

POLICY STATEMENT

SEXUAL VIOLENCE

BACKGROUND

What is sexual violence?

Sexual violence is a non-legal term, defined as any form of sexual activity or behaviour that takes places without consent and can be committed by a stranger or someone known to the victim. There are many different types of sexual violence including rape, sexual assault, child sexual abuse, sexual harassment, stalking, rape within marriage/relationships, forced marriage, so-called honour based violence, female genital mutilation, trafficking, sexual exploitation and ritual abuse.¹

The Sexual Offences Act 2003 sets out the law in relation to the majority of sexual offences, including rape and sexual assault, offences against children (under 13 and under 16) and offences against vulnerable persons.²

What support does Victim Support provide to victims?

Overall, in 2016/17, Victim Support (VS) offered support to 16,500 sexual offence victims, including rape. We provided at least one service to 7,730 victims of these crimes.³

VS offers a myriad of specialist support services for male and female victims of sexual offences. We provide a number of ISVAs (independent sexual violence advisors) who provide face-to-face, telephone, text or email support to anyone who has been the victim of sexual assault or rape at any time in their life. The support includes (but is not limited to) information and advice, help with any required external counselling or mental health support, support with sexual health issues, clinic appointments, in devising safety strategies as well as support throughout the criminal justice process.

Key statistics

According to the Crime Survey for England and Wales⁴:

- 2.0% (equivalent to 645,000 victims) of adults aged 16 to 59 have been victims of sexual assaults in the last year.
- 11.8% of men and women aged 16 to 59 have been victims of any sexual assault (including attempts) once or more since the age of 16.
- In the last year, 11% of women and 2.5% of men aged 16-19 have been victims of any sexual abuse in the last year.
- In the year ending March 2016, the police recorded 106,098 sexual offences, an increase of 20% on the previous year.

http://rapecrisis.org.uk/sexualviolenceoverview.php

http://www.cps.gov.uk/news/fact_sheets/sexual_offences/

³ VS data April 2015-March 2016. Data may be subject to human error.

⁴https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2016/overviewofviolentcrimeandsexualoffences#what-do-we-know-about-sexual-offences

- 9.9% of men and 20.9% of women have been victims of stalking since the age of 16.
- 5.3% of women have been victims of rape (including attempts) since the age of 16.
- 18.6% of women have been victims of indecent exposure or unwanted sexual touching since the age of 16.
- The number of non-recent sexual offences recorded by the police increased by 15% in the year ending March 2016.

OVERVIEW OF TOPICS

- Preventing inappropriate use of previous sexual history as evidence in court
- Providing victims of 'revenge pornography' with anonymity
- Ensuring access to specialist sexual violence services
- National roll-out of pre-recorded cross-examination for victims of sexual offences

PREVENTING INAPPROPRIATE USE OF PREVIOUS SEXUAL HISTORY AS EVIDENCE IN COURT

Overview of the issue and how it affects victims

Section 41 of the Youth Justice and Criminal Evidence Act 1999 states that in a sexual offence case, no evidence can be admitted and no question can be asked in cross examination about the sexual behaviour of the complainant unless a judge rules that it meets at least one of four exceptions. The judge must also believe that omitting the evidence would result in the jury reaching an "unsafe conclusion". The four exceptions are:⁵

- "The evidence or questioning relates to any issue that has to be proved in the case other than whether the complainant consented. The defendant's honest but mistaken belief in consent falls into the category of a relevant issue in the case other than consent."
- "The issue that is being argued in the case is whether the complainant consented and the evidence or questioning relates to behaviour that took place as part of the alleged offence, or at or about the same time"
- "The issue is whether the complainant consented and the evidence or questioning relates behaviour that is so similar to the defence's version of the complainant's behaviour at the time of the alleged offence that it cannot reasonably be explained as a coincidence."
- "The evidence or questioning that the defence wishes to introduce is intended to dispute or explain evidence that the prosecution have introduced about the complainant's sexual behaviour ... Such evidence must go no further than to directly contradict or explain claims made by or on behalf of the complainant."

