Max Hill QC
Director of Public Prosecutions

Members of CPS VAWG External Consultation Group

For the attention of:
Sarah Green and Rachel Krys: Co-Directors, End Violence Against Women Coalition
Karen Ingala Smith: CEO Nia
Heather Harvey: Research and Development Manager, NIA

Sent via email: [redacted]

18 February 2019

Dear Sarah, Rachel, Karen and Heather

RE: SEXUAL OFFENCES PROSECUTIONS

Thank you for taking the time to meet with me on the 22nd January and for sharing your concerns about a range of rape and serious sexual offence (RASSO) issues. Although over the years the Criminal Justice System as whole has come a long way, there is more that we can do to identify and implement improvements to our RASSO prosecution policy and practice. I look forward to working with all members of the VAWG External Consultation Group to help drive these improvements forward.

I understand why the falling charge rates for rape may be a cause of concern. I can assure you that that any falls are not indicative of a change of approach by prosecutors to these cases and there is no less commitment towards prosecuting these types of cases. CPS prosecutions are demand-led and we are not working to outcome targets. However, we recognise that the improvements we are seeking to make in relation to file quality and disclosure have directly impacted upon prosecution volumes.

A cross-departmental review of the Criminal Justice System's handling of rape and serious sexual offences is planned and victims' groups will be invited to participate. The CPS is a partner in this review and will take part, honestly and openly, to scrutinise and further improve our work. I am committed to working closely with the police to address any performance issues that are highlighted as a result of the Review.

We have recently undertaken work to identify the factors causing low jury conviction rates for young adult defendants in rape cases. This has highlighted concerns around the continuing role played by myths and stereotypes and it was clear from our meeting that we are in agreement that more work needs to be done across the criminal justice system to explore and address these. Whilst this is not an issue that the CPS can resolve alone we are committed to engaging in discussions with our partner agencies about the need for action and the forthcoming cross-departmental review provides an opportunity to progress this agenda.

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I am confident that the planned work around understanding the changing nature of sexual behaviours and encounters amongst young people will prove to be invaluable in improving prosecutorial practice. We aim to help prosecutors better understand the shifts in societal norms brought about by social media. However, I am not complacent about progress in this area and, as I said at the meeting, I would appreciate you bringing any cases to my attention that illustrate a lack of understanding, or acceptance, of rape myths in our decision making.

I welcomed our discussion on the issue of complainant privacy in sexual offence cases. Careful thought on reasonable lines of enquiry is key to any investigation and this will include interrogation of personal devices. At the meeting I highlighted the important case of R v E which endorses the approach of our guidance - the duty to investigate does not extend to a duty to follow speculative lines of enquiry. Again I would welcome your assistance in identifying any cases where our guidance may not have been applied.

There has been a significant recent focus on Section 41 YJCEA 1999 and I shared with you the most recent report produced by the Criminal Bar Association which suggests that the legislation is operating effectively. Notwithstanding the conclusions of this report I understand that concerns about the operation of the legislation persist and the CPS is committed to improving our performance in this area. In November 2018 we published updated legal guidance for prosecutors and advocates on Section 41 and this week have launched a dedicated online training course.

I hope that our meeting provided some reassurance to you about our continuing efforts to ensure an effective response to these difficult cases. May I also take this opportunity to thank you for the vital work you do championing the interests of victims and I look forward to meeting with you again soon.

Yours sincerely,

Max Hill

MAX HILL QC
DIRECTOR OF PUBLIC PROSECUTIONS

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Date: 10th June 2019

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BY DX AND EMAIL

Dear Sir

RE: CPS approach to prosecutions in cases of rape

I. Introduction

1. We act for the End Violence Against Women Coalition ("**EVAW**"). We write to you in accordance with the CPR Pre-Action Protocol for Judicial Review.

2. Please respond to this letter by the 24th June 2019, confirming that you will carry out the steps listed below.

3. If you disagree with any aspect of our characterisation of the factual material or legal position set out below, please ensure that you make that clear and explain the disagreement in your reply. We will rely on your answers in any claim we bring on behalf of EVAW.

A. Claimant

4. The Claimant is EVAW, a UK-wide coalition of more than 80 women's organisations and campaigners working to end violence against women in all its forms. It was set up by its members in 2005 to ensure a unified voice calling for better national and local government responses to violence against women and girls. EVAW's members include

support services who work directly with survivors of sexual violence, as well as research and policy experts.

B. Defendant

5. The Defendant is the Director of Public Prosecutions, responsible for the actions of the Crown Prosecution Service ("**CPS**").

C. Summary of the matter being challenged

6. EVAW challenges the abrupt change in policy by the CPS, pursuant to which the CPS ceased to apply the 'merits-based approach' to prosecuting cases of sexual violence, in particular in cases of rape.

7. Alternatively and in any event, EVAW challenges the significant change in practice precipitated by internal training in the course of 2017 coupled with removing reference to the merits-based approach to such prosecutions.

II. Relevant background: the approach to prosecutions for rape

A. The Code for Crown Prosecutors

8. Under s10 of the Prosecution of Offences Act 1985:

> "*The [Director of Public Prosecutions] shall issue a Code for Crown Prosecutors giving guidance on general principles to be applied by them—*
> *(a) in determining, in any case— (i) whether proceedings for an offence should be instituted...*"

9. The Code for Crown Prosecutors (the "**Code**") is issued pursuant to s10, and provides guidance to prosecutors on the general principles to be applied when making decisions about prosecutions (Code, para 1.3). The Code was recently updated in the 8th Edition, on 26th October 2018, replacing the 7th Edition from January 2013.

10. Under both the 7th and 8th Editions of the Code, prosecutors "*must only start or continue a prosecution when the case has passed both stages of the Full Code Test*" (Code, para 3.4 of 7th Ed and para 4.1 of 8th Ed). The Full Code Test contains two stages:

a. The "**Evidential Stage**", under which prosecutors "*must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge*" (Code, para 4.4 of 7th Ed, para 4.6 of 8th Ed).

b. The "**Public Interest Stage**", under which "*prosecutors must go on to consider whether a prosecution is required in the public interest*" (Code, para 4.7 of 8th Ed, para 4.9 of 8th Ed).

11. The Evidential Stage is set out as follows: (para 4.5 of 7th Ed, para 4.7 of 8th Ed):

> "*The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely.* ***It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.*** *This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty."*[1]
> (Emphasis added)

12. The prosecutor is directed in considering the test to ask themselves a number of questions: whether the evidence can be used in court, whether the evidence is reliable, whether the evidence is credible, and (in the 8th Edition) whether there is any other material that might affect the sufficiency of the evidence.

B. The development of the CPS's specific guidance on rape

13. In 2000, several reports were released considering the outcomes for victims of rape after a research study commissioned by the Home Office[2] reported a drop in the conviction rate from 24% in 1985 to 9% in 1997.

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[1] Similar expressions are found in earlier versions of the code. For example, the 2004 Ed states that "*[a] realistic prospect of conviction is an objective test. it means that a jury or bench of magistrates or judge hearing the case alone, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A court should only convict if satisfied so that it is sure of a defendant's guilt*".

[2] Jessica Harris and Sharon Grace, '*A question of evidence? Investigating and prosecuting rape in the 1990s*', Home Office Research Study 196

14. In 2001-2002, Her Majesty's Inspectorate of Constabulary ("**HMIC**") and Crown Prosecution Service Inspectorate ("**HMCPSI**") conducted a joint inspection of the investigation and prosecution of cases involving allegations of rape. The government in response published a Rape Action Plan in July 2002, accepting most of the recommendations, including that there should be guidance and training for both the police and prosecutors, and that specialist rape prosecutors should be introduced.

15. Moreover, the CPS has, since 2004, provided specific guidance in respect of its policy for prosecuting rape, following the introduction of the Sexual Offences Act 2003. The 2012 CPS Policy for Prosecuting Offences of Rape explains the way that the CPS deal with cases in which an allegation of rape has been made. It states that the CPS "*are aware that there are myths and stereotypes surrounding the offence of rape*", and that the CPS "*will not allow [such] myths and stereotypes to influence our decisions and we will robustly challenge such attitudes in the courtroom*" (para 5.5).

16. The CPS has also ensured that it has the expertise to prosecute rape: prosecutions are made by specialist prosecutors in the Rape and Serious Sexual Offences ("**RASSO**") units. Independent Sexual Violence Advocates were introduced in 2010.

C. Application of the Full Code Test in rape cases – the merits based approach

17. The Divisional Court in *R (B) v DPP (EHRC intervening)* [2009] 1 EWHC 106 (Admin); [2009] 1 WLR 2072 ("*B*") considered the question of whether in applying the Evidential Stage of the Full Code Test the court should adopt: (i) a 'bookmaker's' approach; or (ii) should imagine himself to be the fact finder and ask himself whether, on balance, the evidence was sufficient to merit a conviction taking into account what he knew about the defence case. The Court held that the latter was appropriate (see para 49).

18. In so doing, the Court recognised at para 50 that such a distinction was particularly important in respect of certain types of rape prosecutions:

> "*There are some types of case where it is notorious that convictions are hard to obtain, even though the officer in the case and the Crown prosecutor may believe that the complainant is truthful and reliable. So-called 'date rape' cases are an obvious example. If the Crown prosecutor were to apply a purely predictive approach based on past*

experience of similar cases (the bookmaker's approach), he might well feel unable to conclude that a jury was more likely than not to convict the defendant. But for a Crown prosecutor effectively to adopt a corroboration requirement in such cases, which Parliament has abolished, would be wrong. On the alternative 'merits based' approach, the question whether the evidential test was satisfied would not depend on statistical guesswork."

19. In 2009, following *B*, Alison Levitt QC, the then advisor to the Director of Public Prosecutions, delivered face-to-face training lectures to the CPS. The speaking notes from that training show that:

    a. Ms Levitt QC acknowledged that the merits-based approach has proven controversial in some quarters, but explained that the criticisms made of it are either wrong, or outweighed by its advantages (paras 1-2).

    b. She explained that the CPS policy makes clear that the CPS' aim is to prosecute cases of rape effectively, but that the CPS policy does not supersede the Code. (paras 5-7). The test is still that it must be more likely than not that there will be a conviction (para 7). The issue is how the question of whether there is a realistic prospect of conviction should be approached. She explained that, following the case of *B*, set out above, the question of whether there is a realistic prospect of conviction is approached by reference to the "*merits-based approach*", as set out in para 50 of *B* (paras 8-10).

    c. As she goes on to explain at paras 12-17:

    "*In the context of sexual offences, what this means is that even though past experience might tell a prosecutor that juries can be unwilling to convict in cases where, for example, there has been a lengthy delay in reporting the offence or the complainant had been drinking at the time the rape was committed, these sorts of prejudices against complaints should be ignored for the purposes of deciding whether or not there is a realistic prospect of conviction.*
    In other words, the prosecutor should proceed on the basis of a notional jury which is wholly unaffected by any myths or stereotypes of the type which, sadly, still have a degree of prevalence in some quarters.
    Instead of asking necessarily what is the LIKELIHOOD of conviction we should ask ourselves, what are the MERITS of a conviction – taking into account what we know about the defence case.
    May sound like a subjective approach, even a morality judgment.

But it is not: the merits-based approach simply reminds prosecutors of how to approach the evidential stage of the Full Code Test in tricky cases.
It does not establish a different standard for sexual offences."

d. She goes on to explain that because it is known that rape myths are untrue, it is correct to ignore them (just as it would be for other offences) (paras 18 -25).

e. She also acknowledges that if the CPS were to prosecute a lesser number of cases and restrict themselves to "safer" cases then: (i) the attrition rate would be lower, (ii) resources would be saved, (iii) victims would be spared the trauma of a trial, and (iv) defendants who are bound to be acquitted would not be subjected to publicity/distress (para 28). However, she explains that the CPS wants to see the volume of prosecutions go up, accepting that this will cost more and accepting that initially the CPS will lose more cases, because: (i) it is "*morally right*", (ii), "*because it is the intellectually rigorous approach to take to the Full Code Test*"; and (iii) because "*by clever and sensitive prosecuting we can actually change attitudes*" (para 24).

