



Rights of Women response to CPS consultation on *Interim Guidelines on Prosecuting Cases of Child Sexual Abuse*

About Rights of Women

Rights of Women aims to achieve equality, justice and respect for all women. Rights of Women advises, educates and empowers women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers¹.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Rights of Women is a charity that provides free legal advice to women and engages on a policy level in relation to access to justice and violence against women issues. We provide training on legal issues to statutory and third sector professionals, write legal publications designed to assist individual women, and those supporting them, through the law, and provide three legal advice lines offering legal advice to women on immigration and asylum issues, sexual violence and criminal law, and family law (including domestic violence, divorce and contact disputes). Our advice lines are staffed by qualified, practising, women solicitors and barristers.

We therefore have significant experience and understanding of supporting women, and young women, who have experienced sexual violence through the criminal justice system. Our legal officers (who are all qualified solicitors and barristers) train professionals from the third sector and local authorities, police and NHS on how to support women as victims in the criminal justice system and how to support women who have experienced sexual exploitation. Our acclaimed publication *From Report to Court*, which explains the law and

¹ For advice on family law, domestic violence and relationship breakdown telephone 020 7251 6577 (lines open Tuesdays, Wednesdays and Thursdays 7.00pm-9.00pm and Fridays 12noon – 2.00pm). For advice on sexual violence and criminal law telephone 020 7251 8887 (lines open Tuesdays 11.00am-1.00pm). We also have a London only advice line for family and criminal law, please call 020 7608 1137 for further information. For advice on immigration and asylum law telephone 020 7490 7689 and leave a message (please note we currently operate a triage system for this service).

criminal justice system process to victims who have experienced sexual violence, was commissioned for its fourth edition last year by the Home Office, and copies were provided to every police force, rape crisis centre and Sexual Assault Referral Centre (SARC) in the country. Over the past few years we have extended some of our services particularly to young women and have written a companion guide to *From Report to Court* for young victims of sexual violence entitled *Your rights, your body, your life* (published in partnership with The Haven SARC in Paddington). We are also about to embark on a series of training courses for teachers and youth workers covering young people and sexual exploitation in partnership with Brunel University. We are therefore well placed to be able to comment on significant aspects of this consultation.

General Comments

We strongly welcome the overall content of CPS guidelines on child sex abuse. Callers to our advice line who wish to discuss child sex abuse (whether current or historic cases) have often stated that the approach to their credibility at charge or during court proceedings has been a key problem, impacting on the process of achieving justice and their own self-confidence and health.

The guidelines for consultation feel radical, and are a huge step forward in how the CPS approach, consider and treat victims of child sex abuse. We think that, if implemented, these guidelines will assist and support many more victims than before, and lead to a greater number of prosecutions (and therefore convictions) for those who have committed sex abuse offences.

We have answered the consultation questions in detail (see below), but would like to pose a few general questions about the guidelines first.

Why is the guidance limited to child victims only?

Whilst the changes in approach to young victim's credibility is very much to be welcomed, changes need to be made generally to the approach of victim rather than case credibility, and the requirement of corroborating evidence for a positive charging decision. Reconsideration of these views and procedures should occur for all victims of sexual offences, and not just children. Adult victims, particularly victims of rape, and child victims of sex abuse experience these same issues in relation to charging decisions (see response to question 2 for more detail). There is therefore a critical need for the approach suggested in these guidelines to be applied in general guidance for all victims of sexual violence. Similarly, the support issues identified for court proceedings apply to all vulnerable victims.

How will the guidance be implemented?

As *The Stern Review* found in 2010, policies of criminal justice agencies were often well thought out and comprehensive in relation to sexual violence, but the issue was that these policies were not implemented consistently, or at all². This still accounts for many issues with case investigation and prosecution today - for example there was anecdotal evidence that Sapphire Unit teams were not aware of, or implementing, Government guidance for treatment of vulnerable victims³. Whilst this particular guidance is on the whole very welcome, how is it to be ensured that it is consistently implemented in practice, and that busy prosecutors and other staff will be sufficiently aware of it? Otherwise policies are of limited use in making progress.

How will the CPS ensure the co-operation of CJS partners?

Many of the points made in the guidance about support of victims and witnesses in court proceedings can only be made if police and staff in the Witness Care Unit (WCU) take on board similar guidance and implement it consistently. Similarly, police have authority to No Further Action (NFA) child sex abuse cases based on assessing the evidence and applying the first limb of the charging test. How will it be ensured that the police use guidance as to victim credibility and corroborating evidence too? It is important to have a consistent approach to case decisions and to ensure that victims are not treated differently by police decision makers than CPS. Careful thought will need to be given to this point, especially in order to avoid potential legal challenges in the future.

At a different stage in proceedings, the CPS needs to manage its external prosecuting counsel and ensure there is a system so that this guidance is always followed, and supported, by counsel.

Consultation questions

Question 1: Do you agree with the new approach of the CPS to cases involving child sexual abuse?

