Victims recalled facing intrusive and victim-blaming lines of investigation, for example saying:

“It just lacks sensitivity, they’d analyse in depth my whole personal life - phone, education records, medical records, mental health records - but would never explain why. The whole time it felt like I was the one under investigation for ‘false allegations’ as opposed to being the victim of sexual violence”
(Reported in 2018, police dropped the case).

The criminal justice system has significant and long-term detrimental impacts on mental health, that meant they regretted their decision to come forward:

“It’s worsened my experience, if that’s even possible. Turns out not much has changed in history at all”
(Reported in 2019, case ongoing)

“During the process I attempted suicide, and following the trial I relapsed to self-harm and anorexia, so I don’t really know whether it was the right decision for me”
(Reported in 2017, perpetrator was acquitted at trial)

Many victims would not report again, and others did not report at all because they heard about bad experiences from friends and family:

“I would never report to the police again which is a sad thing to say”
(Reported 2019, later withdrew complaint)

“I have heard A LOT of stories about how police just brush it off or don’t or can’t do anything about it, even after the victims go into excruciating details about what happened. I have heard from my close family, friends, and acquaintances, that going through the justice system made their journey to recovery a lot more rocky... I just don’t have a lot of faith in the police or trial process”
(Did not report)

Only 12% of the 586 victims in our survey across England and Wales felt that police investigations are fair and proportionate.

Criminal justice responses to rape cannot continue as they are. The system has lost the confidence of victims and is causing significant harm.

An innovative pilot scheme by the PCC for Northumbria improved victims’ experiences of the criminal justice system by offering free and independent legal advocacy through Sexual Violence Complainants’ Advocates (SVCAs).

The scheme substantially improved best practice in police and CPS responses, and provided remarkable benefits for a new policy.

Our recommended scope for a national model of legal advocacy is outlined in Appendix 1.

EXECUTIVE SUMMARY

Criminal justice responses to rape cannot continue as they are. The system has lost the confidence of victims and is causing significant harm.

An innovative pilot scheme by the PCC for Northumbria improved victims’ experiences of the criminal justice system by offering free and independent legal advocacy through Sexual Violence Complainants’ Advocates (SVCAs).

The scheme substantially improved best practice in police and CPS responses, and provided remarkable benefits for a new policy.

Our recommended scope for a national model of legal advocacy is outlined in Appendix 1.
The support primarily related to victims' Article 8 rights to privacy, although there was also scope for general information about the legal process and attendance at ABE interview.

The scheme took 83 referrals from September 2018 until December 2019, and continued support until March 2020.

- The victim engaged with the SVCA service in 47 cases, amounting to a 57% uptake.
- Most of the 36 complainants who did not engage had decided not to proceed with the police complaint, so referrals may have been made too early.

The most common support offered was advice on data requests (n=38), followed by attendance at ABE interview (n=20), and intervention on data requests (n=18).

- Less common support involved defence disclosure applications (n=8) and invoking the Victims Right to Review (n=2).

The SVCA scheme engaged four local solicitors to provide legal advice and support to rape complainants in Northumbria, so long as they were aged 18+ at the time of the offence.

The SVCAs spent an average of 155 minutes on each case, at an average cost of £725.

The SVCA scheme highlighted poor practice around victims’ privacy rights:

- Case files showed some police officers did not understand privacy rights or their implications for the investigation process.
- Police ‘consent’ forms asked victims for blanket access to data from over 40 organisations, contrary to the Data Protection Act 2018.
- The referral forms demonstrated police frustration with CPS ‘fishing expeditions’ about victims’ private lives.

The presence of the SVCAs dramatically improved police and CPS investigations, with substantially better consideration of what evidence would be relevant and proportionate:

- SVCAs challenged the data requests in at least 22 cases (47%). Of these, 12 outcomes are known and 67% saw the request reduced to a specific timeframe or remit.

In one case the SVCA’s involvement delayed trial, but they increased efficiency overall due to a reduction in irrelevant material being gathered and analysed.

Interviews and feedback forms showed increased victim confidence in the justice process, even when cases did not end in conviction:

- This came from trusting someone whose sole job was to be on their side.
- Another benefit was having someone to translate and speak ‘legalese’ for them.

All participants in the evaluation were clear that the SVCA scheme had no impact on the accused’s right to a fair trial.
The research demonstrates a need to improve criminal justice responses to sexual offences. Legal advocacy provides one route to better police and CPS practice, and should be included in the Government’s package of reforms.

Some lessons can be learnt from the SVCA pilot to highlight important features of a future national model of legal advocacy (outlined in Appendix 1):

- It should be a dedicated, salaried role carried out by someone who is legally qualified and experienced at practicing law involving sensitive evidence. Ideally, these will be housed within existing specialist support services.

- Training for the role should incorporate knowledge and experience from police, CPS prosecutors, defence lawyers, human rights lawyers, and third sector specialist services.