20. That training was complemented, until very recently, by a policy document entitled '*Code for Crown Prosecutors Test – Merits Based Approach*'. That document:

a. Explains that the decision in *B* has *"been particularly important in making sure that the CPS approach to sexual offence allegations is consistent with the proper application of the Code*" (pp1 and 3).

b. Goes on to state in p1 that:

"*It is in sexual offence cases that there is the greatest risk that myths ad stereotypes will influence a jury and in which, therefore, an assessment based on a predictive or bookmaker's is most likely to involve a failure properly to apply the Code. Decisions should not be based on perceptions of how myths and stereotypes might lead a particular jury to reach a particular conclusion.*
The merits based approach is closely linked to the CPS's determination to avoid flawed review decisions."

c. Makes clear that the merits based approach is not a <u>different</u> approach to that set out in the Code, which requires prosecutors to consider an "*objective, impartial and reasonable jury or bench of magistrates or judge... properly directed and*

acting in accordance of the law". What it does is explain how that is to be done in sexual assault cases.

d. Sets out that the merits based approach is "*best understood as an explanation of the correct principles for decision-making under the Code*" (p2) and indeed "*[a]pplying the Code test correctly necessarily involves taking the merits based approach*" (p4, emphasis added). Failing to take it means that offenders will escape prosecution, causing injustice to victims and a loss of public confidence in the criminal justice system, and may means that prosecutorial decisions will be unreasonable or irrational in judicial review proceedings (p4).

21. It was also accompanied by the Legal Guidance for Rape and Sexual Offences, which referred to the merits-based approach in its Chapter 8.

22. In 2010, therefore, the Defendant noted that it was "*committed to reinforcing the 'merits-based' approach to rape prosecutions by dealing effectively with myths and stereotypes and improving the quality of communication with victims*" (2010 Government Response to the Stern Review, p20).

23. In 2012-2013, the CPS continued to make clear that it had "*worked to challenge the myths and stereotypes about rape victims, selecting and training specialist rape prosecutors to adopt a merits-based approach to cases*" (2012-2013 Crime Report by the CPS on Violence against Women and Girls, Foreword, p2).[3]

24. Following Joint Action Plans from the CPS and the Police in 2014 and 2015, training continued to emphasise the importance of the merits-based approach. For example, in a training given to the South Eastern Circuit on 30 May 2015:

a. The training emphasised the importance of the merits-based approach in the context of the Joint Action Plan. It confirmed that "*prosecutors should adopt a merits based approach to the evidential stage of the Code for Crown Prosecutors full code test and ask whether, on balance, the evidence is sufficient to merit a*

[3] See further p5, indicating the extent of the training conducted.

conviction taking into account what is known about the defence case. This approach was confirmed by the Divisional Court in [B]" (p2).

b. It further went on to state that:

"*In practice the test is of ready application to cases where even though past experience might tell a prosecutor that juries can be unwilling to convict such as, for example, where there has been a lengthy delay in reporting the offence or the complainant had been drinking at the time the rape was committed, these sorts of prejudices against complainants should be ignored for the purposes of deciding whether or not there is a realistic prospect of conviction. In other words, the prosecutor should proceed on the basis of a notional jury which is wholly unaffected by any myths or stereotypes of the type which, sadly, still have a degree of prevalence in some quarters.*" (p4)

c. It notes that by so doing, "*the CPS are prosecuting more cases that juries find difficult to convict*" (p5). However, it makes clear that the response to this is for case-building to proceed carefully to challenge those myths and stereotypes.

D. The result of the CPS' approach to prosecutions

25. The experience of EVAW and its members is that the CPS's commitment to prosecuting cases, including difficult cases, has a knock-on effect on the whole system. If cases are prosecuted effectively, victims are more willing to come forward, police are more willing to report and to charge, and the system works more effectively overall.

26. EVAW – and EVAW's members – saw a gradual, but steady, increase in positive outcomes for rape victims following on from the various initiatives set out above. These initiatives had an effect across the system: where prosecutions were working effectively, the police were more likely to refer cases to the CPS and so on.

27. Indeed, the CPS' stated position in 2017 recognised, and appeared to applaud, an increase in both the number of prosecutions brought and successful prosecutions in the 10 years since the introduction of the Violence against Women and Girls strategy. In 2017, the CPS published the tenth edition of its Violence against Women and Girls Report, and noted that there has been a 48.8% rise in prosecutions for such crimes since 2007-2008, and a corresponding 62.7% rise in convictions (p3). In rape cases, convictions rose from 2,021 to 2,991 (a 48% rise), and completed prosecutions rose to

the greatest number ever recorded to 5,190 in 2016-2019 (p9). In sexual assault cases, there was an increase of both prosecutions and convictions to the highest volumes ever recorded, with the highest conviction rate ever (p11).

E. Position prior to change in policy/practice

28. There were a number of reviews in 2015-2016 regarding the CPS' approach to prosecuting rape cases.

29. In April 2015, Dame Elish Angiolini DBE QC published the Report of the Independent Review into the Investigation and Prosecution of Rape in London ("**Independent Review**"), which she was asked to carry out by the predecessor in the role of the Defendant. She was asked to conduct the review "*in order to identify how victim confidence, reporting and attrition of rape can be approved*", and she was asked in particular to consider the effectiveness of the CPS (see p8). As she explains:

    a. The system is interlinked: "*[t]he effectiveness of each of the police and the prosecution ... is very much dependent on the effectiveness of the other*" (p6).

    b. She had considered a review of recent national studies examining how rape is investigated and prosecuted, and found "*consistent approval of the policies*", but the identification "*of an inability to implement those same policies comprehensively and successfully*". She agreed with those findings (p10). In particular, she explains that the "*policy of applying a 'merits-based' approach was introduced in 2009*" (see e.g. p 35), but sets out the concern that this "*well intentioned policy and guidance*" may not be being fully adopted by those "*who investigate and prosecute on the frontline*" (p37).

    c. She specifically emphasises the importance of this approach rather than a bookmaker's approach at p116, cautioning against the abandonment of a merits-based approach to improve statistics at para 563:

    > "*As part of its Violence against Women and Girls assurance regime, the CPS monitors a broad range of measures and publishes details of its performance in an annual crime report. However of all the measures, the conviction rate is the*

> *most prominent and the most scrutinised. The Crown Prosecution Service acknowledges, however, that a risk averse approach to prosecuting (such as charging only cases regarded as 'safe bets') is one way to increase the conviction rate. This approach is actively discouraged by the use of the 'merits-based' approach which directs prosecutors to avoid a book maker's approach to risk."*

30. The CPS Appeals and Review Unit ("**ARU**"), which is responsible for considering decisions not to prosecute when these are flagged by the Victims' Right to Review ("**VRR**") procedure, conducted area reviews in 2015 of decisions made by RASSO units not to prosecute ("**2015 ARU Reviews**").

31. As explained in the "common points" document arising out of the 2015 ARU Reviews, the ARU identified that a clear common theme was a failure to consider the overall credibility of a complainant's version of events and to attach far too much credence to the account of a suspect. It further explained that "*[t]here often appear to be a readiness to make a decision not to prosecute based on minor discrepancies in a complainant's account and, this, coupled with a failure to case-build sometimes gives the impression of prosecutors more focussed on finding reasons not to prosecute than a positive willingness to build a strong case*". It continued that there "*are also a significant number of cases across the service where CPS polices, particularly our child abuse and rape policies have not been considered*".

32. In February 2016, the HMCPSI produced a '*Thematic Review of the CPS Rape and Serious Sexual Offences Units*'. That Review (the "**HMCPSI Review**") drew the following conclusions:

    a. "*The policy and legal guidance for RASSO casework is sound and when correctly applied should deliver quality casework*" (para 1.3).

    b. There are some "*positive trends in the data; the volume of prosecutions completed reached its highest level during 2014-15 with an increase in the number of convictions, although the overall conviction rate fell slightly*" (para 1.5).

c. Amongst the recommendations that were made, one recommendation was for "*[a]ll RASSO lawyers to undergo refresher training, including the role of the merits-based approach in the context of the Code for Crown Prosecutors*" (para 2.17).

d. It looked in particular at the decision-making at charge, and at the application of the merits-based approach (para 4.16-4.26). Within that section, the authors noted at para 4.19 that:

> "*There is evidence from a limited number of Areas that some lawyers apply the merits-based approach far too vigorously and cases are charged that do not have a realistic prospect of conviction. Inspectors were also made aware of times when the merits-based approach has been viewed as separate to the Code for Crown Prosecutors rather than an integral part of it; this can result in poor decision-making, an increase in unsuccessful outcomes and ultimately a poor service to victims. In one CPS Area refresher training is planned to address this. All Areas need to ensure that the guidance on the merits-based approach is understood and applied properly across the specialist teams.*"

33. It goes on to state that:

> "*In another Area inspectors were told about an internal investigation of the low conviction rate which revealed that some charging decisions were not always in accordance with the Code. Action was taken with all the specialist lawyers to clarify the position, with discussions about applying the Code and the merits-based approach, as well as a refresher on the legal guidance. The successful outcome rate rose in the subsequent quarter*".

34. That report was indeed followed by refresher training on the merits-based approach. As is apparent from the slides prepared for the training:

a. The aim of the course was to ensure continuing awareness of and compliance with CPS rape and child sexual abuse policy (p3).

b. It referred to previous reports, including each of the reports set out above (p6). It noted that an issue in the HMCPSI Review was the inconsistent application of policies and protocols, including the failure to apply the Code and merits-based approach correctly (p8). It also refers to the issues identified in the ARU 2015 Review (p22).

c. It clearly refers to the application of the Code (pp17-18), and to the value of the merits-based approach in applying the code (p19-20), reiterating the points made for example in Ms Levitt's 2009 training. It clearly identifies, through the slides, the appropriate issues to be considered by the CPS.

III. The CPS' change in policy/practice

A. Removal of reference to the merits-based approach

35. After the refresher training referred to above, the CPS' policy for the prosecution of rape cases went through an abrupt change.

36. The CPS's current approach is set out in a response to a Freedom of Information Act 2000 request, which appears to have been sent on 27 March 2018,[4] as follows:

> "*The [CPS] does not follow a 'merits-based' or a 'bookmakers' approach to the prosecution of rape cases. We apply the Full Code Test contained in the Code for Crown Prosecutors*".

37. EVAW has only recently been made aware of this response, by way of google searches conducted on the issue.

38. As such, contrary to the clear long-standing and established policy (and extensive guidance) of the CPS, the CPS no longer applies a merits-based approach. This was a complete *volte face* – requiring the CPS to stop applying the approach that had been painstakingly developed and applied over many years. It is now clear that this change in policy (the "New Policy") was carried through in a number of ways.

39. **First**, the CPS removed all reference to the merits-based approach from its guidance to prosecutors. As far as EVAW is aware, this happened in the course of 2017 with respect to its internal intranet.

40. Precisely when that New Policy was reflected in the CPS' external, published, guidance, is markedly unclear. The relevant section of the Legal Guidance for Rape and Sexual Offences (Chapter 8) states that it was "*[u]pdated 22 November 2018 to remove*

[4] https://www.cps.gov.uk/sites/default/files/documents/publications/foi/2018/Disclosure-6.pdf last accessed **7 June 2019.**

reference to Merits-Based Approach".[5] Similar statements appear, for example, in the Child Sexual Abuse Guidelines.[6] The CPS therefore only appear to have confirmed in November 2018 that the relevant changes had taken place.[7] It appears, however, from searches conducted using digital archives like the National Archives and the "Wayback machine" tool, that the *Code for Crown Prosecutors – Merits Based Approach'* – previously found in the CPS' external Legal Guidance under the header 'Merits Based Approach' – was removed in its entirety at some point between 23 October and 8 November 2017. From this time onward, as far as EVAW can determine, no reference to the merits-based approach appears in the index of Legal Guidance.

41. **Second**, a set of training sessions took place in 2017 which were entirely consistent with the removal of the merits based approach.

42. The training sessions were conducted by the Director of Legal Services, Gregor McGill, and the then Legal Advisor to the Defendant, Neil Moore. The training sessions took place on 8 March 2017 (London North), 10 March 2017 (London South), 7 May 2017 (Yorkshire & Humberside), 25 May 2017 (North East), 25 May 2017 (Merseyside and Cheshire), 25 May 2017 (East of England), 23 June 2017 (Thames Chiltern), 5 July (Wessex), 19 July 2017 (North East), 21 July 2017 (South East). Training was also provided to the ARU on 30 August and 8 September 2017.

43. The key message delivered in the training was that prosecutors were charging too many rape cases. In particular, it was emphasised that weak cases should be taken out of the system, and it was indicated that CPS prosecutors would be supported in making more decisions to take no further action. Moreover, in so doing, it was emphasised that if the CPS were prosecuting the right cases the CPS "*would be winning more cases than we*

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[5] https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-8-case-building last accessed **7 June 2019.** This is despite the fact that reference is still made in the introduction to such a policy, directing readers to Chapter 8: see https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-1-cps-policy-statement last accessed **7 June 2019.**

[6] https://www.cps.gov.uk/legal-guidance/child-sexual-abuse-guidelines-prosecuting-cases-child-sexual-abuse last accessed **7 June 2019.**

[7] EVAW addresses at para 48 below its significant concerns regarding the manner in which the CPS appear to have made the relevant changes.

were losing". As such, the training indicated that weak cases should be taken out of the system to achieve a higher conviction rate – at the level of 61%-62%.

