



FINAL REPORT:

Evaluation of the Sexual Violence Complainants' Advocate Scheme.

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FOREWORD

We are currently facing a crisis in our justice system. 1.5% of rape cases reported to the police will end in a prosecution.

This scheme originally visioned and developed by Dame Vera Baird KC explored the reasons as to why a sexual offence case may fail. Dame Vera specifically discovered that disclosure and privacy issues are a huge concern to many. This evaluation of her work with Loughborough University highlighted that these issues are not only leading complainants to lose confidence in the justice system and withdraw their report from prosecutions, but disclosure issues are also leading to many cases not being charged.

The scheme found that too often complainants, on report of rape, are asked to hand over their mobile phones and sign consent forms which permit criminal justice practitioners to obtain their records from any institution or organisation they may have ever had contact with, including hospitals, GP practices, counsellors, schools, local authorities, family courts.

Often, decades of records are requested, dating back to when the complainant was born, regardless of when the offence being reported took place or the relevance to the case, despite the law requiring 'reasonable lines of enquiry' for material 'relevant' to the case. Often complainants are not even aware that they have signed such consent forms, and if they are, and refuse consent, they may be told that their case cannot be continued. The defendant is not asked the same, neither are complainants of any other type of crime.

What happens with these records and private phone data? Depending on the volume of material obtained, police officers, who are as a consequence of austerity, already stretched, are tasked with reviewing them all, in search of anything that may be 'relevant' to the case – a concept hugely open to interpretation. Anything 'relevant' is then handed to the CPS and then ultimately the defence team. Should the case make it to court, it can be introduced to discredit the complainant.

In one case in Newcastle, a jury was told that a complainant of sexual abuse and exploitation was a liar, and had always been a liar, as proven by her school records from years earlier which noted that she once forged a note from her mother to get out of PE¹.

This case was subject to an independent review. The author of the review noted that the consequence of such practice *"is that damaged and vulnerable individuals are knowingly exposed to distressing material without notice and to an experience calculated to confuse, intimidate and cause them further damage and distress"*². He argued that such treatment of complainants in our criminal justice system could arguably be classed as inhuman and degrading treatment, contrary to Article 3 of the European Convention on Human Rights (ECHR), as well as breaching the right to fair administration of justice and the right to a private life (Articles 6 and 8 ECHR). The Information Commissioner has since voiced similar concerns.

Not only does such practice impact on complainants emotionally, by compounding existing trauma and subjecting victims to further loss of control, but it impacts on individuals' access to justice. This is why we

¹ Spicer, D. (2018). Newcastle Safeguarding Children Board and Newcastle Safeguarding Adults Board Joint Serious Case Review Concerning Sexual Exploitation of Children and Adults with Needs for Care and Support in Newcastle-upon-Tyne. Online: <https://www.nscb.org.uk/sites/default/files/Final%20JSCR%20Report%20160218%20PW.pdf>, p138.

² Ibid.

need independent legal representation: legal advocates who can assert and protect the rights of individuals who currently have no voice in the system.

The pilot of Sexual Violence Complainants' Advocates (SVCAs) in Northumbria has exposed the issues faced by complainants nationally and established an effective framework in which to address them. I recommend that the government invest in operationalising ILR across England and Wales as a matter of urgency.

Kim McGuinness

Police and Crime Commissioner for Northumbria

Acknowledgements

My thanks go to the lawyers who took on the SVCA role, supporting almost 100 complainants of sexual rape to recognise their rights: Gillie Robson and Cris McCurley (Ben Hoare Bell LLP), Elspeth Thomson (David Gray Solicitors LLP) and Suzanne Todd (Tait Farrier Graham Solicitors). My thanks also to Dame Vera Baird QC, Louise Silverton, Cath Easton and Project Manager Maxime Rowson.

EXECUTIVE SUMMARY

Introduction

The Sexual Violence Complainants' Advocate [SVCA] scheme engaged local solicitors to provide legal advice and support to rape complainants in Northumbria, so long as they were aged 18+ at the time of the offence. The support primarily related to complainants' Article 8 rights to privacy, although there was also scope for general information about the legal process and attendance at ABE interview. The scheme took 83 referrals from September 2018 until December 2019, and continued support until March 2020.

Methodology

This evaluation aimed to determine whether the SVCA scheme should be expanded nationally. To answer this, it had three core objectives:

- 1) Examine whether there is sufficient rationale to justify the existence of legal advocacy,
- 2) Outline the implementation of the SVCA scheme, including any areas for improvement,
- 3) Identify potential impacts of the scheme, particularly in relation to complainants' privacy rights.

Data were collected from three main sources: Online survey and semi-structured interviews with survivor-complainants (n = 592), semi-structured interviews with practitioners (n = 31), and case file analysis of police (n = 13) and SVCA (n = 86) files.

Key Findings

Is there sufficient rationale to justify the existence of legal advocacy?

A significant proportion of requests for rape complainants' private data are excessive:

- SVCA case files demonstrated poor practice around complainants' privacy rights:
 - Some police officers believed there was no need to seek consent from complainants.
 - Police 'consent' forms initially sought agreement for wide-reaching access to, and disclosure of, unlimited data from over 40 organisations.
 - Referral forms demonstrated police frustration with CPS requests for indiscriminate data collection from third parties and digital devices.
 - Interviews with CJS practitioners acknowledged that complainants' privacy rights had been ignored or side-lined before the project.
 - Complainants often did not understand what they had 'consented' to when signing police forms.
-
- 3 participants said SVCAs might be open to accusations of witness coaching if told details of the defence case that they then passed back to complainants.
 - In the absence of clear rules on this, part of the initial SVCA scope (sexual history applications) was removed from the pilot.
 - There was also confusion about whether Criminal Procedure Rules allow legal representation before a Witness Summons or Disclosure application is made to the court.

These excessive requests had a significant impact on survivor-complainants' wellbeing:

- Survivor-complainants gave examples of wide-reaching and irrelevant lines of questioning linked to excessive data requests.
 - Several told us they delayed counselling because of fear their notes would be accessed.
- Around 1 in 5 complainants who withdrew their complaint (n= 34) said data requests were important or very important in this decision.
- The CJS had significant negative impacts on the mental health of most complainants, with several commenting their CJS experience was the same or worse than the rape itself.

Legal guidance on the scope of legal advocacy could be made clearer. However, there is a clear legal basis for providing (limited) legal advocacy to rape complainants:

- The *Data Protection Act 2018* strengthens complainants' privacy rights and outlines robust procedures around private data that gives an obvious role for legal representation.
- There are clear precedents in family courts and mental capacity cases for lawyers to represent clients without appraising them of all evidence, solving the concerns about coaching.
- Complainants have a right to be informed of the general nature of the defence case, as well as any successful sexual history and/or disclosure applications.
- International comparisons suggest there is no difficulty in providing complainants with legal representation on medical records, counselling notes, and/or sexual history evidence.
- Most participants therefore argued that a sufficiently developed legal framework *does* exist and the SVCA scheme was simply a matter of proper application of well-established law.

How was the SVCA scheme implemented?

The lawyers chosen to be SVCAs were highly skilled:

- All were legally qualified solicitors with decades of experience in family / criminal law.
- They specialised in practice involving vulnerable witnesses and sensitive evidence, so they were well-equipped to understand the needs of rape complainants.
- To ensure consistency they received additional training on sexual offences, E.g. disclosure guidance, at the outset of the pilot scheme.
- The SVCAs took a positive collaborative approach because of their backgrounds in family law, although some cases required more adversarial work.



Referrals to the SVCA scheme:

- 94 referrals were made by police (n= 85) and support services (n= 9), although 11 referrals were ineligible for SVCA support (E.g. the complainant was under 18 at the time of the offence).
- The most common reason for referral was that the complainant was perceived to need advocacy on digital evidence and third-party materials (73%), closely followed by ABE support (62%).
- Of the 83 eligible referrals, the complainant engaged with the SVCA service in 47 cases, amounting to a 57% uptake of support.
 - Most of the 36 complainants who quickly disengaged did so because they decided not to proceed with the police complaint, so referrals may have been made too early.
 - Early referrals were made to give complainants general information about the CJS, but this is best provided by Independent Sexual Violence Advisors.

The SVCAs provided a range of advice and support:

- The most common support offered was advice on data requests (n=38), followed by attendance at ABE interview (n=20), and intervention on data requests (n=18).
 - Less common support involved defence disclosure applications (n=8) and VRR (n=7).
- Many requests were proportionate, so SVCAs simply helped complainants give informed consent.
- The SVCAs spent an average of 155 minutes at a cost of £725 per case.

There were inconsistent findings around inter-agency communication:

- Most police participants found the SVCAs helpful and collaborative.
- Some police interviewees felt like messengers during negotiations between the SVCAs and CPS, although case files suggested that they may have simply been included in email chains.
- A minority of police officers viewed SVCA intervention as interference.
 - Generic feedback was given to police managers, but it would be helpful to hold meetings with the whole sex offences team in order to encourage best practice and collaboration.
- SVCAs and third sector interviewees said good working relationships were developed and felt that these were essential moving forward.

What impacts did the SVCA scheme have?

Individual cases benefitted from more considered and relevant evidence requests:

- SVCAs challenged data requests in at least 22 cases (47%). Of these, 12 outcomes are known and 67% (n=8) saw the request withdrawn or amended to a reduced timeframe or scope.
- 2 of 5 VRRs were successful – there is limited data on VRRs, but this is higher than the success rate in the Victim Commissioner's Office (2020) report of complainants without SVCA support.
- In one case the SVCA's involvement delayed trial, but they increased efficiency overall.
 - Police interviewees said a judge in the delayed case had criticised the SVCA role, but the case file quotes the judge as thanking the SVCA and advising the CPS to include them earlier.

Excessive requests for third-party evidence were reduced, even when SVCAs weren't involved:

- Interview data showed overwhelming consensus that the SVCA project changed organisational cultures, significantly reducing police and CPS requests for indiscriminate evidence-gathering.
 - However, two police officers highlighted ongoing problems with excessive CPS requests.
- SVCAs worked with Northumbria Police and the PCCN to create best practice consent forms.
- This reduction in data requests was perceived as making investigations more efficient.

Complainants liked the scheme and gave very positive feedback:

- Only three service users provided direct feedback, but this was very positive.
- Interviews and the feedback forms showed increased confidence in the justice process, even when cases did not end in conviction:
 - This came from trusting someone whose sole job was to be on their side.
 - Another benefit was having someone to translate and speak 'legalese' for them.

All participants were clear that the SVCA scheme had no impact on the accused's right to a fair trial.

Looking Ahead

The positive impact of the SVCAs on the investigation and prosecution of rape cases is remarkable. It is difficult to think of another policy intervention that has so effectively changed organisational culture.

We strongly recommend that the SVCA scheme be rolled out nationally. Appendix 4 outlines the proposed structure for a national approach to legal advocacy, which can be summarised as:

- A dedicated, salaried role carried out by someone who is legally qualified and experienced at practicing law involving sensitive evidence.
 - Ideally, lawyers will be housed within existing specialist support services.
- Training for the role should incorporate knowledge and experience from police, CPS prosecutors, defence lawyers, human rights lawyers, and third sector specialist services.
- The remit should cover all serious sexual offences, including child sexual offences.
 - There should be a reduced role before ABE interview, but support on sexual history applications should be reinstated.
 - It is essential that complainants' lawyers can make submissions to the court, E.g. at case management hearings. This does not mean giving the complainant party status or making submissions before a jury at trial.
- Referrals should be on an 'opt-out' rather than 'opt-in' basis, but only at the point of requests for digital or third-party materials, or upon application to adduce sexual history evidence.



These costs are justified when recognising the economic impact of the status quo:

- Our estimated costings for a national legal advocacy scheme is £3.9 million, but this could be offset by savings on health and employment spending.
- The Home Office (2018) estimates that the annual cost of sexual offences to England and Wales is £12.2 billion, based on 2015 costings.
 - Around £9.8 billion is caused by the emotional and wellbeing consequences of both the offences and inadequate responses to those crimes.
 - International research shows that legal advocacy improves a range of outcomes E.g. criminal justice satisfaction, health, and employment outcomes.
- Conviction rates for rape are at an all-time low. Westmarland et al. (2015) estimated that each rape conviction can prevent up to 6 further offences, saving untold human costs and an estimated £197,160 per rape, even after the cost of criminal justice interventions.
 - This evaluation did not test the impact on conviction rates, but it demonstrated that investigations were focused on more relevant lines of inquiry.

ACRONYMS & GLOSSARY

Article 6 Rights	The right for a fair hearing, including a fair trial for anyone accused of a crime, outlined in the European Convention of Human Rights and introduced to UK law by the <i>Human Rights Act 1998</i> .
Article 8 Rights	The right to respect for your private and family life, home and correspondence. Outlined in the European Convention of Human Rights and introduced to UK law by the <i>Human Rights Act 1998</i> .
ABE interview	Achieving Best Evidence interview. A video recorded interview that acts as the complainant's evidence-in-chief in the event their case reaches trial.
Complainant	We use the term 'complainant' when referring solely to people who reported a sexual offence to police, however we also spoke to those who chose not to report. We therefore refer to 'victim-survivors' where discussing only participants who did not report, and 'survivor-complainants' when referring to a mixed sample of both reporters and non-reporters.
CPS	Crown Prosecution Service.
DPA 2018	Data Protection Act 2018.
ISVA	Independent Sexual Violence Advisor/Advocate. A specialist sexual violence support worker who can provide emotional and practical support, including an 'informed choices' session where victim-survivors can talk through their options in a non-judgemental and independent manner.
OIC	Officer in the Case. The police officer with primary responsibility for investigating a case and usually the complainants' main contact.
PCCN	Office of the Police and Crime Commissioner for Northumbria. Police and Crime Commissioners are elected officials who are responsible for setting the budgets and priorities of local police forces, as well as commissioning victim services. The PCC for Northumbria is Kim McGuinness.
Section 41	Section 41 of the <i>Youth Justice and Criminal Evidence Act 1999</i> . Sets out trial restrictions on evidence or questions relating to a complainant's sexual behaviour except in under certain limited circumstances. An application to include questions about sexual behaviour must be made by the defence to the court, under the rules outlined in Section 41.
Stafford Statement	A consent form that complainants are asked to sign, giving police access to third party records, such as medical or counselling records. The name comes from the ruling in <i>R (TB) v Stafford Crown Court</i> [2006] EWHC 1645.
SVCA	Sexual Violence Complainants' Advocate. Legally qualified advisor and representative of adult rape complainants, offering support on their rights around certain types of possible evidence.
VRR	Victims Right to Review. Complainants whose cases are dropped have the right to have the decision reviewed in writing, although the extent of this review depends on whether the case has reached the police or CPS stage.

1. INTRODUCTION

The Sexual Violence Complainants' Advocate [SVCA] scheme was developed by the former Police and Crime Commissioner for Northumbria [PCCN], Dame Vera Baird QC, and continued under the current PCC, Kim McGuinness, upon her election in 2019. The scheme, funded by the Home Office Violence Against Women & Girls Service Transformation Fund, responded to concerns about the disproportionate access to, and disclosure of, rape complainants' private data by offering free legal support in discreet areas of the criminal justice system [CJS]. The scheme was part of a wider package of ambitious measures on gender-based violence that have made Northumbria a hub of innovative practice.

We wish to start by acknowledging our gratitude to all who participated in this evaluation, particularly the PCCN and Northumbria Police for their openness surrounding the research. It is common for discussion of rape policy to result in defensiveness rather than accountability and a willingness to learn. While this report contains some critical data, it is in a context of transparency and Northumbria Police's commitment to ongoing improvements and best practice in responding to sexual offences.

1.1 Structure of the Evaluation

In April 2020, Phase One of our independent evaluation of the SVCA scheme comprised an international scoping exercise of advocacy models in adversarial and quasi-adversarial jurisdictions. Findings indicated that rights-based legal representation is offered in most adversarial countries (see Appendix 1), but there was limited English language research as to its efficacy. This report outlines Phase Two of the research, which analysed the SVCA pilot itself. It draws on 86 SVCA case files and 13 police MG5 forms, as well as survey and interview data from 26 practitioners and 592 survivor-complainants.

The report is divided into seven chapters. This introductory chapter outlines the scope of the SVCA role while [Chapter Two](#) delineates the methodology used in the evaluation. [Chapter Three](#) examines the rationale for providing sexual offence complainants with legal advocacy, while [Chapter Four](#) outlines the arguments against this. [Chapter Five](#) uses data from interviews and case files to summarise the SVCA implementation process, including the nature of the support provided and its associated costs. In [Chapter Six](#), we examine the impacts of the SVCA scheme, noting the significant improvement in consideration of complainants' privacy rights. Finally, we summarise the key findings and ask whether the SVCA scheme should be expanded nationally in [Chapter Seven](#).

1.2 About the SVCA Scheme

To ensure that demand for the scheme was manageable, and because of greater difficulty in challenging disclosure for children's records, the pilot was available only to rape complainants aged 18 and over at the time of the offence. The need for the scheme is outlined in Chapter Three, but can be summarised as concern about the excessive access to and disclosure of complainants' personal data, including digital downloads and third-party materials. This concern is part of a wider context of criticism about justice responses to sexual violence, with low levels of reporting, conviction rates at an all-time low, and

evidence that the justice process re-traumatises complainants. As argued in Chapter Three, this context created a situation in which the status quo was untenable, so PCCN identified points in the justice process where additional support for complainants would be particularly helpful to complainants.

The SVCA project was initially funded with three key aims:

- 1) To offer legally informed advice and support for sexual violence complainants undergoing ABE interview.
- 2) To ensure legally compliant access to the complainants' personal data, assisting them to negotiate fully informed consent and making representations on behalf of complainants where necessary to prevent irrelevant or excessive material being accessed.
- 3) To provide legal advice on sexual history applications, assisting the prosecution by ensuring they are fully appraised of the complainants' interests.

Four legally qualified SVCAs were recruited from a pool of local solicitors, each with decades of experience advising and supporting clients in sensitive cases. All four SVCAs worked in family law and had expertise in high risk domestic violence and abuse cases, as well as some experience of practicing criminal law. One SVCA had extensive and recent experience defending in criminal law. The SVCAs received training organised by the PCCN on the rationale for the project and from a senior partner in criminal law at a local firm. This covered legal procedures in rape cases, disclosure rules, and input from police and Crown Prosecution Service [CPS] managers on their respective roles and organisational cultures. The training included scenario-based discussions so that the SVCAs, police, CPS, and PCCN started the project with agreement about best practice. A multi-agency Oversight Group was set up to continue these conversations and ensured that there was regular input from third sector organisations, ISVAs, police, CPS, defence solicitors, and local counsel. A judge also attended these quarterly meetings as an independent observer.

Details of the support provided by the SVCAs is outlined in Chapter Five (particularly Section 5.2). Eighty-three referrals were taken between September 2018 and December 2019; mostly but not exclusively from cases newly reported to police during this time. Ultimately, **47 complainants used the scheme until its end in March 2020**, although SVCAs continued to assist in open cases to avoid a sudden withdrawal of support. The feedback from service users was overwhelmingly positive (see Section 6.3). The feedback from practitioners was more mixed, but remained largely positive, and all participants in the evaluation agreed there is a need for legal support for rape complainants.

2. METHODOLOGY

The evaluation aimed to determine whether the Northumbria SVCA scheme should be expanded nationally. To answer this, it had three main objectives:

- 1) Examine whether there is sufficient rationale to justify the existence of legal advocacy.
- 2) Outline the implementation of the SVCA scheme, including any areas for improvement.
- 3) Identify potential impacts of the scheme, particularly in relation to requests for the complainants' private data.

The methods used to achieve these, summarised in [Table 1](#), can be broadly divided into three sources: Survivor-complainants, practitioners, and case files.

Table 1. Overview of Data Sources

Data Source	Sample Size	Data Collection Techniques
Survivor-Complainants		
SVCA clients	3*	2 End of service feedback forms 2 Semi-structured interviews 1 Written submission
Survivors who reported to police without SVCA support	236*	5 Semi-structured interviews 233 Online survey
Survivors who did not report to police or have SVCA support	353*	1 Semi-structured interview 353 Online survey
Practitioners		
Police	19*	14 Semi-structured interviews 7 Online survey
CPS	2	2 Semi-structured interviews
SVCA's	4	4 Semi-structured interviews
Support workers (e.g. ISVAs, CEOs of victim organisations)	4	3 Semi-structured interviews 1 Written submission
Other stakeholders (Members of Oversight Group)	2	2 Semi-structured interviews
Case Files		
SVCA case files	86	All available redacted files
Police MG5 forms	13	Police selection of forms from range of support contexts (E.g. SVCA, ISVA)

*Some participants contributed via multiple routes.