Section 41 was introduced following concerns that the admissibility of previous sexual history (PSH) evidence was deterring victims from reporting and that it is linked to myths about rape and female sexuality which are prejudicial for the complainant, namely that "unchaste women are more likely to consent and less worthy of belief". It aimed to provide complainants with protection from unnecessary and intrusive questions into their private life and sexual behaviour. VS played a key role in advocating for the legislation to be introduced.

⁵ http://www.legislation.gov.uk/ukpga/1999/23/notes/division/4/2/3

⁶ http://www.publications.parliament.uk/pa/ld200001/ldjudgmt/jd010517/regina-1.htm

Section 41 was a welcome step forward and the exemptions are used rarely. However, fresh concerns about the use of sexual history in court were raised following the high profile acquittal in October 2016 of the footballer Ched Evans of rape following a retrial. The Appeal Court judgement allowed evidence to be given about the complainant's sexual behaviour which led to her being questioned in-depth in court about her sex life. (The third exception - the 'so similar' exception - was used in this case.) This new evidence about the complainant's sexual preferences had a bearing on the decision to find Mr Evans not guilty of raping the woman.

There is also evidence to suggest that a complainant's sexual history is being used as evidence without making an application to the court, in contravention of the law. 2016 research of rape trials found that the complainant's sexual history with third parties was introduced in half of the trials examined without any S41 application to allow it. The researchers also found little evidence of any judicial attempts to stop this happening. In one trial, the defence cross-examined the complainant about her relationships with other men, in contravention of S41. Rather than stopping this line of cross-examination, the judge continued the line of questioning himself. This suggests that S41 is not consistently being enforced at court putting at risk the victims' ability to seek justice for the harm they have suffered. From our experience, we know that victims fear being questioned about their sexual history at court and that consequently it can be a barrier to reporting. For those that do undergo such questioning, the experience can be distressing and risks prejudicing a trial by embedding myths about rape.

A study by Dame Vera Baird, published on 20 February 2017, revealed the extent to which previous sexual history is used in cases in a single court. The findings, which are based on the observations of 12 local members of the public, showed that out of 30 rape trials at Newcastle Crown Court that took place between January 2015 and June 2016, the complainant's previous sexual history was used in 11. In the majority of those cases, an application was not made to obtain the judges consent either at all or it was made at trial without prior notice. The study also found evidence that in one case "the defence sought expressly to use sexual conduct with other men to discredit the complainant". 8

VS also has concerns that that if the police ask victims about previous sexual history in their video interview and the prosecution puts forward the video unedited to the court, this then becomes 'fair game' for discussion. Again, this risks causing the victim further trauma.

Overview of Government plans or Parliamentary activity

In response to a letter from 40 female Labour MPs urging him to change the law to prevent sexual history being routinely used, Attorney General Jeremy Wright said in October 2016: "We need to understand whether a change in the law is appropriate and, if not, whether it is sensible to look at the guidance that is given to judges about when this evidence is admissible and the guidance that judges give to juries about how that evidence should be used." 10

On 8 February, Liz Saville Roberts (Plaid Cymru MP for Dwyfor Meirionnydd) presented the Sexual Offences (Amendment) Bill to Parliament under the ten minute rule motion. It

⁷ Temkin, J., Gray, J. & Barrett, J. (2016)

⁸ http://www.northumbria-pcc.gov.uk/seeing-is-believing-dame-vera-baird-qc-launches-a-new-report-on-northumbrias-unique-court-observers-scheme/

⁹ The prosecution is allowed to introduce PSH as evidence without a S41 application

¹⁰ http://www.telegraph.co.uk/news/2016/10/27/law-for-rape-victims-could-be-amended-after-ched-evans-case-atto/

makes "provision for the circumstances in which the sexual history of a victim of rape or attempted rape may be introduced at a trial" and would "prohibit in certain circumstances the disclosure by the police of a victim's identity to an alleged perpetrator of a serious sexual crime". The Bill is intended to provide victims of sexual abuse with protections similar to those in Australia, Canada and most of the Unites States. Liz Saville Roberts MP said: "Currently, victims of sexual abuse face the possibility of being humiliated and their credibility undermined by defence lawyers asking questions about their sexual partners, clothing and appearance. Clause 1 of this Bill would prevent such intrusive and damaging questioning". The Bill is scheduled for second reading on 24 March but is unlikely to be reached and therefore unlikely to progress further. 11

Victim Support's position

Prevent the use of victims' previous sexual history in court to only be allowed when it is absolutely necessary in the interests of a fair trial, and ensure it is never introduced without a formal application. Ground rules hearings should take place prior to cross-examination in sexual offence cases to address restrictions about the witness's previous sexual history.

