RAPE CRISIS
England & Wales

Breaking Point

The re-traumatisation of rape and sexual abuse survivors in the Crown Courts backlog.

March 2023

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Acknowledgement

This report would not exist without the courage of sexual violence and abuse victims and survivors who have chosen to come forward to speak their truth. We recognise the immense power you have shown in choosing to shine your truth into the darkness.

To all of you still waiting for your trial: we see you. What happened to you matters, it is important, and you deserve a timely completion of your case.

Thank you to the Rape Crisis ISVAs and advocacy workers who continue to advocate for and support those waiting in the criminal justice system. Thank you also to the RCEW Criminal Justice System Reference Group for its endless expertise on the issues faced by survivors. Your input has been vital.

Special thanks to Rape Crisis workers from Coventry Rape and Sexual Abuse Centre, Cambridge Rape Crisis Centre, Support After Rape and Sexual Violence Leeds, SERICC, and North London Rape Crisis, who have been particularly engaged in supporting this piece of work.

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Foreword

Over the last three years, in response to the plummeting charge and conviction rates for rape cases, we have seen criminal justice agencies, inspectorates, and the government respond to the crisis with a flurry of reports and reviews. Nearly all have focused on how police investigations are conducted, and the decision-making policies and processes of the Crown Prosecution Service. Unfortunately, every stage of the criminal justice system gives us grave cause for concern when it comes to the impact on victims and survivors of rape and other sexual offences. Since 2022, women in the Rape Crisis movement have increasingly cited the impact of delays and other issues in the Crown Court as their primary concern. In response to this, we have written the following report.

In **Breaking Point: the re-traumatisation of rape and sexual abuse survivors in the Crown Court backlog**, we seek to explain the interlinked factors contributing to the large backlog of cases in the Crown Court, and the subsequent impact this has on victims and survivors. This report focuses on the post-charge pre-trial stage of the criminal justice process.

We named this report Breaking Point because it aptly describes the current state of the Crown Court in terms of its capacity and how it's functioning. Indeed, survivors themselves spoke of the system being broken. They also expressed that their ability to cope was at breaking point.

Rape and other sexual offences are some of the most serious and traumatic of crimes, and yet victims and survivors are waiting longer than everyone else. Again, and again, we see how the long wait for justice compounds rape and sexual abuse trauma, and, indeed, how it re-traumatises victims and survivors through processes that marginalise and disempower them. The courageous victims and survivors who came forward to share their experiences for this report all detailed the disastrous and life-changing consequences it has had on their lives.

We do not believe it has to be this way. Just as we won't accept that sexual violence and abuse is inevitable, we do not accept that failures in the system are either. We are hopeful that the system can, and will, be changed. Justice is possible, both procedurally and as a completed outcome. With coordination, resource, accountability and leadership, we can collectively make it possible.

We provide a range of recommendations: both those that are more immediately practical and those that are more ambitious in reach. We believe that all will make a difference. It is notable that several of these recommendations have been promised before, but remain unfulfilled or lie forgotten.

Victims and survivors of rape and other sexual offences have waited too long, and simply cannot wait any longer: we must see justice now.

Jayne Butler

Chief Executive Officer, Rape Crisis England & Wales

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Glossary

About us

Rape Crisis England & Wales (RCEW) works to end sexual violence and abuse. We provide specialist information and support to all those affected by rape, child rape and sexual abuse (CRaSA), sexual assault, sexual harassment, and all other forms of sexual violence and abuse in England and Wales. RCEW is also the national membership organisation for a network of 39 independent Rape Crisis Centres.

Terminology

We have used and adapted definitions and terminology from a range of authoritative sources in order to make the report as accessible as possible. These include judiciary.uk, The University of Law, HM Inspectorate cites, and The Law Society's legal glossary.

Backlog

This is the term to describe all cases awaiting trial, being tried, and awaiting sentencing. In this report, we focus on the Crown Court backlog.

Courts

- **Magistrates' courts** normally handle cases known as 'summary offences', for example, most motoring offences, minor criminal damage, and common assault (not causing significant injury). They can also deal with some of the more serious offences, such as burglary and drugs offences.
- **The Crown Court** deals with the most serious crimes. Rape, murder, manslaughter, and robbery are nearly always dealt with in the Crown Court. Cases are overseen by circuit judges, recorders, or, sometimes, High Court judges. The judge or recorder sits with a jury of 12 members of the public. The jury decides whether the defendant is guilty. The judge is responsible for ensuring that the trial is conducted fairly, resolving any legal issues, giving the jury legal directions, and imposing sentence.

Disposal

A court disposal is when a case has been closed for whatever reason, including reaching a verdict, such as a conviction or an acquittal, or for other reasons, such as a dismissal.

Fee Schemes

- **AGFS: Advocates' Graduated Fee Scheme** is a payment scheme for barristers who provide legal aid representation on behalf of a client, i.e., counsel advocates.
- **LGFS: Litigators' Graduated Fee Scheme** is a payment scheme for solicitors, i.e., litigators representing clients for Crown Court cases.

HMCTS

His Majesty's Courts and Tribunals Service is an executive agency of the Ministry of Justice.

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HMICFRS

His Majesty's Inspectorate of Constabulary and Fire & Rescue Services. HMICFRS independently inspects and reports on the efficiency and effectiveness of police forces.

HMCPSI

His Majesty's Crown Prosecution Service Inspectorate. HMCPSI has a statutory duty to inspect the operation of the Crown Prosecution Service (CPS) and the Serious Fraud Office (SFO).

ISVA

An ISVA is an Independent Sexual Violence Adviser. They provide emotional and practical support and information to victims and survivors of sexual violence and abuse who have reported to the police or are considering reporting to the police. The ISVAs we talk about in this report are independent and work within Rape Crisis Centres.

Judiciary

The judiciary is responsible for the country's legal system. People like judges and magistrates are part of the judiciary. The judiciary is independent from the government.

Judges

There are many different types of judge.

- A **presiding judge** is in charge of a trial in court and decides how a person guilty of a crime should be punished. They also make decisions on legal matters in a case.
- A **resident judge** has significant leadership and management duties. They are responsible for making sure that cases within court centres are managed efficiently, alongside managing their own cases and caseload. They work with other judges to make sure that work complies with current guidelines and good practice, and that, where needed, action is being taken to improve performance. This role therefore has significant responsibility for ensuring that the court is able to conduct its business promptly and effectively.
- **District judges** sit predominantly in magistrates' courts. Their work typically involves a wide spectrum of civil and family law cases.
- **Circuit judges** deal specifically with criminal or civil cases. However, some are authorised to hear public and/or private law family cases, while others sit across a range of jurisdictions.

Lawyers

- **Barrister/counsel/advocate:** Barristers are lawyers who often specialise in court room representation, drafting pleadings and expert legal opinions. Barristers can both prosecute and defend at court. Counsel is another term for barrister. Barristers usually practise as advocates, representing their clients in court.
- **Prosecutor:** A Crown prosecutor is a type of lawyer (generally a solicitor or a barrister), who works for the Crown Prosecution Service.
- **Solicitor:** A solicitor provides specialist legal advice on different areas of law and is responsible for representing and defending a client's legal interest. Solicitors usually liaise between clients and barristers.

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Listing

Listing is technically a judicial responsibility and process. Those responsible for listing (listing officers) have to liaise with parties or their legal representatives to fix hearing dates and times, and to allocate judges for hearings. Listing officers work closely with resident judges to ensure that all cases at their court are listed before judges or recorders of suitable seniority and experience for the type of trial.

Magistrates

Magistrates are trained, unpaid members of their local community. They work part-time and deal with less serious criminal cases, such as minor theft, criminal damage, public disorder, and motoring offences. The most complex cases in magistrates' courts are heard by district judges.

OIC

A police officer in charge of an investigation (officer in charge).

Rape Crisis Centres

Rape Crisis Centres provide specialist trauma-informed services for adults and children who have experienced sexual violence and abuse at any time in their lives. This includes both immediate and longer-term support. Rape Crisis Centres have specialisms in working with women and girls, and in working with victims and survivors of all forms of sexual violence and abuse. This includes, but is not limited to, rape, sexual assault, sexual harassment, child rape and sexual abuse (CRaSA), including child sexual exploitation (CSE), sexual violence within domestic abuse, and sexual violence and abuse that takes place within institutions.

Recorders

Recorders may sit in both the Crown Court and the County Court, but most start by sitting in the Crown Court. Their jurisdiction is broadly similar to that of a circuit judge, but they will generally handle less complex or serious matters coming before the court. Recorders are required to manage cases actively as well as to determine claims at trial. A recorder's duties include assisting the parties to prepare for trial, presiding over court proceedings, and delivering judgments in both applications and contested trials.

Trials (types of)

- **Effective trial:** The trial occurs as planned.
- **Cracked trial:** This is when solicitors and barristers have fully prepared a case for trial and then, on the day of the trial, either the prosecution drops the case or the defendant/s pleads guilty. As a result, the trial doesn't happen.
- **Vacated trial:** This is when a trial is delayed ahead of time, meaning that another trial can be listed in its place.
- **Ineffective trial:** This is when a trial does not happen on the day it is due to start and therefore needs to be rearranged.
- **Adjourned:** If a court case is adjourned, it means that the trial or hearing in progress is suspended/deferred to another date.

In this report, we mostly speak in simple terms about trials being delayed, rescheduled, or postponed, to cover one or more of the technical terms above. We also speak about:

- **Floater trials:** These are trials that have not been allocated to a specific court or judge, and may occur in any court in the same court centre on a specific day or within a period of time.

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Victims and survivors

We describe individuals who have been subjected to sexual violence and abuse as victims and survivors. This is to acknowledge the different ways that individuals define what they have been through, and how this shapes their identities and lives.

Witness Care Unit

Witness Care Units have the role of managing the care of victims and witnesses who are due to attend court. Those working in Witness Care Units are people from the police and the CPS. Their role is to guide people through the criminal justice process.

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Executive summary

The context and the issues

In an internal Rape Crisis England & Wales survey in 2022, the top two concerns of Independent Sexual Violence Advisers (ISVAs) supporting survivors through the criminal justice system were general timeliness and the impact of the Crown Court backlog on victims and survivors – and for good reason. At the end of September 2022, there were 62,766 cases languishing in this backlog.[1] Currently, rape and sexual offence cases in the backlog are at a record high: in the last quarter of available data, outstanding sexual offence cases in the Crown Court stood at 7,859 cases, an increase on the last quarter alone by around 800 cases. Adult rape cases increased by 200 cases.[2] These cases – some of the most traumatic and serious of any that the Crown Court will see – wait the longest in the backlog; once a case has been reported, it is now taking an average 839 days for it to then reach completion in court.[3] Child sexual abuse offences wait nearly two years to go to trial.[4] These unacceptably long time-scales have catastrophic impacts on confidence in the system, leading to some victims and survivors ultimately withdrawing from the criminal justice process.

Ronnie,* an adult survivor of child rape and sexual abuse, could no longer cope with the trial delays after an unusually long police investigation. She decided to drop out after eight years of having an open case. She shared:

> *"The whole process of this case is barbaric to [the] point that I have exhausted all patience and mental coping strategies [and] that I cannot support further delays anymore. To consider a victim is too much to ask? To appreciate what the experience is for a victim, is this too much to ask? For the process to take 8 years ... truly anyone with any kind of humane understanding would appreciate [that] this is not acceptable? ... I was unprotected as a child and then denied justice as an adult. This should never have happened ... the acts, nor failing the survivors. Never again will I report an incident. Never."*

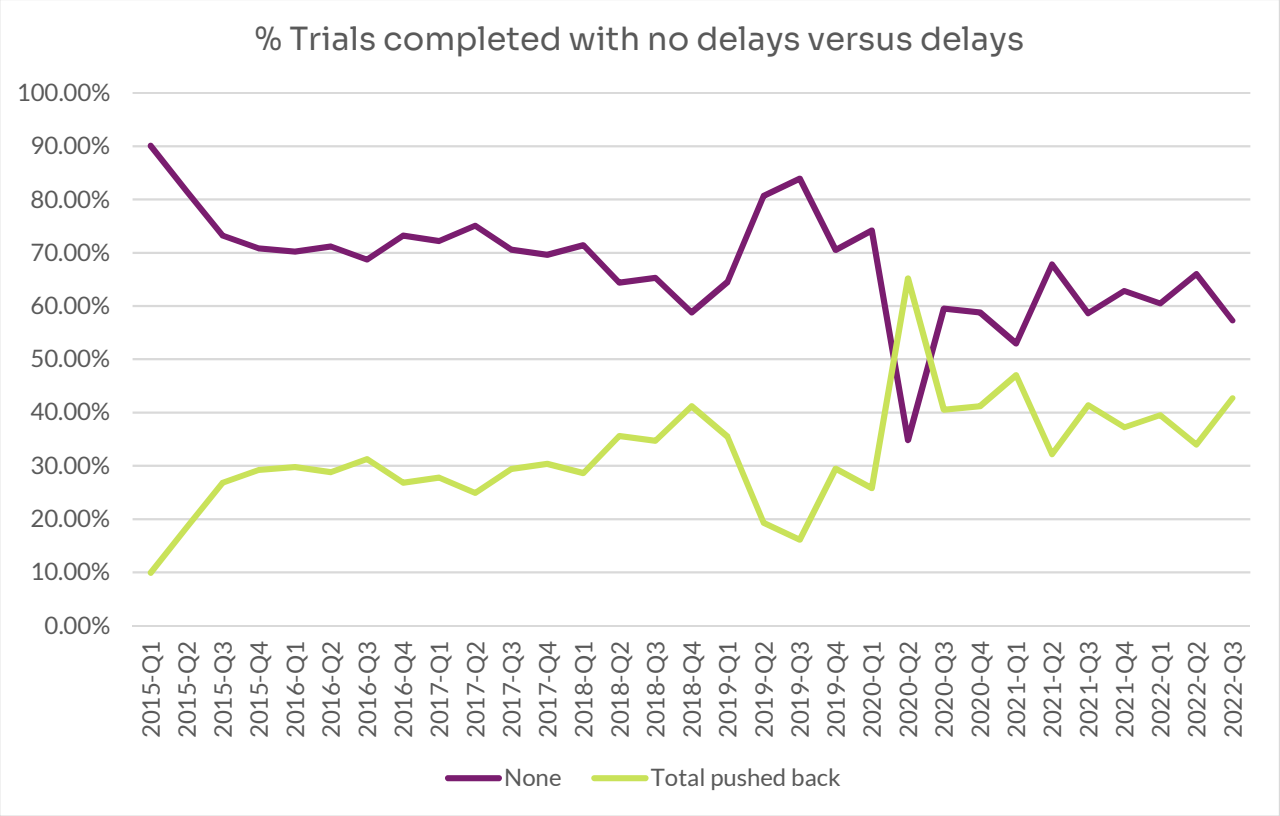
The disastrous experiences of victims and survivors is reflected in the data.[5] When comparing the financial year 2019-2020 with 2021-2022, the number of all rearranged rape trials had more than doubled. The number of trials that were postponed at least once increased by a whopping 133%. The number of rape trials with three or more previous trial dates had almost doubled. There were five times as many trials that had been rescheduled six or more times.

It is also evident from the data that the proportion of effective trials concluded without at least one trial delay has been decreasing since 2015.

[1] Ministry of Justice, Criminal court statistics quarterly: July to September 2022, Published 19 January 2023.
[2] Ministry of Justice, Criminal Court Statistics publication: Pivot Table Analytical Tool for England and Wales. Receipts, disposals and outstanding cases for trial in the Crown Court, Time Period: Q1 (Jan-Mar) 2014 to Q3 (Jul-Sep) 2022.
[3] HM Government. (2022). Criminal Justice System Delivery Data Dashboard. Online: https://criminal-justice-delivery-data-dashboards.justice.gov.uk/#additional_downloads.
[4] Kairika Karsna and Paige Bromley (February 2023), Child sexual abuse in 2021/22: Trends in official data, Centre for Expertise on Child Sexual Abuse.
[5] HMCTS. March 2023. Released under the Freedom of Information Act. 230206032 The data includes adult rape, child rape, and attempted rape. Requested by Rape Crisis England & Wales.

* To protect the identities of the victims and survivors who contributed to this report, all have been given pseudonyms.

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Part one of the report examines some of the fundamental issues that have led to the backlog, and which also aggravate it. Firstly, we look into **pay, working conditions, and the capacity** of the criminal legal profession, which led to barristers and solicitors striking in 2022. The low rates of pay for criminal defence lawyers are increasingly driving some to abandon criminal practice and pursue other areas of work. Anecdotal evidence suggests that poor working conditions are also contributing to this migration of lawyers from criminal law. There are also increasing concerns over a **shortage of judges**. The crisis of recruitment and retention among both solicitors and barristers impacts directly on the pipeline of judges, who are recruited from the ranks of solicitors and barristers.

We also look at the courts estate not functioning at capacity. The government had been cutting the number of sitting days in the Crown Court since 2015/6, a fiscal decision taken at a time when court receipts were declining. Now, court receipts are increasing again and sitting days are once again unlimited; however, there is not the workforce capacity that is needed to service more courtrooms.

The process of **listing cases** in the Crown Court is also looked at. Current data shows that the volume of rape and sexual offence cases listed as floater trials is at a record high, which is unacceptable. The volumes are not large, but no crimes of this seriousness should ever be listed as floater trials. There is a lack of national oversight and scrutiny over listing, with no courts inspectorate in place to look at efficiency.

We also briefly look at the **lack of pandemic preparation** and how there was no plan for the Crown Court before Covid-19 struck. In a formal 2016 exercise simulating a pandemic, the Ministry of Justice only considered the impact of a pandemic on offender management and did not plan for the disruption it would have on the courts. This lack of contingency processes significantly added to the Crown Court backlog.