2.1 Data from Survivor-Complainants

The evaluation sought the experiences of survivor-complainants via SVCA client feedback forms, semi-structured interviews, written submissions, and a national online survey. The feedback forms asked about expectations and satisfaction with the SVCA service and were sent to clients when their case closed. Responses were received from two clients, with the low response rate likely caused by the evaluation starting in February 2020 after most service users had moved on. For ease, these feedback forms were combined with the interview and survey data for analysis.

Invitations for semi-structured interview were sent to survivor-complainants by SVCAs and ISVAs, as well as via the online survey. One participant provided a written response to interview questions, but for ease this is treated as interview data because of the rich detail provided. In total, nine survivor-complainants were interviewed (three SVCA clients, four who reported to the police without any support, one who reported with ISVA support, and one who did not report to police but had ISVA support). Interviews were planned face-to-face, however because of Coronavirus they were held via phone or video conferencing. The interviews were conducted by Cath Easton, who has almost thirty years' experience as a former Sexual Offences Liaison Officer.

A national online survey gathered the opinions of victim-survivors who chose not to report, as well as the experiences of those who did. The survey was disseminated via social media and research recruitment websites, as well as four support organisations in the North East. It was national in scope to ensure a sample size large enough for robust observations, but 86 respondents were based in the North-East due to enhanced advertising in this area. We received 586 responses, of which 233 had reported to the police (including 40 third-party reports) and 353 had not reported to the police (see Appendix 2 for sample characteristics). At a 95% confidence level, this sample provides a confidence interval of 4.05 against the estimated population of 5.7m rape victim-survivors over 18 in England and Wales³. This means that where, for example, 50% of survey respondents stated X, we can be 95% confident that between 46-54% of all adult victim-survivors would say the same.

There are no robust data on the socio-demographic profile of victim-survivors, however the survey appears to under-represent some groups (only 2% of respondents were male and 11% were from minoritised ethnic groups). The Crime Survey for England and Wales estimates that 5% of adult rape victim-survivors in the last year were male and 13% were from minoritised ethnic groups (Office for National Statistics, 2020). No CSEW data are collected on gender non-binary victim-survivors, but our survey included 2.6% participants who identified as non-binary, trans or 'another gender that is not listed'. This means further evidence is required to make robust claims about intersecting inequalities. It also required that diverse experiences had to be combined into a single category, for example 'White' and 'BAME' for analysis, which critically oversimplifies the reality of racialised identities.

Interview and qualitative survey data were stored and analysed using NVivo v.12 software. Thematic analysis was conducted using open coding, identification of common themes, and further analysis to seek contra-evidence to test the validity of interpretations. Quantitative survey data were stored and analysed using SPSS v.24, with descriptive analyses and cross-tabulation for Pearson Chi-Square, Kruskal-Wallis, and Mann-Whitney U tests of difference. All assumptions for these tests were met.

³ Calculated using Crime Survey for England and Wales estimates for year ending March 2020 and applying them to 2020 estimated population sizes from the Office for National Statistics.

2.2 Data from Practitioners

The opinions of local criminal justice and third sector practitioners were collected using semi-structured interviews, or via written submissions or online survey where this was preferred. Police who made referrals to the SVCAs were invited to participate by the evaluation team, and a wider invitation was disseminated by senior officers in Northumbria Police. After this initial invitation, police management were not involved in the sampling process to protect confidentiality and enhance the validity of the findings. In total, we interviewed 14 members of Northumbria Police and received a further seven survey responses. The police sample included a range of ranks, but all had served in the rape investigation teams.

The CPS sample comprises interviews with two senior representatives: One in their capacity as a member of the Oversight Group and the other as a spokesperson for the North East CPS office. We are unable to ascertain if and how the views of individual prosecutors were collated to inform these interviews. In addition, we had nine interviews and one written response from support practitioners, including all four SVCAs, two ISVAs, and two CEOs of victim-survivor organisations. Finally, we interviewed two further members of the scheme's Oversight Group⁴. The practitioner interviews and surveys were open coded and then thematically analysed using NVivo v.12 software. Themes were checked for opposing evidence to develop robust claims.

2.3 Case Files

The files for 92 of the 94 SVCA referrals were redacted and provided by PCCN, although six of these cases had no work and therefore no file contents. Some of the remaining files were incomplete due to difficulties retrieving paper files under coronavirus restrictions, but most were extensive and featured the SVCA's notes on the case, referral and case closure forms, and written correspondence between the SVCA and complainant, as well as Northumbria Police. **In total, 86 case files were analysed using frequency counts of theoretically relevant factors**, for example the activities undertaken by SVCAs, as well as a broad thematic analysis of the qualitative data.

Northumbria police also provided 13 redacted MG5 forms for a variety of cases. Six of these cases involved SVCA support, five had ISVA support, and two had neither SVCA nor ISVA support. The forms were analysed using frequency counts for types of evidence, e.g. references to medical or phone records, although the nature of MG5 forms meant that data were often incomplete or ambiguous.

2.4 Impact of Coronavirus & Limitations of the Research

Coronavirus impacted the methodology in unavoidable ways. For example, we initially planned to run focus groups in practitioners' lunch hours, but these became one-to-one interviews via phone or video conferencing once practitioners began remote working. Covid-19 also placed new burdens on all participants, meaning there were fewer practitioners and survivor-complainants with the capacity to participate in the fieldwork, although offering flexible routes to participation mitigated this.

⁴ We spoke to eight further Group members as part of their practitioner roles. To preserve anonymity, we have not stated which practitioners were members of the Oversight Group unless necessary for context.

The extra workload for the CPS during Coronavirus exacerbated existing barriers to data collection. From the start of the evaluation, CPS concerns about the research caused delays, meaning the project was only approved in February 2020. This limited the number of SVCA clients who could be invited to participate, as some cases had been closed for over 12 months by that point. Our CPS contact was also unresponsive to repeated requests for data that had previously been agreed. For example, the initial approval to access CPS case files was rescinded in April 2020, and contact details for defence solicitors in the SVCA cases were not provided as arranged.

The late engagement of an evaluation team restricted the ability to comment on equalities, because data on the complainant's ethnicity and (dis)ability was requested retroactively rather than as part of the contemporaneous data collection in cases. We are therefore unable to comment on differential uptake and/or impact for complainants based on ethnicity or (dis)ability.

The aims and objectives of the evaluation were limited in focus. For example, it was agreed with PCCN that the research would not assess case outcomes, because the 83 eligible referrals to the SVCAs represented only around 6% of similar cases reported to Northumbria police during that period and the Assistant Chief Constable did not feel this allowed for robust observations. The core rationale for SVCAs related to process rights and complainant experience, so the exclusion of outcome data was acceptable.

Finally, the evaluation did not manage to recruit judiciary⁵ or trial counsel. However, the police and CPS must consider the defendants' rights and are able to comment on fair trial concerns. We also considered the Bar Association's submission to the Gillen Review on sexual offences in Northern Ireland, to identify potential areas of concern from defence counsel. We therefore remained able to draw robust conclusions on the potential impact of SVCAs on defendants' interests.

⁵ The SVCA Oversight Group included a judge, but their remit was as an observer rather than advisor.

3. THE RATIONALE FOR LEGAL ADVOCACY

The SVCA scheme was developed in response to concerns about rape investigations breaching complainants' privacy rights and contributing to a sense of dissatisfaction with the criminal justice system. **All the interviewed practitioners and stakeholders agreed that there was indeed a problem with the extent of access requests for complainants' private data:**

"[The need for the scheme] is to protect the human rights of the complainants and avoid unnecessary invasion of their privacy due to accessing their third-party material without sound reason and to make sure complainants know the reason and gave authority for access with guidance. In the past this hasn't been the case and trials / charging decisions have collapsed incorrectly due to disclosing personal details." (Police Officer 5)

"I think a lot of things are asked for when we, the police in general in the past, not so much now, they just kind of hand it over without questioning it and I don't think that's, that's sometimes the best way. 'Cos there doesn't really seem to be any, there's not any of that for the suspect, let's just say. So I think, you know, we need to have some sort of, some form of protection for the complainant as well." (Police Officer 11)

The latter argument that the accused does not have equivalent searches is complicated. Police can and do ask the suspect to hand over their phone consensually. However, **Rumney and McPhee (2020) found that complainants' phones were twice as likely to be accessed than those of the accused and were unable to explain this disparity.** This was reflected in our data from survivor-complainants, for example two survey respondents (and one interviewee) said their cases were dropped for lack of evidence after the accused denied access to his digital data:

"[Defendant refused consent for his phone to be examined]. OIC told me they would have to do a data request which would be very unlikely to be successful as they only really happen for terrorism cases to check his phone now as the activity was done online? Either way never heard about this, so assume it was refused" (040⁶, reported 2018, CPS discontinued)

"Due to data protection on messages on social media, [they] were not able to be retrieved because the accused wouldn't give his permission." (088, reported 2020, police NFA)

Another survey of almost 500 survivor-complainants found similar issues, with many respondents saying they had provided their phone, but the accused had not (Victims Commissioner, 2020). Police can seize computerised information under the *Police and Criminal Evidence Act 1984* if a suspect does not offer their devices consensually. Formal seizure brings additional safeguards on the subsequent use of data (see Association of Chief Police Officers' [ACPO] 2012 and Attorney General's 2013 guidance), and this may be why there was perceived to be a difference in levels of scrutiny on the complainant and accused.

⁶ Survivor-complainant survey responses are cited using the last three digits of their unique identifiers.

For one police interviewee, the extensive requests for access to complainants' data had implications for staff wellbeing, and they recalled a colleague leaving the Rape Investigation Team because of this:

"I could talk all day about third-party material, and it is the real bone of contention. It's one of the things that has given me sleepless nights over the years, you know. It has... And I had a rape team investigator say to me on one occasion, or a former rape team investigator, say to me, 'I had to like leave the rape team because of what I was being asked to do, in relation to victims, I couldn't do it'. And I think, you know, that, for me just spoke volumes. And lots of people were expressing their concerns, including me, but when that officer said that to me, I kind of thought, d'you know what, there's something sadly wrong here." (Police Manager 1)

It is important to recognise that a complainants' personal data can strengthen a case with corroborative evidence. For example, Rumney and McPhee's (2020) analysis showed that digital evidence assisted the Crown in 36% of the cases where it was requested, compared with assisting the defence 31% of the time. Indeed, several appeal decisions show the usefulness of digital evidence in securing convictions for sexual offences⁷, while Smith (2018) observed counselling records being used by the defence to agree that a complainant had been raped, thereby avoiding cross-examination on this matter. Two complainants in our research also expressed frustration that police were uninterested in digital evidence they felt strengthened their case. **Additionally, where the data being requested contain evidence that supports the defence, this can be deeply probative and relevant to fair trial**, as demonstrated in a series of high-profile disclosure failures in 2017/18. Challenges arise, however, when access to data is 'blanket' or used in ways that undermine complainants based on myths about sexual violence (Temkin & Krahé, 2008).

3.1 Lack of Informed Consent for Complainants' Personal Data

Browning (2011) warned of the potential dangers to privacy rights when 'digging for digital dirt', noting that while social media presents opportunities to corroborate and/or discredit key facts, it should not be accessed lightly. Despite the need for caution, a report by Her Majesty's CPS Inspectorate [HMCPSI] (2019) found that "some prosecutors are still asking for a full download of a complainant's or suspect's phone" (para. 5.52). This is problematic because **the Data Protection Act [DPA] 2018 strengthens the rights of data subjects, such as complainants**, and sets out six principles for processing personal data, including that it must be 'lawful and fair', the purpose must be 'specific, explicit and legitimate', and the personal data being processed must be 'fair and not excessive'⁸ (Home Office, 2018).

⁷ *R v Hart* [2019] EWCA Crim 270 (offender contacting his victim via phone calls and texts led to her reporting sexual abuse to the police). *R v Lewis* [2019] EWCA Crim 710; *R v Merchant* [2018] EWCA Crim 2606; *R v JWW* [2019] EWCA Crim 1273 (electronic communications evidence providing evidence that assisted the prosecution). *R v Davies* [2018] EWCA Crim 2566 (electronic communications evidence providing evidence that assisted the prosecution in a case of historic sexual offending). Cited from Rumney & McPhee (2020).

⁸ Also relevant is the right not to be subject to automated decision-making (*DPA 2018*, s.49), which has potential implications for the use of AI software to download and analyse a complainants' whole phone.



The legal basis for processing a complainant's data is usually consent, which must be freely given with a finite remit, for example to view text messages sent to a particular person and between specified dates. Research from the Victims Commissioner (2020) found that only 33% of complainants felt police had clearly explained the reason for data access requests, and only 23% recalled being clearly told how the requests would be kept to relevant and necessary enquiries. Similarly, our interview and survey data suggested that **complainants without legal advocacy were not routinely giving informed consent for access to their private data**. For example, complainants said:

"I was made to sign a consent form saying I gave the police and CPS full access to my physical and mental health medical records, including content of therapy sessions" (296, reported 2018, CPS discontinued)

"I did not think the pressure put on me surrounding phone and being asked about my sexual history and preference of race in partners were at all appropriate during my video interview." (592, reported 2019, case ongoing)

These quotes reflect a trend that when talking about giving consent to access their data, complainants repeatedly used phrases such as 'made to', 'had to' and 'pressure', suggesting a perceived lack of choice. Indeed, several interviewees observed that the alternative to giving access was accepting that their case would be dropped. This meant that their 'consent' cannot be described as freely given:

"I also knew that, again, from my own experiences, and from talking to others that if I refused data, that my case would be dropped." (Emma, Survivor-Complainant)

"I think a lot of people are aware that actually, if they want the investigation to go anywhere, then that's just what they have to do. And I think that's the thing is, it's so ingrained." (Support Worker 1)

These are legitimate concerns, as HMCPSI (2019) found that refusal of personal information was part of the decision to NFA in almost 18% of cases. Elsewhere, **our survey suggested that complainants agree to the police accessing their private data without fully understanding the consequences**:

"Have no idea what I signed away giving my phone in to the police" (504, reported 2017, case ongoing)

"I wish they told me that signing a form to give the police access to my phone meant they would be examining my consensual sexual relationships and sexual history. I didn't realize my relationships with my ex's, how many friends I have, how often I go out, is relevant to being raped by a school teacher." (752, reported 2018, police NFA)

The police and practitioner interviews reflected these concerns:

“We weren't getting, not getting informed consent, and we were just asking people to sign bits of paper where they don't really know what we're asking for, and data protection is obviously quite a big thing and we shouldn't really be asking people for consent for things that they don't understand.” (Police Officer 13)

“A lot of the time that Stafford statement's [consent form] been put in front of them sort of immediately after an ABE and you know, I guess, you're exhausted, you're upset and then you've got, and I'd not seen the Stafford statement before but it's just a long list of sort of organisations and you know, that sort of thing that you're then consenting for them to go and look at and, so it does seem, you know, it seems quite shocking that that's, that's the way that it's done.” (Support Worker 1)

The latter quote highlights the importance of timing requests for consent, as when it is done as part of the ABE interview there is a heightened risk of poorly informed agreement. These quotes also highlight the over-reaching nature of Northumbria Police's 'Stafford Statement' at the time of the research (see Appendix 3). The form involved broad agreement for the police or prosecution to access Local Authority records, school and education records, medical and psychiatric records, counselling records, and prison or probation records. This was justified by a broad statement of “I have been told that the purpose of the access is to identify anything that might have a bearing upon the prosecution and any trial that might follow”. On the back of the form, there was a list of 45 organisations that “may be identified”, including indiscriminate terms such as “any housing departments or homeless teams”.

A 2020 report by the Information Commissioner's Office [ICO] criticised national police and CPS practices around complainants' personal data. The report identified a number of barriers to meaningful consent, for example mobile phones are likely to hold information about many individuals and it is not feasible to obtain consent from each of them, but the owner of the phone cannot provide consent on their behalf (ICO, 2020b). This means that as well as attempts to gain consent from the complainant, the requested data must be justifiable on the legal basis of being a “strict necessity for the law enforcement purpose”, which means that police “must fully consider the challenge of the high threshold, i.e. ‘strictly necessary’ is more than ‘necessary’” (ICO, 2020b, p.37).

One police interviewee argued that there had not been sufficiently serious consideration of this necessity or the data rights of complainants when requesting and accessing personal information:

“I would love to see a document where somebody who has looked at third-party material has actually considered the Article 8 rights of the victim. ‘Cos I don't think you'll find that anywhere.” (Police Manager 1)

Indeed, **Case 18 included emails from the OIC that suggested the police were accessing extensive personal information, but when asked about the complainant's consent, the officer did not understand why it would be needed.** The emails said:

“In terms of the 3rd party material: I have obtained as much as I need from her phone. I have just received her Local Authority Records from [Council] and I am awaiting her

medical records and school records. Once I have reviewed this material, I will be able to go to the CPS for a decision. Unfortunately, as you are no doubt aware, the CPS will not entertain any files for charging decision unless this material is reviewed without exception regardless of the circumstances.” (Case 18, Case files)

“We have never asked for anything like that [consent for 3rd party material] in the past... If we don’t get 3rd Party information the CPS won’t charge any cases.” (Case 18, Case files)

This officer may be confused because there are some limited provisions to access materials without the complainant’s consent (ICO, 2020a; see also CPS, 2018, guidance on child victims). However, their uncertainty about third-party material reflects the findings of the HMCPSI’s (2019) report, where 52 of 115 prosecutors requested training on the meaning of ‘reasonable lines of enquiry’ without being prompted. The same report found that 40% of CPS requests for police to gather additional digital material (and 30% of other additional material) in admin finalised cases were not ‘necessary or proportionate’. In charged cases, the comparable figures were 28% of additional digital material requests and 18% of other material requests. Finally, in discontinued cases, the comparable figures were 28% (digital material) and 24% (other material, mostly around mental health and counselling). To put this in context, the number of cases that were deemed to have insufficient requests for private data ranged from 2.3% to 5.8% across the case types (HMCPSI, 2019).

In light of the HMCPSI report, it is notable that **both interviewees from the CPS acknowledged a challenge with access to, and disclosure of, third-party materials:**

“Questions around private information, sensitive information, whether held by third parties or maybe on smartphones, and access by the police and prosecutors to that information with it being potentially disclosed. Those are legitimate questions to ask, and ones which we should continue to challenge ourselves on. Because I don't think we always handle it very well.” (CPS Manager 2)

“There is a gap in that a lot of victims do not know the legal side. So why are they being asked about previous sexual history and stuff they don't understand? And it's not always explained to them what the legal basis for that is. They don't understand that they can challenge that... I don't think they necessarily have sufficient support on that legal basis.” (CPS Manager 1)

3.2 Requests for Private Data were Routinely Excessive

The interviews also highlighted that requests for digital evidence and third-party materials were excessive before the SVCA pilot. For example, one senior police manager acknowledged that:

“Some of our members of staff undoubtedly were reporting at the time that they felt too high a level of disclosure was taking place, too much stuff was being gathered.” (Police Manager 2)

This is because **police felt that prosecutors expected them to collect data indiscriminately:**

“At the time when the scheme was introduced, we were having a lot of problems with the CPS asking for a lot of third-party and an unreasonable amount of third-party which was undermining our victims quite heavily.” (Police Officer 13)

“When I started on the team, there was a mentality of sort of get everything... we look into the personal life a little bit too much. If somebody possibly had a back-, like a bad childhood or was involved with social services when they're younger, doesn't mean to say they can't be a victim of a sexual offence. And if it was, if they were sort of specific around, 'we need to look for this and this and this', then yes I understand. But when it's sort of a catch all, throw a net and catch everything we can I think, I think that's not the best for the complainants and detracts from the investigation.” (Police Officer 18)

In Case 27, an email from the OIC highlighted contradictions between formal guidance and real-world practice on requests for, and disclosure of, personal data:

“The Attorney General has said: Speculative searching of a person's 3rd party material 'shouldn't be encouraged' and 'it is entirely proper and reasonable to search voluminous material obtained in the investigation (such as digital media) via the use of key word searches or other reasoned strategies. An invitation to the defence is proper in order to establish any key words or strategies they might wish us to use'. This is NOT being done. The CPS routinely ask us to obtain peoples 3rd party, medical, counselling and phone records regardless of whether a legitimate line of enquiry exists or not. Further to that they insist that we check the voluminous data in its entirety. This is usually PRE-CHARGE.” (Case 27, Case Files, emphasis in original)

This is significant given that case law reaffirms the need to justify the requests for broad-sweeping materials and the use of such evidence at trial. Two examples of such rulings state that:

“The trial process is not well serviced if the defence are permitted to make general and unspecified allegations and then seek far-reaching disclosure in the hope that material may turn up to make them good.” (*R v H and C* [2003] UKHL 3, para.35)

“It is by no means clear that...a bare statement that a complainant had suffered from severe depression as a result of the appellant's conduct would have provided legitimate ground for exploring her mental health in evidence. We are unaware of any automatic association between depression and lack of credibility.” (*Branney v HM Advocate* [2014] HCLAC 78, para.22)

While uncomfortable with CPS blanket requests, police interviewees felt poorly equipped to challenge them for the same reason that complainants did, namely that a case would be dropped if the demands were not met:

“At the time our hands were tied, because what we were getting from CPS was ‘well, we can’t go ahead and give you charging advice until we’ve got all of this material and everything’s been satisfied’... All of a sudden what we were doing actually was looking for information. Fishing for information, in my view, erm fishing for information that actually would demonstrate that the victim was a liar. And that was the real, real concern about it” (Police Manager 1)

The over-reach in these so-called “fishing expeditions” (Police Officer 13) was noted in our survey:

“They asked for my entire medical history, even though I only dated my rapist for 5 weeks - and said that they were asking for my complete records because the CPS will demand to see them, which sounds like nonsense given that the CPS are overwhelmed and irrelevant information will only add to their workload. They “let slip” that any sign of drug abuse or depression in my medical history could influence the CPS’s decision. Can addicts and the mentally ill not be raped?” (772, reported 2019, case ongoing)

Similar examples of excessive gathering of personal information have been compiled elsewhere, demonstrating that this is a national problem. For example, Harriet Harman (Hansard, 2019), Chair of the Human Rights Select Committee, spoke about a constituent who was sexually assaulted by a stranger and was asked for full access to her phone and social media, photos back to 2011, notes, texts, emails, and full history of 128 WhatsApp conversations stretching back five years. In another case outlined by the London Victims Commissioner, Claire Waxman (The Independent, 09 August 2018), it was implied that the complainant had consented because she called specialist support helplines in a timeframe that suggested she “wasn’t that deeply affected by the attack as she was able to make calls”.