In light of the potential impact on the victim, we believe it is essential that use of PSH is strongly regulated and only introduced rarely and when absolutely necessary.

The Government should give consideration to issuing fresh guidance or training for judges on Section 41 of the Youth Justice and Criminal Evidence Act 1999

Judges must step in when the defence produces sexual history as evidence without the clearance of the court. VS believes that fresh guidance or training for judges on Section 41 could help to reduce prevalence.

The prosecution must ensure that it is not inadvertently introducing previous sexual history evidence in court

To ensure that a victim's previous sexual history is only used when absolutely necessary, it is vital that it is not inadvertently introduced via unedited police interviews.

PROVIDING VICTIMS OF 'REVENGE PORNOGRAPHY' WITH ANONYMITY

Overview of the issue and how it affects victims

The law criminalising revenge porn came into force in April 2015. The law was introduced via an amendment to the Criminal Justice and Courts Bill to include revenge porn as a specific offence. Under the Criminal Justice and Courts Act, it is an offence for a person to disclose a private sexual photograph or film if the disclosure is made - a) without the consent of an individual who appears in the photograph or film, b) with the intention of causing that individual distress. A person who is guilty of an offence under this section is liable - a) on a conviction of indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and b) on a summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both). The offence applies to online and offline images

¹¹ https://hansard.parliament.uk/commons/2017-02-08/debates/44CEB7B6-D1AB-4DFA-891A-22FE72997D0F/SexualOffences(Amendment)

which are shared electronically or in more traditional ways. It covers the uploading of images to the internet, sharing by text and e-mail or showing someone a physical or electronic image.

Statistics obtained by VS from 32 police forces show that there were 1,784 reported cases of revenge porn in 2015/16. 30% of reported offences involve young people under the age of 19, with victims as young as 11. 12 In many cases (61% of reported incidents) no action is taken against the alleged perpetrator. 13 While there are statistics on the number of reported incidents, no data exists on reporting rates (i.e. the proportion of such offences reported to the police). However, we know that reporting rates for other sexual offences and partner abuse remains low (79% of partner abuse is not reported to the police).¹⁴

Revenge porn is a new offence and relatively little research has been conducted into the impact on victims. From our experience of supporting victims we know that it is a serious crime which often results in significant and long-lasting distress. Evidence that is available suggests victims commonly report feeling humiliated, ¹⁵ powerless, ¹⁶ angry, ¹⁷ and depressed.¹⁸ Some also report feeling suicidal¹⁹. In addition, it can damage future job prospects, lead to trust issues and have consequences for the victims' personal relationships.²⁰

Unlike most sexual offences, the revenge pornography offence does not benefit from any specific statutory provision to allow for complainant anonymity (note that the use of 'anonymity' in this context means anonymity in the media, not anonymity from the defendant or members of the public present in court). While Courts do have the power to grant victims of revenge porn anonymity in the media, the willingness of each judge to grant such a provision is likely to vary greatly. Without a blanket provision protecting all victims it would not be possible to guarantee to a victim that anonymity would be granted. VS believes that the possibility of details of the offence being published is likely to act as a significant barrier to reporting. Without anonymity a victim testifying in court faces the risk of their name and details appearing in the media. This could lead to the offending images or videos being shared more widely which would clearly create significant distress and act as a strong disincentive to report.

