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Title: In the Eye of the Storm: Permacrisis in the Investigation of Rape and other Sexual Offences

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Abstract

Low conviction rates and poor victim-survivor experiences are the hallmarks of the permacrisis in the police investigation of rape. This article highlights the problems and discusses the way forward as proposed by Operation Soteria Bluestone, a police-academic collaboration aimed at transformational change in the police response to rape.

Introduction

THE STORM ABOUT THE policing of rape and other sexual offences has been brewing for years. The feminist challenge to the police investigation of rape was laid bare in the watershed High Court ruling *DSD and NVB v The Commissioner of the Metropolis*. Systemic and investigative failings were detailed in the judgment, which complimented the Metropolitan Police Service's (MPS) official guidance, but concluded that 'regrettably, deeds did not match words'. The judgment outlines a litany of investigative failures over six years before John Worboys was convicted of one count of rape, five sexual assaults and thirteen other charges. Following his conviction, the MPS received a surge of reports about his offending behaviour, with the number of victims now acknowledged to be over 105. The court established that there is a duty on the police to investigate, which serves the 'purpose ... to secure confidence in the rule of law in a democratic society, to demonstrate that the State is not colluding with or consenting to criminality, and to provide learning to the police with a view to increasing future detection levels and preventing future crime'. The MPS appealed and lost. The duty to investigate now stands in law as assured by Article 3 of the European Convention on Human Rights.

In March 2019, the government announced that it was carrying out an end-to-end review of the way the criminal justice system manages rape cases in England and Wales. Feminist organisations were raising very public protest about the pitiful outcomes of rape investigations. The then charge rate for police-recorded rapes was 2.1 per cent. Research across the globe documents that sexual violence is common, it has traumatic impacts on its victims, most of whom do not report to the police, and that justice means different things to different victims. How police treat victims of rape and sexual offences has life-changing consequences for victims. Before the government's review was published in March 2021, feminist outrage hit boiling point through the tragedy of the kidnapping, rape, and murder of Sarah Everard by a serving Metropolitan Police Officer, Wayne Couzens. Examples of police officers being convicted of rape and other sexual offences remain common in the news. Louise Casey's report, published in March 2023, was the final blow and a woeful indictment of the state of policing and its failure to get a grip on sexual violence inside the police service and in the service to victims. The storm has by no means been diminished.

The problem

Poor rape investigation is often characterised as a problem of police misogyny, of applying outdated myths and misconceptions about rape as a crime, or of sloppy and incompetent investigative evidence gathering. We led the work commissioned by the Home Office—Operation Soteria Bluestone—a comprehensive research programme and collaboration with the police service which began in January 2021 and found all three problems alive and well in policing. Over eighteen months, the programme examined a wide range of data in the five police forces in England and Wales. This included: an analysis of all police records of rape and other sexual offences reported between 2018 and 2020–2021; case file analysis of cases dropped by the police because the victim withdrew support for prosecution or because the case was deemed to suffer from ‘evidential difficulties’; police ethnography observing rape investigators and victim liaison officers on shift; review of body worn video (BWV) footage of first response to rape disclosures; review of video-recorded achieving best evidence (ABE) interviews with rape victims; interviews, focus groups and surveys of officers of all ranks and roles involved in rape investigations. The research also included a review of police training and force-level internal rape and sexual offences investigations guidelines, protocols, and written procedures, and focus groups with Independent Sexual Violence Advocates who support victims through the justice process and with rape survivors to capture their perspective on the police responses to rape. It was a comprehensive approach to diagnosing the problems leading to failure in rape investigations. This research took place nearly a decade after the DSD judgment; sadly, few institutional failings named in the legal judgment had been corrected.

Using six thematic pillars to focus the work, Operation Soteria Bluestone documented many of the failings noted in DSD above. The critical issues are: Policing fails to incorporate specialist knowledge about rape and sexual offending into its front-line and investigative resourcing. We suggest elsewhere this is because the origins of the policing mission never really included relationship violence—the bulk of recorded rape today—in its core remit. If police investigated rape and sexual offences at all, the research shows that it does so through the lens of the stranger rape—the very investigations that went so badly wrong in the Worboys serial stranger rape case. As DSD demonstrated, even the most iconic rape scenario failed to receive a competent investigation. Investigators lack sufficient knowledge about sexual offending, especially how offending manifests itself in different victim-offender relationship contexts. Without understanding sexual violence and the lived experiences of its victims, investigative strategies fall at the beginning of the inquiry. Such knowledge exists in academic research, particularly lived experience research, yet it was absent from the available specialist courses at the College of Policing and, consequently, faulty in all forty-three forces in England and Wales. Forces systematically fail to identify repeat sexual offenders who are reported to them. Such intelligence is available through police intelligence and crime recording systems. The researchers found that repeat offenders accounted for one in four named suspects. This is a critical flaw—and one that was also noted in DSD where, even in the context of a stranger rapist, the identification of Worboys as a serial offender took less than a week when a proper and systematic check of recorded rapes was initiated. Investigating rape and sexual offences takes a human toll on investigators. The research documented very high caseloads, stress, and secondary and vicarious trauma, leading to chronic illness and burnout in officers. It is the