These concerns were further reflected in the Victims Commissioner (2020) survey, where complainants recalled being surprised by the extent of the data they had supposedly consented to provide. For example, one respondent who reported to police in 2019 stated that they were “happy to provide [their] mobile phone for [police] to download all the vile messages that supported my assaults”. The respondent therefore agreed to provide all messages between themselves and the accused (an ex-partner), but found that the police subsequently “actually downloaded all of my phone. Every messages [sic], google search and all my privacy was gone” (Survivor, cited in Victims Commissioner, 2020, p.27). It was also found that phone data sometimes led to the use of rape myths and trivialisation of the alleged offences:

“The OIC said my partner was in his messages after the rape ‘a bit cheeky’ - and she said he was in love with me and didn’t realise what he had done wrong - sounding like she sympathised with him. She ignored other relevant messages sent before the incident.” (Survivor, cited in Victims Commissioner, 2020, p.28)

An HMCPSI (2019) report found that despite the apparently unreasonable lines of enquiry already being sought, 71% rape prosecutors and 78% CPS managers thought requests for digital devices and third-party evidence were increasing since criticism about disclosure failures in 2018. It is unclear how

data requests have been affected by subsequent Court of Appeal judgements, but the upward trend has significant implications in light of *R v E* [2018] EWCA Crim 2426 and *R v McPartland and another* [2019] EWCA Crim 1782, where judges ruled that digital devices are not automatically relevant to sexual offences. Furthermore, the ruling in *Bater-James & Mohammed v R* [2020] EWCA Crim 790 stated that:

“It is not a ‘reasonable’ line of inquiry if the investigator pursues fanciful or inherently speculative researches...There is no presumption that a complainant’s mobile telephone or other devices should be inspected, retained or downloaded.” (para.70, 78)

The *Bater-James* decision and the ICO’s (2020b) report led to the withdrawal of a national form that had been introduced in February 2019 to promote consistency in requests for ‘consent’ to phone downloads. It is notable, however, that existing case law (*R v E* [2018]; *R v McPartland and another* [2019]) had not impacted on practice according to the data above or the case file analysis.

3.3 The Impact of Privacy Concerns on Survivor-Complainants

Another rationale for the SVCA pilot was that privacy concerns might reduce the willingness of victim-survivors to engage with the criminal justice system, and impact on mental health outcomes when they do. The former Chair of the National Police Chief’s Council [NPCC], Sara Thornton, argued that “we cannot allow people to be put off reporting to us because they fear intrusion into their lives and private information that’s not relevant to the crime being shared in court” (NPCC, 2018). This was reflected in our interviews with support workers, who stated that:

“I have had conversations with people in that sort of they are, they don't want to give up their phone and that sort of thing. And I know that that's been a bit of a barrier [to reporting].” (Support Worker 1)

The survey of survivor-complainants found significant differences between respondents who reported to police and those who did not, in terms of their beliefs about the intrusive nature of rape investigations (see [Table 2](#)). It is notable that **both groups tended to hold negative views of the criminal justice process, with most respondents believing investigations to be intrusive.** These are mirrored by findings from the Victims Commissioner (2020), where only 14% of victim-survivors agreed that justice can be obtained by reporting to police.

Even so, the non-reporting group were significantly more likely to hold negative views of the criminal justice system than the reporting group. These data cannot speak to cause and effect, meaning that we cannot determine whether those who reported were slightly more favourable because their experience led to improved opinions, or whether they reported because they had higher opinions of the justice system in the first place. Qualitative data from the survey are therefore helpful in understanding whether privacy concerns might impact on reporting decisions, as well as to understand the satisfaction of reporting complainants.

Table 2. Beliefs about rape investigations, by reporting decision

Statement	% Agreed (Report)	% Agreed (No Report)	Pearson Chi-Square (Difference)
Police investigations of sexual violence tend to be invasive	84%	94%	$\chi^2(1, n=463) = 11.82, p = .001$
Sexual violence victims are routinely expected to give up their phones and personal information	83%	95%	$\chi^2(1, n=429) = 18.72, p = .000$
Police investigations of sexual violence are fair and proportionate overall	28%	11%	$\chi^2(1, n=392) = 18.34, p = .000$
The process of investigating sexual violence is as sensitive as possible*	38%	26%	$\chi^2(1, n=418) = 7.10, p = .008$
Reporting sexual violence to the police means having your private life scrutinised	87%	96%	$\chi^2(1, n=514) = 16.68, p = .000$
People who report sexual violence to the police can expect to have their medical and sexual history discussed at court*	91%	95%	$\chi^2(1, n=476) = 3.89, p = .049$

* When excluding those whose case ended in conviction, the difference stopped being statistically significant at the .05 threshold.

The reasons for reporting or not reporting are complex, but most non-reporting victim-survivors were influenced by fear of not being believed and wanting to maintain privacy about what happened (81% and 84% said respectively that these were important or very important factors). **Several victim-survivors talked about the fear of intrusive investigations:**

"I have had mental health issues since I was 13 so I definitely didn't think I would be believed. I thought they would character assassinate me." (377, did not report)

"I would have to hand my phone over to the police. I had minimal contact with my abuser - maybe 2 texts - but I was promiscuous with others and knew that I would probably be questioned about that and judged for it." (884, did not report)

"I did not want my privacy invaded with the investigation of my health records because I feared my abuser learning about my personal business with regards mental health problems. I feared my mental health issues would be used against me or that the police would consider me insane and not take me seriously..." (910, did not report)

Furthermore, the survey showed that of complainants who reported to police but later withdrew (n=34), almost one fifth said police requests for private data were an important or very important factor in this decision. This is a small sample and privacy was only one of several factors (e.g. 79% said

that not feeling believed was important and 64% were influenced by a fear of trial). However, it is likely that data requests compound feelings of not being believed and worries about cross-examination:

“The first responders were good, however after that the whole process really stressed me out (having my medical records accessed and phone gone through), this had a negative impact on my mental health and felt like a massive intrusion... The impact on my mental health and being signed off work - I almost lost my job... The criminal justice process caused me more harm than good.” (225, reported 2019, withdrew)

“A lot of [complainants] just don't want their medical records [inaudible]... It's got nothing to do with the offence that we're investigating, so some of them will have doubts about continuing with the investigation.” (Police Officer 19)

Interestingly, Rumney and McPhee (2020) did not find any such impact, with qualitative evidence (n=33) suggesting that data requests were not a cause of withdrawals and quantitative evidence suggesting there was actually a lower rate of withdrawal in the cases where phone data was accessed (21.2% withdrawal compared with 32% in other cases).

3.3.1 The Negative Impact on Survivor-Complainants' Emotional and Mental Health

Finally, the survey suggested that requests for data had a negative impact on the complainants' experience of the criminal justice system. For example, respondents without SVCA support recalled their privacy concerns during the investigation:

“It just lacks sensitivity, they'd analyse in depth my whole personal life - phone, education records, medical records, mental health records - but would never explain why, the whole time it felt like I was the one under investigation for “false allegations” as opposed to being the victim.” (982, reported 2018, police NFA)

“It's a horrible experience to give up your phone, personal messages, invasive questions and complete lack of empathy from some officers.” (386, third-party report, case ongoing)

“My school, medical records where [sic] all collected, along with my phone, and reviewed. You felt your privacy was completely invaded and he was still out living his life. It feels very unfair and lonely.” (925, reported 2017, found guilty at retrial)

This last quote was from a complainant whose case ended in conviction, yet the negative impact was described in present tense; highlighting that issues of access and disclosure of third-party materials are about procedural justice regardless of the case outcome. Indeed, the mental health and **wellbeing impact of the criminal justice process was devastating for survivor-complainants**, with many commenting that it compounded existing struggles:

“My court experience was as bad as the actual sexual assault! I'm living with complex PTSD as a result of the double trauma - the sexual assault and the crown court trial!” (393, reported 2015, acquittal at trial in 2018)



"After 8 months I find that every interaction I have with the police induces nightmares, flashbacks, and general anxiety. I think this is not only because I am reminded that I was a victim of rape, but also I am reminded that justice lies in the hands of people I truly believe are not on my side." (772, reported 2019, case ongoing)

Despite the additional challenges, some **survey respondents said they avoided counselling because of fear that the notes would be accessed.** This also arose in the Victims Commissioner (2020) survey, where one complainant described avoiding help because her medical records could be requested:

"I have a history of mental illness and being told that I would have to give up my medical records was a huge part of why I was unsure about going ahead with the investigation. Before it was closed, I had avoided seeking help earlier on (i.e. therapy) because I was scared about this being used against me in a trial." (Survivor, cited in Victims Commissioner, 2020, p.28)

These findings reflect the analysis of Keane and Convery (2020), who drew on *Mraovic v Croatia* [2020] ECHR 323 to argue that criminal proceedings for sexual offences should be organised so that they do not increase the suffering of the complainant or discourage participation, and so as "not to unjustifiably imperil the life, liberty or security of witnesses" (*Mraovic v Croatia*, para.46). **The provision of separate legal representation is known to increase satisfaction with the justice system and improve wellbeing outcomes** (E.g. Bacik et al., 1998; Laxminarayan et al., 2012; Iliadis, 2019). This is likely because of the additional confidence given when a legally qualified supporter can explain proceedings and advocate from inside the legal process, for example a quote from one victim-survivor highlights the inadequacy of the CPS in putting complainants at ease:

"The experience [of court] was traumatising. I could see the public gallery and the friends of the perpetrator glared at me whilst I provided my evidence. The cross-examination from the defence lawyer was ruthless and I felt ridiculed and shamed...**I felt unsupported by the prosecution lawyer. I did not know his name or how he was going to advocate for me.** I had only met him 10 minutes before going into court. The whole experience is traumatising. I completely understand why people do not report rape to the police." (Survivor, cited in Victims Commissioner, 2020 p.48, emphasis added)

The national picture is therefore one of a system in desperate need of reform. **Non-action or maintaining the status quo are not feasible options**, particularly in light of enhanced privacy rights under the *DPA 2018* and the potential economic losses (let alone untold human costs) of having a criminal justice process that is so traumatising for complainants (see Loya, 2015). As one senior police officer put it:

"It is a big change and I do understand that people are nervous about it. That doesn't mean that it's wrong. It doesn't mean that we shouldn't change. It doesn't mean that we shouldn't adapt." (Police Manager 1)

4. THE RATIONALE AGAINST LEGAL ADVOCACY

4.1 Are SVCAs the Best Solution?

While there was universal recognition that requests for personal material were sometimes irrelevant and disproportionate, **some respondents felt that sufficient mechanisms were in place** to address this:

“The issues being raised...were quite correct. But, but actually, I think the mechanisms to challenge those really sat in judicial hands, and also in the prosecution hands, because actually we should be challenging the admission of that evidence, you know, except in circumstances where it's, where it's justified... I wasn't convinced that the SVCAs were the right solution to that problem, 'cos I felt they built in an extra layer of litigation.” (CPS Manager 2)

They placed the onus on addressing judicial passivity about complainants' interests:

“Judges need to be stronger in a lot of trials... they just let anything through, and I think that's the problem.” (Police Officer 11)

“If judges apply the [relevant] provisions properly, then actually that balance between fair trial and you know, being unfair to the complainant, can properly be handled. That is, that's a matter for judges to do their job properly, for prosecutors to do their job properly, and for investigators to do their job properly.” (CPS Manager 2)

Recent statistics demonstrate that most cases do not reach the courts (Home Office, 2020). While it is useful to encourage more robust consideration of such issues by trial judges, this is an inefficient solution to a problem that arises in the early stages of police investigation; using valuable resources to gather information for a judge to then rule in or out several months later. This was addressed in *M v Director of Legal Aid Casework* [2014] EWHC Admin 1354, when **Coulson J expressed concern that unnecessary CPS requests were placing an undue burden on the courts:**

“It is becoming increasingly common for the CPS to issue witness summonses of this kind, seeing medical and other such records concerning a complainant in an assault or sex case. In my experience, these applications are often made somewhat lazily, in the belief that, if there are some records which may have some relevance, the CPS is fulfilling its obligations to the defendant, and to the administration of justice, by issuing the witness summons and then putting the burden of resolving issues raised onto others (namely the defendant, the complainant and the judge). In my view, considerably greater analysis is required before any such summons is issued. As a general rule it is not good enough, as this witness summons seeks to do, merely to require the documents on the general basis that they might undermine the prosecution or help the defence.” (para. 3.12)



Data from Freedom of Information [FOI] requests across twelve police forces suggest that the examination of mobile phones adds an average 3.5 months to an investigation, with the Metropolitan Police average rising to six months (Big Brother Watch, 2019). In addition, **the breach of privacy occurs at the point of disproportionate and unjustified access to private data, rather than at the point of disclosure to the defence.** For the courts to be responsible for all adjudication of data requests, judges would have to be involved in police investigations and this has significant cost and resource implications.

The suggestion that prosecutors can and should challenge defence requests for third-party materials was reflected in police interviews:

“Our problem is the CPS very rarely challenge what the defence are asking for. The defence generally ask for it and then the CPS send it to us so it's then our responsibility to decide whether we think that's reasonable or not.” (Police Officer 13)

“I think the learning is what can we draw out that we should be doing better or differently, as opposed to go down the road where we say, well, we make victims require a lawyer in the future... The police and then the CPS should be the ones arguing about whether it's proportionate, and challenging the court and the defence if they're doing, making requests that are disproportionate.” (Police Manager 2)

These sentiments reflect arguments from Abbe Smith (2016) that addressing the problems with rape cases should focus on “feckless or overly confident prosecutors”. **The suggestion that the police and CPS can fully address any data issues not only ignores the extensive evidence that they do not, but also misrepresents the role of the CPS.** A prosecutor must ultimately prioritise the protection of fair trial when balancing the interests of the public, complainant, and the accused (Raitt, 2013). This is often interpreted as requiring access to, and disclosure of, personal data; particularly under new guidelines from the Attorney General’s Office (2020) that set out a ‘rebuttable presumption’ of disclosure to the defence. For this reason, Schenk & Shakes (2016) argue that the extent to which prosecution and complainant interests align tends to be over-estimated.

Iliadis, Smith and Doak (*forthcoming*) highlight the incompatibility of the prosecutorial role with sufficient protection of complainants’ rights, arguing that continued pressure on the CPS to better consider complainants’ interests takes attention away from prosecutors’ duties to the public and defendants. Indeed, Braun (2019) delineated the many areas of contention between the interests of complainants and the CPS, particularly as police and prosecutors do not know what information the records being sought contain and so cannot make full assessments of the potential significance or damage to privacy (see also Lord Glennie’s comments in *WF Petitioner* [2016]). Keane and Convery (2020) outlined Scottish case law⁹ that demonstrates the Crown cannot be relied upon to effectively represent complainants’ interests on previous sexual behaviour. Finally, there is no professional privilege between the Crown and the complainant, meaning that in some circumstances the complainant may be unwilling to disclose the implications of certain evidence on their privacy.

⁹ *LL v HMA* [2018] H CJAC 35, (para. 12 & 22); *MacDonald v HMA* [2020] H CJAC 21; *RN v HMA* [2020] H CJAC 3; *HMA v JG* [2019] H CJ 71

Some police officers displayed frustration at feeling the responsibility was therefore placed on them to negotiate with the CPS about complainants' interests. For example:

"We would then put our views forward, won't necessarily go out and do it straight away we'd put our views forward, but then when you've got a lawyer who's at CPS who's arguing with a Detective from the police, ultimately it's the CPS's case, so if they think that they need it, we just have to do it." (Police Officer 13)

"Some people have chaotic lives and they're gonna have records that aren't great or records that have, don't shown [sic] that they've had the best lives in the world or that they're, you know, not in control of their lives, but it doesn't mean that they can't be rape victims. But we've then gotta be showing that we're not hiding anything as well. So we're, I think we, we as police officers, we're kind of stuck between a rock and a hard place, really." (Police Officer 11)

Indeed, the practitioner interviews revealed a desire for the SVCA role to take on the burden of negotiating the competing interests at stake. This is reflected in the CPS' (2020) own guidance, which states that where records are sought via a witness summons, the complainant "will be entitled to have his/her views put before the court" (see also the Judicial Protocol, 2013, para.47). While this can be done by the prosecutor on the complainant's behalf or someone else acting for the complainant, it is noted **that the CPS may not be fully aware of the content of the records and so "the prosecutor would not usually be able to represent the interests of the victim or witness"** (CPS, 2020).

4.2 Could SVCAs be Accused of Witness Coaching?

Three criminal justice managers were concerned about whether the defence could accuse SVCAs of witness coaching, as they argued that SVCAs would need to be appraised of the defence case to advise the complainant:

"I don't know how on earth can you make a proportionate disclosure decision without knowing what the defendant has said? What the defence statement is... Is it appropriate for [the SVCA] to know those things? And if they do know them, and they're going to tell the victim, that's definitely not appropriate. And if they don't know them, then how can they give that legal opinion?" (Police Manager 2)

"We would receive challenges from SVCAs which, which [prosecutors] felt were unsatisfactory because they just wouldn't give them the information they wanted. Obviously, there was a lot of stuff around social media, which gets involved in all of this. And as much as people can say, 'well, that's not relevant' or, you know, 'she didn't mean this or that or the other', it is what it is. But the lack of being able to explain to an SVCA the reasons why I'm asking for something, I find, I, it's how you could do that. I can do that with [the OIC]." (CPS Manager 1)



The *Criminal Procedure Rules* (last updated, 2020) state that **complainants must be informed of any decision to introduce evidence of their sexual behaviour and/or bad character, as well as any applications for disclosure of sensitive materials**. This is explained in *Speaking to Witnesses* (CPS, 2018), where it is noted that prosecutors may also inform witnesses about what to expect during cross-examination. However, these rules state that “it is important that prosecutors should not provide the detail of, discuss, or speculate upon the specific questions a witness is likely to face or discuss with them how to answer the questions” (para. 3.4(d)). Instead, these **conversations must be limited to the general nature of the defence case without discussing their factual basis**. The risks of witness coaching are outlined in *R v Momodou* [2005] EWCA Crim 177:

“Even if the training takes place one-to-one with someone completely remote from the facts of the case itself, the witness may come, even unconsciously, to appreciate which aspects of his evidence are perhaps not quite consistent with what others are saying, or indeed not quite what is required of him. An honest witness may alter the emphasis of his evidence to accommodate what he thinks may be a different, more accurate, or simply better remembered perception of events...” (para. 61)

The fear was that the SVCAs would be duty-bound to inform their client of all information they received, thereby meaning that the CPS would indirectly disclose the defence case to the complainant. To address this, prosecutors restricted the information that they provided to the SVCAs, even when this caused difficulty with the consent negotiations:

“Well, I think there is, again, there is a legitimate question about what material, what information, sorry, we provide to complainants, about material that is being disclosed to the defence. And there have been some improvements in that area but that continue to be, there is more information that we should provide, but we haven't gotten mechanisms in place to do it.” (CPS Manager 2)

“Solicitors are responsible to their professional body, and they must put the, the good of their clients first. So, the first, the first stumbling block is, if I tell something to an SVCA it's like me telling something to a defence solicitor, they are duty bound through their professional status to tell their client. It became apparent right from the start that they might ask us things that would contravene the rules around coaching victims and witnesses and therefore, we couldn't, we couldn't tell them stuff they wanted to know because we knew they had a duty to their client, that the client would know and that would jeopardise the case.” (CPS Manager 1)

This became a point of contention in Case 35:

“There was information in the third-party disclosure which could have potential to undermine prosecution case, so we required further information from the victim regarding that. It was, she'd already given a lot, I felt sorry for the poor girl. She'd already given a lot and then we've gone back for more, but when we did that, I made, we made sure, [Colleague] and I made sure that we weren't on any sort of frolic. We knew what we

were asking for. And we knew the relevance of it. But of course, as I've already explained, we couldn't say to the SVCA this is, this is the reason we're asking the question. That's what they wanted to know. But if we had told her that we would have put the defence, the defence's case, we would have put it to the victim, and that wasn't acceptable. So we're in this clastic." (CPS Manager 1)

Conversely, some interviewees argued that a sufficiently developed legal framework did exist and was simply a matter of interpretation because the SVCAs "were simply arguing for the law to be applied correctly" (Oversight Group Member 2). **The SVCAs were all legally qualified solicitors with many years' experience of cases involving vulnerable witnesses and sensitive evidence, so they were well-equipped to understand when to act on their client's behalf without informing them**, and when to appraise the client of the whole situation. Child advocates are a common feature of family proceedings, where a professional (often a lawyer) is trusted to speak with the child and represent their wishes to the court. This involves engaging the child on facts of the case in an age appropriate way, using professional judgement to avoid sharing details of sensitive and potentially distressing evidence about their family members. Representation therefore does not have to equate a full briefing of the client.