44. In accordance with this aim, it was indicated that the merits-based approach terminology should no longer be used, and that prosecutors should not make reference to such terminology in decisions.

45. EVAW intends to adduce evidence regarding the training sessions in its claim in the event that this matter has to proceed to litigation.

B. The nature of the changes made and the position of the Defendant

46. The manner in which the CPS has developed and implemented the New Policy has been, from EVAW's perspective, truly remarkable.

47. As far as the development of the New Policy is concerned:

a. No consultation with affected parties, such as victims' groups, was ever undertaken.

b. At least as far as EVAW is aware, there were no documents produced by the CPS setting out in detail the rationale for the *volte face* engendered by the New Policy, indicating the need to drop the merits-based approach, and analysing the possible factors in favour or against such an approach. Certainly, as far as EVAW is aware, none have been published.

c. Indeed, save for limited case study materials provided for the training sessions referred to above (which the CPS has refused to provide to EVAW),[8] there was minimal – if any – material developed to justify/explain the training sessions.

48. Indeed, the CPS appears to have gone to great lengths to avoid publishing, or at least publicising, the New Policy:

a. No public announcement whatsoever was made in 2017, or at any point thereafter, regarding the New Policy (still less the basis and rationale for it).

[8] Pursuant to a response to a request under the Freedom of Information Act 2000, received on 7 May 2019.

b. Indeed, no steps have been taken at any point to even notify affected parties of the New Policy.

c. It appears that the New Policy was reflected in external facing guidance when at some point between 23 October and 8 November 2017 legal guidance on the merits based approach was removed. This has been ascertained from searches on the "Wayback machine" and in the National Archives.

d. However, over a year after the New Policy was first implemented across the CPS, Chapter 8 of the Rape Guidance was amended to state "'references to the merits-based approach have been removed on 22 November 2018".[9]

e. The CPS has only provided information when forced to do so in response to Freedom of Information Act requests, and even in those circumstances has refused to provide relevant information (such as the training materials requested by EVAW).

49. In light of this, organisations such as EVAW have been left in the dark as to the New Policy.

50. Even now, the Defendant's public position remains remarkably unclear. The Defendant by a letter to EVAW on 18 February 2019 maintained as follows:

"*I can assure you that that* (sic) *any falls are not indicative of a change of approach by prosecutors to these cases and there is no less commitment towards prosecuting these types of cases.*"

51. It is not at all clear to EVAW how this statement is consistent with the development of the New Policy. Insofar as it suggests that there has been no change of approach, this is fundamentally inconsistent with the facts set out above.

[9] https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-8-case-building last accessed **7 June 2019.** This is despite the fact that reference is still made in the introduction to such a policy, directing readers to Chapter 8: see https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-1-cps-policy-statement last accessed **7 June 2019.** Notably, and to EVAW's concern, that appears to have been during a period where EVAW is aware that the CPS was faced with a challenge by "BT" that the CPS was applying a "Secret Policy" in respect of rape prosecutions: an allegation which the CPS strenuously denied.

IV. The CPS's change in practice

52. In any event, even if the Defendant does deny that there has been any change in policy, the actions outlined above, that is the removal of the guidance on the merits based approach coupled with the 2017 training have clearly brought about a significant – and deeply concerning – change in practice. Those actions have plainly led prosecutors to believe that the correct approach to the evidential test in rape and serious sexual offences is the bookmakers approach. The evidence of that change of practice is overwhelming and detailed immediately below.

A. Change in practice

53. The volume and percentage of rape cases charged were lower in 2017/18 than in any other year since 2013/2014. As is apparent from the data released by the CPS in its annual report on Violence on Women and Girls, in 2017/18, 2,822 rape cases were charged compared to an average of 3,713 cases between 2013/14 and 2016/17. Between 2013/14 and 2016/17, 58% of rape cases were charged on average, whereas in 2017/18, 47% of pre-charge cases were charged, a fall of 15.5% compared to 2016/2017. Moreover, data released by the CPS in response to an FOI request from Ann Coffey MP suggests that the decline in charging rates has continued in 2017/18: in April-September 2018, 37.3% of all rape-flagged cases were charged; for "rape-only" flagged cases, the charging rate for this period was 30%.

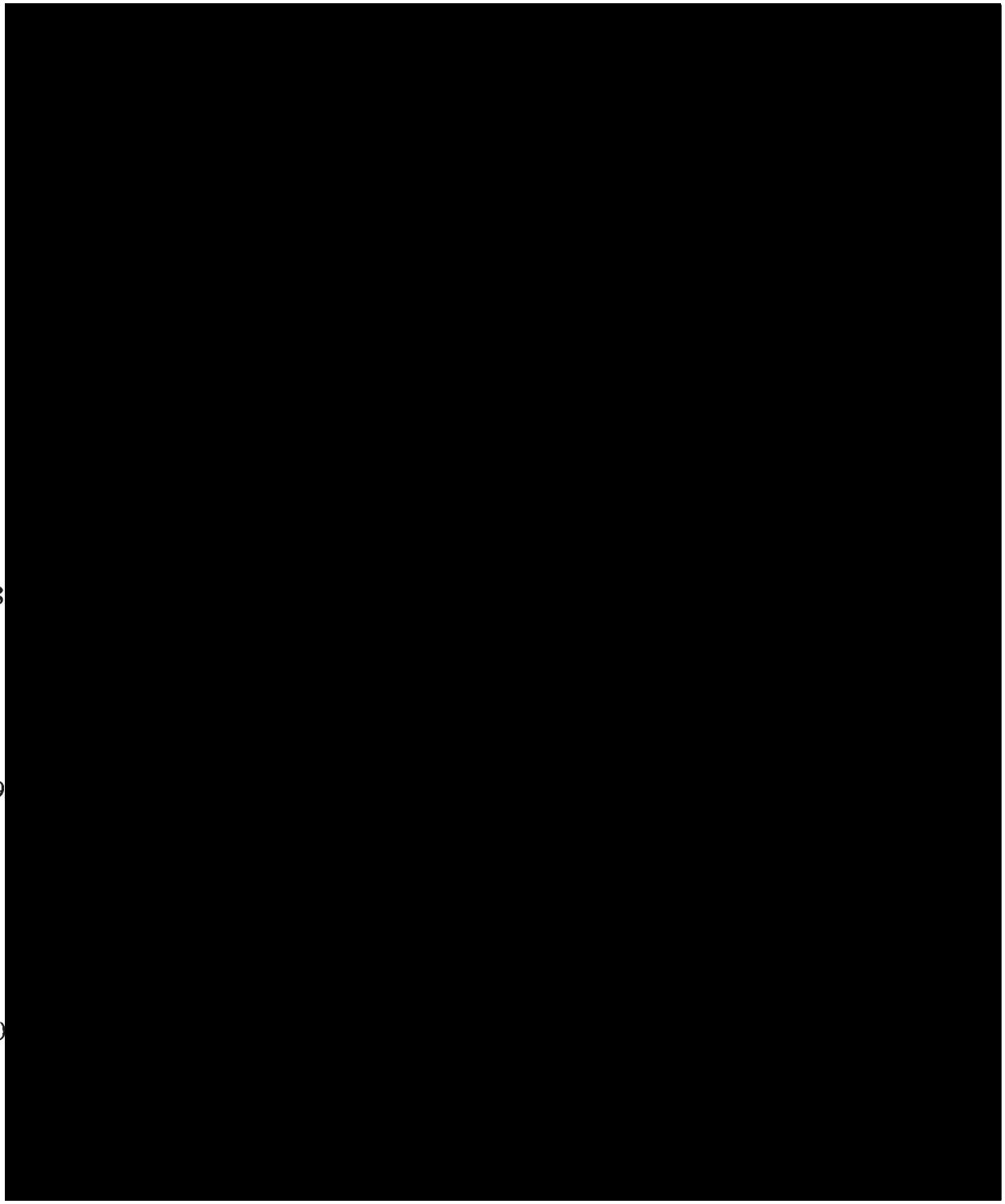
54. This impact has been noted by the Home Office. In announcing its refreshed violence against women and girls strategy in 2019, the Home Office noted the following statement from Dame Vera Baird QC: "*[i]t's a cause of worry that the number of sex offenders referred by the police for prosecutions has dropped and the numbers prosecuted has fallen even more, this is all in the face of thousands more serious sexual complaints.*" It also referred to the concerns of Rachel Krys of EVAW, noting the "*alarming recent collapse in the rate of cases being charged*".

55. EVAW has instructed a statistical expert to consider the recent change in practice, although the data available to her his limited (and EVAW has made further requests for that data below).

56. But in any event, the Government's own statistics amply confirm this position. The recently published "End-to-End review of the CJS response to rape" from the Prime Minister's Implementation Unit ("**PMIU Report**"), in response to the refreshed strategy,

[redacted]

57. [redacted]



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61. [redacted]

62. [redacted]

63. [redacted]

64. [redacted]

65. [redacted]

66. [redacted]

approach described above. That evidence will show that there has been a stark drop in positive outcomes for victims of rape. Indeed, the experience of the Centre for Women's Justice, which represents EVAW in this claim, sadly demonstrates that in individual cases there has been a concerning increase in reference to harmful myths and stereotypes, consistent with the abandonment of the merits based approach and the substitution of a "bookmaker's approach". The Centre for Women's Justice have collated a dossier of 19 cases so far where decisions have been made following the change in policy or practice either not to charge or to discontinue a prosecution.

67. Indeed, as EVAW's evidence will demonstrate, that change in outcomes is not simply a matter of statistics: it means that rapists will go unpunished, and victims will again be let down by the system in which they have placed trust. This is of deep concern to all those who work within the justice system.

68. It is a particularly worrying trend as CPS statistics up to 2017 still indicate that RASSO decision-making has continued to stop meritorious cases from going ahead. Information received by the Centre for Women's Justice on the 5th November 2018, in answer to a Freedom of Information request, indicates that out of a total of 438 VRR requests pursued to independent review in sexual offences cases between the 5th June 2013 and the 31st March 2017, 81 were upheld, meaning that a proportion of 18.5% of original decisions not to prosecute were found to have been wrong. Of the 81 'wrong' decisions, moreover, it was found that 55 had incorrectly applied the evidential test of the Full Code Test.

B. The position of the Defendant

69. The Defendant acknowledged in his letter of 18 February 2019 that there has been a significant fall in charge rates. However, as set out above, the Defendant maintained the following position:

> "*I can assure you that that* (sic) *any falls are not indicative of a change of approach by prosecutors to these cases and there is no less commitment towards prosecuting these types of cases.*"

70. As set out above, insofar as this refers to policy, it is untenable: the New Policy was introduced in 2017. But in any event, even if there has not been a change in policy, it is untenable that the removal of the guidance coupled with the training has not led to a change in practice; it is clear that this has triggered a precipitous fall in positive outcomes for rape victims.

71. It appears from the Defendant's 18 February 2019 letter that the Defendant may argue that there are other reasons for such a fall: he notes that the CPS is seeking to make other "*improvements*", in particularly in relation to "*file quality and disclosure*", which have "*directly impacted upon prosecution volumes*". Insofar as the DPP contends that the change of approach outlined above has had no impact whatsoever and that all of the drop in volumes are attributed to other causal factors, this is not accepted by EVAW. EVAW would require a detailed explanation, including by reference to the dates of the other "*improvements*" referenced, to understand any argument in this regard (and insofar as the Defendant maintains this position would expect such an explanation to be provided in response to this letter).

V. Grounds of review

A. Relevant legal context

72. When examining decisions of the CPS in individual cases, following a VRR procedure, the Courts only rarely interfere with the decision of the CPS (see e.g. Sir Brian Leveson P in *R (S) v |CPS* [2015] EWHC 2868; [2016] 1 WLR 804, para 16).

73. However, even in an individual case, the Courts can and will consider the legality of the general approach of the CPS. This is apparent from a passage from the judgment of Kennedy LJ in the Divisional Court in *R v DPP, ex parte Chaudhury* (1995) 1 Cr App R 136, at 141, from before the VRR procedure came into existence, which is often referred to as providing guidelines (albeit non-exclusive) for circumstances in which the court will intervene:[10]

[10] See further, following the introduction of the VRR procedure, *L v DPP* [2013] EWHC 1752 (Admin); [2013] ACD 108.

> *"From all of those decisions it seems to me that in the context of the present case this court can be persuaded to act if and only if it is demonstrated to us that the... CPS arrived at the decision not prosecute:*
> *(1) because of some unlawful policy...*
> *(2) because the Director of Public Prosecutions failed to act in accordance with her own settled policy as set out in the Code, or*
> *(3) because the decision was perverse. It was a decision at which no reasonable prosecutor could have arrived."*

74. This position is *a fortiori* where, as here, the challenge is not to an individual case (which involves questions of fact and analysis which the CPS is well placed to consider) but to the development and implementation of a New Policy and/or a change in practice, across the CPS. Indeed, EVAW will submit that it is particularly important for the courts to scrutinise the general approach of the CPS, given the very high bar faced by individual claimants.