In addition, the possibility of the details of the offence being reported can act as a barrier to prosecuting alleged offenders. Figures obtained by VS show that victims do not support, or withdraw support for, police action in 30% of all reported cases of revenge porn,

¹² http://www.bbc.co.uk/news/uk-england-36054273

http://www.bbc.co.uk/news/uk-england-36054273

¹⁴ http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonvi olentcrimeandsexualoffences/yearendingmarch2015/chapter4intimatepersonalviolenceandpartnera buse#police-and-the-criminal-justice-system

15 https://www.safeline.org.uk/revenge-porn-what-it-means-for-the-victim-and-the-offender/

https://www.safeline.org.uk/revenge-porn-what-it-means-for-the-victim-and-the-offender/

¹⁷ Kamal, M. & Newman, W.J. (2016). Revenge Pornography: Mental Health Implications and Related Legislation. Journal of the American Academy of Psychiatry and the Law Online 44 (3) 359-

¹⁸ Kamal, M. & Newman, W.J. (2016). Revenge Pornography: Mental Health Implications and Related Legislation. Journal of the American Academy of Psychiatry and the Law Online 44 (3) 359-

¹⁹ Kamal, M. & Newman, W.J. (2016). Revenge Pornography: Mental Health Implications and Related Legislation. Journal of the American Academy of Psychiatry and the Law Online 44 (3) 359-

²⁰ Kamal, M. & Newman, W.J. (2016). Revenge Pornography: Mental Health Implications and Related Legislation. Journal of the American Academy of Psychiatry and the Law Online 44 (3) 359-367

despite a named suspect being identified. This is three times the national average of 10% in 2015/16.²¹ We believe this demonstrates that lack of anonymity creates a strong barrier to victims supporting police action and is acting as an impediment to them being able to secure justice.

There is significant support for anonymity for victims of revenge porn among the general public. An ICM poll of 2,048 people, published in July 2016, found that 75% of the population believed that victims of revenge pornography should be given automatic anonymity. Women are 77% in favour while men are 72% in favour.²²

Overview of Government plans or activity

On 6 September 2016, in response to a written parliamentary question, the Parliamentary Under-Secretary of State for Justice (Dr Phillip Lee) said that he would consider anonymity for victims of revenge porn.²³

Victim Support's position

Victims of revenge porn should have the same right to automatic anonymity as victims of rape and other sexual offences

Victim Support believes that the fact that victims of revenge porn are not afforded the same right to anonymity as victims of rape and other sexual offences is undermining the effectiveness of legislation. The prospect of details of the offence being reported in the media (and by extension the increased likelihood of the offending images being shared further) is likely to cause considerable distress and could be deterring victims from reporting revenge porn offences, thus denying victims justice. As such, we believe that victims of revenge porn should have the right to remain anonymous.

ENSURING ACCESS TO SPECIALIST SEXUAL VIOLENCE SERVICES

Overview of the issue and how it affects victims

Victims of domestic and sexual abuse and violence are not always able to access the specialist help and support they need, including that from Independent Sexual Violence Advisers (ISVAs).

ISVAs are trained specialists. They provide practical and emotional support to survivors of sexual abuse; sexual assault and rape who have reported the incident to the police or are considering reporting.

Evidence obtained by the All-Party Parliamentary Group (APPG) on Domestic and Sexual Violence found that a shift to more localised commissioning, combined with poor commissioning practices, had resulted in a number of specialist domestic and sexual

²¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539447/crime-outcomes-hosb0616.pdf

https://www.theguardian.com/law/2016/jul/19/revenge-porn-victims-should-get-anonymity-say-75-per-cent-of-people

²³ https://hansard.parliament.uk/Commons/2016-09-06/debates/16090629000011/OnlineHateCrime#contribution-16090629000065

violence services being forced to close and women and children facing increasing barriers to accessing support.²

The APPG pins much of the responsibility for lack of adequate specialist provision on commissioners, stating that funders have "been focused on reducing cost through competitive tenders without first understanding women's needs"²⁵ and that "the provision of domestic violence and sexual violence services can be at the mercy of a local commissioner's personal opinions and attitudes". 26 They conclude that "the current model for funding specialist domestic and sexual violence services is not fit for purpose".2