There is also **precedence in the higher family courts for a client to agree that a solicitor will be privy to evidence and able to attend hearings without passing information back to them**. On this issue, *Chief Constable and another v YK and others* [2010] EWHC Fam 2438 highlighted the *Mental Health Review Tribunal Rules 1983*, which allow for some evidence to be withheld from a patient if it would adversely affect themselves or other patients, but this evidence must not be withheld from their suitably qualified representative. This means that a representative can be privy to relevant evidence without sharing details with their client, other than to brief them in broad terms to enable instructions.

This latter precedent refers to the defendants' strong right to disclosure and the principle of representing a client's interests without sharing details is further justified when applied to the complainant, as there is no starting presumption that they should be appraised of all the evidence. Indeed, the *YK and Others* [2010] ruling stated that:

"The problem is not a new one and that there are courts which have long been doing their best to try cases justly even though the ordinary principles of judicial inquiry identified by Upjohn LJ cannot be observed in every particular. If procedure is the servant rather than the master, then dealing with some cases 'justly' may sometimes require a rather different approach." (para. 59)

This suggests that **there is sufficient flexibility in the role of the advocate to ensure that clients' interests are advanced 'justly' where the problem of withholding information occurs**. Interviews with the SVCAs, and the police who worked with them, suggested that that the sensitivities around witness coaching were indeed taken seriously:

"I wasn't there to coach them or to help them with their evidence. I was there purely in the role of looking after their human rights... I made it absolutely clear that when I came to the ABE interview with them, I would not be interfering..." (SVCA 4)

"With the SVCA, who're there to support the complainant, but you can provide additional information where they can be more aware of some of the background of the case where



they're not gonna pass it on to the complainants. But to help them make more of an informed decision as to the advice they give them." (Police Officer 18)

The project team at PCCN gained extensive legal advice from two leading counsel at Doughty Street Chambers to provide a framework for the SVCAs in advance of the scheme. **The advice stated that there was no difficulty with SVCAs adopting the guidance for prosecutors** (CPS, 2018), meaning they could inform complainants about court procedure, updates on the case, the process of giving evidence, and the general nature of the defence case. It was suggested that SVCAs could also adopt best practice for talking to witnesses, outlined in *Momodou* (para. 63). These guidelines include being clear with complainants about the scope of, in this case, the SVCA role and what is/is not permitted as part of that role, informing police that support is being given to the complainant, and taking notes of meetings¹⁰.

Any concerns of witness coaching are further negated by international evidence. The Phase One scoping exercise highlighted the common use of legal representatives in other adversarial jurisdictions bound by the same right to a fair trial as England and Wales (Daly & Smith, 2020). In these jurisdictions, e.g. the Republic of Ireland, legal representatives can contribute to sexual history and/or disclosure hearings without being challenged under criminal procedure rules that are comparable to those in England and Wales. Indeed, the Republic of Ireland has safeguards for defendants via both fair trial rights *and* constitutional protections (making them more robust than the safeguards in England and Wales), so we can be confident that concerns of coaching are easily addressed. The O'Malley report (2020) stated that provisions enabling complainant representation regarding the disclosure of counselling records:

"...strikes a reasonable balance between the constitutional entitlement of an accused person to a fair trial and the victim's right to personal privacy. It provides for an objective, independent assessment of disclosure applications with due regard to the competing rights and interests at stake." (O'Malley, p.79, para 6.40)

Notably, the review recommended that such provisions be extended to the disclosure of complainants' medical records, as they currently apply to sexual history and counselling notes. Scots Law also provides relevant precedence that provided complainants with legal aid to make meaningful representations on access to, and disclosure of, their medical records (*WF Petitioner* [2016] CSOH 27) and digital downloads (*AR v HM Advocate* [2019] HCJ 81)¹¹. In *WF Petitioner* [2016], Lord Glennie said:

"The court will be expected to be aware that its decision has to take into account the Article 8 rights of the complainer. But how is the court to know whether there are any particular sensitivities to be taken into account in making its decision, unless it gets this information from the complainer or her representatives? It is not enough, in my opinion, and does not satisfy the requirements of Article 8, for the court to treat every case in the same way, balancing the accused's interest in obtaining the medical records against a typical complainer's Article 8 privacy rights" (para. 39)

¹⁰ These notes would be confidential under legal professional privilege if they related to direct communication between the SVCA and complainant.

¹¹ Further rulings in relation to sexual history are not yet published, under *RR v HM Advocate* [2020] HCA/2020/4/XM.

The ruling went on to outline the importance of access to legal representation in order to fulfil this right:

“If the complainant has a right to be heard, whether initially or at some later stage, it must follow that she is entitled to legal representation. That raises the question of whether she is entitled to be publicly funded for such representation... The complainant here is vulnerable and terrified by the whole court process so that she cannot be expected to speak up for herself in court and present her arguments coherently and forcefully, that will be a strong reason for the application for legal aid to be favourably regarded.” (paras. 46-51, emphasis added)

The minutes of the SVCA Oversight Group suggest that a **CPS manager initially agreed there may be a case for the complainant to know broad elements of the defence statement, and planned to develop a working group of lawyers with the national CPS in order to refine this.** Unfortunately, due to a change in personnel, this appears to have fallen by the wayside.

The arguments above are compounded by the strengthened Article 8 rights in the *DPA 2018*, which provides the right to rectify inaccurate or incomplete data (s.46) and so requires knowledge of what third-party materials have been gathered and how they have been interpreted. Similarly, **the Act gives data subjects the right to restrict data processing where they contest the accuracy of the information (s.47), which has implications for ensuring that a representative is aware of the way data is being used, even if the complainant themselves does not.** This is particularly relevant, as despite guidance that complainants can be informed of defence applications for disclosure, the OIC in Case 25 stated they had been advised by the prosecutor that they were unable to say what material had been disclosed, nor whether a bad character application had been made (once more, guidance contradicts this claim).

4.3 Can SVCAs Get Involved Before A Witness Summons Application?

A final area of concern for three of the CJS managers related to whether the existing legal framework allowed SVCAs to have rights of audience at court before the CPS applied for a witness summons. **The entitlement to a representative is well-established when a complainant objects to access/disclosure of their private data and the prosecution seek a witness summons** (see s.15 and s.17 of the *Criminal Procedure Rules*). There is little commentary on what is permitted before this stage, but *R (TB) v Stafford Crown Court* [2006] EWHC 1645 highlighted the importance of early engagement with the complainant and/or their representative.

An SVCA instructed a barrister in Case 35 to make representations before a judge regarding disclosure. The matter was settled through discussions outside court, but the case files note that **the judge stated SVCAs were entitled to be involved in disclosure hearings and that the CPS should engage with legal advocates from the earliest possible stage.** Nevertheless, a clear legal framework would be preferable:

“If they're going to be having rights of audience and representing people on challenges over previous sexual history and stuff like that, then they will need some sort of legal standing, but we need to understand what, what their position in the prep, what, if you

talk about legal framework, there's a term called parties in proceedings, well, do they have a, are they a party to proceedings? And in what way are they party to proceedings?" (CPS Manager 1)

It is also useful look at international practice. While quasi-adversarial jurisdictions do sometimes offer party status, most complainants are represented in proceedings without this legal standing. **In our scoping exercise, seven of the 12 'pure' adversarial jurisdictions offered rights-based legal advocacy for complainants, and in six¹² of these the lawyer could make submissions to the court** (Daly & Smith, 2020). The consultation documents on the introduction of legal representation for Irish complainants are particularly useful, as they state that denying the complainant party status at trial does not preclude their representative making submissions at an application hearing away from the jury (Department of Justice, Equality and Law Reform (Ireland), 1998).

Additionally, Raitt (2010) argued that while providing rights to oppose evidence does change the legal status of complainants, this "need not compromise the substantive rights of the accused. It is not a zero-sum game, where additional rights for complainers can only be gained at the expense of a fair trial for the accused" (p.54). Finally, data protection requirements suggest that consultation should take place at the earliest possible opportunity.

However, **future expansion would benefit from clear guidance on the degree to which SVCAs can be told about defence statements, how this should be communicated appropriately to complainants, and their potential rights of audience.** This was highlighted by one member of the Oversight Group, who said legal advocacy must receive "the absolute stamp of approval... by the government, by the judiciary, so that nobody can mess about, you know, saying this is, one scheme that's going nowhere, we'll try and foul it up, we don't like it" (Oversight Group Member 2).

4.4 Changes to the SVCA Scheme as a Result of Stakeholder Concerns

Throughout the pilot scheme, **negotiations between local criminal justice practitioners and the PCCN led to changes to the scope of the SVCAs.** These were a source of contention, and SVCAs felt their role was "eroded" (SVCA 4), so it is useful to outline the changes and ask whether they were justified.

As stated in Chapter One, the SVCA project was initially funded with three key aims:

- 1) To offer legally informed advice and support for sexual violence complainants undergoing ABE interviews.
- 2) To ensure legally compliant access to the complainants' personal data, assisting them to negotiate fully informed consent and making representations on behalf of complainants where necessary to prevent irrelevant or excessive material being accessed.
- 3) To provide legal advice on sexual history applications, assisting the prosecution by ensuring they are fully apprised of the complainants' interests.

¹² The exception was Namibia, where legal advocates can attend all hearings but cannot take part, instead consulting with prosecution and defence counsel.

There were also early suggestions of giving legal advice before a complainant had reported, but this was removed following consultation from senior judiciary that such advice may not be covered by legal privilege. The removal of pre-report advice was further justified by the fact that similar support exists elsewhere, e.g. national helplines run by Rights of Women and the Centre for Women's Justice. As seen in Section 5.1.1, SVCAs did provide information (but not legal advice) on the criminal justice process to help complainants decide whether to pursue their report to police, but this appeared similar to the 'Informed Choices' sessions offered by ISVAs. Arguably, ISVAs are best placed to conduct these sessions as they can offer information on non-criminal justice alternatives and have an established track record of this kind of support¹³.

4.4.1 Removal of Sexual History Advice

Before the SVCA project went 'live', Aim Three (legal advice on sexual history applications) was challenged because key stakeholders, including CPS North East, did not believe there were sufficient legal mechanisms for SVCAs to be privy to Section 41 hearings. Section 4.2 outlines the legal framework that should have enabled the SVCAs to undertake work around Section 41, so it is disappointing that this part of the role was removed. **There are debates about the prevalence of sexual history at trial, but 61% of respondents to the Victims Commissioner (2020) survey recalled being cross-examined on past sexual behaviour** (a further 14% neither agreed nor disagreed that they had been asked such questions).

Legal advocacy on sexual history is currently available in four¹⁴ of the 12 so-called 'pure' adversarial jurisdictions in the Phase One scoping review (Canada, India, Republic of Ireland, US). Of the remaining eight countries, only three do not have ongoing reviews about, or plans to implement, legal advocacy for sexual history evidence: New Zealand (Aotearoa), South Africa, and South Sudan. These jurisdictions have either much stricter rules on sexual history, specialist courts to ensure collaboration with complainants, or are young democracies with developing legal processes. Our future recommendations (outlined in Chapter Seven) therefore argue that sexual history should be re-introduced to any national adoption of the SVCA scheme to avoid England and Wales falling behind international standards. **Sexual history is closely linked to Article 8 privacy rights¹⁵ and PhD research shows there is significant overlap between sexual history and digital evidence** (Daly, 2021, *forthcoming*). To continue excluding Section 41 applications therefore places SVCAs in a bizarre position of supporting complainants to invoke their right to privacy, except when it concerns one of the most private parts of a person's life.

¹³ ISVAs remain under-funded and under-resourced, and our survey suggested that many complainants are still not referred to ISVAs, however these challenges are beyond the remit of this evaluation.

¹⁴ Legal action is also underway in Scotland to test whether their provisions for legal advocacy should be extended to sexual history applications. A pilot of legal representation for sexual history applications has been announced for April 2021 in Northern Ireland.

¹⁵ See, for example, *PG and JH v The United Kingdom* [2001] 44787/98 (para.56), *Axel Springer AG v Germany* (2012) 55 EHRR 6 (para.83), and *AG v Sweden* (2012) 54 ECHRR.

4.4.2 Restrictions on ABE Support

A change to the SVCA scheme meant that from October 2019, **SVCAs could not sit in the room during an ABE interview**. This was in response to police perceptions that SVCAs might challenge questioning, contrary to guidance that anyone accompanying the complainant should not speak (see Ministry of Justice, 2011). Alternative arrangements were made, first by SVCAs observing the interview from another room, then by watching DVD recordings of the ABE after signing a form of undertaking¹⁶ (initially this was allowed off-site, but then SVCAs viewed the DVD on-site at police stations).

One stakeholder (Oversight Group Member 2) argued that removing SVCAs from the ABE was a missed opportunity, because the SVCA's presence brought accountability and the ability to challenge poor interview practice. SVCA 4 also highlighted that being present for the interview meant they did not have to ask the complainant for an account, which is an additional protection against allegations of coaching. However, **five police respondents criticised SVCA conduct at ABE**, including one complaint that their typing affected sound quality and another where the complainant directed her answers to the SVCA.

There was also one allegation that an SVCA advised a complainant not to answer a question, but this was raised in a survey and we could not clarify the meaning of the comment. The case files and all other interviews/surveys failed to mention this incident, suggesting the police officer may have been referring to a challenge to police requests outside of the ABE but immediately before or after it took place. Further, there were some difficulties organising the ABEs around the busy schedules of SVCAs that meant the complainant had to wait slightly longer before having the interview.

As argued in Section 5.1.2, **the support to give an ABE is best done by ISVAs, so long as the SVCAs can view the DVD at a later date** (to prevent the complainant having to relive events repeatedly and to avoid allegations of coaching). However, keeping the SVCAs away from ABE interviews could limit their efficacy if consent to access personal data is requested at the end of the recording (Oversight Group Member 1). This was common practice in Northumbria, so **it will be essential that consent requests are not made on the same day as the ABE**. Indeed, one police officer noted that doing so is bad practice after the trauma of the interview:

"We used to do the ABE and go through the Stafford statement during that time... I think that was too much. You've just been sitting for two hours. The victim was telling you really, really intimate details and then we're asking her to sign a form saying 'you can have access to all my records from me [sic] entire life'." (Police Officer 19)

Preventing consent requests on the same day as the ABE will require formal rules, as the evidence in this report highlights the role of accountability in promoting consistent adherence to best practice. One option to ensure compliance is to mirror the 'cooling off' periods built into sales regulations (c.f. limits on buying insurance from a car dealership on the same day that they give the pricing information). Similarly, the presence of SVCAs in a case had remarkable impact in ensuring that police and prosecutors upheld best practice guidance. **If the suggestion of separating ABE from consent requests is not adopted, the**

¹⁶ Although there was initially some confusion and one SVCA recalled being wrongly told they could no longer even view the ABE interview.

SVCAs will continue being required at ABE interviews so that they can advise and support complainants at the key point their Article 8 rights are under review.

5. THE IMPLEMENTATION OF SVCAs

5.1 Referral Process

In total, 94 referrals were made to the SVCA scheme over 16 months. Eleven of these were ineligible for SVCA support because the complainant was under 18 at the time of the offence ($n = 8$), the offence was sexual assault not rape ($n = 1$), or the support needed was outside of the SVCA remit ($n = 2$). A further 36 complainants declined the SVCA service or did not engage, most commonly because they decided not to continue with the police complaint. This meant that **SVCAs acted in 47 cases, amounting to a 57% uptake** from the 83 eligible referrals.

Referrals could only be made by police officers until July 2019, at which point the option was extended to support services because of lower than expected case numbers. In total, 85 referrals were made by 43 members of Northumbria Police and nine were made by specialist support and ISVA services. **This represents approximately 6% of the eligible cases reported to police during that period ($n = 1311$).** The number of ineligible referrals was higher in the first part of the scheme and can be attributed to the usual learning curve of any new policy. There were also four cases where confusion over which SVCA was taking on the case led to a delay in contacting the complainant, who subsequently did not engage.

Interviews with police officers suggested there was confusion about the appropriateness of referral to SVCAs. Some respondents were instructed to refer all rape complaints from people aged 18 and over “as a matter of course” (Police Officer 1) and the case files suggested that complainants were told it was “mandatory” (Case 4; Case 8). Others recalled being told to only make referrals when the CPS were likely to ask for extensive third-party materials. While many officers referred complainants to the scheme, the majority only did so once, and many referrals were made by a core group: Almost a quarter came from the same three officers.

The differential rate of referrals might relate to whether officers discussed the SVCA scheme with complainants to gauge interest rather than opting for blanket referral¹⁷. Police 14 talked to complainants before referral and estimated that around 20% of those eligible wanted to be sent for SVCA support. There was also a suggestion that some officers bought into the scheme while others did not (SVCA 4), and the SVCAs felt the role was not properly explained by some officers and therefore limited the number of successful referrals:

“Most of the complaints that I encountered said that even when they were given the information as to ‘you have the opportunity to have an SVCA’, they didn’t have a clue as to what it was and what it entailed... and then when I did explain it, people were like, ‘Well, yeah, why would I not have that person standing beside me?’” (SVCA 1)

¹⁷ Only police who made referrals answered the invitation for evaluation interview, so there may be unidentified factors relevant to making a referral decision.

However, senior police disputed that the low uptake was about how explanations were provided to complainants, instead arguing that:

“People may think that that's because 'were staff explaining in the right way?', I don't think so. I think, I don't think it was the, I think it's something when you're in the system or you're very passionate about, you have strong views. But actually, lots of people just don't really, are not that interested and are not that that bothered if I'm totally honest. So I think probably we're more engaged in looking for that justice than perhaps a victim is and therefore, you're putting actually quite a bit of pressure on the victim aren't you, in an SVCA process.” (Police Manager 2)

This quote suggests that most complainants are disinterested in the technicalities of law, however this is belied by interview data where complainants said it was, or would have been, “comforting to have someone looking out to make sure everything was being followed correctly.” (Nora, SVCA client). The PCCN and SVCAs conducted training with police to alleviate the concerns about referrals. These sessions were described as helpful by most interviewees, but there remained a feeling that enthusiastic officers would move on to a new role and their replacements were disinterested:

“The initial, the people initially involved got it, and were keen, and then somebody obviously, people's roles kept changing. And as new people came into the roles, it was just an inconvenience... You just got the sense they, they, they wanted to get rid of the project.” (SVCA 2)

5.1.1 Reasons for Referral

Analysis of the available referral forms show that **the most common request was for advocacy on digital evidence and third-party materials (73% referrals¹⁸), closely followed by ABE support (62%)**. Seven of the referral forms also requested support on sexual history applications (11%), despite this being effectively removed from the scope of the SVCA role. The text comments in the forms suggested that officers were most likely to send complainants to the scheme when they had additional or complex needs, or where the complainant was unsure about whether to pursue a formal complaint. For example, several referral forms commented that the complainant wanted general advice on the criminal justice process before deciding whether to pursue the report:

“[Complainant is] overwhelmed as dealing with ill child & family law proceedings. Would like SVCA support in decision making re. interview & CJS” (Case 32, Case Files)

“[Complainant] is up and down emotionally. She would like support and advice to help her through process” (Case 44, Case Files)

¹⁸ Of the 63 referrals that were eligible for SVCA support and where reasons for referral were provided. Some case files were incomplete or unclear, so the remaining 20 files did not provide reasons for referral.