75. In this regard, as set out above, the Divisional Court has already considered the appropriate analysis in respect of the Full Code Test, and has confirmed in *B* that the objective, merits-based, approach, is the correct one in such cases (while also making clear the significant dangers of the alternative 'bookmaker's' approach).

76. Moreover, as the Divisional Court found in *B*, a failure to take the correct approach to prosecution under the Full Code Test is likely to be unlawful both as a matter of domestic law and in the application of the European Convention of Human Rights (the "Convention"). In particular, as set out by Toulson LJ in *B* at paras 64-71, a failure to take a proper approach to prosecuting serious crimes against the person is likely to entail a breach of Article 3 of the Convention.

77. In this regard, EVAW emphasises the recent confirmation by the Supreme Court that there is an obligation under the positive duties found in Article 3 of the Convention to investigate cases of rape, which may be breached in light of both systemic and operational issues: see *DSD v Commissioner of Police of the Metropolis* [2018] UKSC 11; [2018] 2 WLR 895 ("*DSD*"). That obligation to investigate (which also arises under Article 8 of the Convention) is indissoluble from an obligation to prosecute such cases

where appropriate. As the European Court of Human Rights stated in *MC v Bulgaria* App No. 39272/98, a case relied on heavily by the Supreme Court in *DSD*:

"*...the Court considers that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution*" (para 153, emphasis added: cited in *DSD* at para 18).

B. Grounds of Review

78. As explained above, the CPS has implemented a New Policy in respect of the prosecution of rape cases. That New Policy is, EVAW will contend, unlawful, as set out in part (i) below.

79. In the event that the Defendant contends that there has been no such change at a policy level (as may be the case from his very unclear position set out thus far), EVAW explains in part (ii) below how in any event the change of practice precipitated by the CPS's actions is likewise unlawful.

(i) New Policy

80. The New Policy is unlawful, both in the manner of its introduction and in substance, as addressed in turn below.

Introduction of the New Policy

81. The introduction of the New Policy was flawed in numerous respects – which both individually and collectively rendered the Defendant's decision unfair and unlawful.

82. **First**, the Defendant failed properly to consult, and/or acted contrary to the legitimate expectations of victims of rape and/or advocacy groups, and/or irrationally or unfairly in introducing the New Policy without consultation.

83. It is clear from the CPS website that, ordinarily, the CPS consults publicly on changes in approach and guidance.[11] There is a public announcement, a rationale, and an open consultation, on which there is a clear opportunity to comment. That is to be expected:

[11] See https://www.cps.gov.uk/consultations last accessed **7 June 2019.**

the approach taken by the CPS is one that has a significant effect on the lives of many individuals. It went against the findings of the court in *B* and indeed, as set out above, in certain crimes such as rape engages the human rights of victims. Moreover, it is recognised by the CPS, which states clearly on its website that:

"*We want to hear your views about our prosecution policy. You can help us to be better informed, fairer and more representative by participating in our consultations.*"

84. In light of this, the practice of prior consultation on significant changes in the CPS' policies on prosecution is such that it would be unfair and/or inconsistent with good administration for the CPS to depart from the practice in this case (see e.g. *CCSU v Minister for Civil Service* [1985] AC 374, p401). As such, the CPS is under a duty imposed by the common law to consult in respect of significant changes to its policy.

85. The CPS's approach was, however, not to consult before the change or provide any opportunity to comment. Changes were made in 2017 to reflect the change in policy but these were only expressly recognised from November 2018 onwards. Further, those changes did not make clear that the reason for the removal of the guidance was that the merits based approach was no longer being applied. The only statement to that effect was in the response to the FOI referred to at paragraph 36 above which was not a public announcement, and as stated only came to EVAW's attention recently.

86. EVAW (and other organisations) have been forced to seek information by FOI requests, and the CPS have not been forthcoming in answering those requests (for example, refusing to provide the training materials in question).

87. **Second**, the Defendant failed to have due regard to the matters set out under s149(1) of the Equality Act 2010, pursuant to the public sector equality duty.

88. The whole purpose of the merits-based approach was to ensure that decisions were taken by the CPS without regard to harmful myths or stereotypes, particularly in respect of sex but also in relation to disability. As explained above, in rape cases there are particular concerns that decisions will be taken based on such harmful risks and stereotypes, and the merits-based approach ensures that they are instead taken on objective factors.

89. Both sex and disability are protected characteristics pursuant to the public sector equality duty. The Defendant was required to have due regard to that duty in bringing about the New Policy.

90. Instead, the Defendant removed all reference to the merits-based approach, and instructed CPS prosecutors not to have regard to it, without gathering appropriate evidence and consulting with relevant parties. The Defendant failed to have due regard to the need to eliminate discrimination, advance equality of opportunity (including inter alia by minimising disadvantages suffered by persons with such protected characteristics and encourage them to participate in public life), and foster good relations for persons with those protected characteristics.

91. **Third,** consistently with the Defendant's failure to consult at all (still less in any meaningful way), the Defendant's decision to implement the New Policy was done in breach of its duty to conduct sufficient inquiry,[12] and was therefore unlawful.

92. As explained above, prior to the implementation of the New Policy, there had been calls in the Independent Review, the 2015 ARU Review and in the HMPCSI Review to ensure that the merits-based approach was being properly applied. Those suggestions had been met with the refresher training set out above. There is no evidence that the Defendant inquired whether that training had been successful and/or whether there was any evidential base for the change.

93. Moreover, at least as far as EVAW was aware, there was no call for evidence from the CPS which would have explained to the CPS the likely effect and desirability of such a New Policy, including its effects on survivors of rape and the criminal justice system as a whole.

94. As such, the Defendant simply did not have the information required to promulgate the New Policy. That "*necessary condition for a decision to be characterised as lawful*"[13] was therefore missing, rendering the New Policy unlawful.

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[12] As explained by Lord Diplock in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014.

95. **Fourth**, the Defendant acted insufficiently transparently in the promulgation of the New Policy, rendering the Defendant's decision to implement the New Policy unlawful.

96. As set out above, the Defendant appears to have gone to great lengths not to publish the New Policy, in essence introducing it as surreptitiously as possible, and only admitting its existence in external documents when faced with a challenge that it was acting on the basis of a "secret policy".

97. However, if "*a policy has been formulated and is regularly used by officials, it is the antithesis of good government to keep it in a departmental drawer*" (*B v SSWP* [2005] EWCA Civ 929; [2005] 1 WLR 3796 at para 43). This is particularly the case in respect of the Defendant's policies. The Courts have required him to publish his policies to provide the requisite foreseeability for individuals to regulate their conduct (see e.g. *R (Purdy) v DPP* [2009] UKHL 45; [2010] 1 AC 345).

98. The lack of transparency in the introduction of the New Policy was inimical to the principles of good administration and legal certainty and was unlawful.

The substance of the policy

99. The most fundamental legal objections to the new policy are ones of substance. The Divisional Court in *B* made it very clear that the appropriate approach to the prosecution of rape cases was the merits-based approach. It made it equally clear that the bookmaker's approach was not lawful. This is because, as the subsequent detailed materials produced by the CPS made clear, as a matter of rationality, the merits based approach merely explicates what is necessarily required to apply the evidential test "*that there is sufficient evidence to provide a realistic prospect of conviction ...on each charge*". Thus, those materials variously state:

    a. The merits-based approach "*reminds prosecutors of how to approach the evidential stage of the Full Code test in tricky cases*".

    b. It is the "*intellectually rigorous approach to take to the Full Code Test*".

[13] See Stadlen J in *R (RP) v Brent LBC* [2011] EWHC 3251 (admin) at [239].

c. It ensures that the CPS avoids "*flawed review decisions*".

d. It was "*best understood as an explanation of the correct principles for decision-making under the Code*".

e. Applying the Full Code Test correctly "*necessarily involves taking the merits based approach*".

100. **First,** the promulgation of the New Policy was unlawful because it is contrary to the Divisional Court's decision in *B* as to the approach required in law and irrational because it requires decision makers to stop applying the very approach which, as a matter of rationality, the evidential test, which continues to be part of the Full Code Test, requires them to apply.

101. **Second**, the introduction of the New Policy is contrary to the obligations of the CPS as set out in the Human Rights Act 1998 in conjunction with Articles 3 and 14 of the Convention.

102. Article 3 imposes a positive obligation on state authorities to conduct an effective investigation into the commission by private actors of serious offences such as rape. This extends not just to the investigation of a particular crime but also to its prosecution: see *DSD*. The CPS, as the public authority responsible for prosecutions, is subject to that investigative/prosecutorial obligation with respect to its prosecutorial functions. Insofar as it adopts policies governing the exercise of its prosecutorial powers which unjustifiably hinder the discharge of the investigative/prosecutorial obligation, such systemic failings will breach Article 3.

103. While the merits-based approach merely elaborates upon the evidential test and in many cases is an unnecessary explication, it assumes very great importance where there is a risk that an assessment of the evidence will be tainted by harmful false stereotypes. This is precisely because, when applied, it ensures that those stereotypes do not impermissibly feed into the application of the evidential test. It is in just such cases that a profound difference in outcome arises depending upon whether the merits based approach or the bookmaker's approach is applied.

104. The removal of the merits-based approach in the New Policy necessarily facilitates the application of the bookmaker's approach. Prior to the application of the New Policy the CPS took particular care to guide prosecutors on its application in cases of serious sexual offending against women by providing detailed and specific guidance, including in Chapter 8 of the CPS's policy on rape and in the 'Code for Crown Prosecutors Test – Merits Based Approach', precisely because this was an area where myths and stereotyping was prevalent and where an application of the bookmaker's approach would necessarily result in serious undercharging.

105. It is important to keep in mind that the investigative/prosecutorial obligation imposed under Article 3 is a duty of means not ends. The mark of the effective discharge of that duty is not, therefore, that the application of the state's machinery results in a conviction. Rather it is that the state's machinery operates in practice to bring to trial those who, as a result of an effective investigation and effective prosecution, should be required to answer for their alleged mistreatment. The evidential test set out in the Full Code Test does just that. It requires prosecutors to charge (subject to the public interest test) in all cases where ***an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.***

106. However, the removal of the merits based approach means that in cases of serious sexual offending, where myths and stereotypes continue to abound, alleged offenders will not be prosecuted not by reason of a lack of evidence but because of the improper application of those myths and stereotypes. This is the antithesis of an effective investigation. In *MC v Bulgaria* (2005) 40 EHRR 20 Strasbourg found the article 3 investigative obligation to have been breached where there was evidence of a practice by the Bulgarian authorities of only charging rape offences where there was evidence of violence having been used. In reaching this conclusion the Court recognised that "*in respect of the means to ensure adequate protection against rape, states undoubtedly enjoy a wide margin of appreciation. In particular, perceptions of a cultural nature, local circumstances and traditional approaches are to be taken into account*". It nonetheless concluded at

paragraph 164 that any such practice: "*risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy. In accordance with contemporary standards and trends in that area, the Member States' positive obligations under Arts 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim*".

107. By removing an approach whose greatest value lay in neutralising the application of myths, stereotypes and discriminatory perspectives from the decision whether to prosecute, the New Policy does not just risk leaving certain types of rape unpunished, it will undoubtedly have that effect, most especially in relation to rapes of young women where the perpetrator is known to them, or vulnerable women with disabilities.

108. The New Policy therefore contravenes Article 3.

109. In the alternative, even if the New Policy does not breach the investigative/prosecutorial obligation, it is certainly a measure which falls within the ambit of that duty for the purposes of Article 14. For the reasons given it has an undoubtedly discriminatory impact on women in the context of prosecutions for rape and other serious sexual offending, as well as a particularly adverse impact on those with disabilities. There is no justification for such an adverse impact.

110. The New Policy therefore violates Article 3 in conjunction with Article 14 (see *mutatis mutandis* the judgment of the ECtHR in *Talpis v Italy*, App No. 31237/14, paras 141-149). It is of huge concern to EVAW that those actions have indeed had a very significant impact on the outcomes for victims of rape: there has been a precipitous drop in such outcomes, which necessarily affect women much more significantly than they affect men.

(ii) Change in practice

111. If EVAW are mistaken that the removal of the guidance coupled with the training are the result of a change in policy, then as demonstrated above those matters have led to a profound change whereby prosecutors are no longer as a matter of practice applying the

merits based approach. The overwhelming probability, particularly in light of the active encouragement to drop cases to improve conviction rates as set out in the training sessions described above, is that they are applying the bookmaker's approach.

