



Alison Saunders
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10 October 2018

Dear Alison

CPS Violence against Women and Girls crime report 2017-2018

We are writing to you following the recent publication of the CPS' VAWG Crime report for 2017-18. The report highlights significant areas of concern around the prosecution of rape and serious sexual offence cases, and we note with concern that the number of rape and sexual offence complaints to the police having increased substantially while at the same time there is a marked fall in CPS prosecutions. In particular, the reduction in rape referrals from the police and a 23.1 per cent fall in the number of suspects charged, highlights that, despite progress by the Police and the CPS in recent years, there are significant shortcomings in the system. Equally as concerning, is the 72 per cent increase this year in the number of rape referrals from the police which are 'administratively finalised' by the CPS.

We fully acknowledge the complexity of the rape and serious sexual offence cases but have concerns both about the approach that CPS appear to be taking in deciding whether to pursue a prosecution in a case and also the approach to disclosure in these cases which may be acting both as a barrier to taking cases forward while also deterring victims from coming forward or pursuing cases further.

Specifically, we are concerned that specialist CPS rape prosecutors in England and Wales are being advised to take a more 'risk-averse approach' in an attempt to take a proportion of "weaker" rape cases out the system to raise conviction rates. This has led to the bench mark for proceeding with rape cases to be higher than for other types of offence and we believe that this could severely limit victim's access to justice and send a message to attackers that vulnerable people are open to abuse and the CPS will not prosecute. We would welcome the opportunity to discuss this with you.

Separate but linked to this, we have concerns about the current disclosure requirements being placed on complainants in rape cases. We recognise, and welcome, the significant work being carried out as part of the joint CPS and police National Disclosure Improvement Plan,

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alongside improved training and guidance for prosecutors. In taking this forward, it is vital that any focus on rape considers the risks to complainants' Article 8 ECHR rights (right to private and family life). We are concerned that current disclosure practices do not give adequate regard to the complainant's right under Article 8 and that there is a risk that the drive for improved disclosure might exacerbate this situation.

The disclosure processes and policies in these cases mean that complainants are routinely subject to a level of scrutiny far in excess of that applied to other offences. This manifests itself in two particular disclosure issues.

Firstly, there are the concerns around the disclosure of third party material. It is our understanding that in some areas the CPS require police to gather third party material from healthcare providers, including psychiatric records, from social services and educational establishments, from counsellors and from family court proceedings, as standard practice. Such practice is concerning and especially so in that the signed Stafford statement that the police will have required from the complainant will be taken as complainant consent and would preclude any requirement for a hearing to consider Article 8 rights.

Such a policy would also seem to be disproportionate, as we note that the case of *R v Alibhai [2004] EWCA Crim 681* found that before taking steps to obtain third party material, it must be shown that there was not only a suspicion that the third party had relevant material but also a suspicion that the material held by the third party was likely to satisfy the disclosure test. It was further held that even if there is the necessary suspicion, the prosecutor has a "margin of consideration" as to what steps to take in any particular case and was not thus under an absolute obligation to obtain material that was suspected to satisfy the disclosure test.

Similarly, as well as the concerns around the issue of third party material, there is the related issue of the disclosure of personal information from, for example, social media and mobile phones. Again, we understand that, in some areas, complainants are being regularly advised that prosecutions will not be brought if they do not grant unfettered access to their personal data. The fact that a person's digital footprint now makes such information routinely available poses great challenges as well as opportunities. There is a significant risk in sexual offence cases that in dealing with large amount of digital material that we open a back door into perpetuating rape myths about victims and facilitate the defence "fishing" for material aimed at discrediting the victim's character through raising stereotypes about her lifestyle or character.

There are concerns that such routine requests for wide-ranging records could be disproportionate and breach victims' rights under Article 8. It seems that complainants in rape cases are being treated differently to complainants in other serious case and that the disclosure policies and practices that has grown up in respect of rape cases are not required for complaints of other types of serious crime (the use of Stafford statements being one such example). We believe that there is a need to review this area to ensure that the

disclosure requirements from complainants in rape cases are both consistent, proportionate and in keeping with how complainants are treated for other serious offence types.

The consequence of the current practices around disclosure is that many complainants are not prepared to have their personal records accessed and withdraw their complaint; a corollary is that people may be put off complaining of sexual assaults if they appreciate that such disclosure will inevitably follow.

The [APCC](#) raised our specific concerns about the current disclosure requirements in rape case in our evidence to the Justice Select Committee earlier this year. We also shared this with the Attorney-General to inform his review of disclosure and, similarly, send a copy of this to the Attorney-General.

Concerns around disclosure issues and rape cases, of course, concern to policing, the courts and the criminal justice system more widely and we believe that this issue needs to be viewed from a whole system perspective if we are to move forward in a way that both protects the rights of the accused but also safeguards the rights of complainants and encourages them to have confidence in the CJS.

We would welcome the opportunity to meet with you to discuss these concerns and given the cross-CJS nature of this issue, we are also copying this letter to the Secretary of State for Justice, the Victims Minister, the Home Secretary and the NPCC Lead for CJS.

A copy of this also goes to your successor Max Hill QC.

Yours sincerely



Dame Vera Baird QC

Police and Crime Commissioner for Northumbria

APCC Portfolio Lead Supporting Victims and Reducing Harm

Chair APCC Sexual Offences Stakeholder Group



Marc Jones, PCC Lincolnshire

APCC Deputy Portfolio Lead Supporting Victims and Reducing Harm