The 'Informed Choices' sessions provided by ISVAs are more appropriate for these preliminary discussions, and the repeated use of SVCAs to give general advice suggests confusion with other support roles (see Section 5.1.2). **The referral to SVCAs at this very early stage also meant that 43% of the 83 complainants eligible for support disengaged before any was provided**, mostly because they decided not to proceed with the complaint:

"[Many cases] have been very much a situation where I've got the referral in, I tried to contact the victim... so I would ring them if I couldn't get anywhere. I mean, I would always follow it up with an email just explaining who I was. And it was, to be quite honest, it was a very generic email so that if it fell into the wrong hands or whatever, somebody else saw it, they wouldn't get a glimpse of what it was about, you know? And a lot of those [complainants] just didn't come back to me at all." (SVCA 3)

Early disengagement with support services is common because victim-survivors may need time after the initial act of help-seeking, so it is important to enable service users to re-engage later. An email was sent to unresponsive complainants, providing information on their rights and explaining they could return to the scheme if needed. This is important because of the large amount of information provided to a complainant when they report to police. For example:

"[Complainant] has had many people calling her amounting to offering advice. She is not sure that she wants to take the advice and she is not sure that she wants to engage with the service at this stage. We agreed that I would write to her and advise her on her rights and what I could do by way of limiting disclosure¹⁹." (Case 81, Case Files)

This sense of overwhelm at the number of referrals to different agencies emerged repeatedly, and has implications for the optimal point of referral to SVCAs. There is tension between earlier intervention being perceived as most effective and the feeling that the early stages of a police investigation are already saturated. For example, some interviewees commented that:

"You can refer in any point, but obviously the earlier the better." (Support Worker 1)

"It was like literally about a year and a half into [the case]. So that's jumping right down the line... Literally on the day that the police has assigned me this lady and she went to go and write to the CPS about what was happening, the CPS dropped the case that day." (Susan, SVCA client)

While others noted that:

"I was inundated by about eight or nine different agencies in the first week. I didn't know who was who, what was what, so it was difficult to keep up with who I was speaking to

¹⁹ SVCAs used 'disclosure' as a shorthand for police and CPS requests to access digital evidence and third-party materials, rather than the legal understanding of disclosing unused material to the defence.

about stuff... People kept wanting me to fill out forms and do this and do that. And it was just like a full-time job.” (Patricia, SVCA client)

“I mean, it's, it's hard, isn't it because again, you don't want to overwhelm victims. I'm always conscious that too many professionals...they tend to get overwhelmed. So you've got to be careful that you don't overwhelm them too early, and that it's, maybe is a little bit further down the line.” (Police Officer 19)

Several interviewees commented that this initial ‘bombardment’ of support services could lead to confusion about the boundaries between services and the role of each one:

“You just have a slight sense of people occasionally [thinking] and 'which one of you again?'. They wouldn't put it like that, but like, you could almost feel that people are thinking, 'sorry, you're the who the what, which were you? I have had so many people' and I think people were bewildered.” (SVCA 2)

This highlights a key challenge in the referral process: **Early intervention is important to ensure that advice is given *before* access requests are granted, but at this early stage a complainant may be too disoriented to understand the remit of the SVCAs compared to ISVAs.** There is also evidence from the existing literature that victim-survivors of rape often need space to process events before they feel able to engage fully with support from multiple agencies (Ahrens, Stansell & Jennings, 2010).

We therefore recommend that referrals to SVCAs do not take place until a request for personal data (and/or a Section 41 application) is made. **Other support services, e.g. ISVAs, are best placed to provide the earlier support, when emotional care and ‘Informed Choices’ sessions are most important.** However, our survey data suggested that many respondents did not access ISVA support (58% of 180 complainants who answered²⁰) so alternative may be needed. **It also requires that police officers do not seek personal data before, or on the day of, ABE interview.** The SVCA would need to view the ABE before consent to access data is requested, but it is best practice not to make data requests at ABE anyway.

The O'Malley review (2020) in the Republic of Ireland highlighted that provisions for representation on disclosure of counselling records have seldom been used since they were introduced in 2017. The report found that it remained the norm for complainants to waive their right to be heard by providing consent and recommended action “be taken to ensure that all victims are fully aware of their rights in this regard” (p.79, para 6.40). **One way of ensuring this is through an opt-out system, such as the approach used in Denmark, which we recommend for future iterations of the SVCA scheme in England and Wales.**

5.1.2 Confusion About SVCA vs Other Roles

The referral forms often called on SVCAs to provide general information before a complainant's reporting decision was finalised, suggesting confusion between the SVCA and ISVA role. One ISVA also recalled being initially sceptical of the scheme because it was perceived as impinging on their role:

²⁰ Only 15 of these (8% of people eligible for ISVAs) recalled being offered and declining the service.



I think we had some concerns over, well that was crossing over with our role at the time, because we weren't sure exactly what the purpose of them was, when they were saying advocate, even though we're advisors if you know what I mean? We thought it was sort of something that was coming along that was going to take our role, but then, or sort of cross over our role. But then we were told, it was more like a legal, like the legal side of things they would be helping with." (Support Worker 2)

This also shows the potential confusion emerging from similarities in the names of both services, as the 'A' in ISVA can mean 'advisor' or 'advocate' in different parts of the country. One service user made a similar comment, noting that the names of each service were not distinct in her mind: "Oh, hang on, you'll have to say what SVCA is... Yeah, just people kind of talking in, is it called, acronyms?" (Patricia, SVCA client). This complainant later expressed disappointment that the SVCA had not called to inform her of the defendant's sentence, something that would be more aligned with the ISVA role. However, the SVCA in this case appeared to assure the complainant they would be in touch and so this was more a problem of maintaining boundaries and upholding promises²¹.

This highlights the importance of recognising that the SVCA role is centred on legal support for specific rights-based issues, rather than being a general source of information. An updated name for the SVCAs highlighting a more targeted and legal role could at least partially address these concerns, for example Complainants' Lawyer, or Complainants' Legal Advisor. Additionally, one SVCA noted that they became adept at managing expectations and referring to other services:

"We're all very, very well used to our professional boundaries. And when you work with victims of abuse... We are often contacted and asked for emotional support. And it's just, I have no problem at all in redirecting that to the appropriate person to do that role. I think, I think all of us have very, very strong boundaries." (SVCA 4)

This is reflected in other interviews with police officers, who felt there was no confusion:

"I never saw it as a problem... You know, they kind of knew: ISVA service was for this kind, the support, and SVCA was more, was more legal advice." (Police Officer 15)

"I think you know, any solicitor who was instructed to represent the victim is going to be clear about what the role is. And if the victim strays into territory that is not for the solicitor to deal with the solicitor is going to be very clear, this is what you speak to your ISVA about. And, and vice versa." (Police Manager 1)

There was also agreement that any confusion was easily managed by providing clear written information for the complainant to return to later (Police Officer 10). We would add to this our recommendation of staggered referral points, with the ISVA being engaged as early as possible while the SVCA referral comes once an investigation is more established and reaches the point of seeking access to personal data.

²¹ Concerningly, the OIC also failed to inform the complainant of the sentence, which falls short of the minimum standards outlined in the *Code of Practice for Victims of Crime* (Ministry of Justice, 2015).

5.2 Support Provided by SVCAs

The case files were sometimes incomplete and there were inconsistencies between records, making it difficult to ascertain the exact support offered in each case. To further complicate matters, case files indicated that advice on ABE and consent for third-party materials had been given when the client did not engage but received a generic email for information. This means that on first appearances, **SVCAs supported 81 of the 83 complainants who were correctly referred to the scheme; but there was only meaningful contact with 47 of these.**

Table 3 outlines the nature and frequency of the support offered according to the case files²². The SVCAs were flexible about their mode of communication, but primarily spoke to OICs and complainants via phone calls and emails. Face-to-face meetings with the complainant were usually attempted before an ABE, but this was not always possible.

Table 3. Nature & Frequency of SVCA Support

Support Offered	Frequency	Percentage
Advice on ABE	10	13%
Attendance at ABE	20	25%
Advice on requests for personal data/third-party materials	38	48%
Intervention on requests for personal data/third-party materials	18	23%
Advice on disclosure of personal data to the defence	4	5%
Intervention on disclosure of personal data to the defence	4	5%
VRR / complaint processes	7	9%

The support needed was not always substantial, as one SVCA said that merely questioning why records were being sought was often enough to stop excessive requests:

“I just go back and go, 'can you just explain why you want that?' And then I wouldn't hear anything else. It's like, 'you didn't need it, did you?'. So sometimes, just, just a bit of pushback on asking for evidence. That was I think that was mainly the thing I did. Was, was just push back a bit and make people stop and think about what disclosure they were asking for. And that was about it really.” (SVCA 2)

In a few influential cases, the interventions were more significant, and **many interviewees talked about Case 35, where the extent of the SVCA's remit was tested by engagement with the court.** Case 35 involved two parties unknown to each other prior to the night of the alleged rape. The complainant initially declined SVCA support, but was referred later because the OIC anticipated the CPS would request third-party material about her mental health, substance use, and potential involvement in sex work. The

²²Percentages are based on 80 case files, including those where support comprised sending information emails, because one of the files for the 81 supported complainants was missing.



complainant signed a wide-ranging 'Stafford' consent form without the SVCA being informed, and this was used to obtain material from various agencies concerning the 12 months around the alleged offence.

At a pre-trial case management hearing, the trial judge suggested that the CPS should access the complainant's full records from the age of 18. The complainant, with SVCA support, withdrew her consent and the SVCA requested to make representations to the trial judge. The CPS responded that:

"It is clear from the material provided that there is a history of alcohol and substance misuse which extends back to the complainant's early adulthood. In light of this, it is necessary to broaden the parameters of the search, and obtain and review material over a longer period of time to determine whether there are further incidents which fall to be disclosed on the basis that they may assist the defence. I note your request for an application to be listed in front of the Trial Judge, but it really is a matter for the police and CPS to determine what is a reasonable line of enquiry...If we are unable to pursue this line of enquiry we will have to advise the Court that we have been unable to discharge our disclosure obligations and this will inevitably lead to us having to offer no evidence²³ in a case we believe should be prosecuted." (Case 35, Case Files)

As a history of substance misuse is not automatically relevant, particularly in a case where the accused and complainant did not know each other, the SVCA team wrote directly to the Court to request a listing, having instructed counsel to represent them. Ultimately, the issue was resolved using counsel-to-counsel mediation, and the complainant consented to access on the condition that information relating to one specific issue was redacted. The SVCA's intervention was divisive amongst police and CPS, with several police officers referring to the case as an example of 'when it goes wrong'. One said that the judge had "stated that he did not understand what the purpose of the SVCA was or why they had felt the need to interfere. It was a massive waste of time and effort." (Police Officer 1). In stark contrast, **the SVCA's notes on the hearing include a quote from the judge that said "the SVCA is entitled to be involved"** and that:

"The judge said 'thank you and those instructing you for your care and attention' then indicated that this is a new protocol, the police will have to be careful as complainant has a right to have time to make representations or be represented during disclosure of their personal records. It is more likely that future cases will be carefully scrutinised. That he had raised this matter with senior Judge and it is their intention to make enquiries at an earlier stage regarding instruction of an advocate to ensure that the complainants' interests are represented, maybe at PTR. Judge went on to explain that our views are appreciated and he went on to thank us for our help." (Case 35, Case Files)

Case 35 demonstrated that the SVCAs could go before a judge where they felt police and CPS were being obstructive, thereby ensuring that practitioners took SVCA concerns seriously in other cases. **Without**

²³ The act of offering no evidence is controversial because it means that a case cannot be re-opened, even if the police and/or prosecutors were seeking excessive material. Such a debate is beyond the scope of this evaluation, but is noteworthy context to this quote.

the ability to escalate matters before the court, there is a danger that SVCAs would be ignored and complainants may be given unrealistic expectations of their ability to negotiate consent for their data.

In another case (Case 34), judicial engagement with the SVCAs was once again an issue. The defence in Case 34 sought disclosure of the complainant’s counselling notes mid-way through the trial. While the CPS agreed to include the SVCAs in legal arguments, the trial judge stated that the complainant had already consented by signing a ‘Stafford’ form. The OIC had been made aware that the complainant was “very reluctant to authorise disclosure of her personal, sensitive information” (Case 34, Case Files) and the ‘consent’ had been given without legal advice, using later-withdrawn blanket request forms.

Both cases (34 and 35) ultimately highlight the importance of a clear legal framework, as the SVCAs were resented for taking seriously the complainants’ wishes to restrict access to their personal data. This is arguably the point of the SVCA role and so it would be useful to have clarity about the most appropriate ways to escalate these arguments when informal discussions fail. It is also essential that there is clarity about the SVCA’s ability to be heard by a judge, as the CPS stated this was not possible before the SVCA checked directly with the Court in Case 35.

5.2.1 The Cost of Support Activities

The billing files did not correspond with the SVCA activities in [Table 3](#), instead being split into typical legal categories: Attendance, preparation, travel, waiting, letters received, letters sent, calls, and advocacy (in one case only). [Table 4](#) shows the total and average number of minutes spent on each activity, as well as the billed cost of these²⁴. **There was an agreed fee of £150 per hour for all activities, to be charged in blocks of six minutes;** however, some SVCAs charged a reduced rate of £75 per hour for non-contact activities such as preparation, letters received, or travel and waiting.

Table 4. Nature & Frequency of SVCA Support

Billed Activity	Total Time (Minutes)	Mean Time (Minutes)	Total Cost (inc. VAT)	Mean Cost (inc. VAT)
Attendance	6298	75	£18,840	£224
Preparation	2362	28	£7,082	£84
Travel & Waiting	2424	29	£5,400	£64
Letters Sent	960	11	£17,166	£204
Letters Received	707	8	£7,264	£87
Calls	270	3	£5,105	£61
Advocacy	36	N/A	£126	N/A
All Activities	13,057	155	£60,858	£725

²⁴Calculations are based on the 84 cases where charged were made, as it appears that one incorrect referral had associated costs and was therefore billed.



5.3 Inter-Agency Communication

One difficult aspect of the implementation was multi-agency communication, particularly between the SVCAs and Northumbria Police:

"I think the problem is it's all siloed into individual people's work. So people who are having the contact with the victim are in different places, and they've got no reason to contact each other. So they're just kind of doing their piece of work with the person. And they're not necessarily linking it all up." (SVCA 2)

This quote echoes previous studies on sexual violence, where the need for more joined up working has been recognised for decades and was identified as a key feature in successful advocacy during Phase One (Daly & Smith, 2020). The SVCA highlighted the importance of making contact and getting to know the police and other support workers, but this was often insufficient and there was especially limited contact with support organisations and ISVAs. If the scheme were to be expanded, **we therefore recommend housing the lawyers within support hubs or specialist services, where appropriate, to promote multi-agency coordination.** This was an initial plan of the pilot, but practicalities meant that it was not possible.

In terms of communication between the SVCAs and police, there were positive reviews of a central inbox for referrals, then email or phone contact 'as and when' needed during cases. However, **some officers had difficulty finding time for the ABE because of the SVCAs' other work commitments:**

"They weren't allocated to do that job alone.... And sometimes it took quite a long time to get things sorted. Because, you know, they had court, or they had [inaudible], and like I say people are busy in their lives and the complainants are busy with you know, family and things like that. So sometimes it took a little bit longer, so it might be, would it be considered where that was their role and they didn't have other roles." (Police Officer 14)

This would be significantly mitigated if the SVCA was able to view a recording of the ABE rather than attending in person, as well as if the SVCA was a designated, salaried position.

Another commonly discussed challenge was the lack of direct communication between SVCAs and the CPS, which left police officers feeling like messengers and added to their workloads:

"In my experience the process has been frustrated hugely due to lack of communication between the CPS and SVCA, quite often using the OIC as the messenger" (Police Officer 2)

"As officers we felt that the SVCAs should have been speaking directly to the CPS prosecutors around issues arising from third-party material requests made by them. The totally bonkers side of it was that the SVCAs refused to speak directly to the CPS prosecutors. On more than one occasion officers were acting as message runners between the two. Grow up! Pick up the phone and speak to each other. They were the lawyers." (Police Officer 1)

This is particularly interesting because the SVCA Oversight Group had recommended that the SVCAs liaise with the police rather than directly with CPS lawyers to ensure simplicity. In reality, the SVCAs sometimes spoke with the OIC or emailed the CPS with the OIC included for information, but if the SVCA scheme were to be rolled out, a clear policy on communication between the SVCA and prosecutors is needed.

Complainants also had mixed feelings about the communication style of the SVCAs, with one client stating the advocate was very caring while another said they were too formal:

“She genuinely, like, you could tell that she genuinely cared, d'ya know what I mean, and genuinely listened to me and my sad story and stuff.” (Susan, SVCA client)

“I'm on a double edged sword here because I'm not saying what she did wasn't, I'm really happy that she did the work she did and I was really, you know, I think I warmed to that relationship towards the end of the process. I found it a bit difficult the first time, you know it's all personal isn't it, because you can walk into a room and you can instantly feel comfortable with one person, you can walk into a room and feel instantly intimidated by another person. I don't think at any time that I was, I know it wasn't her intention, I know for a fact that I know that she wanted to help and she wanted to do her job and she did... Obviously they're not counsellors and obviously, like I say you can get on with some people more instantly than others.” (Patricia, SVCA client)

Patricia found the SVCA professional, but preferred the communication style of her ISVA. **It is important for complainants to feel comfortable with the SVCA, and the high risk of feeling intimidated by a legal professional makes it essential that anyone taking on the role is trauma-informed and trained by specialist support services.** Having said this, it is reassuring that the SVCA maintained clear boundaries given the fears of witness coaching at the outset of the project. While formal communication may be desirable, then, Patricia's disappointment highlights the importance of clear expectations and making sure that the SVCAs work alongside emotional support roles e.g. ISVAs and specialist counselling.

5.3.1 Interfering vs Advancing Complainants' Interests

Opinions on the SVCA scheme varied, with some police saying it was “viewed positively” (Police Officer 5, Police Officer 18) while others said their experiences were mixed or that the SVCAs were “not highly regarded” (Police Officer 2). One SVCA found only positive responses and felt that herself and police “were colleagues, we were working together for the same aim and that was great” (SVCA 4), but the other three agreed that attitudes varied. **Where police opinions were negative, it related to concerns that SVCAs might interfere with investigations and undermine their decision-making:**

“The advocates took an adversarial position against the investigating officers instead of a co-operative one... They either did not care, or did not realise that the CPS have no time for charge files minus third party checks and would not charge cases as a result...” (Police Officer 1)

“I've had these horror stories, I've heard where it's been ridiculous, basically obstructive, based on a principle that they didn't think it was relevant. I know they're legally trained.



They didn't think it was relevant, but the case wasn't getting anywhere unless they signed the form. So I think they should have been more working together... They shouldn't be coming to a court where you're sort of cracking heads against each other where you're not getting anywhere. It's just not very professional." (Police Officer 11)

These quotes are striking because they **highlight the deeply embedded assumption that the CPS will not prosecute unless certain evidence is gathered**. The sentiment was repeated in several case files, where individual officers pleaded with SVCAs to allow access to all personal data because: "If we don't get third-party information, CPS won't charge. It's as simple as that" (Case 18, Case Files)²⁵. As fellow lawyers, the CPS would be better placed to negotiate issues of privacy with SVCAs, especially as they are accustomed to the adversarial style of legal argumentation that the police officers found difficult. It is also important to situate the SVCA work within a wider context that suggests CPS case-building may indeed rely on irrelevant lines of inquiry (see Section 6.3.1).

On the other hand, some police officers felt the SVCAs worked in a highly cooperative manner:

"I didn't feel as though there were any barriers or any obstacles put in my way to the investigation. And I felt as if I had any concerns in relation to what we were being asked to obtain, then I could have approached, approached directly and said, 'Look, what do you think?' and had an open, honest discussion." (Police Officer 18)

The potential to challenge police and hold them accountable for ensuring best practice is one of the main benefits of an SVCA role (Oversight Group Member 2). This made some officers feel that their skill at their job was being judged, for example when an ISVA referred a complainant it was interpreted by the OIC as "making it look like he wasn't trustworthy as an officer" (Support Worker 1). Scrutiny can be difficult when work has previously gone unchecked, but additional levels of accountability are necessary given the context of declining rates of charge and falling confidence in the justice system.

Any conflicts between the police and SVCAs tended to arise when neither party were willing to move from their position. One SVCA commented that **there needed to be a clear line of escalation when the conversations with the OIC were not progressing**:

"For example, if we had a disclosure issue, then we would go back to the officer. The officer may say, 'Well, we want it' and it was difficult to say, you know, we could be very clear with them that we don't think that that disclosure is acceptable. But probably that wasn't a conversation that I think maybe some of the officers were comfortable having with us, which is fair enough. I'm not laying any criticism there. So it would have been helpful to know who we could elevate that to, do you know what mean, to sort of protect the officer, protect the victim and really sort of the lawyer and then more senior individual, because at that point, it hasn't gone to the CPS, you can't liaise with the CPS." (SVCA 3)

²⁵ It is noteworthy that these cases occurred before the *Bater-James* ruling which stated that a case cannot automatically be discontinued because of the complainants' refusal to provide consent for their data.