112. It follows that the change in practice is unlawful for the same reasons highlighted as grounds of substantive unlawfulness in relation to the New Policy, that is because it contradicts and is inconsistent with applicable test in the Code, namely the evidential test (see *B*), is in breach of the duty imposed on the CPS under Article 3 to conduct effective investigations and prosecutions, and/or discriminatory under Article 3 in conjunction with Article 14.

113. In the alternative, if the Court were to find that the evidence does not demonstrate that the falls in charging rates are the result of the removal of the guidance on the merits based approach coupled with the training sessions, there is nonetheless an unacceptable risk that these are the cause, that is, there is an unacceptable risk that they have led to a change in practice whereby prosecutors are no longer applying a merits based approach. The consequence of that is that there is an unacceptable risk that the CPS is applying a practice that is unlawful because it contradicts and is inconsistent with applicable test in the Code, namely the evidential test (see *B*), is in breach of the duty on the CPS to conduct effective investigations under Article 3, and/or discriminatory under Article 3 in conjunction with Article 14. Such systemic illegality is itself unlawful: see e.g. *R (Tabbakh) v Secretary of State for Justice* [2014] EWCA Civ 135 at paragraph 54; *R (Detention Action) v First-Tier Tribunal (Immigration and Asylum Chamber)* [2015] 1 WLR 5341 at paragraph 27, and *R (Howard League) v Secretary of State for Justice* [2017] 4 WLR 92.

VI. Response required

A. Redress sought

114. EVAW requests that steps are immediately taken to remedy the illegality, including but not limited to the following:

a. Reinstatement of the merits-based approach.

b. Reinsertion into both internal and external guidance of the specific guidance on the merits based approach including in particular into Chapter 8.

c. Re-training of all CPS RASSO units to reaffirm the CPS' commitment to the merits-based approach.

d. Notifying all victims of the fact that any decisions taken following the New Policy/change of approach in 2017 were taken pursuant to a different approach, and that such decisions will (if they were not final) be reconsidered.

e. Reconsideration of all non-final prosecutorial decisions taken under the New Policy/change of approach in 2017.

f. Review of any prosecutorial decisions that were final and publication of any recommendations from that review.

115. In the event that such steps are not taken, EVAW will issue a claim for judicial review. EVAW envisions being able to serve evidence directly addressing the CPS' change in practice, as well as evidence from both experts in CPS policy and experts in statistical analysis.

116. In particular, EVAW will seek a declaration that the change in policy and/or practice is unlawful, and will seek mandatory orders requiring the CPS to take steps such as those set out in paragraph 114 above.

B. Request for further information

117. EVAW requires the following information, to be included in any response to this letter:

a. **First**, all contemporaneous material setting out the justification for the removal of the merits-based approach, including: (i) any contemporaneous materials setting out the basis for removal of the merits-based approach, including any studies relied upon; (ii) such contemporaneous documents (if any) that set out the Defendants' consideration of whether or not that removal was consistent with its obligations under the public sector equality duty and the Convention; (iii) any consultation (if any) undertaken by the Defendant in advance of bringing about

the New Policy/change in practice; and (iv) the training materials provided at the workshops described above.

b. **Second**, a comprehensive explanation of the changes to the Defendant's policy to implement the New Policy and/or the change in practice, including a list of each policy changed and/or removed, with the date of such change, and confirmation of the date that such change was made public.

c. **Third**, an explanation by the Defendant as to the offences to which the New Policy was applied. EVAW assumes, based on the documents set out above, that it applied to both rape and child (sexual) abuse. Please provide confirmation of this, and whether or not the New Policy applied to any further offences.

d. **Fourth**, to enable EVAW to evaluate the magnitude of the change in practice set out above, data on the number of total: (i) pre-charge decisions; (ii) administratively finalised decisions; (iii) no further action decisions; and (iv) decisions to charge; at the monthly level by RASSO unit since the beginning of 2016. It is noted that the CPS data mechanisms may be different to those in the official statistics[14] – for the avoidance of doubt EVAW seeks both the official statistics and any different 'CPS figures'.

e. **Fifth,** to enable EVAW to evaluate the evidence-base to which the CPS could have had regard as to the training needs of its RASSO units, quarterly or six-monthly data showing how many RASSO cases, and in particular rape cases, overturned by the Appeals and Reviews Unit under the VRR Scheme between 2013 and 2019 have resulted in (i) a guilty plea or (ii) conviction following trial; and complementary data for other areas of offending, for the purpose of comparison.

[14] See e.g. transcript from Gregor McGill's evidence to the IICSA inquiry, 14 February 2019, p76 lns3-5, p 112 lns 11-19, and see further 2017 Violence against Women and Girls Report by the CPS, p8.

C. *Cost capping order*

118. EVAW has only very rarely taken steps in litigation, and has only done so where it feels extremely strongly that matters are unlawful. The last litigation with which EVAW was involved was the *DSD* litigation in which the appellants were successful in the Supreme Court.

119. In this case, it is EVAW's position that the direction taken by the CPS is not only wrong but unlawful, as explained above. EVAW is particularly well placed to address this unlawfulness as:

    a. The bars for individual claimants seeking to raise issues of policy and practice within the CPS are extremely high. It is therefore all the more appropriate that the Courts examine the matter at the level of the CPS' general approach.

    b. EVAW is able to draw on the experiences of its members across the justice system, and therefore provide the Court with an overview that would be particularly difficult for an individual claimant to provide.

120. In the event that this issue cannot be resolved without recourse to litigation, EVAW intends to seek a cost capping order. EVAW is a small NGO with six members of staff. It is a membership organisation, and many of its members are very small voluntary sector organisations. It does not charge for membership, nor does it accept public money (such as to retain its independence). It is therefore reliant on private donors and grants.

121. EVAW has taken the unusual step of setting aside the sum of £15,000 to support this strategic litigation. The Centre for Women's Justice and EVAW's counsel have thus far acted wholly *pro bono* on this matter. Following the payment of court fees, and the instruction of statistical expert, EVAW expects to have approximately £11,000 remaining. It will undertake crowdfunding to further support its claim.

122. In the circumstances, EVAW has made every attempt to provide funds to support its claim, which is manifestly in the public interest. It will not be able to proceed with the

proceedings without a costs capping order. We invite you to indicate your consent to an application for such an order in this matter.

D. Conclusion

123. Your response to this letter is requested by the 24th June 2019.

Yours faithfully

Kate Ellis
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Charity No: 1169213

Our ref: KE/EVAWX01-01
Your ref: Z1910105/FAB/B4
Date: 5th July 2019

[redacted]

BY EMAIL ONLY TO: [redacted]

Dear Sir/Madam

Re: Proposed Claim: End Violence against Women Coalition v The Director of Public Prosecutions

We refer to your letter of the 28th June 2019 regarding the above matter.

Thank you for the information provided with that letter. We note however that you allude to *'further requests for information'* set out in our letter of the same date and have asserted that you will give consideration/respond to these requests *'in due course'*.

The requests for disclosure referred to in our letter of the 28th June 2019 were not *'further'* requests for information. We merely addressed by that letter the Defendant's comments in his response to our Pre-Action Protocol Letter before Claim with regard to pre-action information/documents sought, and underlined – with reasons – the need for the Defendant to comply promptly with the five original requests for information that we set out in our Letter before Claim at paragraph 117.

We wish to be clear that we do not consider the Defendant to have exercised his duty of candour unless he makes the disclosure sought in our pre-action correspondence. Our client requires the information and documents requested at paragraph 117 in our Letter before Claim, and underlined our letter of the 28th June 2019, in order to plead its claim. In light of the delay to date, we ask that you provide this disclosure by no later than **4pm on Wednesday 10th July 2019.**

We reserve the right to rely on the present letter, and our previous correspondence regarding disclosure, in respect of any future application for costs.

Yours faithfully

Kate Ellis
CENTRE FOR WOMEN'S JUSTICE
[redacted]

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Our Ref: CE/KE/EVAWX01-01
Your Ref: Z1910105/FAB/B4

10 July 2019

[redacted]

Dear [redacted]

Re: Proposed Claim: End Violence against Women Coalition v the Director of Public Prosecutions

Introduction

We refer to the pre-action correspondence between our clients, including our client's letter before action of 10 June 2019 ("LBA") and your client's response of 24 June 2019 ("Response"). We also refer to our letter of 28 June 2019 ("Follow-Up Letter") and the letter dated 28 June 2019 [received on 2 July 2019) by your client with documents attached as disclosure ("Disclosure Response").

The matters in issue

As you will understand, this matter is of significant concern to our clients, a coalition of more than 80 women's organisations and campaigners working to end violence against women in all its forms. In particular, it is our client's understanding that there has been both a change of policy and a change of practice within the CPS as to the prosecution of rape. We understand from your Response that the Defendant maintains: (i) that there has been no "change in policy"; and (ii) that there has been no "significant change in practice".

Our clients are surprised by this position, in light of the (uncontested, as we understand the Defendant's position), changes to both the internal and external guidance to remove reference to the Merits-Based Approach ("MBA"), the training given in the 'roadshows', and to the concerning drop in the charging rate for rape-flagged cases set out in our LBA.

However, our client of course will carefully evaluate and consider the Defendant's position, and act consistently with both the Pre-Action Protocol and the overriding objective. Our clients, however, need further information to do so. The LBA set out a number of requests for disclosure. As noted in our Follow-Up Letter, only some of those requests for disclosure were answered in the Disclosure Letter, and we await your response. We set out our further requests below.

The Defendant has confirmed that he is aware of his duty of candour, as recently set out by the Court of Appeal in *R (Citizens UK) v Secretary of State for the Home Department* [2018] EWCA Civ 1812; [2018] 4 WLR 123 at [105] and [106], affirming the principles set in the judgment of the Divisional Court in *R (Horeau) v Secretary of State for Foreign and Commonwealth Affairs* [2018] 1508 (Admin) at [8]-[24]. As such, it is his function to identify the "*good, the bad and the ugly*", as he is not a private party trying to defend his private interest, but is "*engaged in a common enterprise with the court to fulfil the public interest in upholding the rule of law*". It involves a duty not to be selective, nor to mislead the court by omission. It applies at the pre-action stage (see paragraph 13 of the Pre-Action Protocol for Judicial Review).

Further information sought

As to the 'change of policy' set out by our clients, but denied by the Defendant:

1. As to the document referred to at column 15 of the Index of Pre-Action Disclosure in the Disclosure Letter, please:
    a. confirm whether other references to the MBA have been removed from internal guidance;
    b. insofar as other documents forming part of the internal guidance have been amended to remove reference to the MBA please explain the reason (e.g. mistake) that the reference the MBA in the document at 15 of the index has not been removed;
    c. Insofar as other documents forming part of the internal guidance have been amended to remove reference to the MBA provide copies of all guidance, both in their original version and as they appear after the removal. For the avoidance of doubt please disclose both guidance where reference to the MBA has been removed (in its original form and as it appears after removal) and all guidance where such reference has not been removed;
    d. provide any correspondence regarding the removal of reference to the MBA from internal guidance and/or other sources; and
    e. provide a timeline for the aforesaid.

2. As to the document provided at pages 19-20 of the Disclosure Letter, please:
   a. confirm whether this handout is the only remaining reference to the merits-based approach in the current training materials used by the CPS ,;
   b. insofar as other documents forming part of the training materials have been amended to remove reference to the MBA please explain the reason (e.g. mistake) that reference to the MBA in the training materials at p. 19 has not been removed;
   c. provide copies of all training materials (including slides prepared for prosecutors and assistant prosecutors, training packs, guidance notes for trainers/supervisors/tutors, and external materials such as DVDs) for RASSO induction and refresher courses on prosecuting rape, for both before and after the removal of reference to the MBA in respect of some of the training materials; and
   d. provide any correspondence regarding the removal of such guidance from handouts/training materials.

3. As to the removal of reference to the merits-based approach from external guidance, please:
   a. confirm when such guidance was removed;
   b. explain the basis for the removal; and
   c. provide contemporaneous correspondence in relation to that removal.

4. We note the reference in the documents provided with the Disclosure Letter that the change in policy was brought in "*with a view to increasing the conviction rate*" (see Item 3 in Document 1 disclosed with the Disclosure Letter). Please provide any other documents from the period in question which refer to the need to address changes either nationally or by area to the approach to rape cases to "drive" the rape conviction rate up (see e.g. para 5 of Document 2 disclosed with the Disclosure Letter).

5. Please provide any research, statistical information or other data or material (apart from the conviction rate data set out at paragraphs 4-6 at pp. 7-8 of the disclosure), that the comparatively low conviction rate for contested trials involving a straight denial from the defendant was explicable on the basis that prosecutors are misapplying the MBA?