All of these issues are made visible through the data on **trial efficiency** in the Crown Court. High numbers of vacated trials are normalised in the system, but inefficient trials have been increasing since before the 2022 barrister strikes.

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The impact on victims and survivors

Part two documents the impact and consequences of the issues outlined in the first section through the lens of victims and survivors. We consistently see that the treatment of victims and survivors leads to re-traumatisation. Rebecca* shared with us her deeply held anxieties of going to court and how they repeat for her:

> *"I will be on the stand, I think I am on trial. I am on trial. They want me to stand up there and re-traumatise myself and speak about the most shaming and disgusting things. I am worried this is going to be the most traumatic, shaming, and humiliating thing in my life."*

We see how the protracted wait leads to deteriorating mental wellbeing, with several of the survivors having shared that they tried to end their own lives – sometimes multiple times – because they felt that the waiting would never end and they could simply no longer cope. We hear from Maria* who has life-changing injuries from her attempt to end her life, which resulted in specialist treatments in different parts of the country. Her mother shared with us how this affected the whole family unit and the parents' employment.

Meanwhile, dangerous perpetrators have been granted bail after multiple postponements rendered it impossible to detain them any longer. There is also a pattern of poor communication and an overall lack of consideration for victims and survivors, as well as their families. In two of the cases, they had the distressing experience of coming face-to-face with the perpetrator and his family.

Survivors shared how they felt powerless and de-prioritised while stuck in limbo. Charlotte* detailed her feelings, which were common to several of the other survivor case studies:

> *"[T]he court date finally come; I thought, 'This is it. Finally, I get to get it over with and then I can try [to] heal from the trauma'. Thinking that I can finally heal properly instead of dragging it all back up, time and time again. I spent weeks having panic attacks and not sleeping; I wasn't eating; my whole life was falling apart again. I had no control; I was a mess. [But I was] prepared to tell my side to the court so I could finally be heard. Then it got postponed again – I was told I had to wait a year…*
>
> *It's so painful to feel so stuck somewhere yet hopeless; as hopeless as when these crimes took place and no one listened or helped me then. No power or control over the choices that had been made for me. I was going to quit, withdraw my statement; I was at breaking point.*
>
> *The severity of my mental health was deteriorating. My relationship with my children and partner was low as all I would do is sob. How can they let me down again, fail me? Was I not important? Was what I was saying not important? Did I matter? Did my case matter? Who would care if I dropped out anyway?"*

Many other significant consequences of going through the justice system and waiting for trial impacts survivors. We hear the stories of a young woman, Amy,* who is currently at college but struggling to study. Amy described the wait as a never-ending nightmare:

> *"I just feel so upset that I have to wait this long for justice and an outcome. I feel like I can't move forward from this; it's just horrible."*

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Key recommendations

In the final section of the report, we have set out our recommendations for change.

Priority listing and guaranteed fixtures for all rape and sexual offence cases, to ensure that the most traumatic crimes currently waiting the longest to go to trial are heard with timeliness.

Rape and sexual offence trials must never be listed as floater trials. Local Criminal Justice Boards should monitor this listing practice closely.

Clear and coordinated communication with victims and survivors. Criminal justice agencies must coordinate and formally agree routes of communication with victims and survivors, so that they are updated promptly when trials are vacated and relisted. Many of the communication problems at the post-charge pre-trial stage stem from a lack of clearly defined roles across agencies**.** For processes to run smoothly, every element has to function efficiently, from court staff to the Crown Prosecution Service (CPS), police, and Witness Care officers. Agreed protocols must be in place to ensure this happens.

Risk assessing court premises. His Majesty's Courts and Tribunals Service (HMCTS) must support Crown Court staff to create RASSO-specific risk assessments suitable for the range of Crown Court buildings across England and Wales. These should be shared with the Witness Service and include practical considerations around the physical space, accessibility, and arrival timings. This should ensure that victims and survivors and their perpetrators, as well as their respective families and supporters, do not have unwanted interactions.

Recognition of ISVAs as key professionals at court. All court staff, including the volunteer Witness Service staff, must formally recognise the role and importance of the ISVA, and expect them to attend the trial as a key support worker. This could be achieved through memorandums of understanding at local level, but consistency at national level should be coordinated by HMCTS.

Special measures as the default for rape and sexual offences. However, survivors should be consulted with and given the necessary information to help them decide what they need following a pre-court visit.

Mandatory case conferences before trial. Case conferences between police, the CPS, and the prosecution advocate need to be mandatory in order to ensure that there is appropriate preparation, and a shared knowledge and understanding of the case.

Specialist sexual offence courts have been long recommended by Rape Crisis England & Wales and other organisations. Vital learning and understanding should be derived from the developments in Scotland, which is working on the creation of a national specialist sexual offence court, and also New Zealand, which has had specialist courts for years.

Judge-only trial pilots. As part of establishing specialist sexual offence courts, we recommend that the government commits to piloting judge-only trials for a specific time period in the Local Criminal Justice Board areas where trials are the least timely and where there are high volumes of cases in the backlog.

Long-term grants for sexual violence and abuse services that provide crucial specialist counselling, advocacy, and support services for survivors who are taking part in the criminal justice process. Commissioners need to recognise the distressing impact that the criminal justice system has on victims and survivors, and fund the long-term counselling and therapeutic work that Rape Crisis Centres undertake. We recommend five-year minimum grants to give stabilisation to specialist sexual violence and abuse services.

Access to sufficient specialist sexual violence and abuse counselling for victims and survivors who are accessing the criminal justice system in order to mitigate for the traumatic process. Additional legal protections for counselling notes are required in legislation.

A long-term strategy to recruit and retain criminal barristers, along with appropriate investment. We also recommend that there should be incentives for everyone to work towards timely competition of trials. In addition, we recommend that in-depth research be commissioned by the Ministry of Justice and judiciary into how to improve the recruitment and retention of women, working-class people, and ethnically and racially minoritised people into the criminal legal profession.

Victims and survivors recognised as participants in the criminal justice system, rather than being considered bystanders or witnesses to crimes. The government must amend the draft Victims Bill to ensure that survivors have a defined and formally recognised status as participants in the criminal justice system, with a minimum set of measures in place to improve and support their participation in the criminal justice process.

A cross-governmental prevention strategy to reduce sexual offending in the first instance. Without this, there will always be more rape and sexual offence cases in the criminal justice system, and ever-increasing demand on specialist sexual violence and abuse services, such as Rape Crisis Centres.

The Crown Court must be built into all future government plans on pandemic preparation. IT infrastructure and digital systems must also be updated and maintained in order to ensure a modernised and functioning courts estate where remote hearings are possible.

Introduction

It is well established that the criminal justice system has failed to deal with **rape and other sexual offences** effectively. Multiple reviews, reports, and inspections, particularly over the last five years, have primarily and necessarily focused on scrutinising how police investigations take place, misogyny in policing and police-perpetrated violence against women and girls,[6] and the challenging and sometimes strained relationships between police and prosecutors.[7] There have also been serious concerns detailed about how the Crown Prosecution Service has been failing victims and survivors of sexual violence and abuse by discontinuing cases that should have been heard in court.[8] Although the work in rooting out the issues within policing and the CPS are still far from resolved, they have received more focus and attention than ever before, and continue to be worked on by potentially transformative projects such as Operation Bluestone-Soteria.

All the much-needed scrutiny and work into improving investigations and prosecution rates, especially that which focuses on the timeliness and quality of investigations, is risked, and even sometimes undermined, by the shocking state of the backlog of cases in the Crown Court of England and Wales. In the government's 2021 Rape Review, the target was set for volumes of rape cases being referred by police, charged, and going to court to return to 2016 levels.[9] Yet the government's target to reduce the Crown Court backlog to 53,000 cases by March 2025 does not match that ambition, and, while more cases are rightly being charged, the backlog persists and grows. In the final quarter of 2016, there were 35,493 outstanding cases in the Crown Court backlog.[10]

In an internal Rape Crisis England & Wales survey in 2022, the top two concerns of Independent Sexual Violence Advisers (ISVAs) supporting survivors through the criminal justice system were general timeliness and the impact of the Crown Court backlog on victims and survivors. Victims and survivors of sexual violence and abuse, and particularly rape, are waiting the longest and facing the most unreasonable delays, having usually waited years for their case to progress to trial. Child sexual abuse offences wait nearly two years to go to trial.[11] On average, adult survivors of rape can expect to wait 839 days (2.3 years) from reporting to case completion in court. Many victims and survivors wait much longer.[12] Currently, rape and sexual offence cases in the Crown Court backlog are at a record high: in the last quarter of available data, outstanding sexual offence cases in the Crown Court stood at 7,859 cases, an increase on the previous quarter by around 800 cases.[13] The disposals must keep pace with the receipts to stop the backlog increasing, and, in order to reduce the backlog, disposals must substantially exceed receipts.

A constellation of issues has created the record high number of cases currently lamenting in the Crown Court backlog. These are explored in the first section of this report and explore the dysfunction of how some courtrooms are doubled booked with trials whilst others lie empty; how there is a shortage of prosecutors, barristers, and judges – a problem created by unwieldy workloads, a lack of respected specialism in RASSO (rape

[6] 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.
[7] 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).
[8] The Decriminalisation of Rape: Why the justice system is failing rape survivors and what needs to change (Centre for Women's Justice, End Violence Against Women and Girls Coalition, and Rape Crisis England & Wales, 2020).
[9] The End-to-End Rape Review (June 2021), HM Government.
[10] Ministry of Justice (2023), Criminal court statistics quarterly: July to September 2022.
[11] Kairika Karsna and Paige Bromley (February 2023), Child sexual abuse in 2021/22: Trends in official data, Centre for Expertise on Child Sexual Abuse.
[12] Several examples of these particularly lengthy cases are shared throughout this report.
[13] Ministry of Justice, Criminal Court Statistics publication: Pivot Table Analytical Tool for England and Wales. Receipts, disposals and outstanding cases for trial in the Crown Court, Time Period: Q1 (Jan-Mar) 2014 to Q3 (Jul-Sep) 2022.

and serious sexual offences), unpleasant working environments, and salaries that disincentivise professionals (all of which has culminated in strike action); how repairs and maintenance have resulted in losing hundreds of sitting days across the courts estate. These issues relate back to lack of innovation, leadership, and resourcing, but are rooted in the damaging cuts to sitting days during the period of austerity.

The victim and survivor testimonies included here are an indictment of the system. Every victim and survivor states the psychological toll it has taken on them, and many also say they feel broken or are at breaking point. Several have also said the same thing about the Crown Court and the wider criminal justice system: that it is in crisis. Understandably, many victims and survivors are trying but struggling to stay engaged in such a process, after cases are rescheduled, often multiple times. These delays have had devastating consequences, which are outlined in the second half of the report.

There have been some key developments and successes achieved by the Ministry of Justice and His Majesty's Courts and Tribunals Service, such as the national roll out of pre-recorded evidence and the recent effort to incentivise barristers to take on the work.[14] Crucially, there are now unlimited sitting days – something that was introduced in April 2021 – and HMCTS will also continue to use 11 operational Nightingale Courts for another year, which keeps an additional 24 courtrooms in service. The significant increase in technical capability for remote hearings is also a key success.

However, we maintain that the intense trauma experienced by victims and survivors, combined with the unreasonably long time their cases take to reach trial, warrants that their cases be priority listed and therefore expedited through the system. The final section of the report consists of immediate, mid-term, and long-term recommendations. These include the establishment of specialist rape and sexual offence courts, as well as our recommendation that all victims and survivors are able to access specialist sexual violence and abuse counselling and advocacy that is sufficient to support them, whether or not they choose to enter into the criminal justice system. We also suggest that judge-only trials are urgently consulted on and piloted as an emergency measure in areas that have the highest number of cases within the backlog and the slowest progression.

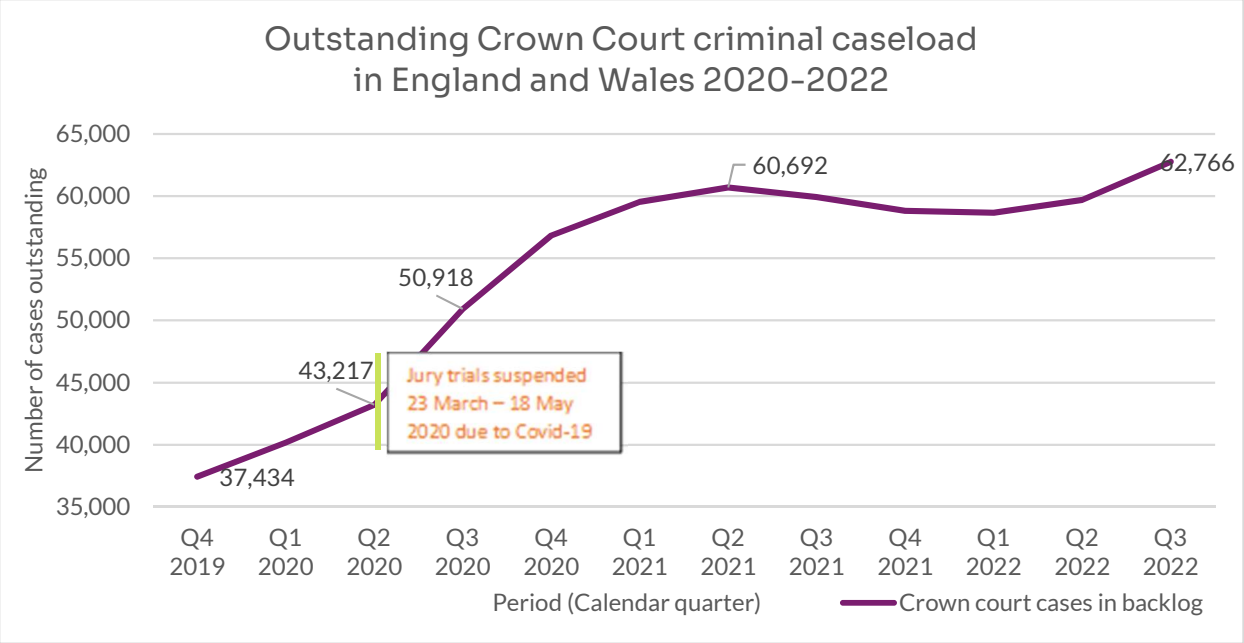
We demand that victims and survivors of rape and sexual abuse, crimes that are among the most serious and traumatic, have their cases treated with commensurate gravity – something that should be demonstrated by a timely system that treats them with dignity and respect.

[14] Ministry of Justice press release, 31st January 2023, Thousands more victims to avoid trauma of courtroom cross-examination under plans to boost barrister fees - GOV.UK (www.gov.uk).

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Context

At the end of September 2022 there were 62,766 cases waiting to be heard in the Crown Court of England and Wales.[15] Whilst the Covid-19 pandemic undoubtedly had an impact on the number of cases in the backlog – jury trials were suspended for a period due to the inability of courts to facilitate social distancing – it was also evident, as shown in the graph below, that the Crown Court was struggling to keep up with demand before the pandemic began. Indeed, the National Audit Office found that the Crown Court backlog increased by 23% in the year leading up to the pandemic.[16]

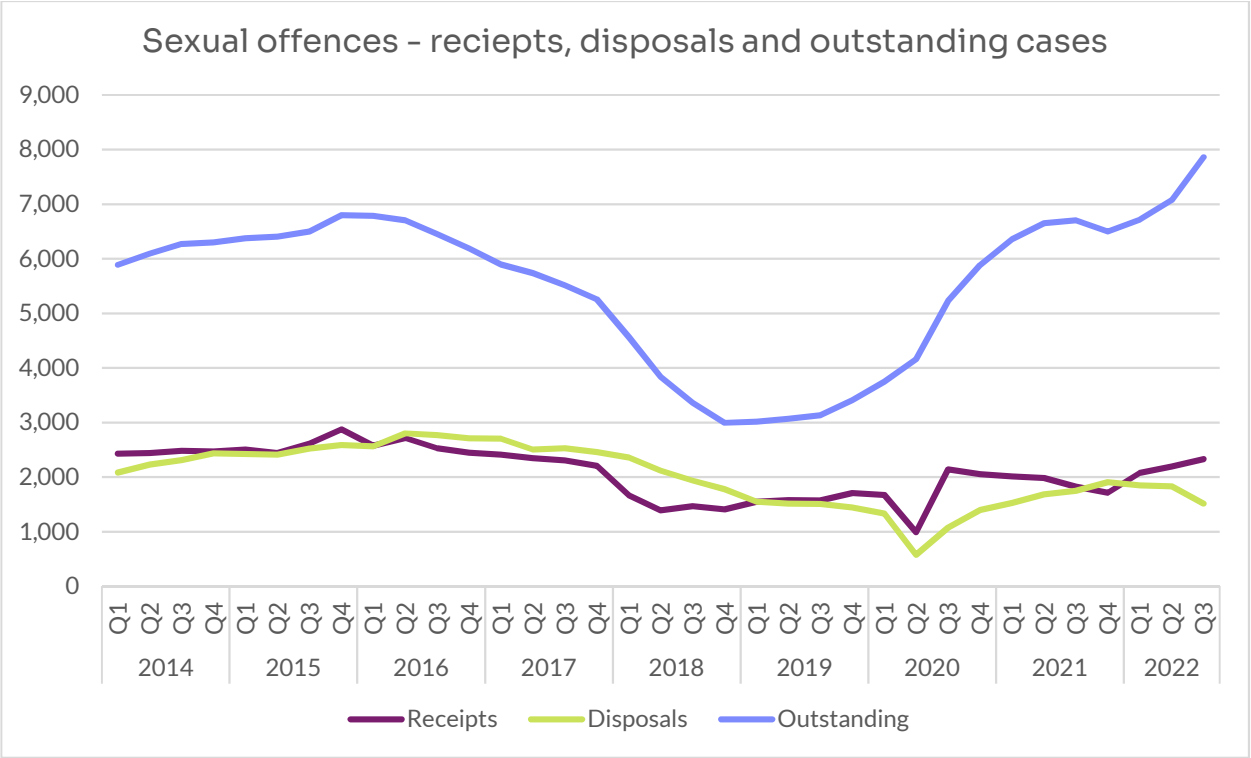


Source: Ministry of Justice. (2022), Criminal Court Statistics Collection. Online: https://www.gov.uk/government/collections/criminal-court-statistics

Defendants in sexual offence cases are more likely to plead not guilty than in other types of cases, meaning that a jury trial is required. With the suspension of jury trials for a period during 2020, and the additional time needed to conduct a jury trial, it is no surprise that sexual violence and abuse cases are disproportionately affected by the Crown Court backlog. The Institute for Government recently analysed the types of case in the Crown Court backlog and found that many were awaiting a jury trial. They concluded that, *"When adjusted for the complexity of cases added (which will disproportionately require jury trials), the current backlog is now more than twice what it was before 2020"* [17] – even more bleak than the figures in the above chart suggest. The National Audit Office reports that, *"between 31 March 2020 and 30 June 2021, the number of sexual offence trial cases in the Crown Court backlog rose by 71% from 3,606 to 6,173, with cases waiting longer than a year increasing 435% from 246 to 1,316"*.[18]

[15] Ministry of Justice. 2022. 'Criminal Court Statistics Quarterly: April To June 2022'. Available at: https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2022/criminal-court-statistics-quarterly-april-to-june-2022--2.
[16] National Audit Office, Ministry of Justice and HM Courts & Tribunal Service. 2021. 'Reducing the Backlog in Criminal Courts', p. 6. [Report] Available at: https://www.nao.org.uk/wp-content/uploads/2021/10/Reducing-the-backlog-in-criminal-courts.pdf.
[17] Chartered Institute of Public Finance & Accountancy & Institute for Government. 2021. 'Performance Tracker 2021: Assessing the Cost of Covid in Public Services', p. 127. [Report] Available at: https://www.cipfa.org/policy-and-guidance/reports/performance-tracker-2021#:~:text=The%202021%20Performance%20Tracker%20assesses,over%20the%20next%20three%20years.
[18] National Audit Office, 'Reducing the Backlog' (n 2) p. 7.