We welcome the approach the CPS takes to child victims in child sex abuse cases, to the extent that these guidelines should have *always* been in place. We welcome the creation of specific roles within the CPS to focus on child sex abuse issues and to promote best practice. We also welcome a focus on advocates in the Crown Court acting on behalf of the CPS to ensure all those who prosecute in these types of cases are specialists in this area. However, we emphasise that the next step for this guidance, once permanently in place, is to be implemented in a coherent and complete way. Prosecutors who are not CSA area managers or specialists in this field should be aware of the guidance irrespective and pass all

² "The policies are not the problem. The failures are in the implementation", p8 *The Stern Review*, March 2010

³ In relation to following best practice recommendations stated in *Achieving Best Evidence for Criminal Proceedings*, March 2011, Ministry of Justice and others

issues to the Area CSA. There should be, we propose, a clear reporting structure within each area so that all staff know they have an obligation to consult with the Area CSA on child sex abuse cases. It is imperative, given past failings, that this best practice guidance is implemented and staff appreciate they should refer to it and that they should refer to an Area CSA as the default position. Given the recent scandal regarding *R v Wilson* it is also clear that the CPS must ensure that prosecuting counsel (even if specialists) are fully aware of their obligations under this guidance.

Specific points regarding paragraphs 1-54 are set out below (although the paragraphs on credibility will be dealt with in Question 2):

- Paragraph 11 – it is not necessary to have the phrase “in order to satisfy their sexual fantasies” in this paragraph, this phrase provides the paragraph with a hyped ‘media’ tone. If the motivation of abusers needed to be explained in the guidance this could be done in a separate paragraph and in a way more befitting to the tone of the document.
- It is important to make clear within the *Context and circumstances of child sex abuse* that, whilst there is evidence that sexual abuse through co-ordinated networks is growing, there will be some cases of child sex abuse where there is one perpetrator and one victim, and that this type of case needs to be investigated and prosecuted with as much commitment as a case of a ‘network’ of abusers. This is to guard against prosecutors looking to this guidance for a definitive ‘context’ of child sex abuse, even though it is made clear in paragraph 9 that there is a range of offending behaviour.
- In relation to the above point, just as the guidance (rightly) sets out that there are different contexts and different types of offenders, the guidance should be more explicit about the fact that there are obviously different types of victims. Children will often be chosen or respond because of particular vulnerabilities, but each child is different and will react in a different way. The point to make here is the myth of ‘the victim’ – children who are victims will be from any social class and present with a range of emotions. They may be extremely difficult to deal with- aggressive, depressed, sullen, withdrawn, in denial – as well as very responsive, articulate and ‘calm’. Effort should always be made to ensure the way the case is assessed and prosecuted should not in essence, however, differ.
- Paragraph 16 – How will it be ensured that the “need for support is identified early”? This is crucial for all victims of sexual violence, but it is important that if the CPS state this in guidance, thought is given as to how practically it will be carried out. We would also submit that in these cases a meeting before trial could be arranged, usually with an intermediary, for the prosecuting counsel in court to build rapport with the victim. If a note is made of what was said and counsel consult a previously agreed list of topics to discuss (e.g. introductions, basic overview of process, safety at court) then this

should overcome the accusation of 'coaching'. A meeting with 'their' prosecutor would, in our experience, make attending court for a young person less daunting.

- *Counselling and therapy* guidance should include the points made in the recent HMCPS Inspectorate report *Disclosure of medical records and counselling notes*; that CPS should ensure their disclosure obligations are met in every case and not disclose documents in 'blanket form', and that consent from the victim (or their carer) should be obtained in every case.

Question 2: Is it right that we should focus on the overall credibility of the allegation rather than the victim?

For the many victims we speak to on our legal advice line, how the guidelines will approach the credibility of the victim will make major changes to their experience of the criminal justice system, and for the better. We strongly welcome this approach, especially the points that contradictory disclosures should not lead to an automatic doubting of the victim's complaint (and in fact could be a factor indicating abuse), that prosecutors should focus on the credibility of the allegation in charging decisions rather than the circumstances of the victim and that prosecutor's should guard against using a lack of corroboration of other evidence as a reason in itself not to proceed with the case.

We would briefly make two points here, because we agree with all of the above; the first is that this is quite a departure in thinking from, anecdotally, how charging decisions are usually made in sexual offence cases. Therefore, further procedural guidance may have to be issued on charging decisions generally or in these cases to ensure that, again, this best practice guidance is used and implemented rather than quoted by policy staff only.

Secondly, and we have mentioned this above, these are crucial points to consider when thinking about credibility and charging decisions for all victims of sexual violence, not just in terms of child sex offences. Children are particularly vulnerable, but so are many women (and men) who experience sexual violence, whether systematic sexual violence as part of domestic abuse, or one off incidents. Many victims find that their credibility and personal life is focused on when making decisions not to charge, by the police and CPS. Each of our advice line sessions almost inevitably assists a caller who has received a negative charging decision from the CPS based on failing the first limb of the charging test because there is no corroborating evidence with her account (usually no other evidence at all rather than evidence which goes against her account). We would urge the CPS to look at charging decisions and credibility for all victims of sexual violence on this basis.