A 2016 study commissioned by the Mayor's Office for Policing and Crime (MOPAC) and NHS England into sexual violence against children and adults in London found that while ISVA support is vital in helping survivors and victims' to navigate the criminal justice system, it is not available in all London boroughs. The report concluded that "the absence of sufficient ISVAs is likely to be a contributor to the high rates of attrition in the CJS, particularly when considering that sexual violence prosecutions take 2 to 3 times longer from offence to completion than for other violent offences against the person". 28 The study also showed that victims require far more support from ISVAs than is currently available. On average, each victim receives only 3 hours of support which the report recognises falls significantly short of what is required. The availability of support from specialist ISVAs to assist, for example, people with learning difficulties and lesbian, gay, bisexual and transgender people was again found to be insufficient against the level of demand.²⁹

Overview of Government or criminal justice agencies' plans or activity

Although the Government acknowledges the problems that local commissioning has caused the sector, it maintains that "local areas are best placed to assess local need, to design comprehensive and good quality interventions, and to be held to account through improved local democratic accountability". 30 However, in order to address some of the issues of poor provision the Government published a 'National Statement of Expectations (NSE)' in December 2016 along with a set of resources. These "make clear to local partnerships what good commissioning and service provision looks like" while "giving them the freedom to respond to ... local needs". Commissioners are expected to ensure sufficient provision of local specialist support, such as ISVAs, including that which is designed specifically around the needs of marginalised groups.³¹

In its Violence Against Women and Girls Strategy (VAWG) for 2016-20, the Government committed to funding a national network of ISVA coordinators until early 2017. From April 2017, it announced that funding would no longer be provided centrally and instead would be available locally through the VAWG Service Transformation Fund. The fund offers £15

²⁴ http://<u>rapecrisis.org.uk/pdfs/2308_appg-changing-landscape-report-2015.pdf</u>

http://rapec<u>risis.org.uk/pdfs/2308_appg-changing-landscape-report-2015.pdf</u>

http://rapecrisis.org.uk/pdfs/2308_appg-changing-landscape-report-2015.pdf

http://rapecrisis.org.uk/pdfs/2308_appg-changing-landscape-report-2015.pdf

²⁸https://www.london.gov.uk/sites/default/files/sexual_violence_against_children_adults_needs_a ssessment_summary_report_2016.pdf
https://www.london.gov.uk/sites/default/files/sexual_violence_against_children_adults_needs_a

ssessment summary report 2016.pdf

³⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_ Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF

³¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574665/VAWG_ National_Statement_of_Expectations_-_FINAL.PDF

million to support, promote and embed best local practice and is intended to offer more funding for such services that provided previously by the Home Office.³²

At a more regional level, on 1 December 2016, the Mayor of London, Sadiq Khan, launched a 12 week consultation on the draft Police and Crime Plan for London. The draft proposals include commitments to:

- produce a refreshed London Violence Against Women and Girls (VAWG) Strategy;
- review the provision and funding of Independent Domestic Violence Advocates and Independent Sexual Violence Advisors and
- work with partner agencies to develop a new sexual violence service model which would better meet the needs of victims and survivors.

The plan will be informed by a Commissioning Framework, developed by MOPAC and NHS England, "to support the transformation of the response to sexual violence in London". The final place will be published by the end of March 2017.

On 13 December 2016, the Mayor of London announced investment of £72 million (a tranche of the London Crime Prevention Fund) over the next four years to tackle crime across London. This includes investment in services to support victims of domestic and sexual violence. The fund will be awarded "according to the greatest need across London's boroughs". 34

Victim Support's position

All victims of sexual violence should have the option of receiving support from an ISVA

In order to ensure that all victims who require ISVA support have access to it, we believe that the Government should commit to monitoring the level of provision nationally and the impact of local commissioning practices on their availability. Where barriers to provision or areas that are not providing services are identified, steps should be taken to improve availability of support to victims.