corporate responsibility of any employer to pay attention to the mental health needs of employees. We found corporate resources for well-being to be lacking and, if they did exist, inadequate for the needs of the investigators. High and unmanageable caseloads are exacerbated by the complexity of gathering evidence of sexual offending, because the overwhelming context of rape and sexual offending takes place within relationships. The contexts of these relationships—intimate partners, family and friends, business colleagues, people in positions of authority and more—are difficult to untangle and carefully document. The researchers found that the victim's credibility was the first port of call in the investigation, often shored up by rape myths and misconceptions. Data and data analysis capabilities are poor and under-resourced. Often the police do not record key demographic variables that would assist investigators in understanding investigators' workloads, the contexts of the rape scenarios—and consequently the investigative strategies that would strengthen the legal threshold to support a criminal charge—and the prevention opportunities there could be if police worked well in partnership with local communities. Digital forensics, the ability to search digital devices such as phones, armed with specialist knowledge of offending, needs an uplift and proper resourcing. Police forces have been accused of 'digital strip searches' of rape victims (in particular, the practice of indiscriminately downloading messages, images, social media posts and other digital data from victims' phones when they were clearly irrelevant to the investigation) and threatening to drop the case if victims refused to cooperate voluntarily. The Operation Soteria research found that officers lacked the competencies and capabilities to develop effective digital forensic strategies. Furthermore, when officers believe there may be directly relevant data on victims' phones and other electronic devices, officers need to ensure that victims are empowered to give—or withhold—consent to officers downloading messages, images or other data from their devices within the agreed parameters of the investigation. The problem of rape investigation is a corporate, institutional failing, not a series of isolated individual failings of individual officers. The failings documented above will appear repeatedly unless and until policing, as a democratic institution with a duty to protect and investigate crime, transforms the way it works. These fundamental corporate problems can only be fixed nationally with the cooperation of the National Police Chiefs' Council (NPCC), the Home Office, and the College of Policing. These were all accepted as agreed findings by these three bodies.

The current state of policing is a burning platform. Policing should not and cannot go back to 'business as usual' in the investigation of rape or, for that matter, in the investigation of any form of relationship involving physical and/or sexual violence. Essentially, the forty-three forces have been left to align their business practices with improvement outcomes, and change is coming at a snail's pace. But there is hope. While national police leadership is debating the solutions to the above, our work with forces demonstrates that improvement is possible. Collaborative solutions, detailed in the next section, address some of the above, while making transparent those that cannot be solved by one force alone.

A way forward: an intensive knowledge-to-practice collaboration

Our framework grounded us in the policing cultures we worked in as much as it did the research questions we explored. We couched the project in a *procedurally just* narrative as fundamental to police practice. We linked core features of police practice in the investigation of rape and

other sexual offences to how investigators are treated by the police forces they work for. The discourses of voice, respect and fair treatment echo throughout any language we use to broker our insight. The investigator, the investigated and the harmed—the victim-survivors—deserve to be treated with respect and empathy. This ethos was built into the academic-police officer teams' working methods and built trust in the work's mission. Commitment to public service, pride in the job, teamwork and good leadership are just a few of the familiar aspects of policing culture that welcome change. We relied on committed police officers to steer us through the choppy waters of a toxic culture that inevitably raised its head throughout the research. It was very transparent to us that many officers suffered from a deficit of organisational support—an indication of a deficit of organisational justice. Embedding the evolution of the research and the in-house solutions to the very heart of the programme enabled ownership throughout the ranks and the police leadership, a key lever in taking on the insight and changing practices based on it.