6. Please provide any correspondence and/or communications, both internally (including any questions or communications from RASSO prosecutors and/or RASSO leads), and externally (including any communications with the police, counsel, and NGOs), in respect of:
   a. the removal of references in the guidance and/or training materials to the MBA;
   b. the effect of the removal of references in the guidance and/or training materials to the MBA, including any questions regarding the effect of the removal and/or confusion as to whether this requires a change in approach and/or displaying a belief or understanding that it entails and/or requires a change in approach;

c. the recent statements by the Defendant that there has been no change in approach, including those on 10 June 2019 including communications which evidence confusion and/or disagreement with any such statements.

As to the 'change of practice' set out by our clients, which your client denies (or at least denies that it was "significant", although different wording is used across the Response):

1. Please provide more up to date statistics relating to the charging or otherwise of rape flagged cases. We have a response to an FOI request (dated 21 June) which indicates data has been withheld regarding the figures for 2018/19. This data is critical to the question of the extent to which there may have been a change in approach, and was requested in our most recent letter to you of June 28th.

2. Please clarify what data is included in the definition of 'administratively finalised' decisions. In particular, please confirm whether the data for this category includes cases where the police have made a decision to NFA with or without reference to advice from the CPS.

3. Please explain whether you have taken any steps to consult with and/or reassure stakeholders, including internal RASSO prosecutors and/or RASSO leads, and external stakeholders such as the police, counsel and NGOs, to ensure that the removal of the merits-based approach has not changed the approach taken to prosecuting rape cases, and if so what those steps are and what the response has been.

We also reiterate the points made in the Follow-Up Letter regarding the information sought in the LBA.

Delay

We note that in your Response paras 47-48 you indicated that your clients may raise the issue of delay in respect of this claim. For the avoidance of doubt, we consider that any such argument would be wholly without merit.

Your client has acted in breach of ordinarily accepted principles of transparency and good administration: having failed to announce the change in policy (even if the Defendant considered it to be 'marginal'), our clients were not aware of the nature or effect of the change in policy and/or approach for a significant period. Moreover, we will rely on the fact that the breach identified is an ongoing breach, which has taken time to evidence and substantiate.
In the circumstances, we would invite you to reconsider your position in respect of 'delay'.

Conclusion

It is of course incumbent on both parties to seek to resolve (or, at least, to narrow) issues prior to claims being filed. In the circumstances, despite the fact that it appears to our clients that there has clearly been a change of policy and/or of practice in this case, we seek the information set above as a matter of urgency, to allow our clients to evaluate the Defendant's explanations properly.

Yours sincerely

Harriet Wistrich
Director
Centre for Women's Justice
[redacted]

Government
Legal Department

Kate Ellis
Centre For Woman's Justice
National Pro Bono Centre
48 Chancery Lane
London
WC2A 1JF

Litigation Group
One Kemble Street
London
WC2B 4TS

T 020 7210 3000

DX 123242 Kingsway 6

www.gov.uk/gld

Your ref: KE/EVAWX01-01
Our ref: Z1910105/FAB/DS4

10 July 2019

By email only: [redacted]

Dear Ms Ellis

Re: Proposed Claim: End Violence Against Woman Coalition v The Director of Public Prosecutions

We acknowledge receipt of your letter dated Friday 5 July 2019 and the information that you were seeking by today's date.

We are working with our client to search for the material requested and intend to revert as soon as possible with any such material that falls to be disclosed pursuant to the Defendant's duty of candour.

Yours sincerely

[redacted]

For the Treasury Solicitor

D [redacted]
F
E

[redacted]

centre for Women's Justice

info@centreforwomensjustice.org.uk
Oxford House, Derbyshire Street,
London, E2 6HG
DX 40901 Bethnal Green
020 7092 1807
centreforwomensjustice.org.uk
Charity No: 1169213

Our Ref: KE/KE/EVAWX01-01
Your ref: Z1910105/FAB/B4
Date: 30 August 2019

[redacted]

BY EMAIL TO: [redacted]

Dear [redacted]

Re: Proposed Claim: End Violence against Women Coalition v The Director of Public Prosecutions

We refer to pre-action correspondence exchanged in connection with the above matter.

We confirm receipt, with thanks, of the most recent tranche of disclosure served by email on the 22 August 2019, including the electronic material sent to us on disc. Having reviewed the same, we confirm that we are now in a position to finalise our client's Statement of Facts and Grounds of Judicial Review, with a view to filing the claim in September.

As previously indicated, our client intends to apply for a costs capping order from the court. In view of this we invite you to provide us with details, or an estimate, of your costs to date in order that we can inform the court of the same. We also invite you to provide us with an estimate, insofar as you are able, of your likely costs to trial. We accept that any such estimate will necessarily be very approximate until you have had sight of our Statement of Facts and Grounds of Judicial Review and Claim Bundle.

We look forward to hearing from you.

Yours faithfully

Kate Ellis
Solicitor
CENTRE FOR WOMEN'S JUSTICE
[redacted]

Government
Legal Department

Ms Kate Ellis
Centre for Women's Justice
Oxford House
Derbyshire Street
London
E2 6HG

Litigation Group
One Kemble Street
London
WC2B 4TS

T 020 7210 3000

DX 123242 Kingsway 6

www.gov.uk/gld

By email only: [redacted]

Your ref: KE/EVAWX01-01
Our ref: Z1910105/FAB/DS4

5 September 2019

Dear Ms Ellis

Proposed Claim: End Violence against Women Coalition v The Director of Public Prosecutions

We refer to your letter dated 30 August 2019.

Thank you for acknowledging safe receipt of the most recent tranche of disclosure, including the material on the DVD.

We note your client's intention to apply for a costs capping order and your request for us to provide an estimate of our likely costs to trial. It is premature to consider a costs capping order prior to permission being granted and we therefore decline to incur further costs in meeting your request, at this stage. However, by way of indication our costs to date, including disbursements, are approximately £20,000 (excluding VAT).

Our views on your intended application for a costs capping order are set out in detail in our letter of 24 June 2019 and we do not intend to repeat its contents herein. However, for the avoidance of doubt, our position remains that the threatened proceedings are doomed to fail, accordingly permission should be refused and the merits of any costs capping application will not fall to be considered.

Yours faithfully

[redacted]

Government
Legal Department

Litigation Group
102 Petty France
Westminster
London
SW1H 9GL

T 020 7210 3000

DX 123243, Westminster 12 www.gov.uk/gld

Ms Kate Ellis
Centre for Women's Justice
Oxford House
Derbyshire Street
London
E2 6HG

By email only:
[redacted]

Your ref: KE/EVAWX01-01
Our ref: Z1910105/FAB/DS4

10 October 2019

Dear Ms Ellis

End Violence Against Women Coalition v The Director of Public Prosecutions

We write concerning the 'Confidential Annex' referred to in the statement of Ms Wistrich; the order made by Mr Justice Supperstone and the undertaking referred to in that order (related to the Annex). The order provides for the Director of Public Prosecutions to give an undertaking to Ms Wistrich, to preserve the confidentiality of the material referred to in the Annex.

We understand entirely the sensitivity of the material which will be in the Annex but have a number of concerns about this approach. **First**, it is not unusual for highly sensitive information to be exchanged between parties in the course of judicial review proceedings- such proceedings can accommodate the need for confidentiality without undertakings. **Second**, the law already provides that where an individual makes an allegation of rape, nothing that might identify that individual may be included in any publication if it is likely to lead members of the public to identify that person as the person offended against. **Third**, the confidentiality of any information disclosed will be protected pursuant to relevant legislation and the Civil Procedure Rules. **Fourth**, the material relied upon is likely to relate to documents received by or generated by the Crown Prosecution Service, in the first instance. Furthermore, as a matter of general principle, undertakings should not be used in order to secure compliance with the law.

For all of these reasons we do not see why any undertaking should be required. However, in order to expedite matters (and understanding that the women who have provided you with their accounts may have done so in the expectation that there would be an undertaking), we attach a draft (modelled on undertakings given in other types of litigation) to be given on behalf of the Director of Public Prosecutions. In keeping with the usual approach, it is an undertaking to the Court rather than Ms Wistrich.

This undertaking means that we will not have to seek permission each time the CPS needs to show the material to someone within the CPS in order to respond to the annex. Given all of the obligations set out above, we do not consider that the legal team needs to provide any undertaking. If you are agreeable to this, we attach a draft consent order to make a slight amendment to the terms of Mr Supperstone's order.

[redacted]

Timetable

As might be anticipated, the Director intends to rely upon a witness statement from Mr Gregor McGill as part of the Summary Grounds of Defence of this claim. We consider that it is in the interests of both parties that, from the outset, important areas of factual agreement and disagreement are clear (insofar as is possible).

Unfortunately, Mr McGill is away for almost two weeks of the period within which the Acknowledgement of Service has to be served. In addition, given that the Defendant has not had sight of the Confidential Annex and may require some time in order to respond to it, it is inevitable that the timetable will require some adjustment. In light of both these considerations we ask that you agree to an extension of time of 28 days for the Defendant's Acknowledgment of Service until 15 November 2019. We have included provision for this in the draft consent order and would be grateful if you could let us know if you are agreeable to this.

Yours sincerely

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

THE QUEEN

(on the application of

END VIOLENCE AGAINST WOMEN COALITION)

Claimant

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

I, ... , on behalf of the Director of Public Prosecutions, hereby agree and undertake as follows:

In respect of the 'Confidential Annex' to the witness statement of Harriet Wistrich dated the 19th September 2019, I undertake, **to the High Court**, to:

(i) Keep it confidential.
(ii) Keep the Confidential Annex safe and not to leave it unattended other than at a secure location.
(iii) Only use the confidential annex for the purpose of these proceedings. The purpose of these proceedings includes the taking of instructions from individuals who work within the Crown Prosecution Service and the preparation of any pleading or witness statement.

In giving this undertaking, I understand that I may only disclose and discuss documentation and information in the Confidential Annex with the legal team instructed on behalf of the Director of Public Prosecutions, persons providing instructions and persons involved in the preparation of pleadings or witness statements or persons who have also given an undertaking.

I understand that it would be a breach of this undertaking if I was to deliberately disclose the contents of the Confidential Annex to any individual not covered by it terms.

SIGNED .....

DATED .....

71E

CLAIM NO: CO/3753/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

BETWEEN:

END VIOLENCE AGAINST WOMEN

Claimant

-v-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

---

draft ORDER

UPON the Defendant's application dated October 2019

BY THE CONSENT of the Claimant and the Defendant.

IT IS HEREBY ORDERED THAT:

1. The time limit for the service of the Defendant's Acknowledgement of Service is extended by 28 days to 15 November 2019.

2. The order made by Mr Justice Supperstone (of 2 October 2019) is varied so that paragraph 2(a) provides:

    a. A representative of the Defendant shall provide a confidentiality undertaking to the Court in relation to the materials in the Confidential Annex. Upon the provision of that undertaking, the Claimant shall provide the Defendant with the confidential annex (as soon as is possible). The undertaking does not prevent the Defendant (or those acting on his behalf) from using or showing the confidential annex to individuals who work

within the Crown Prosecution Service, for the purpose of taking instructions and for the preparation of any pleading or witness statement.

From: [redacted]
Subject: Re: CO037532019 END VIOLENCE AGAINST COALITION v DPP * OFFICIAL *
Date: 11 October 2019 at 16:50
To: [redacted]
Cc: [redacted]

Dear [redacted]

Thank you for your correspondence below and attached.

I do not think I need provide a detailed response to your letter of yesterday's date, but confirm that we are content to agree the attached draft Consent Order, subject to one minor amendment. We suggest that paragraph 2(a) (the paragraph intended to vary the Order of Justice Supperstone) should we think be amended so that the first sentence of that paragraph concludes (after 'as soon as is possible') with 'and file it at court'.

I also confirm that we agree the wording of the attached undertaking.

Please kindly revert to us with the draft Consent Order once you have inserted signatory details for each party and we will promptly sign and return it. I confirm that I will sign the Order as one of the solicitors for the Claimant.

Kind regards

Kate Ellis
Solicitor
Centre for Women's Justice

www.centreforwomensjustice.org.uk

On 10 Oct 2019, at 17:27, [redacted] wrote:

Dear Ms Ellis

Further to [redacted]s email below, please see attached correspondence.

Kind regards

[redacted]

From: [redacted]
Subject: RE: CO037532019 END VIOLENCE AGAINST COALITION v DPP * OFFICIAL *
Date: 14 October 2019 at 18:01
To: [redacted]
Cc: [redacted]

AH

Dear Ms Ellis

Thank you for your confirmation that you agree to the draft Consent Order and the wording of the undertaking.

Please find attached the updated Consent Order for signature, including your suggested amendment to paragraph 2(a) and a signature block. Please note that I have also inserted a provision that costs be in the case and I trust that such will not be controversial.

For your information, please also see attached a draft of the application notice that we intend to file.

We look forward to receiving a copy of the signed consent order shortly.

