police by victims and survivors, and cases proceeding through the criminal justice system, there are numerous points at which police and/or prosecution interests could be at odds with interests of the victim, and where the victim/survivor requires legal advice. The following demonstrate the key areas.

1) Requests for disclosure of victims/survivors' personal data

“Victims are being told to consent to hand over extraordinary amounts of information about their lives, in the immediate aftermath of a life changing attack. Victims are being asked to allow access to medical records, school reports, social service records and the

⁵This is already an option in the current Criminal Procedure Rules in certain limited circumstances. Also see our briefing “Keep Counselling Confidential” which outlines the unique problems of requesting counselling notes, and the urgent need for a higher legal threshold for obtaining counselling and therapy notes.

contents of their mobile phones as a precondition to accessing justice. Victims are being treated as suspects.”

- The Information Commissioner’s Opinion, May 2022

The interests of victims/survivors diverge from those of the Crown. The police and CPS frequently make excessive requests, and the Crown’s duties are to act in the public interest, rather than to protect privacy rights. Legal advice and representation would include making representations to police and CPS where requests may not be a reasonable line of enquiry, and liaising with police and CPS to seek agreement on appropriate parameters to limit data requests, such as date parameters or limiting to certain issues or sections of records.

2) Victim’s Right to Review (VRR)⁶

“In nearly three quarters of the cases where the police had decided to take no further action there was no record that the victim had been informed of their right to have the decision reviewed. It is a requirement under the Victims’ Code that victims are told about this right.”

- Criminal Justice [Joint Inspection](#), July 2021

In the VRR scheme a victim/survivor’s interests are clearly at odds with those of the police or CPS, as the victim/survivor is directly challenging their decisions. Many victim and survivors are not even told about this right. Legal advice enables survivors to obtain a meaningful explanation from police and CPS of the reasons for a decision to take No Further Action (NFA), assess the validity of reasons given for an NFA decision, and where appropriate draft legal representations, for example where cases are closed on the basis of rape myths and stereotypes. Without legal advice survivors are powerless to challenge criminal justice agencies when errors of law are made over some of the most serious and traumatic crimes.

3) Complaints to police and CPS

There is a clear divergence of interests when survivors want to make a formal complaint. Procedurally correct complaints supported by independent legal advice will result in better use of complaints processes, improve the accountability and practice of organisations and enable victims/survivors to feel heard. There is a clear need for legal advice on drafting requests for reviews to the Independent Office for Police Conduct where there are legal grounds, and advising the victim/survivor when there is a case to answer for police misconduct including on the procedure at a disciplinary tribunal.

4) A range of other issues that arise during a criminal justice journey

The availability of legal advice on any issue arising during the criminal justice journey is highly beneficial to the sense of empowerment of victims/survivors, reducing attrition, and improving practice through improved accountability. There is a very wide range of issues on which victims/survivors of rape and other sexual offences benefit from legal advice. Recent examples of queries and issues on which victims/survivors have sought legal advice include:

- Victim/survivor with autism being refused an intermediary by the police

⁶ The Victim’s Right to Review is a system put in place by the CPS and all police forces in England and Wales. It allows victims to ask for a decision not to continue a criminal case to be reviewed to see if it was the wrong decision.

- Police advising a victim/survivor not to apply for criminal injuries compensation before the trial
- Police failing to follow up potential defendant's bad character evidence by taking statements from other known victims of the same suspect
- CPS refusing to make applications for early video-recorded cross examination of the victim/survivor as a vulnerable witness under s.28 Youth Justice and Criminal Evidence Act.

A recognised, tried-and-tested choice

There is often confusion for victims and survivors around the role of the Crown Prosecution Service, as its role is not to represent their interests, but those of the Crown. Whilst their abuser is entitled to representation, they themselves cannot access any sort of legal advice or representation of their own. It is an obvious gap in provision.

Crucially, there is a tried and tested precedent for independent legal advice. In Northumbria between 2018-2020, there was a successful pilot for independent legal advocacy: the Sexual Violence Complainants' Advocate Scheme (SVCA). The [evaluation](#)⁷ recommended that independent legal advocacy be rolled out nationally. All criminal justice agencies, specialist providers, and crucially the survivors who were referred into the scheme, recognised the value of independent legal advocacy:

"100% in all of this the saving grace has been the SVCA advisor, without a doubt, without a doubt my saving grace"

- Susan, survivor and recipient of independent legal advice and representation

One police officer shared:

"We don't get as many ludicrous requests from the CPS anymore... we're not gonna get blanket information anymore. We're only gonna progress reasonable lines of enquiry. So I do think there's a change in attitude in the CPS."

Another police officer said:

"I mean, the first thing I look at as an officer if I'm getting somebody else involved, what additional workload am I gonna have?... Introducing [the SVCAs] didn't increase my workload at all, it assisted."

CPS managers also recognised the value of independent legal advocacy:

"There is a gap in that a lot of victims do not know the legal side. So why are they being asked about previous sexual history and stuff they don't understand? And it's not always explained to them what the legal basis for that is. They don't understand that they can challenge that... I don't think they necessarily have sufficient support on that legal basis."