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Source: Ministry of Justice, Criminal Court Statistics publication: Pivot Table Analytical Tool for England and Wales. Receipts, disposals and outstanding cases for trial in the Crown Court, Time Period: Q1 (Jan-Mar) 2014 to Q3 (Jul-Sep) 2022

A joint inspection into the police and Crown Prosecution Service (CPS) response to rape found that cases involving sexual offences take longer to process through the Crown Court than all other types of offences.[19] More recent government data shows that the situation has worsened since that 2021 inspection. As of June 2022, an average of 380 days were passing between an adult rape case arriving at the Crown Court and its completion – a 53% increase in time since December 2019 and 143 days longer than criminal cases in general.[20] This is on top of the increasingly long period that rape survivors are waiting for the police to charge an offender following a report of rape (an average of 342 days as of June 2022), and for the CPS to make a charge after receiving a referral from the police (117 days).[21] This means that, on average, adult survivors can expect to wait 839 days (2.3 years) from the reporting of an offence of rape to the case completion in court. This is abysmal and we know that some survivors are waiting even longer, their experiences marked by multiple delays at multiple points in the criminal justice system. This is leading to survivors understandably withdrawing from the process altogether, meaning that perpetrators are free to continue to offend and survivors are left to pick up the pieces of their traumatic experiences.

For some survivors, like Ronnie, it ultimately becomes too much. After experiencing an unacceptably long police investigation, followed by her trial being vacated, Ronnie withdrew from the process. As we can see below, the experience has led to her total disillusionment with the criminal justice system.

[19] HM Inspectorate of Constabulary and Fire & Rescue & HM Crown Prosecution Service Inspectorates. 2022. 'A Joint Thematic Inspection of the Police and Crown Prosecution Service's Response to Rape – Phase Two: Post-Charge', p. 82. [Report] Available at: https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/joint-thematic-inspection-of-police-and-cps-response-to-rape-phase-2.pdf.
[20] HM Government. 2023. Criminal Justice System Delivery Data Dashboard [Online]. Available at: https://criminal-justice-delivery-data-dashboards.justice.gov.uk/#additional_downloads.
[21] ibid.

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Ronnie

Ronnie* reported child sexual abuse in January 2015. Her perpetrator was not charged until the summer of 2021. The trial was due to go ahead in the autumn of 2022, but ended up being vacated due to the barrister strikes (which meant that a barrister was not available). It was rescheduled for the summer of 2023, well over eight years since Ronnie had first reported the abuse. The impact of the length of the investigation and the court delays on Ronnie has been immeasurable; eventually, she felt unable to continue to support the prosecution. She has now withdrawn from the case.

She said: *"The harrowing effects of this all [is] taking so much of my valuable life away from me. Overall, my experience has been more than disappointing. I feel they haven't just failed me but many others. The whole process of this case is barbaric to [the] point that I have exhausted all patience and mental coping strategies [and] that I cannot support further delays anymore. To consider a victim is too much to ask? To appreciate what the experience is for a victim, is this too much to ask? For the process to take eight years ... truly anyone with any kind of humane understanding would appreciate [that] this is not acceptable? And who is checking on this case? ... Why did it truly take this long? They didn't give a jury a chance to make their own minds up about this because they took too long without courtesy contact and support."*

On processing her decision, Ronnie shared: *"I know what happened. Sadly, I have to live with that. And no longer am I ashamed to say it, nor am I afraid of the person that did it … But I am not proud of the so-called justice system who we are supposed to feel safe with."*

Deep feelings of disillusionment came about for Ronnie when her perpetrator recently died. "*Had the justice system worked, he would have been behind bars and withdrawn from a society he was a risk to for an additional eight years. There was already enough evidence to show his offences and that he was a repeated offender," she told us.*

"I feel the police condoned his sexual beliefs in robbing young girls of their innocence and destroying their lives. He should never [have] had freedom after reports of his wrongdoings and the length of time he was left in the public was extremely concerning. Someone like him does not stop. How is a child sexual abuser allowed to remain in the community with more than one case reported and others known?

"I question who the law is there to defend. I was unprotected as a child and then denied justice as an adult. This should never have happened ... the acts, nor failing the survivors. Never again will I report an incident. Never."

In the government's Rape Review bi-annual progress updates, it is repeatedly stated that £477 million is to be invested over the next three years[22] to facilitate the reduction of the Crown Court backlog to 53,000 cases by March 2025. However, this target has been dubbed "meagre" and "slow".[23] Indeed, 53,000 outstanding cases is far higher than the number of outstanding cases pre-Covid-19, which was deemed unacceptable at the time. Complainants and defendants will still be required to wait too long for justice. Doubts have also been raised surrounding the government's ability to meet even this target, including by Conservative MPs. In oral evidence given to the House of Commons Justice Committee in January 2023, Mike Freer, Parliamentary Under Secretary

[22] HM Government. 2022. 'Rape Review Progress Update: June 22', p. 4. [Online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1083955/rape-review-progress-update-june-2022.pdf.
[23] House of Commons Committee of Public Accounts. 2022. 'Reducing the Backlog in Criminal Courts', p. 5. [Report] Available at: https://committees.parliament.uk/publications/9159/documents/159649/default/.

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of State for the Ministry of Justice, when asked about the target of reducing the backlog to 53,000 cases by March 2025, said:

> *"There is a variety of modelling that needs to be completed before I will want to put a stake in the sand and say 53,000, but it certainly remains a very strong aspiration."*[24]

This suggests that even this target may not be achievable, despite its repeated featuring in the government's own Rape Review update reports.[25] Other concerns around the achievability of this target are, in summary:

1. **Uncertain future demand:** the National Audit Office points out that the Ministry of Justice's models for recovery *"forecast a much quicker recovery than the Ministry's previous central estimate in April 2021, even though considerable uncertainty remains about demand flowing into the courts following the pandemic and the pace of new police recruitment and deployment"*[26] (this refers to the government aim to recruit a further 20,000 police officers to replace those lost due to previous government funding cuts). Indeed, the government has committed to ensuring more rape cases in particular are reaching courts, after years of plummeting prosecution rates.[27] Significant and much-needed work is currently under way in order to transform the investigation and prosecution of rape and sexual offences, with Operation Bluestone-Soteria being one of the largest and most high-profile. This will mean even more cases coming into a court system that is currently unable to manage the number of sexual violence and abuse cases already outstanding.
2. **The impact on the Prison Service:** the House of Commons Public Accounts Committee stated that it has "*significant concerns about the ability of the rest of the criminal justice system to respond to more cases flowing through the courts, particularly in the prison service … given the planned increase in police officers and the [Ministry of Justice]'s work to reduce the backlog in criminal courts*".[28] There are already reports of offenders being spared a prison sentence as there is no space for them[29] – the consequences of the same happening with sex offenders is unthinkable, especially when so many already escape justice.
3. **Lack of data around the composition of cases in the backlog:** the Public Accounts Committee further stated in its March 2022 report that the government and His Majesty's Courts and Tribunals Service "*do not yet have the data they need to fully understand and manage the flow of cases. Both are relying on a new case management system to address these gaps, although HMCTS has currently paused the roll-out of this system*".[30] It is difficult therefore to comprehend how the government can set any targets, without fully understanding the issues contributing to the backlog and the make-up of the cases outstanding.
4. **Lack of clarity surrounding plans to improve performance:** the Public Accounts Committee further stated that, whilst they recognised the publication of national scorecards that bring together data on performance across the criminal justice system as "*long overdue*", *"it is not clear how the Department [Ministry of Justice] will use this to improve performance*".[31] For example, in June 2021, the government set out a range of other actions it would take in its Rape Review and has published update reports every six months since. However, the government "*cannot yet say what impact these actions are having on the*

[24] Justice Committee. 2023. 'Oral Evidence: The Future of Legal Aid', at [Q. 215]. [Oral Evidence, HC 665, 17 January 2023] Available at: https://committees.parliament.uk/oralevidence/12539/pdf/.
[25] See, for example: HM Government, 'Rape Review Progress Update' (n 8) p. 15.
[26] National Audit Office, 'Reducing the Backlog' (n 2) p. 8.
[27] For example, in 2019, 55,259 rapes were reported, yet only 1,659 rape cases resulted in a charge and 702 convictions were secured. See: Rape Crisis England & Wales et al. (2020). 'The Decriminalisation of Rape: Why the Justice System is Failing Rape Survivors and What Needs to Change'. Available at: https://rcew.fra1.cdn.digitaloceanspaces.com/media/documents/c-decriminalisation-of-rape-report-cwj-evaw-imkaan-rcew-nov-2020.pdf.
[28] House of Commons Committee of Public Accounts, 'Reducing the Backlog' (n 9) p. 3.
[29] See, for example: Dathan, Matt 2023. 'Judge Can't Jail Violent Lorry Driver Because There's No Space in Prisons' [*The Times*, 13 January 2023] Available at: https://www.thetimes.co.uk/article/judge-can-t-jail-violent-lorry-driver-because-there-s-no-space-in-prison-gkf6qpwb7.
[30] House of Commons Committee of Public Accounts, 'Reducing the Backlog' (n 9) p. 7.
[31] ibid.

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number of rape and serious sexual offence cases waiting in the backlog".[32] The Justice Committee has also recommended that the government builds on the scorecards by setting itself timeliness targets, particularly for rape cases.[33] This is yet to materialise.

It would appear that the government does not have clarity on what is causing the backlog of Crown Court cases, how to improve the situation, or how to properly monitor any improvement. This becomes even clearer in the government's response to the numerous inquiries and reports examining the backlog – it repeats that it has removed the limit on Crown Court sitting days, extended magistrates' sentencing powers to allow more cases to be dealt with in the lower courts, set out plans to recruit more judges, and expanded the physical capacity of the courts estate, for example through opening 'super courtrooms' and continuing to open Nightingale Courts.[34] Whilst these improvements are needed and welcomed, there remain other fundamental problems to address. We explore these key issues below.

[32] ibid, p. 5.
[33] House of Commons Justice Committee. 2022. 'Court Capacity: Sixth Report of Session 2021-2022', p. 22. [Report] Available at: https://committees.parliament.uk/publications/21999/documents/163783/default/.
[34] See: ibid; HM Government, 'Rape Review Progress Update' (n 8) p. 17.

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Issues: what has caused the backlog in the Crown Court?

1. Pay, working conditions, and the capacity of the criminal legal profession

Background: criminal legal aid

Solicitors and barristers providing criminal legal aid (defence) services are renumerated through fixed payment schemes which are set by government.[35] Barristers and solicitor advocates in the Crown Court are paid under the Advocates' Graduated Fee Scheme (AGFS), and solicitors (the litigators who undertake the preparatory work for court) under the Litigators' Graduated Fee Scheme (LGFS). The government previously implemented reductions in cash terms to the fees paid under these schemes – there was an 8.75% reduction in solicitors' fees in 2014 and cuts to advocates' fees between 2010 and 2012.[36] There has been no increase to criminal solicitors' fees for 25 years.[37]

Following sustained pressure from the legal sector to review criminal legal aid provisions, the government finally published its Independent Review of Criminal Legal Aid in November 2021 (almost three years after it was announced). The author of the review, Lord Bellamy, deemed the situation for criminal legal aid solicitors in particular to be "parlous"[38] and in need of urgent, as well as long-term, investment. An immediate overall pay increase of at least 15% was recommended for both barristers and solicitors – this was regarded as the *"minimum necessary as the first step in nursing the system of criminal legal aid back to health after years of neglect*".[39] Bellamy warned that the situation with court backlogs at the time his report was published (November 2021) would only worsen and that, without funding, "*there will not be enough criminal advocates to meet the increased demand … More particularly, underfunding criminal legal aid runs directly counter to the CJS [criminal justice system] policy of seeking better engagement and earlier case disposals, an aspect of particular importance given the current backlog in the Courts"*.[40] Put simply, if the government did not urgently increase criminal legal aid fees, there would be no legal professionals to work on cases going through the courts.

The warnings in this report, commissioned by the government itself, could not be clearer. Yet, the government still refused to offer barristers and solicitors the immediate 15% pay increase for all areas of work under the AGFS and LGFS.[41] Whilst advocates eventually accepted the government's offer for increased pay under the AGFS, voting to end industrial action in October 2022, solicitors are still refusing to accept the overall 9% increase to LGFS fees, as they claim this is not enough to sustain the sector. The government's current offer is to increase LGFS fees for preparatory work (the bulk of solicitors' work) by just 4% – 9% lower than Bellamy recommended as a minimum. In evidence given to the Justice Committee in January 2023, the president of the

[35] Criminal Legal Aid (Remuneration) Regulations 2013. Available at: https://www.legislation.gov.uk/uksi/2013/435/contents/made.
[36] Bellamy, C. 2021. 'Independent Review of Criminal Legal Aid: Sir Christopher Bellamy', p. 6. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf.
[37] See: The Law Society. 2023. 'Criminal Legal Aid Review'. [Online] Available at: https://www.lawsociety.org.uk/topics/criminal-justice/criminal-legal-aid.
[38] Bellamy, 'Independent Review of Criminal Legal Aid' (n 22) p. 52.
[39] ibid, p. 10.
[40] ibid, p. 17.
[41] Ministry of Justice. 2022. 'Government's Full Response to the Criminal Legal Aid Independent Review and Consultation on Policy Proposals'. [Consultation Outcome] Available at: https://www.gov.uk/government/consultations/response-to-independent-review-of-criminal-legal-aid/outcome/governments-full-response-to-the-criminal-legal-aid-independent-review-and-consultation-on-policy-proposals.

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Law Society, which represents criminal solicitors in England and Wales set out her "disappointment" at the government's proposal, highlighting that inflation is currently at 9.3%, nullifying the 9% overall increase. The Law Society has issued a pre-action protocol letter to the government, which threatens judicial review if it continues to "unlawfully" ignore the recommendations of its own review and guarantee the 15% overall increase to LGFS fees.[42]

The capacity of the legal profession

The low rates of pay for criminal defence lawyers are increasingly driving some to abandon criminal practice and pursue other areas of work. Anecdotal evidence suggests that poor working conditions are also contributing to this migration of lawyers from the criminal law. The Criminal Bar Association reports that, *"those who remain in criminal practice at this juncture … are presently working without adequate (and often without any) breaks between trials, impeding family time, without regard to health, and without adequate preparation time for forthcoming trials"*,[43] in "grotty"[44] courts.

The Law Society reports that criminal legal aid firms are closing due to the inability to sustain themselves on the poor rate of pay under the LGFS. Twelve years ago, there were 1,861 firms, but only 1,038 as of January 2022. In addition, almost 20% of solicitors dealing in criminal legal aid have left the profession in the last five years and, in a recent survey, 80% of junior solicitors said they were unwilling to go into criminal defence work.[45] If the government does not implement the recommendations of its independent review into criminal legal aid, it is predicted that a further 16% of criminal legal aid firms will close by 2025, while 50% of the remaining solicitors will exit this area of work. This raises serious concerns for tackling the Crown Court backlog and preventing further delays.

There are fears around the availability of advocates to work cases too. In December 2021, the Criminal Bar Association reported that the number of junior barristers and King's Counsel (the most experienced barristers who work on the most complex cases) practising in crime decreased between 2015/16 and 2019/20 – 11% and 22% respectively. In addition, the number of new barristers (0-2 years qualified) who were leaving crime-only practices increased 86%, while the number of new barristers entering criminal practice had decreased each year for the previous three years, suggesting a crisis not only in retention but also in recruitment.[46] Alongside reports of an aging profession (in December 2021, 45% of full practice criminal barristers were aged 45 or over), these statistics raise real concerns about the sustainability of the profession and its capacity to service outstanding cases.