Kind regards

[redacted]

GLD accepts service by fax in accordance with CPR PD6A. **However, we do not accept service by email unless otherwise agreed**

From: [redacted]
Sent: 11 October 2019 16:51
To: [redacted]
Cc: [redacted] .org.uk;
Fio[redacted]
<c.[redacted]
<h.[redacted]
Subject: Re: CO037532019 END VIOLENCE AGAINST COALITION v DPP * OFFICIAL *

Dear [redacted]

Thank you for your correspondence below and attached.

I do not think I need provide a detailed response to your letter of yesterday's date, but confirm that we are content to agree the attached draft Consent Order, subject to one minor

71 I

CLAIM NO: CO/3753/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

BETWEEN:

END VIOLENCE AGAINST WOMEN

Claimant

-v-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

---

draft ORDER

UPON the Defendant's application dated October 2019

BY THE CONSENT of the Claimant and the Defendant.

IT IS HEREBY ORDERED THAT:

1. The time limit for the service of the Defendant's Acknowledgement of Service is extended by 28 days to 15 November 2019.

2. The order made by Mr Justice Supperstone (of 2 October 2019) is varied so that paragraph 2(a) provides:

    a. A representative of the Defendant shall provide a confidentiality undertaking to the Court in relation to the materials in the Confidential Annex. Upon the provision of that undertaking, the Claimant shall provide the Defendant with the confidential annex (as soon as is possible) and file it at court. The undertaking does not prevent the Defendant (or those acting on his behalf) from using or showing the confidential annex to

individuals who work within the Crown Prosecution Service, for the purpose of taking instructions and for the preparation of any pleading or witness statement.

3. Costs in the case.

Dated this day of

Signed _____

Centre for Women's Justice

Oxford House

Derbyshire Street

London

E2 6HG

For the Claimant

Dated this day of

Signed _____

Government Legal Department

102 Petty France

Westminster

London

SW1H 9GL

For the Defendant

71K

N244

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Name of court Administrative Court	Claim no. CO/3753/2019
Fee account no. (if applicable)	**Help with Fees – Ref. no.** (if applicable)
	H W F - - -
Warrant no. (if applicable)	
Claimant's name (including ref.) The End Violence Against Women Coalition ('EVAW')	
Defendant's name (including ref.) The Director of Public Prosecutions	
Date	**15 October 2019**

1. What is your name or, if you are a legal representative, the name of your firm?
   Government Legal Department

2. Are you a ☐ Claimant ☐ Defendant ☒ Legal Representative
   ☐ Other *(please specify)*

   If you are a legal representative whom do you represent? Defendant

3. What order are you asking the court to make and why?
   The Defendant kindly requests that the Court: (1) exercise its case management powers pursuant to CPR 3.1(2)(a) to extend the time for the Defendant to file its Acknowledgement of Service and accompanying Summary Grounds of Resistance until 15 November 2019; (2) vary the order of Mr Justice Supperstone dated 2 October 2019; and (3) that costs be in the case.

4. Have you attached a draft of the order you are applying for? ☒ Yes ☐ No

5. How do you want to have this application dealt with? ☐ at a hearing ☒ without a hearing
   ☐ at a telephone hearing

6. How long do you think the hearing will last? ☐ Hours ☐ Minutes
   Is this time estimate agreed by all parties? ☐ Yes ☐ No

7. Give details of any fixed trial date or period

8. What level of Judge does your hearing need? High Court Judge

9. Who should be served with this application? The Claimant

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

71L

10. What information will you be relying on, in support of your application?

☐ the attached witness statement

☐ the statement of case

☒ the evidence set out in the box below

Following receipt of the claim by the Government Legal Department ('GLD') on 27 September 2019, GLD considers that the current deadline, pursuant to CPR 54.8(2)(a), for the Defendant to file is Acknowledgment of Service is 18 October 2019.

The Defendant intends to rely upon a witness statement as part of the Summary Grounds of Defence and in addition, has not has not yet had sight of the Confidential Annex. Therefore, in order for the Defendant to have sufficient time to produce a witness statement and respond to the Confidential Annex, the Defendant kindly requests that the Court exercise its case management powers pursuant to CPR 3.1(2)(a) to extend the time for the Defendant to file its Acknowledgment of Service and accompanying Summary Grounds of Resistance by 28 days to 15 November 2019.

Further, the Defendant respectfully requests that the Court vary the order of Mr Justice Supperstone dated 7 October 2019, as set out in paragraph 2(a) of the attached Consent Order.
The Claimant's representatives consent to the extension of time and variation of the Order (see attached Consent Order).

Statement of Truth

(I believe) (The applicant believes) that the facts stated in this section and continuation sheet are true.

Signed _____ Dated 15/10/2019

Applicant's legal representative

Full name [redacted]

Name of applicant's legal representative's firm GLD – The Treasury Solicitor

Position or office held Grade 6 Senior Lawyer
(if signing on behalf of firm or company)

11. Signature and address details

Signed _____ Dated 15/10/2019

Applicant's legal representative

Position or office held Grade 6 Senior Lawyer
(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

Government Legal Department 102 Petty France	If applicable Phone no. [redacted]

71 M

Westminster London Postcode S W 1 H 9 G L	Fax no. [redacted] DX no. DX 123243 Westminster 12 Ref no. Z1910105/FAB/DS4
E-mail address	[redacted]

71 N

CLAIM NO: CO/3753/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW

BETWEEN:

END VIOLENCE AGAINST WOMEN

Claimant

-v-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

---

draft ORDER

UPON the Defendant's application dated October 2019

BY THE CONSENT of the Claimant and the Defendant.

IT IS HEREBY ORDERED THAT:

1. The time limit for the service of the Defendant's Acknowledgement of Service is extended by 28 days to 15 November 2019.

2. The order made by Mr Justice Supperstone (of 2 October 2019) is varied so that paragraph 2(a) provides:

    a. A representative of the Defendant shall provide a confidentiality undertaking to the Court in relation to the materials in the Confidential Annex. Upon the provision of that undertaking, the Claimant shall provide the Defendant with the confidential annex (as soon as is possible) and file it at court. The undertaking does not prevent the Defendant (or those acting on his behalf) from using or showing the confidential annex to

individuals who work within the Crown Prosecution Service, for the purpose of taking instructions and for the preparation of any pleading or witness statement.

3. Costs in the case.

Dated this 15th **day of** October

Signed Kate Ellis

Centre for Women's Justice

Oxford House

Derbyshire Street

London

E2 6HG

For the Claimant

Dated this day of

Signed _____

Government Legal Department

102 Petty France

Westminster

London

SW1H 9GL

For the Defendant

From: [redacted]
Subject: Re: CO037532019 END VIOLENCE AGAINST COALITION v DPP * OFFICIAL *
Date: 15 October 2019 at 09:45
To: [redacted]
Cc: [redacted]

Dear [redacted]

Thank you for your correspondence below.

Please find attached Consent Order with our signature.

Once you have filed the application (and accompanying undertaking), we will look forward to your suggestion as to a convenient time this week for delivery of the documents comprising the Confidential Annex. There are only two lever arch files' worth of documents but we would like to ensure their safe receipt by a member of the legal team.

Kind regards

Kate Ellis
Solicitor
Centre for Women's Justice

www.centreforwomensjustice.org.uk

On 14 Oct 2019, at 17:52, [redacted] wrote:

Dear Ms Ellis

Thank you for your confirmation that you agree to the draft Consent Order and the wording of the undertaking.

Please find attached the updated Consent Order for signature, including your suggested amendment to paragraph 2(a) and a signature block. Please note that I have also inserted a provision that costs be in the case and I trust that such will not be controversial.

For your information, please also see attached a draft of the application notice that we intend to file.

We look forward to receiving a copy of the signed consent order shortly.

Kind regards

[redacted]
Lawyer

71Q

From: [redacted]
Subject: RE: CO037532019 END VIOLENCE AGAINST COALITION v DPP * OFFICIAL *
Date: 16 October 2019 at 13:31
To: [redacted]
Cc: [redacted]

FB

Dear Ms Ellis.

We served the undertaking, CnO and AN on the Court yesterday. I would be grateful if you could please arrange for the delivery of the confidential undertakings as soon as possible.

My colleague, [redacted] and I will both be out of the office tomorrow but Alice is back on Friday. Would you be able to deliver the undertakings to Alice to arrive on Friday please?

The address is below.

Please let me know if this is likely to present a problem.

Best wishes

[redacted]

Working pattern- Monday to Wednesday. Outside of those days, please contact my named out of office contacts.

In accordance with civil procedure rule 6.24, note that the Government Legal Department address for service has changed to:

102 Petty France
Westminster
London
SW1H 9GL
DX 123243 Westminster 12

Service should therefore be made to the above address with immediate effect, although we will treat any service made to our previous address by 4pm on Wednesday 25 September as valid.

From: [redacted]
Sent: 15 October 2019 09:50
To: [redacted]
Cc: [redacted]
Subject: RE: CO037532019 END VIOLENCE AGAINST COALITION v DPP * OFFICIAL *

Dear Ms Ellis,

Your signed CnO is received with thanks.

We will let you know as soon as the CnO and undertaking are filed and then will be in touch to arrange receipt of the confidential undertakings as you propose.

7 | R

Government
Legal Department

Administrative Court Office
The Royal Courts of Justice
Strand
London
WC2A 2LL

Litigation Group **T 020 7210 3000**
102 Petty France
Westminster
London
SW1H 9GL

DX 123243, Westminster 12 **www.gov.uk/gld**

By email only:
administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk;
administrativecourtoffice.caseprogression@hmcts.x.gsi.gov.uk

Your ref: **CO/3753/2019**

Our ref: **Z1910105/FAB/DS4**

14 November 2019

Dear Sirs

End Violence Against Women Coalition v Director of Public Prosecutions

We refer to the consent order dated 15 October 2019, in which the parties consented to extend the time limit for service of the Defendant's Acknowledgement of Service to 15 November 2019.

The Defendant's Summary Grounds and evidence are being finalised, however, despite best efforts, there is a possibility that this may not be complete by tomorrow. To enable the Defendant time to finalise the documentation and ensure it is as helpful for the Court as possible, the Defendant respectfully requests that the Court:

(1) exercise its case management powers pursuant to CPR 3.1(2)(a) to extend the time for the Defendant to file its Acknowledgement of Service and accompanying Summary Grounds of Resistance by a further 7 days, until 22 November 2019; and

(2) that costs be in the case.

We do not consider that this further extension will cause any prejudice to the parties or to the Court, as no hearing is listed and we confirm that the Claimant consents to the Defendant's request for an extension of 7 days.

We should be grateful if the Court would inform us as soon as possible if a formal application is considered necessary and, if so, we can file one by 4pm tomorrow.

Yours faithfully

[redacted]

From: [redacted]
Subject: Re: CO03753/2019 - END VIOLENCE AGAINST COALITION v DPP - Extension of Time for AoS * OFFICIAL *
Date: 15 November 2019 at 12:56
To:
Cc: [redacted]

Dear Momotaj

Thank you for your email below. I likewise confirm agreement on behalf of the Claimant to the Court amending the order so that the new deadline for the Defendant to file the AoS and supporting evidence is the 22nd November 2019.

Kind regards

Kate Ellis
Solicitor
Centre for Women's Justice

www.centreforwomensjustice.org.uk

On 15 Nov 2019, at 11:38, [redacted] wrote:

Dear Momotaj

Thank you for your email. I confirm agreement on behalf of the Defendant to the Court amending the order to reflect that the AoS and supporting documents be lodged by 22/11/2019.

Kind regards

[redacted]

From: [redacted] **On Behalf Of**

71

info@centreforwomensjustice.org.uk
Oxford House, Derbyshire Street,
London, E2 6HG
DX 40901 Bethnal Green
020 7092 1807
centreforwomensjustice.org.uk
Charity No: 1169213

Your Ref: Z1910105/FAB/B4
Our Ref: EVAWX01-01
Date: 9 December 2019

[redacted]

BY EMAIL AND BY POST

Dear [redacted]

Re: *EVAW v DPP* [CO/3753/2019]

Please find enclosed by way of service upon the Defendant, the Claimant's Reply to the Summary Grounds of Defence, and the Second Supplementary Report of Professor Abigail Adams. I confirm that these documents have been filed with the court today. I would be grateful if you could confirm receipt of this letter and both enclosures.

I confirm that we are also considering with our client whether to serve a second witness statement of Sarah Green, addressing matters raised in the Defendant's response to the Claimant's costs capping application. I will endeavour to confirm the position, and effect service of any further statement prepared, as soon as possible.

I also write with a request. The statement of Jean Ashton, JA/1, refers to and makes use of 'CPS Data', which is reported quarterly [JA/1, at 12]. Ms Ashton describes this data as encompassing a 'broad range of casework measures including both pre charge and prosecutions data for rape flagged cases' [JA/1, at 11]. I would be grateful if you would send the underlying CPS data on which Ms Ashton has relied, by return.