Most crucially, case studies from the Northumbria pilot evaluation captured how independent legal advocacy was able to directly support victims and survivors. The case studies below (simplified) also demonstrate the range of ways that independent legal advice and representation support justice outcomes, and rape and sexual abuse survivors.

⁷ Smith and Daly (December 2020), Final Report: Evaluation of the Sexual Violence Complainants' Advocate Scheme, Northumbria Police and Crime Commissioner and Loughborough University

Hafsa reported being raped and sexually assaulted by her former employer. At the end of her video recorded interview, the investigating officer asked Hafsa to sign a document giving access to all third-party records. Her independent legal advisor challenged the request on the basis that much of the information, e.g. Local Authority and education records, would not be relevant to the case. The officer agreed and amended the form so that only medical notes from a specific GP visit were included.

Without the intervention from her lawyer, it is likely that Hafsa would have signed the 'blanket' request for her private data. The lawyer was also able to explain to Hafsa why it had been necessary for the officer to download data from her mobile phone.

Ziva reported oral rape by an acquaintance. Ziva was worried about her medical records and mobile digital data being accessed. Her legal advisor was able to reassure Ziva that the investigating officer was only seeking relevant information, namely messages exchanged between her and the accused, and that a full mobile download would not occur. With legal support, Ziva also consented to the police accessing specific limited medical and counselling records. The police sent the file to the CPS for a charging decision and charge was refused.

The police felt it was a strong case and requested a review, which still resulted in a refusal to charge. Ziva's lawyer drafted legal representations for Victims Right to Review, but again the CPS upheld their decision not to charge. With the support of her legal advisor, Ziva requested an independent review which resulted in the CPS decisions being overturned and a charge has been brought.

As outlined above, the need is very clear. The need for legal advice and representation has also been iterated and recommended numerous times, and has been promised by the government in the Rape Review itself, as quoted at the very top of this document. It has also been a core recommendation in several other significant reviews into rape and sexual offences in the Criminal Justice System:

"independent legal representation should be offered to complainants from the outset up to but not including the trial." - Gillen Review, May 2019

"Independent legal representation (ILR) should be made available to complainers" - Dorrian Review, March 2021

The former Victims Commissioner Dame Vera Baird also recognised and advocated for independent legal advice and representation for rape and sexual offence survivors, recognising the need:

"If we are to restore victims' confidence in the justice system, rape complainants must have protections so that the right balance of their rights and those of the defendant

can be struck. I believe it is therefore crucial that victims receive legal advice which could protect them from undue interference in their right to privacy.”⁸

- Dame Vera Baird KC

What happens currently

In the above examples, responding to these circumstances relies on consulting legislation, policies and guidelines, and the consideration of criminal and civil procedure – skills and knowledge that Independent Sexual Violence Advocate (ISVA) are not equipped with, as this is the work of trained lawyers. As it stands, the provision of advice in these matters is therefore left to the charity sector to plug the gap (via organisations such as Centre for Women’s Justice and Rights of Women). However, in a context of constrained funding and resources, we are only able to scratch the surface. Far too many victims and survivors are confronted with such varied and complex predicaments without recourse to legal advice. Many ultimately withdraw from proceedings altogether. This is not in the interests of justice. Given the prevalence of rape and sexual violence and the extent of failures in the criminal justice system, more sustainable solutions are required. Independent legal advice would significantly assist victims and survivors in this context.

How does independent legal advice and representation affect other rights?

Upholding rights that already exist for victims and survivors does not infringe on the rights of defendants. We are not arguing for victim-survivors to be given party status in legal proceedings. None of the proposals would undermine fair trial rights, nor the duty of the Crown to act in the public interest. It is helpful to look at where independent legal advice and representation exists in other jurisdictions: International evidence has demonstrated that strengthening complainants’ rights had not weakened defendants’ rights.

In Ireland legal representatives can contribute to sexual history and/or disclosure hearings under criminal procedure rules that are comparable to those in England and Wales.

All of the practitioners and stakeholders interviewed in the evaluation research from the Northumbria pilot were clear that the provision of legal advocates had no negative impact on the accused’s right to a fair trial.

As demonstrate above, the privacy rights of victims and survivors are consistently breached. Independent legal advice and representation will help to uphold the laws around privacy and data protection, and also allow for survivors to exercise their right to be heard and rebuild trust in the criminal justice process.

In their [briefing](#) on independent legal advice, Rape Crisis Scotland explain:

“This is not proposing a change to the nature of the adversarial system – this is about understanding processes, reducing re-traumatisation, providing better access to rights which already exist and giving professional advice to the most vulnerable victims of crime. A vindication of the rights of survivors.”

- Rape Crisis Scotland, 2022

⁸ Quoted in: [Rape victims should be given free legal support to stop ‘excessive’ personal information requests, commissioner warns | The Independent](#) but this ask was included throughout multiple consultations and briefings. For more: [**Home - Victims Commissioner](#)

We would urge you to support the call for independent legal advice and representation for survivors of sexual violence during Second Reading of the Victims and Prisoners Bill, for further info please contact:

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