Whilst criminal barristers have accepted a pay deal from the government,[47] much damage has been done and many experts worry about the ability of the "*ever more frustrated and demoralized*" profession to recover.[48] Indeed, a huge number of trials in the Crown Court are failing to go ahead due to there being no defence counsel available. As shown in Table 1 below, in the year ending June 2022, there was a 2,693% increase on the previous year in ineffective Crown Court trials due to the defence advocate being engaged in another trial and a 1,239% increase in ineffective trials due to the failure of a defence advocate to attend.

[42] See: The Law Society. 2023. 'MoJ Should Rethink Legal Aid Funding or Risk Judicial Review'. Available at: https://www.lawsociety.org.uk/topics/legal-aid/raab-should-rethink-funding-legal-aid-or-face-judicial-review.
[43] House of Commons Public Accounts Committee. 2022. 'RBC0010: Written Evidence Submitted by the Criminal Bar Association', at [16]. [Online] Available at: https://committees.parliament.uk/writtenevidence/41490/pdf/.
[44] Justice Committee, 'Oral Evidence: The Future of Legal Aid' (n 10) at [149].
[45] ibid at [171].
[46] House of Commons Public Accounts Committee, 'RBC0010: Written Evidence Submitted by the Criminal Bar Association' (n 29) pp. 4-5.
[47] See, for example: Siddique, H. 2022. 'Junior criminal barristers 'despair' over pay deal in England and Wales' [*The Guardian*, 11 October 2022] Available at: https://www.theguardian.com/law/2022/oct/11/junior-barristers-despair-over-pay-deal-in-england-and-wales.
[48] House of Commons Public Accounts Committee, 'RBC0010: Written Evidence Submitted by the Criminal Bar Association' (n 29) at [33].

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Meanwhile, survivors (and the Rape Crisis Centres supporting them) felt the impact of the 2022 barrister strikes immediately. We have heard from many survivors who faced yet more delays at court due to barristers participating in industrial action in a bid to secure a pay deal from the current government – which states that it is committed to tackling such delays.

The roll-out of pre-recorded cross examinations (section 28 hearings) across England and Wales is especially welcome at a time when survivors are waiting years for trials to go ahead, as it helps to ensure the quality of the evidence (which can be affected over time due to the fading of memory). Section 28 hearings also spare survivors the experience of having to be cross-examined at trial and reliving the trauma they experienced, both in front of large numbers of strangers and in an intimidating setting. However, there had been disagreements between the government and the Criminal Bar Association over the pay that barristers can expect to receive for this work, with the CBA demanding more from the government to ensure that their members are fairly compensated. The Justice Committee raised concerns that failure to pay barristers fairly for this work could have "*the perverse consequence that barristers decline to take instructions in cases that will involve a section 28 cross-examination because it will not be worth their while*",[49] impacting hugely on survivors who would have benefited from the option to pre-record their cross-examination. Welcomed efforts have been taken recently to address this particular issue, with the Ministry of Justice announcing that they are increasing the pay of barristers who take the evidence and paying those barristers immediately, rather than receiving payment at the completion of the case. It is hoped that incentivising barristers will translate into survivors giving their evidence in this way, allowing many more to be able to make choices about this part of the trial and helping more survivors access justice.

There are now also concerns regarding the availability of prosecution counsel for trials. The new increase in criminal legal aid fees for defence barristers means that defence work is better paid that prosecution work (which is funded by the CPS). Most advocates are self-employed and take both prosecution and defence work. However, there are concerns that advocates may be less inclined to accept prosecution work for less pay. The Justice Committee recently heard evidence from the CPS that, *"it is desperately trying to find prosecutors for cases listed for trial, casting a wide net across an area where they are just not able to do so, meaning that there are even more delays to more trials*".[50] As shown in Table 1, below, there has also been a huge increase in the number of ineffective trials due to a lack of prosecution counsel.

Table 1: Crown Court Ineffective trial listings reason breakdown – all offences[51]

	Year to June 30th 2020	Year to June 30th 2021	Year to June 30th 2022
Defence advocate engaged in another trial	**48**	**40**	**1,117**
Defence advocate failed to attend	**256**	**240**	**3,214**
Prosecution advocate engaged in another trial	**16**	**24**	**464**
Prosecution advocate failed to attend	**192**	**208**	**1,925**
Judge availability	**592**	**409**	**1,155**

[49] Justice Committee, 'Oral Evidence: The Future of Legal Aid' (n 10) at [205] – [206].
[50] ibid at [190].
[51] Ministry of Justice. 2022. 'Crown Court Information'. [Online] Available at: https://public.tableau.com/app/profile/moj.analysis/viz/CrownCourtinformationJune2022/Introduction.

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When asked about what the government is doing to resolve the issue of the availability of prosecution counsel, the minister responsible answered with, "*that specific issue has not been brought to my attention*",[52] despite the above statistics which are published by the government. We are disappointed with this response, given the huge impact on survivors of sexual violence and abuse who face repeated delays to court proceedings due to counsel being unavailable even for less timely hearings such as plea hearings and sentencing.

Rose

Rose* experienced child sexual abuse at the hands of her father in September 2021, when she was aged 15. The first plea hearing in the magistrates' court was scheduled for October 2022, but this was adjourned twice as the defence counsel was a "no show". The defendant pleaded guilty, as expected, and so the case could go straight to sentencing. However, due to the Crown Court backlog, the date of the sentencing hearing was set for November 2022 – a year after the case entered the court system.

Rose's mother, Josie,* talked about the impact that this had on her family and the vicarious trauma she experienced:

"The delays had a big impact on us as a family, my daughter Rose, myself, and our friends and extended family. That first date that was set, we all had so many hopes and emotions pinned on it. Thinking we were finally getting closer to a conclusion, some answers, for us to just hear it had been adjourned was unbelievably hard. The adjournment was due to the plea needing to be heard in the Crown Court; we were not informed beforehand this would happen. I find it ridiculous that such a non-event of a formality is a part of the process; to have the defendant attend a court date just to be told the case is going to a higher court - to not even hear the plea!*

"The second postponement was due to the [barrister] strikes; we didn't find out about the fact until the very end of the day it should have been heard. The defendant's representation was a no show. This same scenario happened again at the next date; it was gut wrenching. My daughter disconnected herself from it all; she's not ready to deal with any of it with no answers yet in sight. Delays to such proceedings may be unavoidable at times, this I can understand; however, I believe these strikes were handled badly and incorrectly … it affects people's lives.

"The delays had a very big impact on me personally; being the mum of the survivor (and of a younger child), the stress of each impending date was huge. I don't sleep well – I haven't in over a year – I can get snappy with relatives. My emotions are all over the place some days and I sometimes close myself off from the world when the kids are at school … The emotions wrapped up in criminal cases are immense … it was a very short hearing we were waiting for. Just a plea entry. The defendant had admitted to being guilty of the crimes the very day it happened – the very day he was arrested, it was recorded. The chances of a plea being anything other than guilty were minimal, so a very short court hearing. It should never have been delayed. My daughter deserved to have that milestone done, out of the way. Now we are sitting, hoping the wait for sentencing doesn't treat us the same way".

[52] Justice Committee, 'Oral Evidence: The Future of Legal Aid' (n 10) at [193].

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2. Judicial capacity

As well as a shortage of solicitors and barristers to service the work of the Crown Court, there are increasing concerns over a shortage of judges. As shown in Table 1, in the year ending June 2022, there was a 182% increase on the previous year in the number of trials that were ineffective due to there being no available judge to preside over them. A number of factors have contributed to the dwindling capacity of the judiciary:

a. Decreased sitting days in previous years: as set out in more context below, the government decreased the amount of Crown Court sitting days by 15% in 2019/20 (from 97,400 days in 18/19 to 82,000 in 19/20).[53] This not only led to a 23% increase in the Crown Court backlog even before the pandemic hit,[54] but also meant that far fewer judges and recorders were required to preside over cases. This in turn meant that fewer were recruited and fewer new entrants to the profession gained the necessary experience that they would need in later years to develop their judicial careers. Now that the government has increased the number of Crown Court sitting days in order to deal with the backlog, there are not enough judges to service the work of the Crown Court.

b. A leaking pipeline: judges are recruited from the ranks of solicitors and barristers, and it is within these careers that they gain the necessary knowledge and experience to become members of the judiciary. The crisis of recruitment and retention among both solicitors and barristers, as set out above, impacts directly on the pipeline of judges. The most recent recruitment competition for salaried Crown Court judges fell short by 16 judges, who would have sat for around 3,200 sitting days combined.[55] This would have gone some way to helping clear the backlog of Crown Court cases, particularly as experts are clear that the issue is not the physical space for cases to be heard, but the judges available to sit in them.[56]

c. Efforts to increase the number of sitting recorders: the first step on the judicial ladder for barristers is to become a recorder. Recorders are recruited on a part-time basis and are expected to sit for 30 days per year in the Crown Court. They can therefore continue their work as barristers alongside. As government efforts to recruit more full-time judges fail, recorders are coming under increasing pressure to sit more cases. This is so that they can supplement judicial capacity and fulfil the increased Crown Court sitting days required to clear the backlog of cases. However, as set out by the Criminal Bar Association:

> *"Increasing judicial sitting days creates a tension between the numbers of barristers available to represent the parties and the numbers of Recorders available to sit on trials. Unless that is taken into account, and unless the factors impacting flight from the profession [remuneration and working conditions], and difficulties in recruitment are addressed … the Criminal Bar will be unable to service the work at the pace and volume of sitting days that are required to reduce the backlog within an acceptable timescale, or at all."*[57]

The Justice Committee recently declared judicial capacity "*the most pressing constraint on the capacity of the courts*"[58] and therefore the biggest factor affecting the ability of the system to deal with the backlog of cases. The government claims to recognise the urgency of the situation as regards judicial capacity; however, its plans to rectify the situation do not seem to address the issues set out above.

[53] House of Commons Public Accounts Committee, 'RBC0010: Written Evidence Submitted by the Criminal Bar Association' (n 29) at [18].
[54] National Audit Office, 'Reducing the Backlog' (n 2) p. 6.
[55] Justice Committee, 'Oral Evidence: The Future of Legal Aid' (n 10) at [229].
[56] House of Commons Justice Committee, 'Court Capacity: Sixth Report of Session 2021-2022' (n 19).
[57] House of Commons Public Accounts Committee. (2022). RBC0010: Written evidence submitted by the Criminal Bar Association, December 2021. Online: https://committees.parliament.uk/work/1521/reducing-the-backlog-in-criminal-courts/publications/written-evidence/, at [28].
[58] House of Commons Justice Committee. (2022). Court Capacity: Sixth Report of Session 2021-2022, at [59].

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The government states that it has:

i. Increased renumeration and reformed pensions for members of the judiciary.
ii. Reduced the number of sitting days needed before professionals can apply to become district judges.
iii. Plans to increase recorder sitting days to 80 from the current 30.[59]

However:

i. There are still outstanding concerns about the longer-term renumeration of barristers and solicitors which will affect the available pool to recruit from in future (as professionals are abandoning criminal work).
ii. District judges sit predominantly in magistrates' courts and so this will have no impact on the Crown Court backlog.
iii. As set out above, increasing recorder sitting days means decreasing the available counsel to work cases which could contribute to further delays to trials.

Therefore, until the government is able to address the issues causing the crisis in judicial capacity, the current backlog and concurrent delays to sexual offence trials can only be expected to worsen.

3. Idle courts

A further issue contributing to the backlog of Crown Court cases and the delays faced by survivors is the courts estate not functioning at capacity. The CourtStats website reports on the number of idle courtrooms daily. On each working day in January 2023, between 10-46% of Crown courtrooms across England and Wales were empty.[60]

As aforementioned, prior to the Covid-19 pandemic, the government had been cutting the number of sitting days in the Crown Court since 2015/6. Experts claim that this was a fiscal decision by the government, taken at a time when court receipts were declining. However, the government knew that the decision would affect those waiting for trials:

> *"In total, we had 36,733 Crown Court trials due to be heard in [2019] – far fewer than 58,000 [sic] nine years earlier – but the period from offence to completion had increased to 511 days on average. The reason for that was that the Government realised there were far fewer trials but they decided not to deal with them expeditiously. They decided that it would be better to make financial savings rather than ensure the timeliness of participation in a trial through the criminal justice system. They reduced court sitting days. They stopped judges sitting in courts and hearing trials. That was a deliberate decision. While complainants, witnesses and defendants waited years to be heard, they decided to do that."*[61]

Now that court receipts are increasing again (due to many reasons, including an increase in the number of police officers who can charge offenders, the backlog caused by the court closures in 2020, and the government's own targets to increase the number of RASSO [rape and serious sexual offence] charges), the government has removed limits on sitting days. However, we are now in a position where the workforce capacity is not available

[59] House of Commons Justice Committee. (2022). Court Capacity: Government Response to the Committee's Sixth Report of Session 2021-2022, p. 4.
[60] See: https://courtstats.wordpress.com/.
[61] House of Commons Justice Committee. (2022). Court Capacity: Sixth Report of Session 2021-2022, at [53].

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to service more courtrooms – as explored above. In addition, many have noted that the government's failure to invest in the courts estate itself now means that many courtrooms are idle due to unresolved maintenance issues.

The Lord Chief Justice's 2022 annual report stated that, "*The allocation of funds for maintenance and repairs has continued to be well below what is needed to maintain the estate in a decent condition. This does more than increase future costs. It results in hundreds of lost sitting days each year*". Whilst the government has taken a few welcome steps to find additional monies for maintenance, the report added that, "*the scale of the problem is such that they amount to no more than a sticking plaster on what is a significant wound*".[62]

Sixty-four per cent of solicitors who responded to a recent Law Society survey stated that they experienced delays in cases being heard within the last 12 months due to the state of the courts.[63] Anecdotal evidence from court users recalls air conditioning units falling on lawyers' heads and water pouring through ceilings, meaning that trials have had to be adjourned at the last minute while courts sit empty.[64] Often, these trials cannot be rescheduled for months, sometimes years, to the huge detriment of those involved in the cases. It is difficult to see how the backlog of cases can be dealt with when the court system is unable to work at full capacity, although we note the positive announcement in February 2023 that Nightingale Courts are being kept open another year in order to reduce the backlog.[65]

[62] Judiciary of England and Wales. (2022). The Lord Chief Justice's Report 2022, pp. 3-4.
[63] The Law Society. (2022). Justice delayed: 5 steps to resolve the backlogs in our courts, p. 4.
[64] Justice Committee. (2023). Oral Evidence transcript: The Future of Legal Aid, 17 January 2023. Online: https://committees.parliament.uk/oralevidence/12539/pdf/, at [137] and [223].
[65] Government announcement, Nightingale Courts to remain open to boost capacity and speed up justice - GOV.UK (www.gov.uk).

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Alex

Alex* reported sexual violence and emotional abuse by an ex-partner in 2019. After a lengthy police investigation – one in which blanket requests were made for Alex's medical and counselling notes, as well as social care records from when she was a child – the suspect was eventually charged.

She said: *"I'd given my phone, my therapy records, my social care records, my everything to this case. I feel like I am the one being investigated whilst he roams the streets. This has been horrific for my mental health …. I spent a long time with him being traumatised yet even longer by the police and CPS being re -traumatised."*

The trial was due to begin more than three years after she reported.

Just days before trial, Alex was told that it would likely be pushed back due to a last-minute change in counsel and the impact of recent barrister strikes. She was told to await confirmation. On the Friday evening before the original trial date, Alex was informed by other witnesses in her trial that it would be postponed by more than six months to the following year. Alex was not contacted directly with this update until the following week.

As a new mother with a young baby, various childcare arrangements had been put in place in the weeks leading up to trial. Alex was devastated by the delays and uncertainties around her case but more so by the way in which vital updates – such as a new trial date – were not communicated with her before other witnesses.

Despite Alex's case getting to court, she feels let down by the criminal justice process and, until recently, was still considering withdrawing from the case in order to prioritise her emotional and physical wellbeing, and that of her family.

However, even the choice of whether to stay in the system has ultimately been removed from Alex: she very recently received the news that, just a few weeks before the trial was due to take place, the CPS had closed the case by offering "No Evidence".