- The remit should cover all serious sexual offences, including child sexual offences, and be available to victims throughout the legal process.

- It is essential that complainants’ lawyers can make submissions to the court, e.g. at case management hearings. This does not mean giving the complainant-party status or making submissions before a jury at trial.

- Referrals should be on an ‘opt-out’ rather than ‘opt-in’ basis, but only at the point of requests for digital or third-party materials, or upon application to adduce sexual history evidence.

A common misconception is that independent legal advocacy for complainants is rare in adversarial legal systems. In fact, only three adversarial countries have no access to legal representation: New Zealand, South Africa, and South Sudan.

Our estimated costings for a national legal advocacy scheme is £3.9 million, but this could be offset by savings on health and employment spending.

The Home Office (2018) estimates that the annual cost of sexual offences to England and Wales is £12.2 billion, based on 2015 costings.

- Around £9.8 billion is caused by the emotional and wellbeing consequences of both the offences and inadequate responses to those crimes.

- International research shows that legal advocacy improves a range of outcomes e.g. criminal justice satisfaction, health, and employment outcomes.

- Conviction rates for rape are at an all-time low. Westmarland et al. (2015) estimated that each rape conviction can prevent up to 6 further offences, saving untold human costs and an estimated £197,160 per rape, even after the cost of criminal justice interventions.

- This evaluation did not test the impact on conviction rates, but it demonstrated that investigations were focused on more relevant lines of inquiry.

A NATIONAL SYSTEM OF LEGAL ADVOCACY

THESE COSTS ARE JUSTIFIED WHEN RECOGNISING THE ECONOMIC IMPACT OF THE CURRENT APPROACH
Complainants’ Lawyers should:
■ Provide free legal advice and representation for complainants of serious sexual offences, or the guardians of complainants who are children and adults with intellectual or mental disabilities (unless they are the accused or key defence witnesses).
■ Offer advice on best practice for police and other CJS practitioners, including via CPD training and rota on a national helpline (like the Bar Council’s ethics and practice guidance helpline).

REFERENCES AND RECOMMENDED READING


“...I wish they told me that signing a form to give the police access to my phone meant they would be examining my consensual sexual relationships and sexual history. I didn’t realize my relationships with my ex’s, how many friends I have, how often I go out, is relevant to being raped by a school teacher.”
(Reported in 2018, police dropped the case)

APPENDIX 1: A NATIONAL MODEL FOR LEGAL ADVOCACY

Complainants’ Lawyers should:
■ Provide free legal advice and representation for complainants of serious sexual offences, or the guardians of complainants who are children and adults with intellectual or mental disabilities (unless they are the accused or key defence witnesses).

■ Offer advice on best practice for police and other CJS practitioners, including via CPD training and rota on a national helpline (like the Bar Council’s ethics and practice guidance helpline).
The remit of the advice and representation should include:

■ Information & advice before reporting to police (via a national helpline)
  ○ This is distinct from the ISVA ‘informed choices’ session and refers to context-specific legal questions rather than general queries about the CJ process.

■ Requests for consent to collect digital evidence / third-party materials
  ○ Complainants should not be able to give consent without waiving an opportunity for legal advice & this should not be possible on the same day as the ABE interview recording.

■ Victims’ Right to Review
  ○ ISVAs are currently expected to help complainants with VRR, however they cannot know the facts of the case or provide legal advice. Complainants wishing to undertake VRR should therefore be offered the support of a lawyer.

■ Consultation with disclosure officers / prosecutors to make representations for complainant during decisions about disclosure of unused material to the defence.

■ Representation on applications to admit evidence under sexual history or bad character provisions
  ○ In the first instance, these representations should be made to the CPS.
  ○ Attendance and submissions at case management hearings (instructing counsel where relevant) where the complainant feels their representations were not given due consideration by the CPS.

■ Attendance (but not involvement) at trial
  ○ The advocate should not be able to make submissions to the court, instead raising concerns with the Crown (or counsel for the Crown). The Crown (or counsel for the Crown) would be responsible for deciding whether to raise a legal argument with the court.
  ○ This is similar to recommendations in the Republic of Ireland (O’Malley Review, 2020, para. 6.15).

■ Facilitate written complaints to the relevant criminal justice agency, ombudsman, or Member of Parliament, in line with the Victims Code
  ○ Any further legal action, e.g. judicial review, would involve referral to other organisations, e.g. Centre for Women’s Justice. This may require additional funding due to increased demand.

■ Make, review, and appeal applications to the Criminal Injuries Compensation Authority
  ○ While this would ideally be free for the complainant, there is scope for supplementing the funding for this role with a small % commission on successful claims.
“I felt further victimised by the process. I was equally as traumatised by the police, it took me longer to overcome that trauma before I could even explore the rape trauma”

(undated third party report)