NATIONAL ROLL-OUT OF PRE-RECORDED CROSS-EXAMINATION FOR VICTIMS OF SEXUAL OFFENCES

Overview of the issue and how it affects victims

Cross-examination can be a stressful, difficult and traumatic experience for witnesses. VS's 2013 report 'Out of the Shadows', which looked at the experiences of victims and witnesses (including victims of sexual offences) at the Crown Court, found that most witnesses are anxious about going to court and feel it to be an unknown and intimating environment. Most find cross-examination to be nerve wracking and challenging, are

³²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585422/VAWG-fund-application-guidance-170120.pdf

³³https://www.london.gov.uk/sites/default/files/sexual_violence_against_children_adults_needs_a ssessment summary report 2016.pdf

ssessment_summary_report_2016.pdf

34 https://www.london.gov.uk/press-releases/mayoral/mayor-tackles-crime-across-londons-boroughs

³⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553335/process -evaluation-doc.pdf

frustrated at the long waiting times for trial and fear coming face-face with the defendant and/or their supporters.³⁶

Overview of Government plans or activity

Special measures were introduced through the Youth Justice and Criminal Evidence Act 1999 and Section 28 of the legislation allows vulnerable and intimidated witnesses to video record their cross-examination before the trial. Section 28 is the last of the special measures for victims to be implemented; concerns about the IT, cost and required procedural changes prevented its immediate implementation.

In 2014, Section 28 was piloted in three Crown Courts (Liverpool, Leeds and Kingston-Upon-Thames) with almost three quarters of the cases involving sexual offences. The evaluation of the Section 28 pilots found that they resulted in witnesses being cross-examined much sooner, around half the time of non Section 28 witnesses,³⁷ and reduced the level of stress experienced by the witness. The pilots also found that pre-recorded cross-examination aided witnesses' ability to recall events and led to fewer cracked trials and more guilty pleas.³⁸ On 15 September 2016, the Government announced that following the success of the pilots it would be rolling out pre-trial cross examination nationally from early 2017.³⁹

In March 2017, the Justice Secretary, Liz Truss MP, announced an extension of Section 28 to sexual offences. This could help reduce the negative effect of use of previous sexual history in court and increase victims' willingness to come forward and pursue their case to trial. 40

Victim Support's position

VS supports the national roll out of pre-trial cross examination

Pre-recorded cross examination is an important tool for helping vulnerable witnesses to give their best evidence in court and these measures should ensure that vulnerable witnesses are spared the ordeal of giving evidence in open court. In light of our own research and the findings of the pilot evaluation which showed that pre-trial cross examination resulted in witnesses giving evidence earlier, an improved quality of evidence and a less stressful and traumatic experience⁴¹, VS supports the Government's extension of the national roll out of Section 28 to sexual offences. However, we believe that victims should always be given the choice of how they want to give evidence and have access to support they need to give their best evidence. We recognise that some victims may want their day in court and where this is the case it is important that it is facilitated.

³⁶ Victim Support (2013) Out of the Shadows.

https://www.victimsupport.org.uk/sites/default/files/Out%20of%20the%20shadows%20report.pdf ³⁷ Sexual offence cases take more time to go through court than any other offence; on average it takes 197 days from first listing at court to the completion of trial

³⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553335/process -evaluation-doc.pdf

³⁹ http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-30/907698

statements/written-question/Commons/2016-11-30/907698

https://www.gov.uk/government/news/greater-protection-for-rape-victims-and-children-at-risk-of-grooming

https://www.gov.uk/government/publications/process-evaluation-of-pre-recorded-cross-examination-pilot-section-28

CASE STUDY

'Revenge pornography'

The victim was a young woman who met a man through an online dating site. The pair shared explicit images via a messenger app on their phones but the relationship soon soured and she decided she didn't want to continue contact.

Following the woman making clear she didn't want to see him anymore, the man involved uploaded her images to a porn website. He also threatened to share the images with her family.

The victim reported the offence to the police and case was set to go to trial towards the end of 2015. The victim was very distressed when she came to Victim Support and reported feeling rejected by family and friends. The victim has come under significant pressure from family members to withdraw the allegation as her parents are very concerned about grandparents, friends and neighbours finding out about the case. The victim feels deeply ashamed and is struggling to maintain relationships with family and friends. She is very afraid about the possibility of the case being reported in the press.

Victim Support is providing ongoing support to the victim.

For more information please contact policy.team2@victimsupport.org.uk

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