4. Listing

"I have trials being listed for 18 months away, and trials getting postponed on the day for 12 months." (Rape Crisis ISVA, January 2022)

Listing cases is complicated work that is carried out by listing officers in consultation with judges. There are multiple challenges with listing cases, as there are many variables to take into account, which cannot always be predicted. As set out in the Bellamy Review:

> *"The problems of listing mainly arise because of the difficulties of predicting how long cases are going to take and the ever-present possibility that for one reason or other cases will be ineffective or "crack" at the last minute.*

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> *Listing officers, quite understandably, consider that the Court cannot run the risk of being left with a lack of work, particularly in view of the imperative to reduce the backlog."*[66]

However, we submit that not enough is being done to reduce the delays caused by listing processes and the subsequent trauma faced by complainants, particularly complainants of sexual offences, who are facing the longest waits in the criminal justice system. On RASSO listings, The Criminal Bar Association states that, "*More courts and more sitting days are required to try cases within a sensible timeframe. The current turbulence in listing must be eliminated, especially for these cases. Guaranteed fixtures for all RASSO trials are the only solution. This used to be the practice and the norm in court listing*".[67]

It is our view that there are three main issues when it comes to listing:

a. A lack of real commitment from the government and judiciary to end the practice of listing RASSO cases as floater trials:

We are particularly concerned to see the increase in rape and sexual offence cases being listed as floater trials. A "floater" is a trial not allocated to a specific court or judge but which may be taken in any court in the same court centre on a specific day or within a period of time. In a joint inspection of the police and CPS handling of rape cases in 2002, it was stated:

> "*In all the* [CPS] *Areas, trials are generally fixed, by that we mean that the court assigns a day on which the trial is expected to start. In London, rape cases are still listed as floaters, that is, cases that might be called on if a courtroom becomes available due to the collapse of other cases. Witnesses in floaters are left in suspense as to whether their case will be called on. They often have to wait for some time before they give their evidence, and in some cases are sent home after a long wait, without having given their evidence. We are concerned about the effect this has on witnesses, particularly victims in rape cases."*[68]

In 2022, the most recent joint inspection of the police and CPS handling of rape cases stated the following:

> *"In our victim surveys, half of victims reported their case was delayed at court. We were told … that cases are being listed for trial in the court and then later removed from the lists because of many factors, including the availability of judges and counsel … In most forces and CPS Areas we inspected, we were told that rape cases were still being listed as 'floaters', or 'backers', meaning that they could be moved or re-listed (re-scheduled) at the last minute, including on the day of trial."*[69]

As set out above, the practice of listing RASSO cases as "floaters" was identified as an issue in 2002 and then again in 2022. This shows a real lack of understanding of the impact on survivors awaiting trial, as well as a lack of commitment from the government to facilitate any change in this area. As well as being raised by the Justice Committee and others as an issue, the House of Commons Home Affairs Committee made the following recommendation to the government in its report of 2022:

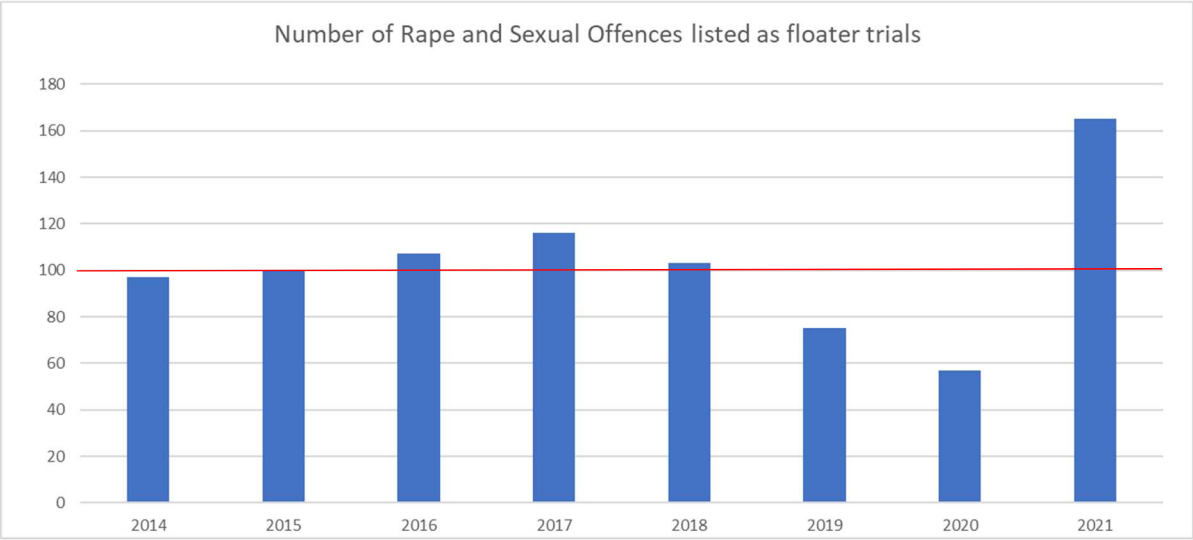
[66] Sir Christopher Bellamy. (2021). Independent Review of Criminal Legal Aid Sir Christopher Bellamy, at [15.47].
[67] Written Evidence from the Criminal Bar Association, in House of Commons Home Affairs Committee (2022). Eighth report of Session 2021-22, p. 73.
[68] HMCPSI. (2002). A Report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape, at [10.22].
[69] HMICFRS and HMCPSI. (2022). A joint thematic inspection of the police and Crown Prosecution Service's response to rape - Phase two: Post-charge, p. 7.

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> *"We urge the Government to work with the judiciary to explore what more could be done to ensure fixtures for all rape and serious sexual offence trials are guaranteed. This would help address the severe delays many complainants and defendants are affected by."*[70]

In response, the government gave a vague nod to its commitment to "*work with the judiciary*" to "*overcome challenges*" created by the Covid-19 pandemic, despite these issues not being caused by the pandemic. It further stated that the judiciary *"try to avoid 'floating' rape and serious sexual offence cases in the list and instead give them fixed trial dates wherever possible*".[71] We submit that this is not good enough.

The situation with regards to listing rape cases as 'floaters' has actually worsened in the 20 years between the reports, with cases across different CPS areas now being listed as floater trials, rather than just in London. Current data shows that the volume of rape and sexual offence cases listed as floater trials is at a record high. The number of floater trials in 2021 was 61% higher that the longer-term average (represented by the red line), and 120% higher than then number listed in 2019. This is indicative of the inability of the Crown Court to cope with the issues we have explored above.



Source: data provided by the Ministry of Justice in a parliamentary answer to a question on 26th January 2023: UIN 126668

b. A lack of clarity and transparency over listing responsibilities:

The government states that listing is a judicial function.[72] Others say it is incorrect to think of listing as a judicial function. This includes His Majesty's Chief Inspector of the Crown Prosecution Service Inspectorate, who has stated the following:

"[I]n the Crown court [sic] you have a listing officer and a listing department in the court and they are primarily responsible for the listing of cases. A judge then supervises the listing. Normally, it is the resident judge in a court who is in charge of listing. He or she works together with the listing officer … A lot of people have expressed concern about the way in which trials are listed. I agree. I think listing is not a judicial function. I do not think you can throw over it the cloak of judicial independence, because it is a problem."[73]

[70] House of Commons Home Affairs Committee. (2022). Investigation and prosecution of rape: Eighth Report of Session 2021–22, p. 77.
[71] House of Commons Home Affairs Committee. (2022). The investigation and prosecution of rape: Government Response to the Committee's Eighth Report of Session 2021–22, p. 22. (Emphasis added).
[72] House of Commons Justice Committee. (2022). Court Capacity: Government Response to the Committee's Sixth Report of Session 2021-2022, p. 11.
[73] House of Commons Justice Committee. (2022). Court Capacity: Sixth Report of Session 2021-2022, at [72].

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The House of Commons Justice Committee report on **Court Capacity** ultimately recommended that the need was for transparent and effective listing policies and processes so that it could be distinguished whether listing decisions were based on court capacity or based on case progression.[74] However, without agreement on the simple point of who should be responsible for listing, it is unlikely that we will see an end to sexual violence and abuse cases being listed as floaters any time soon.

c. A lack of scrutiny of the judiciary and HMCTS:

The third part of the issue centres on scrutiny and accountability. In 2009, the coalition government announced the closure of His Majesty's Inspectorate of Court Administration (HMICA), stating that, *"the 'robust audit methods of HMCTS' negated the need for independent inspection … it is not necessary for purely administrative systems to be subject to inspection by an independent body … [and] the inspection provided by the existing criminal justice inspectorates and the National Audit Office was sufficient".*[75] However, this assertion is not wholly accurate, and, according to the Justice Committee, has not stood the test of time.[76] The other criminal justice inspectorates, such as His Majesty's Crown Prosecution Service Inspectorate (HMCPSI), can only inspect the court service (HMCTS) if it is connection with an inspection that they are already carrying out – no inspectorate at present can set out purely to look at, for example, the court service's handling of rape case listings.

In addition, as explained by the Chief Inspector of HMCPSI, that inspectorate is unable to inspect anything that falls within the discretion of the judiciary. He says, "*I would love to look at listing, for instance, because it has a huge impact on the effectiveness of the system, but that is outside scope".*[77] Judicial independence is of course necessary so as to protect the doctrine of the separation of powers in our democratic state; however, given the huge impact that listing decisions can have on survivors – who may be called to court only to be sent home with their trial adjourned to the next year – as well as on defendants, and the lack of clarity over who has ultimate responsibility for listing, we believe that there should be greater scrutiny of this process.

The Justice Committee recently recommended that the government re-establishes a courts inspectorate to redress the significant gap in the inspection regime of the criminal justice system.[78] However, in its response to this recommendation, the government stated that, *"to re-establish a Court's [sic] inspectorate would require significant long-term resourcing which we are not currently set up to deliver. Available resource is being targeted on our priority areas, including reducing the outstanding caseload to deliver swifter justice"*[79] – which clearly missed the point around the impact of listing on the outstanding caseload in the Crown Court.

Not only does poor listing impact on complainants, witnesses and defendants involved in cases, the capacity of the legal profession is also impacted. Junior barristers have been raising issues since at least 2017. "Shabby" listing, sometimes of multiple cases in the same courtroom at the same time, means that legal professionals either face a lengthy wait for their case to be heard or else an adjournment. This not only has an impact on earnings – work is usually only paid for once cases have been completed – but also on the ability of professionals to organise childcare or take on other work. This has a disproportionate impact on women, who are typically more

[74] House of Commons Justice Committee. (2022). Court Capacity: Sixth Report of Session 2021-2022.
[75] House of Commons Justice Committee. (2022). Court Capacity: Sixth Report of Session 2021-2022, at [32].
[76] ibid.
[77] ibid.
[78] House of Commons Justice Committee. (2022). Court Capacity: Sixth Report of Session 2021-2022, at [34].
[79] House of Commons Justice Committee. (2022). Court Capacity: Government Response to the Committee's Sixth Report of Session 2021-2022, p. 5.

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responsible for childcare, and, as a result, the *"junior bar has been haemorrhaging talented women"* for many years now,[80] impacting on the diversity of the profession overall.[81]

5. Lack of pandemic preparation

As already stated above, the courts were in a weak position before Covid-19 struck and all the underlying issues already outlined have only been compounded by the pandemic. This has contributed considerably to the size of the backlog.

Governments plan for disasters and emergencies, and these plans take into account everything from flooding to influenza. In 2016, Public Health England, on behalf of the Department of Health, delivered Exercise Cygnus, an exercise designed to assess the UK's ability to respond to a pandemic influenza outbreak. The Ministry of Justice only considered the impact of a pandemic on offender management, however, and did not plan for the disruption it would have on the courts. The House of Lords Constitution Committee report on **Covid-19 and the Courts** stated the issues with the risk assessment:

> *"The courts were not prepared for disruption on the scale caused by the COVID-19 pandemic. The 2016 Government simulation of a flu outbreak, referred to as Exercise Cygnus, did not consider the potentially devastating impact of a pandemic on courts and tribunals in England and Wales. Risk assessments undertaken by the Ministry of Justice and HMCTS also failed to recognise the disruption that a pandemic could cause. It is regrettable that the potential impact of a pandemic on the courts, a crucial public service, was not considered by those responsible for overseeing the justice system. Had the risk been identified in advance, the urgent need for modernised court IT systems and additional court estate might have been recognised sooner."*[82]

Aside from a lack of crucial risk assessments, the report also outlined the courts' particularly weak position to deal with any kind of pandemic. This was due to the digital transformation programme led by HMCTS having fallen behind schedule for several years, owing to a lack of government funding, and the related lack of suitable infrastructure to enable remote hearings.[83] Other reports state that HMCTS did not have sufficient contingency plans in place,[84] but that they responded quickly in the early stages of the pandemic to extend the use of audio and video technology to enable cases to be heard remotely.[85]

In the weeks and months following the start of the pandemic in the UK, there were a range of more innovative ideas that had been suggested, none of which ever came to fruition. The Lord Chancellor at the time had publicly stated the possibility of having smaller juries to enable courts to socially distance more easily. Former High Court judge Sir Richard Henriques QC backed judge-only trials. By July 2020, Susan Aclan-Hood, the former chief executive of HMCTS, had stated with some urgency:

> *"[I]t is essential for us to significantly increase our capacity – and to do so quickly. We can't wait until normal times return to solve the problem – not least because no-one knows when that will be. The human cost of failing to address this, for those seeking justice, is just too great … there is no single change that delivers this capacity*

[80] See, for example: Fed up junior barristers victims of 'shabby' court listings | News | Law Gazette.
[81] For further discussion on issues surrounding the diversity of the legal profession see: Sir Christopher Bellamy. (2021). Independent Review of Criminal Legal Aid Sir Christopher Bellamy, from [1.25] onwards.
[82] House of Lords Select Committee on the Constitution (2021), 22nd Report of Session 2019–21, COVID-19 and the Courts.
[83] House of Lords Select Committee on the Constitution (2021), 22nd Report of Session 2019–21, COVID-19 and the Courts.
[84] Comptroller and Auditor General, Initial learning from the government's response to the COVID-19 pandemic, Session 2021-22, HC 66, National Audit Office, May 2021.
[85] National Audit Office. (2021). Reducing the backlog in criminal courts: Ministry of Justice and HM Courts and Tribunal Service.

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in one go. Instead, we will need to do everything available – to pull all the levers at once – to get back to at least the levels of work we were managing before the pandemic hit."

With the end of lockdowns and social distancing measures, the more innovative ideas and potential solutions initially considered by the government to deal with the backlog and suspension of trials disappeared, whilst the backlog continues to increase. Capacity has not been very significantly increased, the Crown Court backlog is far from getting back to pre-pandemic numbers, and the cost of failure has already been far too great.

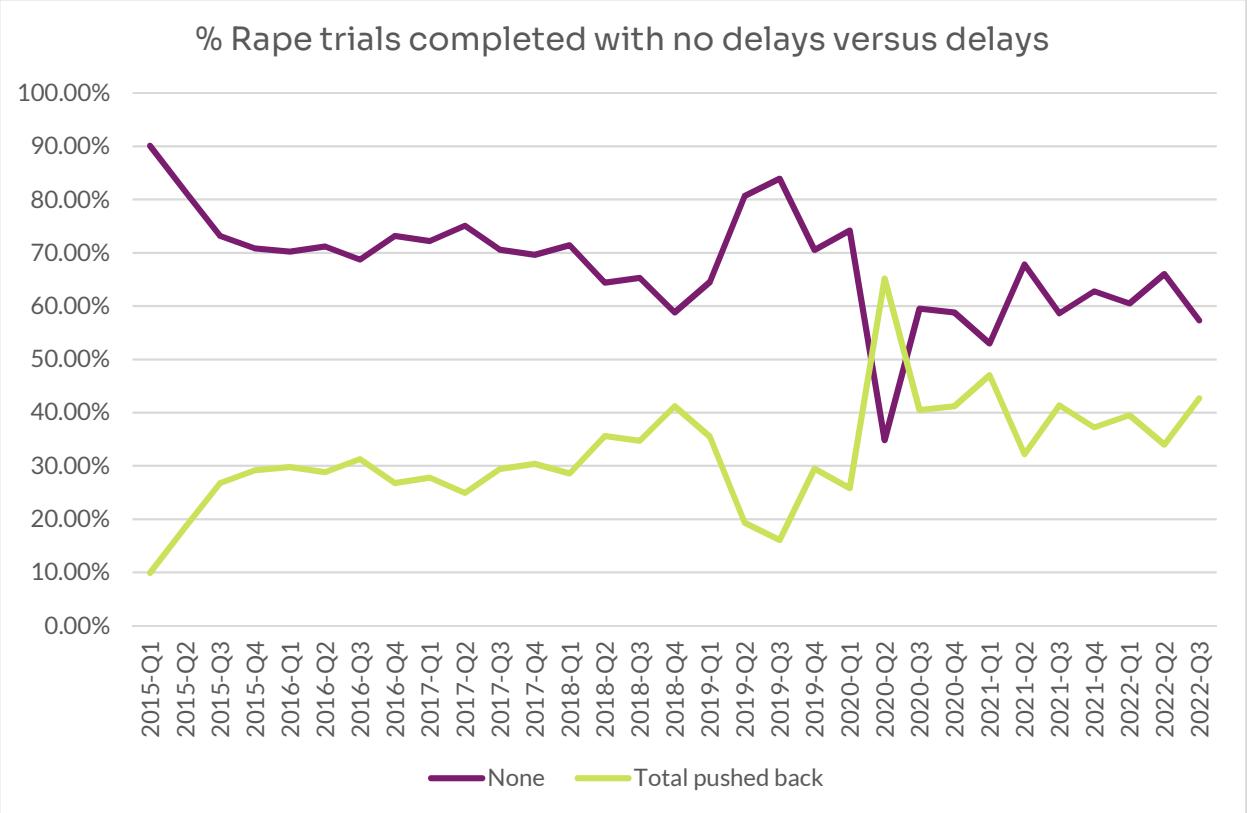
6. Trial efficiency

Because of all of the closely related issues above, the efficiency of Crown Court trials are affected. Not only are survivors waiting longer than ever, but more trials are ineffective or vacated multiple times.[86]

When comparing the financial year 2019-2020 with 2021-2022, we see that:

- The number of all rearranged rape trials has more than doubled.
- The number of trials that were postponed at least once increased by an enormous 133%.
- The number of rape trials with three or more previous trial dates has almost doubled.
- There were five times as many trials that had been rescheduled six or more times.

The proportion of effective trials concluded without at least one trial delay has been decreasing since 2015, many years before the pandemic.



[86] HMCTS. March 2023. Released under the Freedom of Information Act. 230206032 The data includes adult rape, child rape, and attempted rape. Requested by Rape Crisis England & Wales.