Question 3: While the list of criteria for the suspects is non-exhaustive, have we got the factors right?

Assessing the suspect and their credibility is very important, and we welcome that guidance on this is included, especially as suspects compared to vulnerable victims may present as well-mannered, sympathetic, plausible and coherent. It may be useful to say this explicitly. We suggest that besides a 'child abduction warning notice' CPS staff should also consider whether or not other actions have been instigated in the past or present to do with the suspect and having access to children, especially in the family courts or previous 'alerts' made to social services. This could then be linked with the comprehensive guidance on how evidence from family proceedings is to be used.

Question 4: Would it be helpful to have an Annex setting out 'myths and stereotypes' surrounding this type of offending? If so, please provide details of 'myths and stereotypes' that would be useful in the circumstances.

Given the recent case *R v Wilson*, and our discussions with other organisations that support victims of rape and sexual abuse who inform us that the attitudes displayed in court in that case are not necessarily uncommon, we submit that it would be very helpful to set out some 'myths and stereotypes' for CPS staff and external counsel to consult before any court appearance in child sex abuse cases. There is a danger that any list would be viewed as exhaustive and prosecutors would therefore dismiss other myths and stereotypes not included that present in their case work, so any list would need to make clear that it was not a definitive guide.

Some obvious 'myths and stereotypes' that could be included in any list would be the following:

- Children who are sexually abused come from all backgrounds and all communities and ethnic groups. Abusers also come from all backgrounds, communities and ethnic groups. Children who are abused may react in a similar way to other abused children or they may not, and if their behaviour is different from expected in any way it does not mean that they are not telling the truth. Similarly, because a defendant presents in a certain way does not necessarily mean they are guilty or innocent (this point could be emphasised in a separate 'myth' if necessary).
- Children and young people who are victims may behave in a way that is difficult to manage, and this includes overtly violent or sexual behaviour. This does not mean that they haven't been abused, or do not deserve a well thought out and dedicated prosecution of the defendant.
- A late complaint of abuse does not mean a false complaint of abuse. Many children and young people take a long time to trust that they will be believed and are concerned about the involvement of authorities or are terrified of the abuser finding out. They may have a sense of loyalty to their abuser which prevents them speaking out, or think the 'relationship' is not abusive.

- All victims of sexual abuse are likely to have been groomed in some way. For some, this means that they 'like' the relationship they have or they tolerate it as a necessity. Alternatively they may enjoy any gifts given to them and not want that to stop. They are children, not adults, and may not understand that they are being exploited or abused until they are much older. This does not mean that an effective prosecution cannot be pursued.

Question 5: What more can the CPS do to support the victim and witnesses through the court process?

We welcome the comments made about supporting victims and witnesses, particularly re-emphasising the importance of special measures and promotion of early consideration of special measures, and use of intermediaries. We welcome also a reiteration of best practice points concerning monitoring and control where possible of cross-examination and consideration of the waiting times in court for a young person. Again, we would stress that these points should be CPS policy for all vulnerable victims, whether adult or child.

We also suggest that consideration is given to the following measures to support victims and witnesses through the court process:

- Information such as a general overview of what will happen, case development updates, and updates after each hearing where issues have been decided, is still something that could be improved in practice. Lack of timely information, given in a sensitive manner, is still a point of concern for most callers to our advice line, and although this is the remit of the WCU or the police, CPS staff still have a responsibility to ensure that relevant information from the prosecution case has been passed on in a timely manner to the victim.
- Feedback from our own work in the area (from individuals and support workers) highlights again the need for a reassessment of the prosecution policies on meeting a victim before the court case begins. We submit that provisions could be put in place to ensure witness coaching allegations are prevented, and a meeting together with an overview of what to expect would be of great benefit to victims (see also point made in response to question 1 above).
- According to feedback from our advice lines and training services, victims have been concerned to find that their ABE video statements have been edited and that, in their opinion, crucial information has been excluded from the jury's consideration when viewing edited versions of an ABE video. We therefore propose that guidance should include the need to inform a victim before the trial begins of the necessity of ABE editing and the form that this will take. Again, we appreciate that this could be something more suited to the role of the WCU or prior to charge, the police, but we

think that CPS staff should not necessarily shift responsibility of information providing to the WCU and should check explicitly that this has been done.

- In appropriate circumstances, details of restraining order applications may need to be pro-actively considered, as young people could still be harassed by their abusers or associates of the abuser if the abuse is group or gang related.

Question 6: Do you have any further comments on the Interim Guidelines on Prosecuting Cases of Child Sexual Abuse?

Please see the introductory comments above.

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