Another SVCA contacted police management to give positive feedback about an officer (SVCA 2), meaning the extra layer of accountability also highlighted best practice where it occurred. The same SVCA raised concerns in Case 51, as a complainant was wrongly asked to sign a consent form meant for those who are unconscious during the alleged incident. The OIC felt that this was “nit-picking” and disapproved of the escalation to a police manager:

“She went straight to my DI instead of to me personally... and he then came to me saying, 'Urgh, [removed for anonymity], just tell me why you've used this that and the other so I can respond to this'. And I felt a bit like, well why has she done that? You know, we've been communicating, why can't she speak to me direct if she's got a query. I just felt like she went a bit behind my back... I know that the advocate was questioning why are you using that form, why are you using this? And I was justified in what I was doing, but I felt like she was nit-picking with what I was doing” (Police Officer 11)

The case files do suggest an attempt at informal discussion before the issue was escalated (anonymously, at first) with police managers, but this incident created tension between the officer and SVCA. It is positive that the use of incorrect forms was identified and addressed, particularly as other cases highlighted similar problems, however there may be ways to maintain accountability without creating interpersonal challenges. **SVCAs and the Rape Investigation Team could have formal meetings to provide generalised feedback and address any concerns that cannot be dealt with between individuals.** Regular feedback meetings were held between the SVCA project team and police managers to raise issues anonymously. However, it would be best to hold these meetings as a whole policing team, rather than with managers alone, to encourage ‘buy-in’ and avoid a sense that police investigators were being reported on to their superior. This could also address one of the potential reasons for the SVCAs taking a combative approach, as one noted:

“It was the, a sense that you were you were there by tolerance. You had no, no formal, we had no clout. You just had to ask nicely. I think that's probably the most, most, the biggest barrier.” (SVCA 2)

Without a formal way to manage conflicts, there may be a greater reliance on adversarial rhetoric to ensure the complainant is heard. Indeed, a handful of police officers noted that challenging the status quo was an important part of the SVCA role, but felt it could be done more effectively:

“The SVCA, possibly quite rightly, challenged the parameters we were asking for from the victim, and erm, said that she disagreed with the decisions we were making in the investigation, and although I appreciated that was her role and that's what she was there for, to protect the victim, it erm diminished the trust that that victim had in us. And so the victim then thought, 'hang on, you're asking me for this when you shouldn't be, what else are you doing in the investigation you shouldn't be doing?'... And I don't know how you would get around that, because the SVCA is there to do a job, and they are gonna question it if they disagree with something that we've said. But I don't know whether maybe it could have been done away from the victim so it didn't then discredit the investigating officer.” (Police Officer 13)

This quote highlights the potential harm to the complainant if the communication between SVCAs and police officers break down. If challenges are not made well, they can undermine trust in the investigation and could lead to the complainant withdrawing support for the prosecution:

“[I viewed the scheme] very negatively - in that one particular complainant lost some faith in the investigative process around disclosure and felt as though the Police / CPS / SVCA were in conflict.” (Police Officer 2)

These concerns highlight the difficult line being walked by SVCAs: They must challenge poor practice without exacerbating the disillusionment felt by many complainants after their initial report. **Our survey had countless examples of this discouragement and suggested that losing trust in the police and CPS is common during the investigation process.** It is also important to focus on improving practice rather than creating a false sense of security for complainants, and the police concerns could be addressed by creating monthly meetings between the SVCAs and Rape Investigation Team to provide an outlet for feedback and identification of good/bad practice. Finally, these comments highlight the usefulness of having an advocate external to the prevailing culture of police and prosecutorial teams, as this allows areas for improvement to be identified more easily than by ‘insiders’.

Ultimately, practitioners’ impressions of the SVCA scheme depended on whether they viewed disruption of the status quo as part of advocating for the complainants’ interests, or as interference from an outsider who did not understand ‘the way things work’. This is best summed up in one quote from a CPS manager that “[SVCAs]: **They’re not there to interfere. They are there to represent the interests**” (CPS Manager 1). It is difficult to understand how representing the complainant’s interests can be achieved without any involvement with the case or those investigating and prosecuting it. For ‘involvement’ not to be viewed as ‘interference’, clear and robust mechanisms for having these legal arguments are needed.

6. THE IMPACT OF SVCAs

6.1 Third-Party Materials: Individual Changes & General Consideration

There were substantial files for each SVCA referral and it was not possible to analyse each one in detail within the timescales of this project. Case summaries were provided as part of these files, but there were some inconsistencies and missing files due to off-site access in COVID-19. This means that we are not able to establish the precise number and extent of impact in all cases. However, **there was significant evidence of impact both in general practice and specific cases.**

6.1.1 Impact on Individual Cases

The case files suggest that **SVCAs simply advised the complainant in 53% (n=35) of the 47 cases** where they provided support. Interviews with the SVCAs themselves suggested that this was because requests for third-party material in these cases were relevant and proportionate, so they simply explained why evidence was likely to be collected and the complainant gave informed consent.

There were 22 cases where representation was provided on requests for third party data (n=18) or defence disclosure (n=4). The outcome of this representation is unclear in many cases, possibly because it referred to the informal conversations that led to immediate withdrawal or reduction in requests early in the investigation (see quote by SVCA 2 in Section 5.2). The case files delineate the resolutions for 12 cases involving SVCA representation. In at least eight cases (Cases 16, 27, 30, 33, 35, 38, 43, 56), requests for medical records or counselling notes were challenged and the parameters of the request were subsequently reduced (by scope or timeframes covered). In Case 30 this was also applied to the complainant's mobile phone download, while in Case 56 the complainant was supported to refuse access to counselling notes and social media records. A request for Local Authority records was rescinded in Case 38 and counselling notes were redacted in Case 43. This means that **in eight of the 12 cases where the outcome of SVCA challenges were known, the police or CPS recognised that they had been disproportionate and acted to mitigate this.**

Hafsa (Case 16)

Hafsa reported being raped and sexually assaulted by her former employer. At the end of her ABE interview, the investigating officer asked Hafsa to sign a Stafford statement giving access to all third-party records. Her SVCA challenged the request on the basis that much of the information, e.g. Local Authority and education records, would not be relevant to the case. The officer agreed and amended the form so that only medical notes from a specific GP visit were included. Without the SVCA's intervention, it is likely that Hafsa would have signed the 'blanket' request for her private data. The SVCA was also able to explain to Hafsa why it had been necessary for the officer to download data from her mobile phone.



The success in individual cases was reflected in practitioner interviews, where it was noted that:

“It certainly made me you know, push our lawyers to adopt a more thinking approach to how they work. So I think in that sense, if that improves the way, then yes, there would have been a positive influence... And periodically, we, we encountered pushback from the SVCAs. Some of that I think was constructive. And actually, you know, again made lawyers think more about it.” (CPS Manager 2)

“They did some very, very heavy representational work, and they did challenge us and in some cases, on some occasions, you know, we learned from the challenges that were brought to us by the SVCAs. So I wouldn't underplay that at all.” (CPS Manager 1)

The impact of the SVCAs was sometimes restricted because they were excluded from case decisions.

For example, in Case 27, the complainant had been referred prior to her first ABE, however the OIC then had a 'blanket' Stafford form signed whilst visiting the complainant, without informing or engaging with the SVCA. In correspondence with the SVCA later, the OIC said “I fully explained what the reasons for this were” (Case 27, Case Files). However, correspondence with the complainant indicated that she had not understood the explanation:

“[Complainant] indicated that last week [OIC] contacted her via telephone asking her to sign further medical disclosure forms and also mental health records. She did not quite understand what it was that she was signing. She also said that this week she has received a telephone call from her counsellor... They have been contacted by the police in order to provide details as to her records. As far as the client is aware, she has not signed anything for disclosure of counselling records, she is not quite sure what is going on... In addition, she indicated she has still not had her telephone back despite asking for such on several occasions” (Case 27, Case Files)

During the ensuing discussions, the case files feature a note about Case 35, saying that:

“...positive comments were raised by the judge in relation to the role of the SVCA and the interests of the complainant being covered, especially at an early stage so that, if required, any disputes can be raised early in the proceedings.” (Case 27, Case Files)

The SVCA then worked with the complainant to withdraw her consent and drafted a more appropriate consent form to ensure that only relevant and proportionate material was accessed. This case demonstrates the importance of independent legal support, as the OIC sought to inform the complainant and felt satisfied that she understood, when in reality the complainant was confused and felt she had to sign the form.

6.1.2 Greater Consideration About Third-Party Requests

Even more significant than the impact on individual cases was the overwhelming consensus that the SVCA project led to greater consideration of third-party requests *before* they were made. For example, stakeholders noticed a change of attitudes amongst police:

“And the change, the sort of slow change in attitude in some pockets of the system that we've seen” (Oversight Group Member 1)

Two police officers, including a frequent referrer to the scheme, said that they already considered third-party requests carefully and so SVCAs had not impacted on their work. The rest of the police interviewees said that regardless of whether the SVCAs intervened in their own investigations, it had increased consideration of third-party materials amongst themselves and their colleagues:

“It did make you think a bit more because we did, we're in a position where we were asking for consent, we'd do the interview with a victim and we'd ask for consent to get third-party. And at that point, we wouldn't have really been thinking about what we were gonna use it for, or why we were getting it, or the relevance, or anything, it was just something we did because we knew we were probably gonna need any investigation. And when the scheme was introduced it certainly made you think a bit more about, should we, are we right in trying to get this consent for this material because we probably don't need to see it, and are we gonna discredit the victim from the very beginning when we don't need to? Erm, so yeah, **it definitely, as a whole it changed the way that I worked. In terms of that particular case it didn't, but as a whole it did.**” (Police Officer 13)

“I think that did make a difference, and I think it's a learning curve with it anyway but I definitely think the fact that instead of just doing a blanket application it makes you sit down and look at what's actually going to be relevant a lot more and in detail... Not to protect the complainant but just to assist... It makes you look at your investigation in more depth and actually think well yeah we do need that and we don't need that and I'm not gonna apply for that. And it kind of makes you stand up to the CPS a little bit more, which is not a bad thing, 'cos I think they just want everything, so you've just gotta be able to say no.” (Police Officer 10)

It was recognised that more relevant evidence-gathering not only benefited the complainant, but also improved the quality and efficiency of investigations. The SVCA scheme was also perceived to reduce the number of blanket data requests by CPS:

“We don't get as many ludicrous requests from the CPS anymore. There has been training since that has said we are not gonna get third-party for every victim anymore, we're not just gonna get, we're not gonna get blanket information anymore. We're only gonna progress reasonable lines of enquiry. So I do think there's a change in attitude in the CPS” (Police Officer 13)



"In days gone by they'll say 'right, I want this record that record'. You know. It was like a tick list, in the past, when they'd say I can't judge this person if I haven't got all these records. And I just think you know, when they're forty years old and they want school records and I'm like you're not having them that's ridiculous." (Police Officer 11)

Additionally, the **SVCA**s gave police officers more confidence to challenge prosecutors when they requested excessive data:

"Certainly on my part and people I've spoken to, it does make you think about it more and just think well actually we can actually say no, you know, if we don't believe it's relevant we've got a case to argue and I think it's made people feel a little more confident in saying no when it's not relevant." (Police Officer 10)

"I think disclosure's changed and I think we have kicked back a lot with erm, with CPS. I think now, we don't as a rule just blanket ask for things, we're more inclined to put parameters down and say 'well no, actually you don't need that, you don't need their phone downloads from 15 years ago. You don't need'. I mean I got asked at one point to look at people's landline records from 15 years ago, they didn't show anything, they wouldn't prove anything, and it's just, it's just a no from us now, we're kind of just we are just starting to kick back and say, well, no that's not required." (Police Officer 15)

However, **these improvements were viewed as ongoing and it was noted that SVCA**s remained important for encouraging good practice because of their status as legal professionals:

"Because it's kind of lawyer to lawyer as well isn't it, and it, it sort of gives it, I sometimes think CPS don't take the, the investigating officers so seriously and I think maybe if it was another lawyer who they're kind of on a level plane with, it might, might have a bit more impact as well." (Police Officer 15)

These findings are reflective of existing literature, which states that independent legal advocacy can foster cultural changes within criminal justice professionals (Dullum, 2016, as cited in Antonsdóttir, 2018, p.317). Indeed, analysis of similar legal advocacy in the Republic of Ireland found that it increased justification for the inclusion of complainants' private material (Iliadis, 2019). The changes should be considered part of wider improvements on complainants' privacy, e.g. the introduction of a RASSO Gatekeeper before the start of the SVCA pilot demonstrates that disclosure was already on the agenda of Northumbria Police. This Gatekeeper was perceived as a further safeguard by police, but it is notable that poor practice was readily identifiable in the case files even with this improvement. **The extent to which even sceptical practitioners began to rethink and better consider their practice in a 15-month pilot study is remarkable.** Given the slow pace of change in this area, it is difficult to think of another reform that has been so effective at challenging deeply embedded cultural practices.

6.2 Encouraging Best Practice

As part of the shift in general attitudes, **the SVCA project team worked with Northumbria Police to identify and address gaps in best practice.** For example, inappropriate ‘consent’ forms were challenged in at least four cases (Cases 18, 35, 43, 51) and the wide-reaching ‘Stafford’ form was ultimately re-developed in a collaboration between Northumbria Police, the PCCN, and the SVCAs. The SVCAs liaised with officers to ensure that consent was requested for specified parameters, in line with the *DPA 2018*:

“To begin with the police were automatically utilising what's known as the Stafford forms and just basically putting it under the client's nose and saying sign there. And therefore, after the ABE, I would always ensure that we went through that together or I challenged and said, 'Well, no, there's nothing that you need'... The consent forms, I was involved in tweaking them, so changing the parameters as to what it was that they were asking for, looking at the dates that were relevant and inserting those. So that it wasn't just a blanket obtaining of GP material, it was only what was relevant.” (SVCA 1)

In their willingness to acknowledge poor practice and work with others to improve, Northumbria Police were arguably pioneering on disclosure. Nationally, it was not until legal rulings in mid-2020 that other police forces began to meaningfully address concerns about privacy and consent for data. Northumbria Police are therefore an example of best practice, even where inappropriate and substandard procedure has been found.

Isabel (Case 43)

Isabel reported a rape by her ex-partner. She was supported by an SVCA during her ABE interview. The officer in this case did not ask Isabel to sign a ‘Stafford statement’, but the police later sought to obtain her counselling records. Isabel’s SVCA supported her consenting to give access only if all unrelated information was redacted prior to the police receiving the records.

This does not mean that learning is complete and the SVCAs are no longer needed to hold police and prosecutors to account. Time and again there were disparities between the assertions from police about how they work and the evidence of their work in the case files. The consent forms were a clear example of this tension, as one SVCA commented:

“I think we did do quite a lot of good by just challenging the Stafford statements, which allegedly weren't used at all by the police, because yes, they are... And it was also a bit dispiriting that we kept being told 'no, that's not happening'. It's like, well it is. So we sort of say this is happening, you know, 'you're using the wrong form', 'No, we're not'. 'Here's the form. You are using the wrong form'.” (SVCA 2)



Indeed, the SVCAs were highlighting the use of old and inappropriate forms throughout the pilot scheme, suggesting that sustained accountability with police is needed rather than highlighting the need for reform and then assuming this will be fully adopted.

Kelsey (Case 33)

Kelsey reported to police about years of abuse, including rape, from her ex-partner. Immediately after the ABE interview, Kelsey was asked to sign a 'blanket' Stafford statement. Her SVCA was present and challenged the request, explaining to the investigating officer why it was important to ask for specific information to ensure it was proportionate and relevant. The consent form was amended accordingly to allow only specific requests to be made in relation to medical and social services records. She was also supported to consent to counselling records being accessed, with the condition that irrelevant information would be redacted before being sent to the CPS. Both Kelsey and the accused (her ex-partner) provided their digital devices for download.

Another area of best practice promoted by the SVCAs was the response to complainants with additional or complex needs. In Case 31, the complainant had been taken into hospital for their mental ill-health and case files stated:

"Police informed not to interview via ABE and instead do on paper. I was brought in to see if this could be challenged. Successfully challenged and got approval for ABE to be conducted, however intermediary was deemed necessary... [Complainant] deteriorated in her presentation and as such couldn't progress." (Case 31, Case Files)

The complainant's health in this case deteriorated to the point of sending threatening messages to the SVCA, however it is positive that her needs were properly assessed and an intermediary specialising in the complainant's condition was made available. As a result of the intervention, **the complainant reported that "cops are treating her much better since [SVCA] involvement"** (Case 31, Case Files). Another SVCA observed that the same level of accountability was not possible by other support roles because they do not have the same legal standing:

"They haven't really got anybody to help them and the role of the ISVA and Rape Crisis is completely different to somebody that's really going to say, Well, look, you know, Officer, what, what's happened there? Why haven't you done an ABE? Erm, there needs to be one done, you know, what are you doing about this? What are you doing about that? You know, and so I think I think it is helpful for them to have that." (SVCA 3)

In addition, the **SVCAs helped with five VRRs, of which two were successful (40%).**

"[The internal review] came back, 'we've reviewed this we completely satisfied that there's absolutely no prospect blah, blah, blah, we're not going to we're not going to charge, we're not going to take prosecution here'. So then we did the external review and

I drafted that with her... And we then got a result that they were going to charge and the police officer was absolutely thrilled.” (SVCA 4)

It is not possible to compare this with success rates where legal advocacy was not provided, because such data is not available from the CPS nationally even under FOI request. However, the Victims Commissioner (2020) survey found that only five of 23 VRRs by their respondents were successful (22%).

Ziva (Case 71)

Ziva reported oral rape by an acquaintance. Ziva was worried about her medical records and mobile digital data being accessed. The SVCA was able to reassure Ziva that the investigating officer was only seeking relevant information, namely messages exchanged between her and the accused, and that a full mobile download would not occur. With SVCA support, Ziva also consented to the police accessing specific limited medical and counselling records.

The police sent the file to the CPS for a charging decision and charge was refused. The police felt it was a strong case and requested a review, which still resulted in a refusal to charge. Ziva exercised her Victims Right to Review, but again the CPS upheld their decision not to charge. With the support of her SVCA, Ziva requested an independent review which resulted in the CPS decisions being overturned and a charge has been brought.

Additionally, the SVCAs supported client to make a complaint to Northumbria police and a referral for judicial review, suggesting that they offered access to accountability mechanisms.