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Ineffective trials have been steadily increasing since the pandemic and spiked as a result of the barrister strikes. The vicious circle of judicial capacity and availability, court capacity, and listing challenges results in cracked and ineffective trials which are costly and wasteful. In 2016, the National Audit Office estimated that the cost to the CPS for cases that do not go on to trial – for example, due to late guilty pleas – was £21.5m.[87]

For victims and survivors, one of the worst outcomes is to go through a years-long process of a police investigation, followed by a wait for the CPS to make a decision, and then another wait for the trial, only for the case to be dropped late down the line – as happened in Alex's case. Referring to a different case, a Rape Crisis ISVA shared the following:

> *"[S]ometimes the wrong decisions the CPS make are more impactful than the police's. I had a client, over three years in the CJS with a charging decision; two weeks prior to the trial, CPS presented 'No Evidence'!"*

In summary, a series of interlinking issues has contributed to the enormous number of cases waiting to be heard in the Crown Court. These include pay, working conditions, the capacity of the legal profession, poor listing practices, estate maintenance problems, a lack of scrutiny and accountability, and, ultimately, a lack of leadership in finding innovative and radical solutions at ministerial level. A report by Crest Advisory in January 2021 stated that, *"if no action is taken, demand will increase across the system – reaching unmanageable levels by 2024"*.[88] Although their model was not what has ultimately occurred, we argue that the situation is already unmanageable. In the next section, you will see more evidence of just how intolerable the current circumstances are for victims and survivors of sexual violence and abuse.

[87] National Audit Office, Ministry of Justice, "Efficiency in the criminal justice system" March 2016.
[88] Crest. (2021). Survive. Recover. Rebuild. Justice post Covid-19, p. 10.

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The impact on survivors of sexual violence and abuse

The impact of the Crown Court backlog on victims and survivors, as well as their families and supporters, is enormous. Behind the volumes and percentages in the backlog are people who have been waiting years for their cases to be completed in court. They will have nearly all experienced countless setbacks along the way, including the already lengthy wait for police investigations to be completed and Crown Prosecution Service (CPS) decisions to be made, all whilst still experiencing the effects of the sexual violence and abuse they were subjected to. Delays are often very consequential for survivors and those close to them, and we note that both survivors and defendants' right to a fair trial (under Article 6 of the European Convention on Human Rights) is compromised by long delays.[89]

Independent Sexual Violence Advisers, who work to support and advocate for survivors through the criminal justice system, are very proximate to the impact of delayed trials on survivors. In an internal Rape Crisis survey of ISVAs in January 2022, general timeliness in the criminal justice system and the impact of the Crown Court backlog on survivors were the top two concerns that ISVAs had with the overall functioning of the system.

The previous section considered the causes of the problems faced by survivors who are waiting for their cases to go to court. This section looks at many of the devastating effects these have had – and continue to have – on survivors.

Risk to life and danger to the public

The lack of understanding in the criminal justice system is evidenced by listings processes that are entirely unaware of trauma and its impacts. Repeated delays and long waits for a trial are not just an inconvenience – for some victims and survivors there are profound, life-changing consequences.

In November 2020, Victim Support flagged concerns around survivors attempting suicide due to the trauma, anxiety, and stress of waiting in limbo for trials that are relisted years into the future.[90] More than two years on, it deeply concerns us that this crisis and the risk to life it has incurred has not been addressed with the urgency required.

[89] Article 6 of the European Convention on Human Rights states: "everyone is entitled to a fair and public hearing within a reasonable time". Council of Europe, European Convention on Human Rights. 1950. Available at: https://www.echr.coe.int/documents/convention_eng.pdf.
[90] Almeida, R. 2020. "Crime and Covid-19: How Victims and Survivors have been impacted by the pandemic" p. 21 Available at: 2020_Crime_and_Covid19_Impact_report.pdf (victimsupport.org.uk).

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Maria

Maria* is a young woman who was subjected to multiple rapes by a serial perpetrator. The perpetrator went on trial for raping Maria, as well as several other girls.

Maria reported in March 2019 and waited three years and seven months for her case to go to trial. During this time, she was contacted by Witness Care several times to say that the case would be going ahead soon, before later being informed that it would be set back again. She was told that this was because of Covid-19 and other trials overrunning. Maria's mother said: *"I had to contact the CPS lead to request that the trial isn't put back any more [because of] the impact it was having on my daughter's mental health."*

There were year-long waits between each of the trial dates that had been set: September 2020, September 2021, and October 2022. These postponements had a devastating impact on Maria, as her mother explained to us: *"This was very upsetting for my daughter, especially in her fragile state. As her mum, I wasn't always informed of the communication and contact, [which would have helped me] to support her. Following one of these calls, my daughter tried to take her own life."*

Maria's attempt to end her own life resulted in her sustaining life-changing physical injuries. *"She spent five weeks in a specialist hospital in another part of the country,"* her mother said. *"This massively impacted on mine and my husband's work and life, and our other children. The emotional impact has been hugely exhausting."*

On the day of the sentencing, Maria's mother experienced a very distressing experience. She shared with us how she was *"placed in a room with the perpetrators' parents – no one else – and was verbally attacked several times by this mother"*. She added: *"I understand she was upset, but so was I. I felt unprotected by the court."*

In terms of criminal justice outcomes, the perpetrator was found guilty of all counts against him. Whilst the trial is now completed, Maria continues to work through her trauma. She self-harms and struggles with sleeping.

Maria's case shows that the needs of victims and survivors outlive the duration of a court case and the criminal justice process. It also demonstrates the devastating ripple effect that rape trauma, exacerbated by failings in the criminal justice process, has on whole families. This has also been the case for Ben, below, who was suicidal when his perpetrator's trial was adjourned mid-way through.

Like Maria, Ben's family also had the horrendous experience of coming face-to-face with the perpetrator and his family. For traumatised survivors and their families, this can set off safety instincts, including fight or flight, and derail all of the preparatory work that goes into trying to establish psychological safety. The Joint Inspectorate report published in February 2022 also detailed this problem, citing the experience of a survivor who had to walk through a crowd of her perpetrator's supporters, who laughed at her whilst she was in tears.[91] Appropriate safeguarding arrangements should be in place to ensure that such situations are avoided. Reports dating back 10 years also cited this issue as a problem, stating that much more needed to be done in order to prevent such

[91] HM Inspectorate of Constabulary and Fire & Rescue & HM Crown Prosecution Service Inspectorates. 2022. 'A Joint Thematic Inspection of the Police and Crown Prosecution Service's Response to Rape – Phase Two: Post-Charge', p. 82. [Report] Available at: https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/joint-thematic-inspection-of-police-and-cps-response-to-rape-phase-2.pdf.

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encounters from occurring.[92] For victims and survivors, it adds to the feelings of not being significant enough to protect.

Ben

Ben* is a young man who survived rape and child sexual abuse. He reported in 2018 and the defendant was charged with multiple counts of rape and sexual assault in 2019.

The trial was initially set for 2020, but later vacated due to Covid. In 2021, the trial began, but was then adjourned halfway through because of the defendant making false claims against Ben. Ben's mother identified how this demonstrates the imbalance of power in court: *"The judge chose to listen to the perpetrator over the victim when making a decision to halt the whole trial for 18 months … Sadly, the system appears to be made for criminals, not victims; we came face-to-face with the perpetrator in the court waiting area."*

The trial resumed in 2022, but, due to the outcome, Ben now awaits a retrial. This is due to take place in 2024, at which point Ben will have waited six years for justice.

Ben's mother said: *"My family have lived through four very traumatic years of being in and out of court and constant changes of dates. I thought at one point I might lose my son to suicide; his mental health has suffered terribly.*

"My daughter struggled through her GCSEs and A levels with all the upsets of court. It's like living under a cloud that won't go away. We have all suffered in different ways, but my son has severe post-traumatic stress disorder, and I feel I've lost all faith in the justice system.

"How we have been treated is beyond cruel … expecting a rape victim to relive the trauma for a third time leaves me speechless."

In Ben's case, it is clear that the perpetrator attempted to deliberately manipulate the justice processes to work in his advantage and buy more time. In the sexual violence and abuse sector, it is well-understood that sex offenders are entitled and manipulative. Rape Crisis ISVAs stated that they saw perpetrators actively trying to disrupt proceedings by claiming they had Covid-19 during 2020-21.

Delays to justice not only create significant safety concerns for survivors, but also for the wider public. It is not common that perpetrators are on remand for rape and sexual offences, but, when bail is granted, they are then in the community and able to reoffend. In the government's consultation on pre-charge bail, Rape Crisis England & Wales argued that breaching pre-charge bail conditions should be a criminal offence in its own right. In response, the Home Office said it had been assessed that this is not currently a workable legislative option, although it recognised that the "current system does not provide the police with an effective deterrent to prevent breaches of bail conditions and protect the public, nor does it offer enough protection to victims and witnesses".[93]

[92] Hunter, G., Jacobson, J., & Kirby, A. 2013. 'Out of the Shadows: Victims' and Witnesses' Experiences of the Crown Court' [Project Report] Available at: https://eprints.bbk.ac.uk/id/eprint/13550/1/Out%20of%20the%20shaddows.pdf.
[93] Home Office. 2021. 'Police Powers: Pre-Charge Bail Government Response Accessible Version' [Consultation Outcome] Available at: https://www.gov.uk/government/consultations/police-powers-pre-charge-bail/outcome/police-powers-pre-charge-bail-government-response-accessible-version.

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The Centre for Women's Justice lodged a super-complaint against the police for failing to fulfil their statutory duties to protect survivors of domestic abuse, including rape. In a report looking into the super-complaint, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, the Independent Office for Police Conduct, and College of Policing stated that, "We think the Home Office and Ministry of Justice should revisit whether to create a bespoke offence of breaching pre-charge bail".[94] We maintain that if breaking bail conditions is not an offence, perpetrators of rape and sexual abuse will not be suitably deterred. In Rebecca's case below, the delays to the trial resulted in the police force ultimately granting bail to her perpetrator.

[94] College of Policing, HM Inspectorate of Constabulary, & Independent Office for Police Conduct. 2021. 'A Duty to Protect: Police Use of Protective Measures in Cases Involving Violence Against Women and Girls'. Available at: https://www.justiceinspectorates.gov.uk/hmicfrs/publications/police-super-complaints-police-use-of-protective-measures-in-cases-of-violence-against-women-and-girls/.

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Rebecca

Rebecca is a survivor of multiple rapes and sexual abuse, as well as coercion and control, and physical abuse by her ex-partner.

She first reported in the summer of 2021. Her perpetrator was charged just days after the arrest, remanded in custody, and then bailed with a tag. He breached bail conditions and was remanded in custody, with bail refused when he requested it again at the end of 2021. Several more attempts were made but were not granted. At that time, a trial date was set for late Spring 2022. A month before the trial was due to start, the trial was postponed until the end of 2022, due to the judge deciding that the trial needed to run for two weeks rather than one.

Over the summer, Rebecca suffered flashbacks, nightmares, anxiety, and fear, and was told by the police she was not allowed to access her choice of therapy that she needed. When Rebecca became suicidal and took an overdose, her family were so concerned that they paid for her to have therapy in a residential setting as they weren't able to access NHS support – not only because she would have had to wait months to receive it, but also because the provider said they would be unable to support Rebecca until after the trial.

Rebecca shared: *"You go to get support and can't share anything about what's happened – you think, 'What's the point?'. You go through the most traumatic thing of your life and then you're told you can't talk about it. I think it's absolutely barbaric."*

In winter 2022, Rebecca received assurances from the CPS that the trial would go ahead the next month. Two weeks later, the trial was delayed again and is now scheduled to go ahead in Spring 2023. Then, Rebecca's perpetrator was released on bail.

Rebecca now feels very sceptical about whether the trial will take place, and the pressure from the police and CPS to stay with the case has been considerable. She also suspects that her case has been listed as a floater trial, as she has only found out about the May trial date through other witnesses, who have been told that the trial will now be three weeks long.

She said: *"It's got to the stage where I don't even want to go anymore because I've lost faith in the system. I can see why women do pull out; I have not been treated with respect or communicated with at all. As soon as you go through this process you hear nothing, you get nothing. They won't tell me anything about the case."*

Rebecca also spoke of the anxieties and fears that play out for her whilst waiting for the trial: *"I will be on the stand, I think I am on trial. I am on trial. They want me to stand up there and re-traumatise myself and speak about the most shaming and disgusting things. I am worried this is going to be the most traumatic, shaming, and humiliating thing in my life."*

Rebecca is concerned about the ripple effect that her experiences have had on her young family, who are also receiving support. One of Rebecca's family members said: *"We have been wondering why RASSO [rape and serious sexual offence] trials are taking so long to come to court especially when the victims are often so traumatised. They should be prioritised as having a fast track trial, not left to linger in a hellish situation."*

Rebecca, like many survivors, is staying engaged with her case for altruistic reasons. She shared: *"The only reason I am doing it now is for other women. I can't see another woman be abused or come back dead. These*

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> *people can't be on the streets; he will 100% do it again because of the way he is. I don't want to do the trial – it's really unfair what they [criminal justice agencies] expect you to do, compared to what you get in return. But I want something good to come out of this crap. I want to show my kids that bad things happen but they don't have to define you."*

Rebecca, like Maria and Ben, speaks about the impact of trauma on family and relationships, and the challenges it creates. But, like so many victims and survivors who access the criminal justice system and report what happened to them, Rebecca's motivation to stay with the case is altruistic: a hope that, by seeking justice, others will be protected.

Rebecca and Ben's mother stating that they have "lost faith" in the system should be of serious concern to the government, criminal justice agencies, and the judiciary. The dwindling public confidence in the justice system due to people's experiences of waiting for trials was a concern captured in 2013 by the Institute for Criminal Policy Research[95] and again in 2016 by the National Audit Office.[96]

It is amply clear how disastrous and re-traumatising the delays in justice are for victims and survivors. At a minimum, survivors should be able to access specialist counselling and therapy of their choosing. Currently, however, survivors are only able to access pre-trial therapy in the period before a case is completed – or risk having their counselling notes requested by the prosecution and, potentially, the defence. We saw from Rebecca's case that she was denied NHS-funded services because they did not have the specialist training to deliver pre-trial therapy; they were afraid of notes being requested and this possibility jeopardising the confidential and safe space established between professional and client. For some survivors, this can mean years of not being able to discuss the details of an experience with anyone. We have detailed elsewhere the urgent need to end the intrusive request of counselling and therapy material, which is virtually never relevant to a case because counselling and therapy explore feelings and not facts.[97] Proper resourcing for specialist sexual violence and abuse services to give timely counselling and therapeutic support to survivors is paramount.

[95] Hunter, Jacobson & Kirby (n 2).
[96] National Audit Office, Ministry of Justice. 2016. 'Efficiency in the Criminal Justice System' [Report] Available at: https://www.nao.org.uk/reports/efficiency-in-the-criminal-justice-system/.
[97] Rape Crisis England & Wales, Centre for Women's Justice, & End Violence Against Women Coalition. 2022. 'Keep Counselling Confidential: The Problems and Solutions with the Disclosure of Counselling Notes' [Briefing Paper]. Available at: https://rapecrisis.org.uk/get-involved/keep-counselling-confidential/. For further information about the Keep Counselling Confidential campaign, see: https://rapecrisis.org.uk/get-involved/keep-counselling-confidential/.

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Overwhelming and interminable

From the cases above, it is clear that the combination of survivors' experiences of sexual violence and abuse, and their treatment by the criminal justice system can result in suicide attempts. The increased time spent in limbo is described here by a Rape Crisis ISVA:

> *"The lack of timeliness feels like the biggest concern in our area at the moment as this then affects everything else in the process. The slowness of the police report is then mirrored in a wait for court dates. Whilst waiting, victim-survivors' mental health and wellbeing deteriorates, with some saying it is 'overwhelming' or 'interminable'."*[98]

Below, we look at Ola's case. Ola had a section 28 hearing, but it was important for her to see the progression of the case and to witness justice being served to her perpetrator. Her case illustrates the numerous and wide-ranging reasons why aspects of a trial are postponed, which occurred upwards of 10 times for Ola. The lack of timely and respectful communication in Ola's case are consistent with Rebecca and Maria's experiences, as shared above.

Ola

Ola is a young survivor of rape, who reported her rapist on the same day that the crime occurred, in July 2021. The perpetrator went on the run but was located and remanded into custody the following month. He pleaded not guilty and a trial was listed for the end of November 2021, with a section 28 hearing taking place a few weeks earlier. Ola, who was experiencing severe trauma, tried to end her own life.

In the days before the section 28 hearing, the perpetrator entered a guilty plea to one of the counts on the indictment. Then, on what should have been the first day of the trial, he entered guilty pleas to the remaining three counts. He was due to be sentenced three days later. However, when the day of sentencing arrived, he said that he wanted to change his pleas on the grounds that he had not been mentally fit when he originally entered them (just three days prior).

A hearing was listed for **a month later** to try to deal with the application to vacate his pleas. After some chasing from Ola's ISVA, the officer in charge (OIC) and the CPS, it transpired that the perpetrator was struggling to find new counsel to instruct. Eventually, the hearing was **rescheduled** for mention on February 2022.

The case was then **postponed again** to March 2022. At this hearing, the defence was informed that it would need to serve any reports to the court by April 2022 and the application, in writing, by May 2022. The prosecution then had to respond that same month and the case was relisted for a hearing a few days later for determination of the change of plea application. However, the case was **adjourned again** to June 2022 as the judge was unhappy with the application. Ola attended court at the time provided in the published court listings, but the time had been brought forward on the day and so she missed the hearing.

[98] Rape Crisis England & Wales. 2022. Internal ISVA Survey.

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In June 2022, the case was **further rescheduled** to July, as medical records had still not been provided to the court. The governor of the prison where the perpetrator was being held was issued a summons to provide required medical documents. Medical reports were finally received but the hearing was **moved again**, to the end of July 2022, as the court didn't have one of the medical expert's availability.

On that date, the hearing was **moved again** without notice and dealt with administratively; the case was relisted for October 2022 as it was not possible to get medical expert availability prior to that. In October, the case was **moved again** to November due to the barrister strikes.

In the lead up to the November hearing, which looked set to decide on the application to vacate pleas, Ola was completely overwhelmed and tried to take her own life again**.**

In November 2022, the application to vacate his pleas was finally heard and, following evidence from the perpetrator and two medical expert witnesses, the application was rejected. The judge said that no risk reports would be required and that there was no need to reserve the case to him as this would mean that the case could hopefully be finalised sooner. Sentencing of the man who raped Ola was listed for a couple of weeks later in November 2022.