Working with committed and enthusiastic police officers opens the space for changing practice. The insight from the intensive research outlined above enabled the academic-police thematic leads to carve out critical elements for change in individual forces. Ways of working are different in every one of the forty-three police forces in England and Wales. The high-level learning about sexual offending—a fundamental gap for improvement—was developed first through cooperation with the College of Policing. Case reviews turned into acute learning tools and exposed the need for better supervision, reflective practice and the management of investigator workloads. Detailed analysis of recorded crime by the research team led to corporate considerations about how different force units, such as offender management teams and domestic violence units, could work more closely with rape and sexual offence investigators to link investigation to disruption of offending. The data capture and the application of insight took place hand in hand between academic teams and front-line investigators. We linked together the overall picture through the creation of the first National Operating Model (NOM) for Rape and Serious Sexual Offences (RASSO).

The NOM is, first and foremost, a model for corporate change. Investigators are empowered to alter their investigation strategies through neglected avenues we documented in the research described above. No law has been changed. The model sets out key features for strategically thinking about the capacity and capability of the police service to investigate relationship crime. It did so through the thematic pillar structure, organising the approach to change through different 'layers' for improvement: *Layer 1*, the 'vision' layer, sets out the NOM's aims, objectives and principles. The aims include increasing the volume of RASSO cases that result in a suspect being charged and facing trial, demonstrably improved procedural justice for victims of all backgrounds, and the reduction and prevention of sexual violence by suspects known to the police. *Layer 2*, the 'flightdeck', comprises a set of key performance indicators (KPIs) to holistically measure and track progress towards the aims in Layer 1. The flightdeck has the dual function of assisting police leaders in understanding how well their organisation is progressing and to course-correct where the KPIs indicate the organisation is going off-track. It also enables transparency and accountability to the public. *Layer 3*, the 'strategic layer', is aimed at senior officers and consists of policy guidance to support strategic business and workforce planning, and as such, is the launchpad for operational change. *Layer 4*, the

‘operational layer’, primarily focusses on investigators and officers interacting with victim-survivors. It consists of investigation guidance, toolkits, forms, checklists and crib sheets to support operational policing to conduct suspect-focussed investigations in a context-led manner, informed by specialist knowledge of sexual offending behaviour and engage with victim-survivors in procedurally fair ways that centre their rights, needs and wishes. *Layer 5*, the ‘foundational layer’, comprises the corporate enablers of operational and strategic work in line with the vision of the NOM. This includes a comprehensive learning and development strategy and course contents, policies and products to support officer well-being, data analytics, digital forensic strategies and digital forensic competence building.

These layers address archaic working methods that propel police forces toward their traditional remits, public order and law enforcement. Relationship crimes—especially those that affect women and children, involving forms of coercive control—are inadequately resourced. The police service, for example, knew for decades that they faced a shortage of investigators. This was not resolved until the last few years when direct entry into investigation roles began to be offered. While this might address the shortfall in the next decade, newly recruited investigators should not be left *de facto* unsupervised with caseloads of complex relationship crime. The Soteria Bluestone research found this to be a national problem that has an impact on rape investigations.

In the three years since we began our collaboration with the police service, we have seen change, with rape charges doubling and even tripling in some pathfinder forces. This effect is more robust when senior leadership drives the way business decisions are made. The stand-out example in England and Wales is Avon and Somerset Police. Here Chief Constable Sarah Crew, the NPCC lead for adult rape and sexual offences, is committed to demonstrating that policing's remit can morph to meet today's problems. The critical change over the past five decades is that women expect to be treated equally, and violence against women and girls remains a linchpin of inequality. The ownership of transformation is in the hands of the police service, nationally and locally. The proof of policing's ability to crawl its way out of the permacrisis and onto firmer ground for investigating rape is in the future. It is our hope that we are not asked again to write a commentary on rape investigation that sets out—again—the failings that were so eloquently laid out in DSD. The investigation of Sarah Everard's kidnap, rape and murder was exceptional and timely. Sadly, it did not prevent her death. The transformation required of the whole police service must address policing's internal corporate ways of working. It cannot do so without the open transparency that the service demonstrated in the cooperative programme Operation Soteria Bluestone.

FOOTNOTES

¹Royal Courts of Justice, ‘DSD and SBV v The Commissioner of Police for the Metropolis’, 28 February 2014, p. 12; .

²Ibid, p. 96.

³Office for National Statistics, ‘Crime in England and Wales: Year ending September 2021’, 2022; .

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¹¹College of Policing, *The National Operating Model for Rape and Serious Sexual Offences*, 2024; .

¹²National Police Chiefs' Council, 'Op Soteria rolled out across England and Wales', 2023.