Finally, **senior police management noted that the impact of learning from the scheme had extended beyond the SVCAs’ immediate sphere of influence:**

“There’s no doubt learning, so my staff have been exposed to people with different backgrounds and experiences, the SVCAs, so there’s undoubtedly learning and I think there is learning about the victim journey and how they felt about it. Which I think is really important... We’re now redesigning our victim services and some of the sort of work and thinking around ISVA provision, and what we need to do, undoubtedly would play out from that. So that is very positive.” (Police Manager 2)

6.2.1 Do Improvements Mean SVCAs Are No Longer Needed?

Whilst the SVCA scheme fostered positive changes in attitudes and police and CPS practice, the need for legal advocacy remains clear. The accountability provided by SVCAs will be essential for ensuring the positive changes stay embedded. **For example, one officer described continuing to receive wide-reaching requests from the CPS once the SVCA scheme had ended:**

“For example, this morning I’ve received a request from the CPS and it’s like well, there are things here that aren’t relevant to the investigation, erm, in relation to how many

people this person spoke to on Facebook, erm, what her boyfriends are. It's, it's, we seem to be sort of, well the CPS seem to be throwing out quite a large net to look for everything where in, in an investigation like this the majority of rapes are within relationships, or former relationships or known people." (Police Officer 18)

Another police officer continued to demonstrate poor understanding of data protection requirements when accessing data from third parties:

"SVCAs did not seem to understand that we need no written authority from an IP [complainant] to obtain third party material from Local Authorities, Schools and some social care settings. I have been repeatedly asked by SVCAs what authorisation I had got signed by an IP to obtain third party material. I reply none, because I did not need any. That answer doesn't seem to compute with them though." (Police Officer 1)

The confusion may relate to some provisions for complainants who are under the age of 18 and whose guardians may be hostile to the investigation. However, given the issues discussed in Chapter Three, it is concerning that a police officer maintained these views at the time of fieldwork in June 2020. It is clear, then, that **legal advocacy remains essential for longer term change and to continue changing the culture where scepticism remains.**

6.3 Improved Complainants' Experience of the Criminal Justice System

The impact on complainants' satisfaction with the criminal justice system was difficult to establish because only three SVCA clients took part in the evaluation. However, the practitioner interviewees were well-placed to supplement these findings as they had received feedback from service users throughout the project. **Complainants were very positive about the SVCA role:**

"100% in all of this the saving grace has been the SVCA advisor, without a doubt, without a doubt my saving grace" (Susan, SVCA client)

"She was helpful. I found it comforting to have someone looking out to make sure everything was being followed correctly." (Nora, SVCA Client)

The indirect feedback gained via practitioners reflected these sentiments:

"When I met [complainants who used the scheme], they really felt somebody was fighting their corner. That must be so valuable... They had nothing but, but praise for them. And that, the support they gave them." (CPS Manager 1)

"I know that my complainants who I spoke to, who'd said that the referral had gone through, said that they'd thought the service was absolutely spot on." (Police Officer 10)

Much of the positivity originated from an **increased sense of confidence in the process because they trusted SVCAs to hold criminal justice practitioners to account**. For example, practitioners observed:

“They felt that the law, that somebody with, they had, I think there was a confidence that somebody who was legally trained was in, on their side.” (CPS Manager 1)

“As I understand it, without that lady involved I don't have any sort of actual legal representation it's just the evidence that I give and the CPS obviously, like, are important to me. So this was just kind of like from my side of things, be my voice, to the CPS.” (Susan, SVCA client)

Indeed, the **SVCA clients noted the positive impact of having someone to navigate the ‘legalese’** of the justice system, commenting that it mitigated the trauma of engaging with the police and CPS:

“Being able to actually write letters on my behalf where I haven't got the best English skills ever, I would never claim to, and just the way that she was able to actually put together letters to write the CPS to make the points that needed to be made in the correct terms. To be able to be like, listen to me and what I'm saying. But then, like I said, I break it down... D'ya know what I mean? And being able to, to actually speak to the CPS in the language that they understand, not the language that I myself speaks every day.” (Susan, SVCA client)

“She knows what she's talking about in terms of legal speak. And, you know, brought all her experience to that role... I do wonder how women understand and negotiate their way around it all because, I actually think you know, I'm at degree level... but there was a lot of times when I didn't [understand] and I thought God... There're probably loads of times where you're missing out on big important parts of the woman's story because you're intimidating her with the language. And also just the humanity in the whole experience...” (Patricia, SVCA client)

Patricia's comment also highlights the potential impact of SVCAs to enable better quality evidence from complainants, as well as the way in which legal advocacy might be especially important complainants with fewer educational qualifications, or those who struggle with communication. **In addition to improving complainants' satisfaction, SVCAs may therefore strengthen the quality of investigations.**

These data also suggest that SVCAs contribute to commitments under the Istanbul Convention (Council of Europe, 2011), which the UK Government continues to work towards ratifying, for complainants “to be heard, to supply evidence and have their views, needs and concerns presented” (Article 56(1)(d)). **The importance of legal advocates in achieving a meaningful voice for complainants reflects the existing literature, where similar outcomes are identified in other adversarial jurisdictions** (Laxminarayan et al., 2012; Iliadis, 2019). For example, Irish prosecutors state that a key benefit of independent legal representation is complainants feel their views are heard (Keane & Convery, 2020).

6.3.1 Complainants Benefitted Even If SVCA Interventions Were Not Upheld

Giving complainants a sense of voice mattered even when SVCA interventions were unsuccessful. For example, Patricia's feedback was hugely positive despite her records ultimately being disclosed to the defence. For others, a good outcome meant making an informed decision to retain their privacy and accept discontinuation of the criminal legal case (noted in three stakeholder interviews). In Case 56, there was also a push to challenge the CPS decision not to prosecute because of refusal to offer consent for dating app communications with a judicial review. In all outcomes, a significant factor was that clients felt they had been heard and able to make their own informed choice about what happened next.

Anika (Case 56)

Anika made a report of rape by someone she met during a night out. The investigating officer made an SVCA referral because Anika was concerned about her privacy in relation to her medical records and phone data. The SVCA successfully challenged the CPS request for counselling records that pre-dated the allegations and supported Anika in consenting to limited disclosure of her medical records. Anika's messages from a dating app to other men had also been obtained and reviewed by the CPS, who felt they met the test for disclosure to the defence. Anika did not consent to the messages being disclosed as she felt strongly that they were not relevant. For this reason, the CPS discontinued the case. Anika's SVCA ultimately supported her to join a judicial review by the EAW Coalition and Centre for Women's Justice, which Anika felt gave her a chance to be heard, as well as to make a difference for future women in her position.

It is notable that some CPS requests appeared excessive and/or rooted in myths about sexual violence, meaning that an ultimatum to give up data or have the case dropped was unfair or disproportionate. Case files revealed some of the reasons given by the CPS to complainants about why they would not charge the accused. These included:

"I am of the view that there is no evidence that the prosecution could use to show that a lack of consent has been communicated to the suspect. It is arguable that your demeanour should have communicated your reluctance to perform oral sex, however, this, on its own is insufficient to prevent the defence from asserting that it was reasonable for the suspect to assume consent... There is no evidence of how loudly you told the suspect no and if he acknowledged hearing it." (Case 24, Case Files)

"In relation to the ABE interview the [CPS] lawyer stated that she thought [complainant] was too emotional. [The prosecutor] made reference to a stranger rape she had been dealing with and this victim showed less emotion than [complainant]. Again I disagreed with her and stated that all victims react in different ways... The CPS lawyer also made reference to the fact that [complainant] rang the suspect out of the blue and agreed to go and sleep in the same bed with him but not have any sexual contact. She stated that male members of a jury would not believe that was the case." (Case 52, Case Files)

Similarly, one police officer quoted CPS requests for data in the SVCA referral form:

“We have no idea as to why the complainant was known to Social Services in the past. It could be that she was simply a neglected child. What we do know however from her “admission” is that she is a user of cannabis. Thus, for example, there could be records in existence because she was known to be a user of illicit substances and drink as an underage teenager who would regularly go missing from home and be found in bed with boys/males whilst intoxicated with little recollection to how she came to be there. Or perhaps she was a troublesome teenager whom her parent reports as going missing and telling lies about where she had been or with whom she had been. Again, any reference to the complainant telling untruths in the past would also be highly relevant. Accordingly this third-party material should be obtained from the local authority and reviewed by the OIC for any relevant material.” (Case 81, Case Files)

These speculative requests related to a complainant in her twenties, but included discussion of early teenage behaviour without explanation as to the relevance of that timeframe. There are national concerns about CPS decision-making, leading to the Centre for Women’s Justice [CWJ] and End Violence Against Women [EVAW] Coalition launching a judicial review (see CWJ, 2020 and linked documents). For this reason, CPS threats of discontinuing a case should not be viewed as automatically meaning that their requests were necessarily proportionate

Regardless of the ultimate outcome, SVCA support helped complainants to better understand their rights and their position in the criminal justice process. This was particularly useful when explaining to complainants why the data requested was relevant and proportionate:

“Once you explain why, why evidence is relevant to something people are okay... Or they might not be, they'll be very clear, 'well, I don't want this being disclosed'.” (SVCA 2)

“I got [feedback] that I, that I made the explanation of the system and the whole process, like the totality of the criminal justice process, I got told that I made it a lot clearer than what the police did.” (SVCA 1)

“Police officers don't explain themselves clearly and it's from a police perspective, whereas I think an advocate would explain it in more layman's terms and be able to explain why it's needed at court and things like that.” (Police Officer 12)

Such findings reflect analysis of the Republic of Ireland’s legal advocacy, which found that having independent legal representation enabled complainants’ to better understand the reasons behind requests for private material and the decisions made about it by legal practitioners (Iliadis, 2019; Keane & Convery, 2020). Like the Irish research, **we also found that advocacy positively impacted complainants’ wellbeing:**

“Responding to the CPS for me helped save me from going under during an extremely devastating time. Having the SVCA there to help guide me through the information, along with knowing the law, helped me stay strong mentally during this period... It's like when you're going through anything like this, and you've got these like mental health issues to deal with, the pressure to deal with life changes within your life, and you're supposed to,



it sounds so simple, to write a letter, but actually to write a letter and then also find anything to do with court or responding is extremely hard... The stress would of [sic] been unbearable if it wasn't for the SCVA responding to the CPS for me" (Susan, SVCA Client)

6.4 Impact on the Accused

All of the practitioners and stakeholders interviewed for the evaluation were clear that the SVCA scheme had **no** negative impact on the accused's right to a fair trial. This is unsurprising given the SVCAs "were simply arguing for the law to be applied correctly" (Oversight Group Member 2), rather than representing a new direction in the balance of complainants' interests with fair trial. Indeed:

"We were very careful to make sure that there was, as I've already said, that [the defence] couldn't have, they couldn't challenge us at any, that we had coached or we'd given out information or anything like that. We were very careful because our overriding aim is to bring a fair prosecution and to do everything so that a, so that the defence do not gain an advantage just by creating the, the fog that is 'Look over there'." (CPS Manager 1)

The trial in Case 35 took place approximately five months after the original listing because of the SVCA's challenge about disclosure (see Section 5.2). The defendant was acquitted at trial, meaning that the postponement increased his time on remand; but delays to court dates are commonplace in England and Wales (see National Audit Office, 2016) and the defendant had opportunity to present arguments for bail instead of custody. The right to a fair trial is recognised as requiring balance with other interests, for example to ensure proportionality and procedural justice, meaning that any disadvantage to the defendant does not equate to a breach of fair trial (*R v A* [2001] UKHL 25).

Indeed, it was suggested that **the only negative impact on the defendant would be a reduced opportunity to conduct "fishing expeditions"** (Police Officer 15) or "mudslinging about [the complainant's] character" (Police Officer 11):

"It is possible that some material that would have been disclosed irrelevantly and might have given an unfair advantage to the defendant, contrary to the guidance in the statutory guidance... we stopped that kind of unfair play, which was there to undermine her...So we're not interfering with fair trial rights." (Oversight Group Member 2)

"The defendant would only be impacted to the extent that was permitted by law... the impact on them might be a better and more full assessment of the material to be disclosed." (Police Manager 1)

This reflects a Norwegian study, where participants similarly agreed that strengthening complainants' rights had not weakened defendants' rights or caused imbalance (Dullum, 2016, as cited in Antonsdóttir, 2018, p.317). International evidence shows that independent legal representation is exercised within an adversarial paradigm and against the high standards of the right to a fair trial (Braun, 2019). There is nothing sinister in ensuring the proper administration of justice and the SVCA achieved this without breaching the due process rights of the accused.

6.5 Workload & Efficient Investigations

The SVCA scheme had both positive and negative impacts with regards to the efficiency of rape investigations. Six police interviewees noted that they had been anxious before the SVCA pilot, mostly because they thought it would increase their workload. In practice, however, there was generally no negative impact on officer workloads and SVCAs were even perceived as freeing up resources by reducing the amount of material being accessed:

“I mean, the first thing I look at as an officer if I'm getting somebody else involved, what additional workload am I gonna have?... Introducing [the SVCAs] didn't increase my workload at all, it assisted.” (Police Officer 18)

“Because we're not wading through mountains and mountains of stuff that we don't need to go through, I think it's a lot better.” (Police Officer 8)

The case files featured examples of extensive delay (12+ months) waiting for the extraction and analysis of mobile phone data. This reflects a national problem, with an average delay of six months being reported by the Metropolitan Police and an average 3.5 months delay elsewhere (based on 2019 FOI data from 12 forces; Big Brother Watch, 2019). The increasing time taken from report to charge is a core focus of the Government's End-to-End Rape Review, and high levels of digital and third-party evidence are recognised as a significant causal factor in this (see ICO, 2020b).

In some cases where SVCA intervention was substantial, the process caused delays and police officers felt their workload was increased by liaising between the SVCA and CPS:

“In some cases, there was a lot of, it created quite a lot of work. Some of the challenges and especially this, the one case got to court with, did create a lot more work because obviously, there's a duty of continual review from us and as things change there's another review, so, there was increased correspondence, there was increased challenge, which creates more work for us. I'm not saying it's not welcome challenges, we welcome, that's what we do. But I think maybe the SVCAs in some cases were doing, were trying to do the very best for their clients and I don't underestimate that at all and how difficult that can be. But, they, we got quite a lot of correspondence on some cases.” (CPS Manager 1)

As with much procedural justice, there was potential for the SVCAs to slow case progression until legal arguments were resolved. This was required to protect due process; however, the delays were rare and not excessive. **Overall, it was therefore felt that SVCAs made investigations more efficient and that where individual cases did take longer, the extra time was justified:**

“I just think the benefits just outweigh the potential for, for some extra work, some extra thoughts, some extra challenge to the judiciary. For me, the benefits massively outweigh.” (Police Manager 1)

7. LOOKING AHEAD

We asked the 34 CJS practitioners and stakeholders whether the SVCA scheme should be expanded nationally. **Thirty-one participants, including those who had initially been sceptical, wanted to see SVCAs become a permanent aspect of the national response to rape.** Of the three participants who did not want expansion, one still agreed with legal advice for complainants and the other two acknowledged that there was rationale for a similar type of support.

This reflects the support for legal advocacy in submissions to the Gillen Review (2019), including from the Law Society, Human Rights Commission, and 89.5% of respondents in the Review's survey of the public. A separate survey by the Northern Ireland's Women's Regional Consortium found 96% of respondents agreed with legal representation in sexual offences. Notably, the only 'substantive objection' to Gillen's recommendation of legal advocacy came from the Northern Ireland Bar, on the basis that:

"The prosecutor owes duties [to the complainant] as set out in the Victim and Witness Charters ... [and] once a case comes to trial and the issues of previous sexual experience, or disclosure of medical documents are encountered, a senior prosecution counsel being conversant with all of the circumstances, having access to all the witnesses, knowing how decisions are reached and being familiar with the disclosure in the case, could adequately deal with these matters." (Northern Ireland Bar Council, 2019)

Section 4.1 outlines why prosecutors cannot adequately protect complainants' rights. In addition, Gillen (2019) argued that the NI Bar Council's response was unconvincing because experience shows that the prosecution does not sufficiently address the private interests of the complainant. **We therefore strongly recommend that independent and specialist legal advocacy be made available for complainants of sexual violence moving forward.**

7.1 Proposals for a National Scheme of Legal Advocates

This evaluation highlights the importance of legal advocacy in best practice responses to rape, however there are lessons to be learnt from the challenges in the SVCA pilot. A summary of the recommended scope for legal advocacy is provided in Appendix 4, but for ease the suggested changes are below.

Dedicated role

Moving the role to salaried posts rather than contracting lawyers via a fee system would be more cost effective, even with overheads and indirect staffing costs. This would also limit the chance of conflicting interests arising and increased consistency could foster stronger relationships with key partners, e.g. police. Evidence on specialist courts in South Africa demonstrates significant benefits for multi-agency collaboration when the same pool of practitioners from different organisations work together regularly (Walker & Louw, 2003). Ideally, legal advocates would work within a specialist court model akin to those in New Zealand (Aotearoa) and South Africa, but we recognise this is a longer-term goal.

Housed within specialist support services

A repeated theme from the evaluation was that there could be improved communication with other support services. A legal advocacy scheme being introduced to Northern Ireland in April 2021 will house lawyers within the same offices as ISVAs, and this appears sensible. Where there would be tension between the underpinning philosophy of legal advocates and the service providing the ISVAs, it may be useful to house legal advocates in the SARC, as these are already hubs of multi-agency support. One SVCA also suggested that there be a network of complainants' advocates, similar to other national legal panels, whereby best practice could be shared and CPD training delivered.

Training from specialist support services & intermediaries

Relatedly, it would be beneficial to include specialist training from independent support services alongside the legal training. This is to ensure that legal advocacy is underpinned by the trauma-informed and specialised approach that was highly rated in our survey. The support services involved in training would also benefit by gaining a clearer understanding of the advocacy role.

The evaluation also highlighted the role of advocates in ensuring that a complainants' access needs were met. The referral forms suggested that police more actively encouraged a complainant to seek SVCA help when they had learning disabilities and/or long-term mental health conditions. To ensure that support for complainants with additional or complex needs is framed most appropriately, it would be helpful for training and CPD sessions to include experts on these needs (e.g. intermediaries).

Finally, to optimise the legal perspectives in the training, we recommend input from defence lawyers and judiciary, as well as human rights lawyers. This would ensure that the SVCAs are rooted in sound legal knowledge but do not simply replicate existing organisational cultures within the criminal legal system about what evidence is 'necessary' in rape cases.

Expanded remit – All serious sexual offences

Many interviewees stated that the scheme should be expanded to cover all forms of sexual violence, as the same privacy issues emerge in other serious sexual offences and the restriction of support to s.1 rape felt arbitrary. The O'Malley report (2020) recommended that Irish provisions for independent legal representations are broadened to cover all sexual assaults, setting a precedent for this scope in comparable adversarial jurisdictions.

Interviewees also argued that the SVCAs should work with child complainants as well as adult complainants, particularly as child sexual exploitation cases tend to involve extensive third-party materials. Legal advocacy in these areas would contribute to the Government's commitment to increase CSE prosecutions (HM Government, 2017) and enable a more joined up approach to all forms of sexual offences.

In line with the recommendations of the O'Malley review (2020), we also suggest the provisions be extended to parents or guardians of children and adults with intellectual or mental disabilities.

Reduced role around ABE interview

To avoid overlap with the role of ISVAs, referrals for legal advocacy are best kept until there is a request for third-party material or personal/digital data. In some cases, these issues will not arise and there is no need to involve an advocate. In cases that do require advocacy, the earlier support up to and including ABE interview is best provided by ISVAs. Referrals to legal advocates should not be made for the purpose of providing general information about the criminal justice system, and they should only be engaged before ABE if there is a specific legal query about rights.

Referrals should be ‘opt-out’ rather than ‘opt-in’

In line with the Gillen Review (2019), we recommend the Danish approach that requires a complainant to ‘opt out’ rather than ‘opt in’ to legal advocacy during the police investigation. While blanket referrals to the SVCAs at the outset of reporting were inefficient, a compromise would be to have a presumption of legal advice and support each time a complainant is asked for access to their digital data and/or third-party materials, or where there is a sexual history application.

Reinstate the support around sexual history applications

As outlined in Chapter Three, it would be helpful to establish a legal framework within which legal advocates could support complainants on all aspects of their Article 8 rights. This includes applications to adduce evidence of their sexual history, which are recognised by the courts as being intrinsically linked to a right to private life even if the complainant is publicly vocal about their sexual behaviour. This area of evidence law is particularly controversial and has been criticised for limited compliance with procedure rules, thereby making it a prime target for future legal support.

Current rules state that applications for sexual history evidence, known as Section 41 applications, must be heard in private and without the complainant, but the court must be satisfied that they have taken account of the complainant’s rights and a complainant must be informed if an application is successful. These provisions could form the basis of legal representation around sexual history, but in order to be most effective there should be revision of the rules in order to provide meaningful contributions from a representative of the complainant (although the complainant themselves would not be fully briefed).

7.2 Who Should Be A Complainant’s Legal Advocate?

7.2.1 Independent from the Criminal Justice System

Independence is a highly rated aspect of support services like Rape Crisis (Daly & Smith, 2020). Independent advocates are better placed to challenge poor or problematic practice within the criminal justice system (Brooks & Burman, 2017) and their independence fosters the complainant’s trust and confidence (Robinson, 2009), as well as being linked to improved wellbeing outcomes (Lovett, Regan & Kelly, 2004). Our data suggested these were also vital features of the SVCA role, because it was perceived as meaning “they’ve got no ulterior motive” (Support Worker 2).

The *perception* of independence is important too because studies of non-legal advocacy have shown that affiliation with police and health services reduces complainants' perceptions of a service as independent (Robinson, 2009). This was not an issue raised by complainants regarding the SVCA scheme, probably because the SVCAs were based in private practice firms. However, one stakeholder (CPS Manager 2) argued that having the SVCA role managed by PCCN was not sufficiently independent and could cause tensions with the police. Housing within an independent support service may alleviate this tension.

7.2.2 Legally Qualified Professionals

Three practitioners (CPS Manager 1, CPS Manager 2, Police Manager 2) questioned whether the SVCA role could be undertaken by non-legal advocates, such as ISVAs, if they had enhanced training around disclosure rules. This would require an overhaul of the ISVA model, including significant training needs and increasing resources to a chronically under-funded service that cannot meet existing demand for support, let alone an expanded remit. The roles of ISVAs and SVCAs were fundamentally different, with legal advocacy not providing emotional support and being limited to very specific legal questions. An ISVA is a point of continuity throughout the complainants' justice journey, whereas an SVCA has a specific and limited role regarding evidence and privacy rights.

Similar conclusions were drawn in recommendations for independent legal representation in Scotland (Keane & Convery, 2020) and Northern Ireland (Gillen, 2019). The scoping exercise also demonstrated that while most adversarial countries have the possibility of both legal and non-legal advocacy, only one (Norway) combined these into one support role (Daly & Smith, 2020). Notably in this Norwegian model, the non-legal elements of the role are strictly practical, e.g. referral to medical support or assisting in compensation claims (Amnesty International, 2008).