The sentencing hearing went ahead on the date it was planned. Ola watched the hearing via video link, but was devastated to find that the process didn't end that day. The sitting judge was unaware of the chronology and history of delays, and felt they needed more time to decide the sentence – so the hearing **adjourned** to the following day. For Ola, hearing details about the case was just too painful and traumatic, and so she didn't feel able to engage with the further two hearings that ended up taking place and to hear the final sentence being passed.

The next day, the judge felt they couldn't pass sentence without a risk report from probation and so the sentencing was **adjourned** to December 2022. The exact date was to be confirmed, however, as the judge would be sitting in another court that week. The sentencing was eventually scheduled for 10am in the penultimate week of the year. The OIC was on leave and so Ola's ISVA joined by video link in order to update her as soon as the hearing finished. However, the hearing was **adjourned** to 12.30pm as the defendant was not present and couldn't be located. Ola's ISVA was unable to attend the later hearing, but was updated by the CPS barrister when the sentencing completed.

Ola's perpetrator was finally sentenced for nine years in custody. He will serve at least two thirds of it before being considered for parole. The sentence also included a Sexual Harm Prevention Order, which included no contact with Ola for life, as well as a ban on involvement in any work, volunteering, or activities with children or vulnerable adults.

Ola said: "*I'd wanted to continue to try to be a part of the court process to hear what was happening for myself. I turned up twice; once the hearing had been moved forward at short notice and the other time it was pushed back as medical records still hadn't been received by the court. I stopped coming. It was too much build-up, too much disappointment, too much pain.*

"Every time there was a hearing I felt that I was being pulled backwards; like all the hard work I was trying to do was being undone."

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Meanwhile, Ola's ISVA stated: "*Every time there was a hearing for this case, Ola would start to feel overwhelmed again; it would bring everything back for her. At certain points she started almost shutting down completely as the build-up and let down became too much to keep going through. Ola tried to go to a couple of hearings as she really wanted to know what was going on. However, as not much happened at the hearings or the time would be changed last minute, Ola stopped coming as it always felt like such a disappointment.*

"As the case got dragged out, not only did it impact her college work and grades; it also impacted where she could apply for higher education as well as her attendance, engagement, and achievement in her university course. Ola has become more withdrawn as the case has gone on. With no final answer, no certainty, Ola had to deal with anxieties about when/if the perpetrator may be released from prison at short notice or whether she would have to wait months more after the application was dealt with for a trial.

"More people started finding out about the case the longer it went on and this impacted college, work, and even where she lived. The whole processing has been so devastating that Ola tried to end her own life."

Ola's experience of not being updated for hearings is sadly not unique. Rape Crisis ISVAs cite having to chase Witness Care officers for such key information as when they should be expected in court in order to give evidence. In some cases, police officers assume the role of Witness Care officer because they feel they've established a rapport with a survivor – but then do not, or are not able to, follow through with timely liaising. Clear roles and responsibilities of the different agencies involved has to be established, with an agreed, formalised protocol for who makes contact with victims and survivors. The Joint Inspectorate report stated that, "We heard that in some areas, a victim of rape can be contacted by the investigating officer, the SOLO [sexual offences liaison officers], the WCU [Witness Care Unit], the ISVA, and Citizens Advice or other witness service teams". This is entirely unnecessary, and can be resolved by formalised protocols between agencies.

Powerless and deprioritised

By the time there is a trial date, survivors will have already been through lengthy and invasive police investigations, and been waiting for a CPS decision. Given the small numbers of cases going to court, it is crucial that cases are dealt with in a timely manner; the longer that survivors wait, the more likely they are to withdraw their support for cases. Many tell us that they wish to move on without the prospect of reliving their experience in court hanging over them. A Rape Crisis ISVA shared:

> *"The excessive delays in the courts are disgusting. Just this week a survivor whose trial was listed for early 2022 has had the trial vacated and moved till January 2023. This re-enforces feelings that survivors sometimes experience about* ***not being good enough or important enough*** *and prolongs the process where survivors are unable to get on with their lives."*[99]

One key systemic issue is that victims and survivors in the criminal justice system are witnesses to the very crimes that took place against them. Former Victims' Commissioner Dame Vera Baird argued for a redefinition of victims' status in the system that would see them recognised as participants rather than considered bystanders. This would ensure that victims and survivors are treated as the vital and central participants of the investigation and trial that they are.[100] Decisions about cases are taken out of the hands of survivors, which

[99] ibid.
[100] Victims' Commissioner. 2021. 'Victims Law Policy Paper: Victims' Commissioner's Proposals for a Victims Law'. Available at: https://s3-eu-west-2.amazonaws.com/jotwpublic-prod-storage-1cxo1dnrmkg14/uploads/sites/6/2021/12/VC-Victims-Law-policy-paper_FINAL-1.pdf.

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removes power and control. This has the impact of compounding the feelings of powerlessness they experienced when subjected to the sexual violence and abuse itself.

Charlotte

Charlotte* reported child rape and sexual abuse which was perpetrated in the late 1980s and early 1990s. She was shocked when her case progressed to trial, as she was afraid of being disbelieved and not taken seriously. Charlotte had been experiencing intimidation and threats from her perpetrator.

A trial was originally set for 2021, but, due to Covid-19 restrictions, was postponed to January 2022, and then again to April 2022. Due to the barrister strikes, it was moved for a third time to January 2023.

Charlotte described to us the emotional rollercoaster she faced due to the delays, and the impact it had on her mental health:

"This will be one of the hardest challenges I've ever had to face: to stand up and tell strangers what happened to me … the nightmares [and] the alcohol abuse I used to cope. The challenges I have faced to still be here, fighting for my case to be heard. The therapy I had to [have] and still have to have just to survive another day.

"Then the court date finally come; I thought, 'This is it. Finally, I get to get it over with and then I can try [to] heal from the trauma'. Thinking that I can finally heal properly instead of dragging it all back up, time and time again. I spent weeks having panic attacks and not sleeping; I wasn't eating; my whole life was falling apart again. I had no control; I was a mess. But [I was] prepared to tell my side to the court so I could finally be heard. Then it got postponed again – I was told I had to wait a year.

"That year went past. I built myself up – sobbed every day, nightmares every night, reliving what happened – [only] to be … at the turning for the court. My phone rings: it's my police officer saying that, 'The case is delayed again. Sorry, there is nothing we can do. It's now another year". I was devastated [that I'd] wasted more of my life. Precious time with my kids and partner. I struggled to cope at work weeks before the build-up; the reviewing my statement again and again. It's so painful to feel so stuck somewhere yet hopeless; as hopeless as when these crimes took place and no one listened or helped me then. ***No power or control over the choices that had been made for me****. I was going to quit, withdraw my statement; I was at breaking point.*

"The severity of my mental health was deteriorating. My relationship with my children and partner was low as all I would do is sob. How can they let me down again, fail me? ***Was I not important? Was what I was saying not important? Did I matter? Did my case matter?*** *Who would care if I dropped out anyway?*

*"But then I realised who would care: the most important person, me. And that is why, with amazing support from my [*Rape Crisis Centre*] team and some reassuring words from my supporting officer … I stay strong and continue to wait to be heard. If my case got moved again, I'm not sure I would continue with this."*

Charlotte's questioning of whether her case had any significance because of how it has been delayed is a common feeling amongst survivors.

A decade ago, the Institute for Criminal Policy Research recommended that professionals in the criminal justice system should do much more to ensure that victims and survivors feel valued rather than taken for granted:

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particularly by being considerate and respectful in their interactions, and by providing clear, consistent, and timely information about the court process.[101] It made the following recommendation:

> *"Cancellations and adjournments of court hearings are frustrating and stressful for victims and witnesses. More needs to be done to reduce this and all possible steps should be taken to minimise delays. Where these are unavoidable, the impact on victims and witnesses should be recognised. Updating victims and witnesses about the progress of cases and informing them about the reasons for delays can help to mitigate the impact."*[102]

A decade later, the situation has worsened. There is a compelling case for expediting specific RASSO cases. During the height of the pandemic, we heard from a Rape Crisis ISVA manager in North West England whose client was unable to survive long enough to see his case go to trial. She told us:

> *"I had a male client in his early 50s who died the day before his trial was due to start. He had physical health conditions that significantly impacted his life on a daily basis. The trial was postponed due to Covid in May 2020, then re-booked for the end of November 2020. Which wasn't as long as a lot of my clients have had to wait for a re-scheduled trial, but this was still too late… The sadness I felt was overwhelming, that this client hadn't managed to give his evidence at trial. I feel like he died with unfinished business, something that was so important in his life to get through."*[103]

Suspended justice

Survivors and their families describe being made to "live in limbo" and put their lives "on pause", and feeling unable to plan for the future or move on from what has happened to them. Cases like Ronnie's (see previous section) and Ben's both speak to systemic problems relating to how defendants are prioritised during trials. Survivors can experience secondary victimisation[104] and trauma from having to relive their experience and being unable to move on, and are unable to move into a phase where they are able to focus on their wellbeing and deal with any mental or physical health issues they are experiencing. Due to the lengthy delays, survivors are also less able to recall details of what happened when they do reach trial – which impacts on their perceived credibility and ultimately affects conviction rates. This is especially an issue for children and young people.

As mentioned previously, one important initiative to try and mitigate for these risks has been the successful roll-out of section 28 hearings. For some victims and survivors, once they have given their evidence they feel they can move on. Whilst we support the use of section 28 hearing as a choice for victims and survivors, we also recognise that, for some survivors, knowing their perpetrator is still out there and that there is still a long wait for justice is distressing. Like Ola (see above), Amy also had a section 28 hearing, but still feels unable to move forward due to the current trial date being so far into the future – 20 months from when the original trial was scheduled. Also like Ola, Amy's educational attainment has been affected by the stress and anxiety of waiting for the trial to complete.

[101] Hunter, Jacobson & Kirby (n 2).
[102] ibid, p. 6.
[103] Rape Crisis England & Wales. 2021. 'Holding It Together: The Courage, Resilience, and Innovation of Rape Crisis Centres During the Covid-19 Pandemic', p. 29. Available at: https://rcew.fra1.cdn.digitaloceanspaces.com/media/documents/RCEW_HoldingItTogether_Digital.pdf.
[104] For further discussion, see: Burman, M, & Brooks-Hay, O. 2020. 'Delays in Trials: The Implications for Victim-Survivors of Rape and Serious Sexual Assault' [Briefing Paper, The Scottish Centre for Crime & Justice Research] pp. 2-3. Available at: https://www.sccjr.ac.uk/wp-content/uploads/2020/08/Delays-in-Trials-SCCJR-Briefing-Paper_July-2020.pdf.

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Amy

Amy is a survivor of child sexual abuse by the father of her friend. The incident happened in 2019, when she was a pupil at secondary school, and had a serious impact on her mental health and ability to study – which in turn impacted her education outcomes. She gave pre-recorded evidence during a section 28 hearing in 2021 and the trial was due to go ahead in June 2022. Due to the barrister strikes, however, the trial was delayed and is now not due to go ahead until February 2024.

Despite giving her evidence in 2021, Amy has struggled to move forward whilst there is still an open court case. She is currently at college but is continuing to struggle and described the wait as a never-ending nightmare: *"I just feel so upset that I have to wait this long for justice and an outcome. I feel like I can't move forward from this; it's just horrible."*

Support services

Committed ISVAs supporting victims and survivors are also affected by the dysfunction and delays in the criminal justice system. They have the long-term perspective of supporting many hundreds of victims and survivors through the system. And, because of the many problems faced by survivors, many ISVAs also struggle to maintain confidence in criminal justice processes. One Rape Crisis ISVA shared:

> *"In my eight years as an ISVA, I have never seen a case convicted. I am on this journey of re-traumatisation with survivors every time. It can lead to you feeling so burnt out and defeated. And knowing that you have to leave all the previous cases outside the door each time that you go in for a first meeting with a new survivor – and [that] you have to give an impartial informed choice session so they can make their own decisions, which is important. But knowing, actually, that they will suffer a journey of re-traumatisation and it will be such a struggle. I sometimes feel jealous of my counsellor colleagues; they see improvement and growth, but us ISVAs see re-traumatisation again, and again, and again."*

Some Rape Crisis Centres are overwhelmed due to the number of survivors waiting for court dates, who, as a result, require longer-term support. Caseloads are growing and ISVAs are having to carry out more emotional support work in order to "hold" survivors during the protracted waits (as case progress updates are few and infrequent, and support needs therefore increase). For Centres, this issue is compounded by long waiting lists for counselling – including that considered "pre-trial therapy" – as thousands of victims and survivors across England and Wales wait to receive specialist Rape Crisis services.

As one Rape Crisis service manager shared:

> *"For a long time, so few cases were going to court [that] much of our work was holding survivors in the system whilst they waited and waited. Because of Covid and barristers' strikes, we saw even more trials get vacated, sometimes multiple times. Now that trials are starting to go ahead – which is important for victims and survivors, but has a huge impact on ISVA capacity – we are seeing multiple trials booked on the same day at different courts.*
>
> *It's vital that resource continues to go to specialist support services, as we are the ones who are consistent for the survivor throughout the whole process. The length of funding for ISVA contracts needs to be longer to reflect the increasing time [that] cases are in the criminal justice system. Services may be put in a position of making*

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ISVAs redundant due to end of funding – therefore impacting on the consistency of support offered to the survivor who may have built a good professional rapport with the ISVA.

We also need to make sure our specialist sexual violence counsellor colleagues receive funding so that survivors can get the emotional and therapeutic support as part of the wrap-around offer when needed."

Funding for ISVAs has increased in recent years, but the short-term contracts from Police and Crime Commissioners lead to job instability for the ISVA workforce, as well as for the organisations that host them. It is crucial that long-term grants are awarded to specialist services who can then appropriately plan their service delivery, as it is widely accepted that having specialist ISVA support reduces attrition rates. Resourcing specialist Rape Crisis services and other third sector sexual violence and abuse services is crucial. Resourcing of both counsellor and ISVA support must be factored into supporting the progression of rape and other sexual offences through the Crown Court. We know that Rape Crisis Centres are life-saving and life-changing for victims and survivors. As Charlotte* stated, "*with amazing support from my* [Rape Crisis Centre] *team and some reassuring words from my supporting officer … I stay strong and continue to wait to be heard*".

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Recommendations

Priority listing of rape and sexual offences

As part of HMCTS' plan to create trauma-informed courts, judges and listing officers should be required to have due consideration of the potential impact that rescheduling will have for a traumatised victim or survivor, who lacks any control over the processes and will very likely have heightened anxiety from waiting months – and sometimes years – for their case to progress. Local specialist sexual violence and abuse services are ideally placed to support this work and deliver high-quality training on trauma and its impacts to members of the judiciary.

Floater trials for rape and sexual offence cases are particularly problematic. Rape Crisis workers commonly share similar feelings to the ISVA worker quoted here:

> *"Floater trials. Let's not do that. Let's not do that. We were told three or four years ago by our Local Criminal Justice Board that no RASSO trials would be put in as floaters. And then somebody somewhere forgot that, so that's happening again. Putting people on standby for court, just like, just get dressed, do your normal day-to-day things and just sit by your phone and wait for a phone call from the police to come to court. Let's not do that. Let's just give people a time."*

We recommend:

- A minimum of seven days' notice should be given when cases are vacated, with full reasons provided, in writing, by the CPS.
- HMCTS and the judiciary need to work jointly to ensure that listing policies are consistent across Crown courtrooms; these should be clearly published to ensure transparent processes and accountability.
- Rape and sexual offence trials must never be listed as floater trials. In lieu of a national oversight mechanism for the judiciary, Local Criminal Justice Boards should monitor this listing practice closely.

Specialist sexual offence courts

The Inspectorate report published in early 2022 recommended that, "*Immediately, and no later than May 2022, to help clear the significant Crown Court backlog for rape cases, the MoJ [Ministry of Justice] should group adult rape cases into specialist rape offence courts*".[105] We expand this to recommend that specialist courts should apply to all sexual offences. In 2021, Lady Dorrian published a review on Improving the Management of Sexual Offence Cases, the key finding of which was the need to establish specialist courts. Its detailed components of such courts included the default pre-recording of witness evidence, ground rules hearings, the right to independent legal representation, and specialist trauma-informed training for all personnel.[106] Plans for specialist rape and sexual offence courts were announced by the Deputy Prime Minister early in the summer of 2022, but they have not yet materialised.

[105] Criminal Justice Joint Inspection (February 2022) A joint thematic inspection of the police and Crown Prosecution Service's response to rape: Phase 2: Post-charge.
[106] Improving the Management of Sexual Offence Cases, Lady Dorrian, March 2021.

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We recommend:

- The Ministry of Justice must resume and reconsider this work with pace, beginning with a rapid review of successful examples of specialist courts in other jurisdictions, such as New Zealand, which have resulted in the much more timely progression of cases to trial.[107] Much detailed work has already been scoped out and reviewed by professionals in Scotland, which can be of significant benefit in England and Wales. The function of rape and sexual offence courts needs significant input from the specialist sexual violence and abuse sector to ensure that they are fit for purpose, and that the needs of specialist judiciary are also supported in a trauma-informed way that results in professionals feeling able to undertake the work long-term.

In an internal consultation on specialist courts, Rape Crisis workers shared that there was a need for "proportionate change", stating that, whilst the whole court system could not be rebuilt immediately, the experience of survivors as witnesses could be changed. Referring to the need for specialist, trauma-informed courts designed by the sector, one worker stated that, "[p]eople could walk away from the process feeling more empowered if their wellbeing was looked after and prioritised". In order to make processes more timely, Rape Crisis workers suggested doing away with the initial hearing in magistrates' courts. One Rape Crisis CEO stated:

> *"[C]ould we just not circumvent the system and go straight* [to the Crown Court?] *… the whole thing of going to magistrates' court, when you know, if it's a rape or a serious sexual offence, it can't be dealt with at magistrates' court, it just seems unnecessary; and what we find is that you're waiting for that, then you're waiting for them to make a decision, then you're waiting for it to go to Crown Court … we've got people waiting four or five years for a case to come to court as it is now."*

Due consultation and consideration should be given to whether it is possible to streamline judicial processes. Whilst specialist courts are still hypothetical, elements that should already be in place to ensure that trials are better for survivors – such as special measures and ISVA recognition and support – need to be properly applied.

Judge-only trial pilots

We recommend:

- As part of establishing specialist sexual offence courts, we recommend that the government commits to piloting judge-only trials for a specific time period in the Local Criminal Justice Board areas where trials are the least timely and where there are high volumes of cases in the backlog.

In 2020, Rape Crisis Scotland CEO, Sandy Brindley, stated:

> *"If in fact there is no practical way of recommencing jury trials capable of functioning at meaningful and effective level, then it is only reasonable to suggest that some change has to be made to the way in which cases, particularly cases involving serious sexual offences, are conducted."*[108]

[107] Allison. S and Boyer. T, Evaluation of the Sexual Violence Court Pilot (Gravitas Research and Strategy Limited/Ministry of Justice, Wellington, 2019, accessible at: Sexual-Violence-Court-Pilot-Evaluation-Report-FINAL-24.7.19.pdf (districtcourts.govt.nz).
[108] Jury trials: Rape Crisis Scotland CEO statement (2020) Copy of RCS Briefing (rapecrisisscotland.org.uk).

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The organisation also secured legal opinion from both senior and junior counsel which suggests that the unacceptable strain on complainants that delays are creating could be unlawful.

Retired High Court judge Sir Richard Henriques suggested in May 2020 that judge-only trials might be necessary as a proportionate response to the current crisis; since then, however, it has not been seriously considered as an option. This was partially due to the resumption of jury trials, despite the backlog reaching peak levels and the Crown Court functioning well below full capacity. Judge-only trials could be a part of a solution, as they would be more economical, could reduce the length of trials, and boost the number of both effective and completed trials. Given the seriousness of the issue, a range of options should be given serious consideration, including a model similar to tribunals where a judge may work alongside two lay experts.

Clear and coordinated communication with victims and survivors

Criminal justice agencies must coordinate and formally agree clear routes of communication with victims and survivors, so that they are updated promptly when trials are vacated and relisted.

Witness Care officers must keep survivors and their Independent Sexual Violence Advisers (ISVAs) and supporters (where there is consent from the survivor) updated when trials are vacated and relisted. It is important that reasons why the time and date has changed are given to survivors. This is not just a matter of professional courtesy, but, as made clear from the case studies, it can be a matter of safeguarding. Any communication needs to consider the potential impact that the information could have on a traumatised survivor and whether the support worker, such as an ISVA, or a trusted supporter needs to be made aware of the communication. Anything less than a clear and timely update can risk making survivors feel peripheral to the process; good and timely communication can support survivors to stay engaged and reduce stress.

Many of the communication problems stem from a lack of clearly defined roles at the post-charge pre-trial stage. For the process to run smoothly, every element has to function efficiently, from Crown Court staff to the Crown Prosecution Service (CPS), police, and Witness Care officers.

We recommend:

- Clear, agreed, and formalised multi-agency protocols for communicating with survivors and their ISVAs post-charge pre-trial. This protocol has to be joint and should be incorporated into the Joint National Action Plan, which is jointly led by the CPS and National Police Chiefs' Council.

Clear and trauma-informed communication also extends to the start of the trial, when survivors are often waiting around unnecessarily and spending much of the first day growing increasingly anxious. Consideration of RASSO (rape and serious sexual offence) victims and survivors warrants more specific court warnings being offered.

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We recommend:

- The CPS should give realistic timeframes within court warnings, to be delivered by Witness Care, so that the survivor and their ISVA (if they have one) are not required to be on the court premises for protracted periods of time.

Risk assessing court premises

All operational courts must account for the particularly traumatic nature of rape and sexual offence cases, and ensure that different parties are not left to wait together in shared spaces. Considerations must be made for families and supporters, who often struggle with the strain of the situation and sometimes experience vicarious trauma. Where there are good practices around staggering timings and navigating physical spaces, including car parks, entrances, and waiting areas, this could be shared between staff across different Crown courtrooms.

Importantly, there needs to be the understanding that a key support worker, such as an ISVA, must not be kept separate from the survivor, or denied access to the court, and must be recognised as a core component of the survivor's experience of justice. This would better reflect His Majesty's Courts and Tribunals Service (HMCTS)'s efforts to work in a trauma-informed way. One Rape Crisis ISVA shared:

> *"[A] lot of the time when supporting survivors, something they're very anxious about is potentially bumping into the perpetrator as they're entering the building, or, you know, other witnesses, perhaps on the defence's side, which has happened multiple times. So being able to assure as a survivor, when they're going to court, that that won't happen would be a massive benefit."*[109]

We recommend:

- HMCTS must support Crown Court staff to create RASSO-specific risk assessments suitable for the range of Crown courtrooms across England and Wales. These should be shared with the Witness Service and include practical considerations around the physical space, accessibility, and arrival timings. This should ensure that survivors and their perpetrators, as well as their families and supporters, do not have unwanted interactions.
- High-quality, frequent, and consistent training on rape and sexual abuse trauma should be mandatory for all Crown Court staff, Witness Service, and judiciary members. The specialist sexual violence and abuse sector is ideally placed to deliver it.

Recognition of ISVAs as key professionals at court

Rape Crisis ISVAs commonly cite ongoing challenges with recognition of their role in court. This is problematic as it undermines the ISVA as a key support worker and professional, and has a hugely detrimental impact on the experience of survivors. One shared:

[109] Internal Rape Crisis consultation on Specialist Sexual Violence and Abuse Courts, (2022).

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> *"I told my client who was quite a young girl, she was 16, you know, I can sit in the live link room with you, it will be absolutely fine. And then on the day, I was told no, I'm not allowed in. So obviously, for anybody, let alone a 16-year-old girl, that just completely shook her up … Afterwards, I tried to figure out why, but there was no reason."*

Another Rape Crisis ISVA shared:

> *"I went to support my woman. There was a huge hoo-ha about what the ISVA role is; Witness Service weren't aware, the CPS wasn't aware, and it just was such faff to get me in and I had to sit behind a curtain. And it was just ridiculous for this poor woman that I was supporting with her mental health. She really was terrified that I wasn't going to be within her view or, you know, sitting behind her or whatever … And often we're doing battle…with the Witness Service, because they see that as their role. They don't see the added support and the added value that we can give to the people that we're supporting. Because we've worked with them [for], often, two, three, four, sometimes now, five years, and we've built that real relationship of trust with them."*[110]

We recommend:

- All Crown Court staff, including the volunteer Witness Service staff, formally recognise the role and importance of the ISVA, and expect them to attend the trial as a key support worker. This could be achieved through memorandums of understanding at local level, but consistency at national level should be coordinated by HMCTS.

Mandatory case conferences before trial

The quality of communication between advocates who prosecute rape cases and prosecution solicitors needs to be improved in order to most effectively ensure case fluency and accuracy.

We recommend:

- Case conferences between police, the CPS, and the prosecution advocate must be mandatory in order to ensure that there is appropriate preparation, and a shared knowledge and understanding of the case.

However, this does not deal with the issue of new counsel needing to take over cases last minute. This obviously puts huge pressure on advocates trying to familiarise themselves with cases, and impacts their ability to do so effectively. Sometimes, it is not possible, which will result in further delays.

Introductory meeting between witness and prosecuting barrister

Meeting very briefly on the day can be intimidating, overwhelming, and add to survivors feeling marginal to the case. Now, with the normalisation of online working, it is more achievable to schedule introductory meetings

[110] ibid.

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between different parties. These need not be lengthy and time-consuming. Some Rape Crisis workers have stated that special measures meetings should be reinstituted consistently across the country, and that this would be the time to potentially meet with the barrister. One Centre manager shared:

> *"[S]pecial measures meetings, they're very ad hoc; they're not persistently and consistently applied … throughout all the cases. And I think that's what we need … special measures meeting[s] so that the survivors are meeting their barrister before court."*

Whether the meeting takes place online just between barrister, survivor, and ISVA, or through a special measures meeting, we recommend that barristers working in rape and sexual offences cases are trauma-informed and have due consideration of what survivors have been through to get to this stage. One ISVA manager shared that a Witness Service volunteer, on introducing counsel to the witness, said, "here's your barrister", to which the barrister replied, "I am not your barrister, I am the Crown's barrister", which – although technically correct – was unnecessary and made the witness feel small. An ISVA also shared:

> *"It's also not meeting the barrister till the day you're there. And then they rush in, five minutes, 'Hello, how are you doing, ooh, look, I need to go back to court, it's going to be fine'. You're just, you're very much the add-on, you're just part of their case. It's very much their world, not the victim's world."*[111]

We recommend:

- Several days before the trial, an online introduction meeting should take place between counsel and survivors. However, this might not be required should special measures meetings be consistently instituted.

Considerations of witness needs

Assumptions about what survivors want and don't want needs to be considered and facilitated wherever possible. In RASSO cases, attending the trial may be seminal for many victims and survivors. We are aware of some, in certain locations, who have wished to watch the rest of the trial after giving evidence but have felt unable to do so due to there being no allocated private spaces. We note, however, that defendants have their needs met if they are in prison.

We recommend:

- Due consideration should be given to the wishes of how the survivor wants to engage. Every court should have a way of enabling the witnesses to observe the trial, aside from sitting in the public gallery. Meeting this need could be achieved through incorporating it as a new special measure.

Consideration of the witness' needs also to be reflected in special measures. Survivors should be informed of the special measures available to them and there must be consistent implementation of special measures across

[111] ibid.

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Crown courtrooms for RASSO cases. These should provide survivors with choices, such as giving evidence over live link, pre-recorded cross-examinations, and screens that are appropriately applied and adhered to.

We recommend:

- Special measures should be considered the default for RASSO trials. However, in order to give survivors choices, they should also be consulted with so that they can make an informed choice about this. Survivors without ISVAs should always be offered a referral from criminal justice agencies to a specialist sexual violence and abuse service.

In some locations, the CPS insist that all special measures have to be decided before the pre-trial preparation hearing. This is a difficult point for these decisions to be made, and survivors can end up feeling pressurised and scared. In Merseyside, we are aware of good, trauma-informed practice, where, after the pre-court visit, the ISVA provides a bespoke form on special measures that gets sent to the Witness Care Unit, police, and the CPS. After this, they complete a freshly updated MG2 (application for special measures). This process was an innovation by the Rape Crisis ISVA services. There are also innovations in this area taking place in Essex.

We recommend:

- There should be the option for special measures to be adjusted after a pre-court visit, within a reasonable time period. Formalised and simple processes and forms should be adopted across all Crown courtrooms.

A long-term and resourced strategy to recruit and retain criminal barristers

Women's organisations have previously outlined the huge problems caused by the police and the CPS managing caseloads with increasingly limited resources, following falls in public sector funding.[112] The impact of austerity had far-reaching consequences for the judiciary and courts: the shortage of barristers and judges, and problems with retaining a high calibre workforce, many of whom go elsewhere for higher salaries and increased benefits, is an issue that, ultimately, can only be met with more resource and better working conditions.

We recommend:

- The government must put forward a long-term strategy to recruit and retain criminal barristers, along with appropriate resource.
- Appropriate incentives should be in place for everyone to work towards timely completion of trials. Due consultation with the relevant bodies should take place in order to establish what appropriate incentives would look like.

[112] See: RCEW et al. (2020). The Decriminalisation of Rape: Why the justice system is failing rape survivors and what needs to change.

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The shortages in the judiciary pose a threat to public safety, and creative solutions must therefore be considered. We would like to see clear and prestigious routes to a RASSO specialism being established that would cultivate excellence within the judiciary in rape and sexual offence cases. This specialist professional pathway could be developed with an aim of encouraging those with protected characteristics to enter into the judiciary. In order to achieve a fairer criminal justice system, it must better represent the people that it serves.

We recommend:

- In-depth research needs to be commissioned by the Ministry of Justice and judiciary into how to improve the recruitment and retention of women, working-class people, and ethnically and racially minoritised people into the criminal legal profession.

Long-term funding for specialist sexual violence and abuse services

Long-term funding is required by the sexual violence and abuse sector, which provides specialist services and support for survivors through the system – often for multiple years. A survivor receiving an ISVA service will often require therapeutic support during and after her case is closed.

We recommend:

- There needs to be sufficient funding for specialist sexual violence and abuse services in the form of five-year grants.
- Health commissioners need to appropriately contribute to specialist sexual violence and abuse service provision. This would reflect the fact that the majority of survivors access sexual violence and abuse services for mental health-related support, such as counselling, and emotional and peer support.

The government's Victims Funding Strategy needs full input from the Department of Health and Social Care in recognition of the high-volume of mental health work that is being carried out by specialist services.

The survivor cases featured in this report show how the protracted stress and anxiety of waiting for changing trial dates compounds the trauma that survivors of sexual violence and abuse were subjected to. It is imperative that survivors can access specialist sexual violence and abuse trauma counselling. As part of this, we are advocating for new protections in the law around access to counselling notes, so that survivors waiting in the justice system with worsening trauma are able to access the appropriate support. Currently, there are insufficient safeguards to ensure that survivors' rights to privacy will be respected and that requests for counselling notes will only be made when absolutely necessary. We know that the possibility of highly personal and sensitive material being disclosed to criminal justice agencies, and, sometimes, the defence, understandably puts survivors off from accessing therapy.

No one should have to choose between seeking criminal justice and seeking specialist, trauma-informed therapy. In other jurisdictions with adversarial legal systems similar to that of England and Wales, survivors' ability to seek both justice and therapy is afforded greater protection, alongside the right to a fair trial being duly safeguarded.

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We recommend:

- Access to sufficient specialist sexual violence and abuse counselling must be available to victims and survivors accessing the criminal justice system, and there must be special legal protections for counselling notes. This requires a necessary change in legislation.

A change of status for victims and survivors

In the Victims' Commissioner's 2020-21 annual report, Dame Vera Baird said:

> *"The time has come to re-conceptualise the status of victims, so that they are seen as active participants from the point the crime is committed throughout the criminal justice process and beyond."*[113]

The purpose of giving victims a particular status is to recognise that victims and survivors are not bystanders to crimes, but participants with an inherent interest in the justice response to that crime. As the case studies in the previous section demonstrate, survivors are currently treated as bystanders who are marginal to the case against their perpetrator, which is part of the reason why they are side-lined. One Rape Crisis ISVA shared:

> *"[Y]ou will walk in and it's all, 'If you just want to sit in that room, we'll get to you whenever we get round to you'. And it's just not understanding that those witnesses have been waiting for that moment to come for so many years, that they're not just giving evidence in seeing someone shoplift something … they're made to feel … like just another witness, when it's not. We've already got to sit and explain to* [survivors] *that this isn't your case, you're a witness in this case … They are the centre of this case, and I don't think enough can take that into consideration."*[114]

The abstraction of victims and survivors as witnesses is out of step with the considered seriousness of the crime type. If survivors' rights under the Victims' Code were made statutory and they were formally recognised as active participants, treatment of them would potentially improve considerably without in any way undermining defendants' rights.

We recommend:

- The government must amend the draft Victims Bill to ensure that victims have a defined and formally recognised status as a participant in the criminal justice system, with a minimum set of measures in place to improve and support survivors' participation in the criminal justice process.

At the time of writing we are waiting for the Victims Bill to be put before parliament. This bill presents an ideal opportunity for the status of rape and sexual abuse survivors in the criminal justice system to be elevated from mere bystanders to victims who have been subjected to harm.

[113] Annual Report of the Victims' Commissioner 2020 to 2021.
[114] Internal Rape Crisis consultation on Specialist Sexual Violence and Abuse Courts, (2022).

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A whole-system criminal justice system strategy that includes prevention

The government's Rape Review was a missed opportunity to consider judicial policies and procedures. By only focusing on policing and the CPS, the problems faced in rape cases that ultimately progress to court were almost entirely out of scope. This disjointed approach means that improvements and resource in one area of the criminal justice system will have consequences elsewhere – as, indeed, has always been the situation. The increasing number of cases that the CPS are taking forward to prosecute will necessarily increase the number of trials. If the Crown Court addressed the backlog and kept pace with receipts, this would have considerable budgetary implications for the Prison Service.

We recommend:

- There needs to be a long-term and fully resourced cross-government prevention strategy in place, in order to reduce sexual offending in the first instance. Sexual offences are high-harm crimes, with high costs. Funding prevention work needs to be considered a mid to long-term cost savings plan. Without this, there will always be more rape and sexual offence cases in the system, and an ever-increasing demand on specialist sexual violence and abuse services, such as Rape Crisis Centres.

The Crown Court embedded into all emergency planning

The lack of adequate pandemic planning for the whole courts estate, but particularly for Crown courtrooms, which were ultimately impacted the most, added thousands of cases to the backlog. This must not be forgotten; adequate attention and resource must be invested into ensuring that the technological progress made in Crown courtrooms remains in place for when the next pandemic occurs. Future planning for the next pandemic needs to be taken seriously by the Ministry of Justice and appropriate contingency plans for courts need to be in place before the next pandemic occurs. Commitment to disaster planning and appropriate risk assessing must not be discretionary or contingent on political interest.

We recommend:

- The impact on the functioning of the Crown Court must be taken into account and planned for in future government preparation.
- ITinfrastructure and digital systems must be updated and maintained in order to ensure a modernised and functioning courts estate where remote hearings are possible.

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