Additionally, non-legal advocates cannot know details of the complainant's case, whereas legal advocates are required to know the details so as to provide appropriate advice and make representations. This is demonstrated in the existing difficulties faced by ISVAs when supporting complainants in VRR. Without the privilege enabled by legal qualifications, discussions about the contents of third-party materials could also be accessed by the Crown and disclosed to the defence, meaning that complainants may be adversely affected by seeking advice.

Finally, most practitioners suggested that non-legal professionals in the same role would be given less status and have less influence on police and prosecutors. Having legally qualified advocates instead provides reassurance to complainants and practitioners that the lawyers will be aware of the procedural rules and able to work within appropriate boundaries. However, Police Manager 2 called for a clear legal framework, otherwise the role may be limited to 'advisor' and this would be a missed opportunity.

7.2.3 Knowledge and Experience

The SVCAs in the pilot were highly experienced solicitors, all of whom had been qualified for at least 15 years. This was important for effectively and confidently working alongside experienced police officers and prosecutors, as their professional background was perceived as giving them "some clout" (SVCA 1). There were questions from some interviewees, about whether the role would be best undertaken by solicitors with more experience in practicing criminal law (the SVCAs mostly specialised in family law).

For example, one police officer said they were concerned that a single training course would be insufficient to grasp the complexities of disclosure (Police Officer 16), while senior police found the limited experience of criminal procedure rules “problematic at times” (Police Manager 2). Indeed, one complainant declined SVCA support because they were not criminal lawyers, believing that family solicitors would not be able to effectively represent her. There was also recognition of a learning curve and at times the SVCAs felt “a bit kind of out of our depth with criminal law” (SVCA 2). Indeed, one SVCA had more recent and extensive criminal practice and was described by fellow SVCAs as “a lot better” because she “rode both horses” (SVCA 2). This SVCA felt her criminal law background was an advantage:

“Things like the ABE, obviously, I knew that inside out. I've been, I've watched so many of them, I knew what to look out for from the other side of the fence in order to see like weaknesses or [inaudible] like for whichever side so that was fine.” (SVCA 1)

To be clear, all SVCAs had practiced criminal law in the past and their specialism in family law provided many advantages. For example, they were experienced in representing clients without fully briefing them on all evidence, and they took a less adversarial and more mediatory approach than criminal lawyers might. Finally, the SVCAs were able to provide “a fresh pair of eyes” on ways of working (SVCA 2).

In a national roll-out, there is a risk of recruiting less experienced lawyers than the SVCAs in the pilot. The pitfalls of inexperienced lawyers representing complainants’ rights have been noted in other jurisdictions, including Germany and the Republic of Ireland. Studies have found that using insufficiently experienced lawyers can amount to ineffective representation (Braun, 2019; Iliadis, 2019). Indeed, the O’Malley review (2020) specifically addressed this issue in the Republic of Ireland and highlighted the importance of ensuring complainants’ advocates are “of an appropriate level of seniority and experience in light of the nature of the case” (p.69, para 6.14). This has also been identified in Sweden, where a government report recommended in 2007 that “the complainant’s counsel should be an experienced lawyer with the necessary competence, which has been defined as equivalent to the requirements that apply to defence counsels” (Amnesty International, 2008, p.82)²⁶.

The risk of inexperienced lawyers arises when there is late engagement of advocates (Republic of Ireland) and lower fees for representing complainants (Germany). The use of salaried posts and a presumption of referral during the police investigation will mitigate the former, and the latter can be addressed by ensuring that the salaries are comparable to the average earning for criminal law solicitors. If these conditions are met, Barton & Flotho (2010, cited in Braun, 2019, pp.259-260) suggest that many lawyers are attracted to the position because they have a special interest in victim-survivors and/or gender-based violence. This was reflected in the SVCAs’ motivations for taking on the role, as they were all experienced in family law representing women and children around domestic violence and abuse.

²⁶ More recent reports, however, indicate that this remains a problem in Sweden as a similar recommendation was made in 2016: “Requirements are to be tightened concerning the injured party counsel's expertise and suitability” (Ministry of Justice (Sweden), 2016; see also Staten Offentliga Utredningar, 2016, cited in Braun, 2019, p.260).

7.3 How Much Will It Cost?

We estimate that a national rollout of legal advocacy for complainants would cost around **£3.9 million annually in England and Wales**. Widening the scope to include all sexual offences would increase the costs, but we could not accurately estimate the demand and have based the figures on any rape offence.

Table 5. Calculation of Estimated Costs (Per Year)

Cost Type	National Estimate*	Calculation of Cost
Staff	£2,970,360	£44,400 per post (outside London) £53,280 per post (London) Average solicitor salary = £37,000 London weighting = 20% On-costs for employer = 20% 13.8% N.I. + 5% pension + 2.2% overheads
Advocacy	£782,460	Advocacy used in 1% SVCA cases, at £2415 per case 60% uptake: 53,970 recorded rapes = 32,382 cases 1% of 32,382 cases = 324 324 cases x £2415
Miscellaneous	£111,394	SVCAs averaged £3.44 expenses per case £3.44 x 32,382 cases Training & CPD self-funded Indemnity assumed adequate

* 61.5 FTE outside London + 4.5 FTE in London. Based on average 4.5 hours work per client & 60% uptake.

7.3.1 Justification of Costs

The Home Office (2018) estimates that the cost of sexual offences in England and Wales is £12.2 billion each year (based on 2015 calculations). Of this, an estimated £9.8 billion is caused by the emotional consequences of both the crimes and inadequate responses to those crimes.

Research shows that improved criminal justice responses lead to better health and employment outcomes, as well as increasing public confidence in the justice system and preventing future offending.

Conviction rates for rape are at an all-time low. It is estimated that each rape conviction prevents up to six further sexual offences (Westmarland et al., 2015) – saving untold human costs and an estimated £197,160 per conviction even after the cost of imprisonment.



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9. APPENDICES

Appendix 1: International Models of Legal Advocacy

Adapted from Daly, E. and Smith, O. (2020). *Scoping Review: Legal & Non-Legal Advocacy for Rape Complainants in Adversarial Jurisdictions*.

Adversarial Jurisdictions:

Jurisdiction	Remit of Legal Advocacy	Stage of CJS
Australia - NSW	Submissions on disclosure of evidence relating to privacy e.g. counselling and medical records.	Pre-trial case management
Australia – S. Aus	May challenge applications to discover confidential records, e.g. counselling records (legal advocacy for victim must be agreed by Victims' Commissioner).	Pre-trial case management
Canada	May make submissions regarding sexual history evidence. May make submissions relating to privacy e.g. medical or counselling records. Most states also offer free legal advice (not representation) limited up to 4 hours before the trial stage.	Before report to police, pre-trial case management
India	Victims are entitled to hire private legal representation and support as required.	Throughout process
Republic of Ireland	May make submissions regarding remit of sexual history and counselling records (but not currently medical, psychiatric, or social work records).	Investigation, pre-trial case management
Scotland	May make submissions regarding disclosure of medical records and digital downloads.	Pre-trial case management
US	May make submissions in response to applications to adduce private records and sexual history.	Pre-trial case management

Hybrid or quasi-adversarial Jurisdictions:

Jurisdiction	Remit of Legal Advocacy	Stage of CJS
Denmark	May object to sexual history evidence. May sometimes cross-examine defendant. May, at judicial discretion, cross-examine other witnesses. May, at judicial discretion, make submissions regarding procedural issues.	Throughout process
Iceland	May access case files as relevant to the complainant and to protect their interests (usually this comprises their police interview and medical records). May access all case files and share with complainant if case proceeds to court.	Throughout process
Italy	May access case files. May be present at court proceedings. May cross-examine the defendant. May make objections.	Pre-trial case management through to trial
Japan	May make submissions regarding use of evidence. May cross-examine witnesses, including defendant. May make closing arguments. May present victim's opinion of the facts and application of the law.	Pre-trial case management through to trial
Norway	Free legal advice, limited to 3 hours, available prior to reporting. May access case files and adduce / comment on evidence. May cross-examine witnesses (including defendant). May appeal decisions made by prosecution.	Throughout process
Sweden	May suggest evidence and ask questions. May object to questions and request of adduction of evidence. May cross-examine defendant.	Investigation through to trial

Appendix 2: Characteristics of the Complainant-Survivor Survey Sample

Table A. Characteristics of all survey sample

	<i>n</i>	% sample
Gender		
Female	554	95.2%
Male	13	2.2%
Non-Binary / Trans / Not Listed	15	2.6%
Not stated	4	0.7%
Ethnicity		
White British	506	86.3%
White Other	22	3.8%
Black British / Black	7	1.2%
Asian British / Asian	14	2.4%
Dual / Multiple Heritages	20	3.4%
Not Stated	17	2.9%
Age		
18 - 24	103	17.6%
25 - 34	225	38.4%
35 - 44	134	22.9%
45 - 54	77	13.1%
55 - 64	35	6.0%
65 & Over	9	1.5%
Not Stated	3	0.5%
Age at Time of Offence		
Adult (18 & Over)	342	58.4%
Teenager (13-17)	167	28.5%
Child (12 & Under)	73	12.5%
Not stated	4	0.7%

Table B. Characteristics of survey sample who reported to police

	<i>n</i>	% sample
Gender		
Female	222	95.3%
Male	3	1.3%
Non-Binary / Trans / Not Listed	6	2.6%
Not stated	2	0.9%
Ethnicity		
White British	205	88.0%
White Other	5	2.1%
Black British / Black	4	1.7%
Asian British / Asian	5	2.1%
Dual / Multiple Heritages	7	3.0%
Not Stated	7	3.0%
Age		
18 - 24	34	14.6%
25 - 34	89	38.2%
35 - 44	60	25.8%
45 - 54	30	12.9%
55 - 64	17	7.3%
65 & Over	3	1.3%
Age at Time of Offence		
Adult (18 & Over)	151	64.8%
Teenager (13-17)	49	21.0%
Child (12 & Under)	31	13.3%
Not stated	2	0.9%

Year of Report

Before 2003	37	15.9%
2003 - 2013	51	21.9%
2014 – 2015	20	8.6%
2016 - 2017	44	18.9%
2018 - 2020	58	24.9%
Not Stated	16	6.7%

ISVA Support

Yes ²⁷	76	32.6%
No	104	44.6%
N/A	37	15.9%
Not Stated	16	6.9%

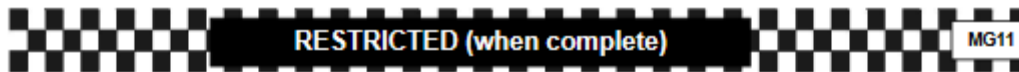
Case Outcome

Withdrew support	38	16.3%
NFA at Police stage	64	27.5%
NFA at CPS stage	31	13.3%
Acquittal after trial	15	6.4%
Guilty plea	17	7.3%
Found guilty at trial	22	9.4%
Ongoing	24	10.3%
Other / Not Stated	22	9.5%

²⁷ Qualitative answers demonstrated confusion amongst victim-survivors about whether they had been offered and received ISVA support. Only those cases where it was clear that ISVA support *had* been given were therefore coded as 'yes'.

Appendix 3: Northumbria Police Stafford Statement

RESTRICTED (when complete)		MG11
WITNESS STATEMENT CJ Act 1967, s.9; MC Act 1980, ss.5A(3) (a) and 5B; Criminal Procedure Rules 2005, Rule 27.1		
Statement of:		URN
Age if under 18: (if over 18 insert 'over 18') Occupation:		
This statement (consisting of page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.		
Signature:		Date:
Tick if witness evidence is visually recorded (supply witness details on rear) ☐ I am the Complainant/Witness/Parent/Person with parental responsibility for the Complainant/Witness in the case of Regina v (full name of the Defendant or Operation name)		
I have been informed that as part of this investigation the police/prosecution will request access to the following material where applicable:-		
- Material held by the Local Authorities for areas within which I have resided - School/Education records - Medical and any psychiatric records held by (name of GP practice(s) and/or hospital(s) if known) - Any Counselling records held by any agencies. - Prison or probation records		
I have been told that the purpose of the access is to identify anything that might have a bearing upon the prosecution and any trial that might follow in the event someone is charged.		
I do/do not object to the prosecution being given access to the material		
I understand if I refuse permission for the prosecution to consider and disclose such material which is appropriate the defence representatives will have to be advised of my refusal and a judge may order disclosure, after hearing and considering any objections by me/my representative, as appropriate.		
Signature:		Signature witnessed by:
2006/07(4)		RESTRICTED (when complete)



Witness contact details

Home address:..... Postcode:.....
 Home telephone No:..... Work telephone No:.....
 Mobile/Pager No:..... E-mail address:.....
 Preferred means of contact (specify details):
 Best time of contact (specify details):
 Male / Female Date and place of birth:.....
 Former name:..... Ethnicity Code (16 + 1)..... Religion / Belief (Specify.....)

DATES OF WITNESS NON-AVAILABILITY:

Witness care

- a) Is the witness willing to attend court? Yes ☐ No ☐ If 'No', include reason(s) on form MG6.
 b) What can be done to ensure attendance?
 c) Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness?
 Yes ☐ No ☐ If 'Yes' submit MG2 with file.
 d) Does the witness have any particular needs? Yes ☐ No ☐ If 'Yes' what are they? (Disability, healthcare, childcare, transport, language difficulties, visually impaired, restricted mobility or other concerns?)

Witness Consent (for witness completion)

- a) The Victim Personal Statement scheme (victims only) has been explained to me: Yes ☐ No ☐
 b) I have been given the Victim Personal Statement leaflet Yes ☐ No ☐
 c) I have been given the leaflet "Giving a witness statement to the police – what happens next?" Yes ☐ No ☐
 d) I consent to police having access to my medical record(s) in relation to this matter (obtained in accordance with local practice) Yes ☐ No ☐ N/A ☐
 e) I consent to my medical record in relation to this matter being disclosed to the defence: Yes ☐ No ☐ N/A ☐
 e) I consent to the statement being disclosed for the purposes of civil proceedings if applicable, e.g. child care proceedings, CICA: Yes ☐ No ☐
 g) The information recorded above will be disclosed to the Witness Service so that they can offer help and support, unless you ask them not to. Tick this box to decline their services: ☐

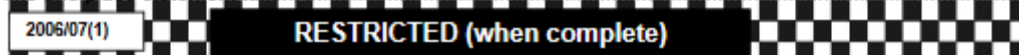
Signature of witness:..... PRINT NAME:.....

Signature of parent/guardian/appropriate adult:..... PRINT NAME:.....

Address and telephone number if different from above:.....

Statement taken by (print name):..... Station:.....

Time and place statement taken:.....



RESTRICTED (when complete)

MG11(CONT)

Page No. 2. of 2.....

Continuation of Statement of:

In the event of anyone being charged:

I do/do not object to the material identified as relevant being disclosed to those who represent the defendant and I confirm that I have been told that the defence will have access only to such parts of the material that are needed to ensure that the trial is fair. I understand that I may explain my reasons for objecting to disclosure and I would like to say

I understand that the review continues throughout the prosecution process which includes the duration of any subsequent trial, I therefore authorise the release of my records upon any request made by the Police during that time period.

I understand that I may withdraw my consent to access to any or all of the above records at any time. If I choose to do so I will notify the Crown Prosecution Service of my decision by writing to the Crown Prosecution Service, St Ann's Quay, 122 Quayside, Newcastle Upon Tyne NE1 3BD

During the process of recovering third party material that I have already highlighted in this statement I have been informed that other agencies & their associated records may be identified.

I do/do not object to the prosecution being given access to the material. These agencies if relevant include:-

Barnardos, SCARPA, DnA (Drugs and Alcohol), NSPCC, MIND, Sorted, Orchard Mosaic, Richmond Fellowship, Acorns, YOT (including YOT services Newcastle, Northumberland & any other YOT services), CYPS, CAMHS (to include CAMHS Newcastle, Durham, Longbenton & any other CAMHS records including those held by medical record SPOCS anywhere in England, Scotland & Wales), Northumbria Tyne & Wear NHS Foundation Trust, Plummer Court, The New Croft Centre, Any Rape Crisis Teams, GAP, Turning Point, Substance Misuse Service, Voice Advocate Visit Unit, Talking Therapies, Northumberland Recovery, PALS, Emotional Wellbeing, Youth Voice, NACRO, CHOYSEZ, Insight Health Care, any Residential Care Homes either run by a private company or on the instruction of any identified local authority, NECA, Princess Trust including the Fairbridge Programme, The Beacon Centre, Netherton House, Newcroft Sexual Health Services-Newcastle Upon Tyne Hospitals NHS Trust, Newcroft psychological services, Streetwise, Childline, PROPS, Family Intervention Project, Harbour Refuge, any MARAC records, Young Peoples Services relating to Your Homes in Newcastle & Connexions, Wearside Woman in Need refuge, Escape & any housing departments or homeless teams, DASH (drugs, alcohol & sexual health), ISVA.

2006/07(1)

RESTRICTED (when complete)

Appendix 4: Recommendations for a National Legal Advocacy Scheme

Complainants' Lawyers should:

1. Provide free legal advice and representation for complainants of serious sexual offences, or the guardians of complainants who are children and adults with intellectual or mental disabilities (unless they are the accused or key defence witnesses).
2. Offer advice on best practice for police and other CJS practitioners, including via CPD training and rota on a national helpline (like the Bar Council's ethics and practice guidance helpline).

The remit of the advice and representation should include:

Information & advice before reporting to police (via a national helpline)

- This is distinct from the ISVA 'informed choices' session and refers to context-specific legal questions rather than general queries about the CJS process.

Requests for consent to collect digital evidence / third-party materials

- Complainants should not be able to give consent without waiving an opportunity for legal advice & this should not be possible on the same day as the ABE interview recording.

Victims' Right to Review

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

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

Representation on applications to admit evidence under sexual history or bad character provisions

- In the first instance, these representations should be made to the CPS.
- Attendance and submissions at case management hearings (instructing counsel where relevant) where the complainant feels their representations were not given due consideration by the CPS.

Attendance (but not involvement) at trial

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

Facilitate written complaints to the relevant criminal justice agency, ombudsman, or Member of Parliament, in line with the Victims Code

- Any further legal action, e.g. judicial review, would involve referral to other organisations, e.g. Centre for Women's Justice. This may require additional funding due to increased demand.

Make, review, and appeal applications to the Criminal Injuries Compensation Authority

- While this would ideally be free for the complainant, there is scope for supplementing the funding for this role with a small % commission on successful claims.

Proposed relationship to other support services:

To ensure clarity in the difference between ISVAs and complainants' lawyers, please see [Table C](#). The ISVA role is wider than the areas in the table, but it is intended to delineate the criminal justice aspects of the role where there may be confusion with complainants' legal advocates:

	Independent Sexual Violence Advisors (ISVAs)	Complainants' Lawyers
Before reporting	General advice, outlining practical options and giving information on CJS.	Helpline to answer context-specific questions on rights (not general advice).
At first report	Attend and provide emotional support. Give information on the justice process.	
ABE interview	Can attend building, but not sit in interview, for emotional support.	Can attend interview if requested (where complainant has no one else to accompany them).
Ongoing investigation & charging decision	Liaise with OIC to give complainant updates about case progress and provide emotional support. Cannot know the facts of the case or discuss these with the complainant.	Advise complainant on consent for third-party and digital materials. Liaise with OIC to make representations. Can know facts of the case and hold privileged discussions with complainant.
Pre-trial	Liaise with Witness Care Unit to arrange court familiarisation visits.	Liaise with CPS on applications for sexual history / bad character evidence, or disclosure to defence. Advise & represent complainant on these.
At trial	Accompany complainant while waiting to give evidence. Some courts allow ISVAs to sit with the complainant when giving evidence, others do not.	In cases where there is a high risk of non-probative breaches to privacy, the lawyer may attend trial and sit in court. Can raise concerns with CPS (or their counsel).

Victims Right to Review	Provide emotional support. Inform the complainant of VRR and offer support writing the letter. If successful, a new ISVA must replace the one who supported in the VRR.	Liaise with complainant to formulate & submit VRR letter. Liaise with police/CPS to update complainant on status of the VRR.
Complaints & Judicial Review	Provide emotional support. Inform about complaints processes and option for judicial review. Refer to relevant organisations (e.g. CWJ).	Inform about complaints processes and option for judicial review. Liaise with complainant to formulate & submit complaint letters. Refer to relevant organisations (e.g. CWJ) for judicial review.
CICA claims	Inform the complainant of the criminal injuries compensation scheme. Provide emotional support.	Upon decision to apply for compensation, support to complete application and act as designated contact for the authority. Liaise with the complainant to draft and submit any reviews and/or appeals.