I look forward to your confirmation of receipt and response at your earliest convenience.

Yours sincerely

Kate Ellis
Solicitor
CENTRE FOR WOMEN'S JUSTICE
[redacted]

Encs.

Centre for Women's Justice

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020 7092 1807
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Charity No: 1169213

Your ref: CO/3753/2019
Our ref: EVAWX01-01
Date: 12 December 2019

Administrative Court Office
The Royal Courts of Justice
Strand
London
WC2A 2LL

BY EMAIL ONLY TO: administrativecourtoffice.caseprogression@hmcts.x.gsi.gov.uk

Dear Sir/Madam,

Re: EVAW v DPP [CO/3753/2019]

As proposed in our letter of the 9th December, we enclose a second statement from Sarah Green, Director of EVAW, briefly addressing factual matters raised in the Defendant's submissions in relation to the Claimant's cost capping application, along with two additional exhibits.

We also enclose an updated version of the index to our court bundle to reflect the inclusion of this new material in Volume 7 of the bundle. The statement and exhibits are paginated such that they may be inserted into the existing bundle.

In the interests of clarity, we further enclose a *paginated* version of the Second Supplementary Expert Report of Professor Abigail Adams, which we originally filed (without pagination) with the court on 9th December. Our index has also been amended to reflect the inclusion of this Expert Report in Volume 10 of the bundle. We apologise for any inconvenience caused by the initial unpaginated service.

We would be grateful if you could assist us by inserting the additional material provided into the appropriate points in the court's copies of the bundle, and in replacing your copies of the index that accompanies each volume of the bundle with the most recent version. We are conscious that this will require multiple copies of the index to be printed by the court. If this is inconvenient and the court would prefer us to send multiple copies of the index in hard copy, please do not hesitate to ask us and we will supply them accordingly.

Yours faithfully

CENTRE FOR WOMEN'S JUSTICE

Encs.

[redacted]

71 W

Government
Legal Department

Administrative Court Office
The Royal Courts of Justice
Strand
London
WC2A 2LL

Litigation Group **T** [redacted]
102 Petty France
Westminster
London
SW1H 9GL

DX 123243, Westminster 12 **www.gov.uk/gld**

By email only:
administrativecourtoffice.caseprogression@hmcts.x.gsi.gov.uk
administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk
[redacted]

Your ref: **CO/3753/2019**

Our ref: **Z1910105/FAB/DS4**

18 December 2019

Dear Sirs

CO3753/2019 - End Violence Against Women Coalition v DPP

We refer to the above matter. Further to the service by the Claimant of their 'Short Response to the Summary Grounds of Resistance' and in light of the publication yesterday of 'A thematic review of rape cases' by the HM Crown Prosecution Service Inspectorate, we enclose for filing an updated note of the Defendant to assist the Court.

We should be grateful if this could be placed before the judge with the other papers in this case as a matter of urgency. In the interests of expediency, we have copied this correspondence to the Court lawyer who we understand is the case-holder for this matter.

The Claimant's representatives are copied to this correspondence by way of service. Please do let us know if it would assist the Court for us to provide a hard copy of the enclosed document.

Yours faithfully

[redacted]

Enc.

Cc: Kate Ellis, Centre for Women's Justice [redacted]

71 X

Centre for Women's Justice

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DX 40901 Bethnal Green
020 7092 1807
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Charity No: 1169213

Your ref: CO/3753/2019
Our ref: EVAWX01-01
Date: 3rd February 2020

Administrative Court Office
The Royal Courts of Justice
Strand
London
WC2A 2LL

BY EMAIL ONLY TO: [redacted]
administrativecourtoffice.caseprogression@hmcts.x.gsi.gov.uk

Dear Sir/Madam,

Re: EVAW v DPP [CO/3753/2019]

We write further to the Defendant's 'Update Note' dated the 18th December 2019, and further also to recent email correspondence with the Court Lawyer with conduct of this matter regarded our proposed reply to the information contained in that Note.

Please now find enclosed accordingly on behalf of the Claimant:

i. A Short Response to the Defendant's Note;
ii. Annex A to that Response: Press statements from civil society and women's sector organisations concerning the HMCPSI report published on the 17th December 2019;
iii. Annex B to that Response: An open letter from the Victims' Commissioner, Vera Baird QC, to the Attorney General, dated the 30th January 2020, concerning the HMCPSI report published on the 17th December 2019; and
iv. The witness statement of Kate Ellis, dated the 3rd February 2020, referred to in that response.

We recognise that the material we are serving would require appropriate pagination and insertion into the court's bundles, if permission is granted. If it would assist the court to receive these documents in hard copy now, and/or to receive a revised index of documents, we will be glad to provide the same.

We have copied the Defendant's representatives into this correspondence, by way of service.

Yours faithfully

CENTRE FOR WOMEN'S JUSTICE

Encs.

[redacted]

Government
Legal Department

Administrative Court Office
The Royal Courts of Justice
Strand
London
WC2A 2LL

[redacted]

[redacted]

DX 123243, Westminster 12 **www.gov.uk/gld**

By email only: [redacted]
administrativecourtoffice.caseprogression@hmcts.x.gsi.gov.uk

Your ref: **CO3753/2019**

Our ref: **Z1910105/FAB/DS4**

10 February 2020

Dear Sirs

CO3753/2019 - End Violence Against Women Coalition v DPP

We write further to the correspondence and documents served on behalf of the Claimant on 3 February 2020 and, in particular, the witness statement of Kate Ellis dated 3 February 2020.

We do not consider that the Court's willingness to accommodate the Claimant providing a response to the Defendant's update note to the Court (upon the publication of the HMCPSI report published on 17 December 2019), was an invitation for the Claimant to supplement their claim with yet further evidence.

We are very conscious that this claim goes to an important issue (insofar as it is concerned with the prosecution of rape and other serious sexual offences) and that it is right that the Claimant be afforded some latitude in the preparation of this claim. We are concerned however that we have moved well beyond that. The Court will be aware that since the Defendant filed its Summary Grounds of Resistance, the Claimant has filed a Reply, a supplementary expert report and an additional witness statement.

We also make the following observations with it well in mind that we asked the Court to consider the inspection report. However, we were duty bound to put that report before the Court (regardless of whether it assisted the CPS or not), given that it goes directly to the issues in this claim. It was accompanied by a short submission (five pages long) which was to assist the Court given that the Report was some 193 pages long. It did not warrant the submission of further evidence.

The Court will be aware that in R (on the application of AB) v Chief Constable of Hampshire Constabulary, The Secretary of State for Justice, The Crown Prosecution Service, The National Police Chiefs' Council [2019] EWHC 3461 (Admin), 2019 WL 07606243 the President of the Queen's Bench Division addressed concerns about the conduct of judicial review to make it clear to practitioners and litigants that in future other cases brought in the Administrative Court are not to be dealt with in a similar way to that case (drawing attention also to reliance upon expert evidence [§116]).

[redacted]

The President stated [§108]:

"*The conduct of litigation in accordance with the rules is integral to the overriding objective set out in the first part of the CPR and to the wider public interest in the fair and efficient disposal of claims. Public law cases do not fall into an exceptional category in any of these respects. If the rules are not adhered to there are real consequences for the administration of justice*"

The Defendant has already, in its Summary Grounds of Resistance, made submissions about the Claimant's reliance upon anonymous and unparticularised hearsay evidence. The Claimant has now filed a further statement by Ms Ellis setting out an unattributed, hearsay account by a police officer. We need not say more about the risks inherent in such evidence still less when the individual quoted does not even know that their conversation will make it into a witness statement, which will feature in High Court proceedings. If this statement had been filed with the Claimant's application we would have made further submissions about it. We do not do so because we recognise that the Court must draw a line under the extensive amount of documentation that has already been submitted at the permission stage of this claim.

The issue of costs is fundamental to the overriding objective. This is a case in which the Claimant has sought a costs capping order and which the CPS has strongly contested (drawing the Court's attention to the reality of the CPS' financial position). The way in which the case is being litigated is driving up costs in an unnecessary way.

Please note that the Claimant's representatives are copied to this correspondence, by way of service.

Yours faithfully

[redacted]

cc. Kate Ellis, Centre For Women's Justice on behalf of the Claimant [redacted]

info@centreforwomensjustice.org.uk
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London, E2 6HG
DX 40901 Bethnal Green
020 7092 1807
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Charity No: 1169213

Your ref: CO/3753/2019
Our ref: EVAWX01-01
Date: 14th February 2020

URGENT:
Administrative Court Office
The Royal Courts of Justice
Strand
London
WC2A 2LL
BY EMAIL ONLY TO: administrativecourtoffice.listoffice@hmcts.x.gsi.gov.uk; [redacted]

Dear Sir/Madam,

Re: EVAW v DPP [CO/3753/2019]

We write further to the Order received by email today at 16:42 containing directions from Mr Justice Supperstone with respect to a hearing. We are grateful to Mr Justice Supperstone, and also to the court for its prompt service today.

We regret to inform the court that both our Leading Counsel Phillippa Kaufmann QC of Matrix Chambers, and our First Junior Counsel Jennifer Macleod, are unavailable on the 27th February 2020, the date on which the proposed case management hearing has been listed. In the case of our Leading Counsel this is because of a prior court listing.

We also write to advise the court office – having had the opportunity to discuss this matter with Counsel urgently on receipt on the Order – that we believe a longer hearing will be necessary. Mr Justice Supperstone proposes that this hearing should answer a number of case management questions which are of a relatively complex nature, as well as the substantive question of permission, and our client's contested costs capping application. We recognise that in many cases a half day might be sufficient, but the court may be aware that this complex judicial review application concerns an exceptionally large volume of evidential material, the original claim having been supported by more than 11 bundles of supporting documents. The Defendant have also relied on a substantial volume of material in response, and further submissions by way of updates to the original claim have also been submitted by both parties which go to the heart of the issues in the claim. It is respectfully submitted on behalf of the Claimant therefore that a half day will not be sufficient, and that the matters should be listed for a full day's hearing.

We ask therefore that the court very kindly postpones the proposed hearing by a short time to enable the Claimant to be represented by Leading Counsel, and that it also seeks a date on which a full-day hearing can be accommodated.

We have copied both the Defendant's representatives and our Counsel's clerks into this correspondence in order that they may liaise with the court as regards any dates to avoid, if the court agrees that this would be helpful.

Finally, we would be grateful if the court is able to provide any clarification as regards two brief procedural matters in advance of the hearing.

First, we presume from the Order that this may be the *only* oral permission hearing which the Claimant is afforded, subject of course to any alternative directions issued by Mr Justice Supperstone at the hearing itself. If this is also the court's assumption, we would be grateful if the court would confirm that the matter will be listed before a Divisional Court of two judges as would normally be the case in an oral permission hearing where a decision or policy of the Director of Public Prosecutions is under challenge. We respectfully submit that this would be appropriate.

Secondly, it is our assumption that the hearing is likely to proceed on the *Mount Cook* basis as to costs, albeit that it is open to either party to make an application in due course as to the appropriate way of allocating costs. If the court is able to confirm wheth in its view our assumption with regard to the application of the *Mount Cook* principle is, as a starting point, correct, we would be most grateful.

We are grateful to the court for its assistance in resolving these matters.

Yours faithfully

CENTRE FOR WOMEN'S JUSTICE

cc. [redacted]

From: **Sarah-Jane Ewart** sj.ewart@centreforwomensjustice.org.uk
Subject: [CO/3753/2019]: End Violence against Women Coalition v Director of Public Prosecutions * OFFICIAL *
Date: 17 February 2020 at 13:10
To: [redacted]
Cc: [redacted]

SE

Dear Ms [redacted]

Further to Ms Ellis' email below, please find enclosed the following:

1. Our unsealed N244 application to vacate
2. A draft order

Please accept this as notice that we intend to file the same with the court today, enclosing our correspondence to the court dated 14.2.20 and the order of Supperstone J of the same date.

We would be grateful if you could indicate whether you are content to consent to the enclosed application.

PDF

N244 Applica...ed).pdf

DOCX

Draft order to vacate.docx

Kind regards,

Sarah-Jane Ewart

Paralegal
Centre for Women's Justice

www.centreforwomensjustice.org.uk

Registered Charity number: 1169213

Begin forwarded message:

From: [redacted]
Subject: **Re: [CO/3753/2019]: End Violence against Women Coalition v Director of Public Prosecutions * OFFICIAL ***
Date: 17 February 2020 at 12:30:47 GMT
To: [redacted]
Cc: [redacted]

Dear Ms [redacted]

Thank you for your email below. For your information and the Defendant's, I confirm that we will file an application via Form N244 today formalising our application to vacate.

In the the meantime, is there any assistance that you can possibly provide us in respect of the two procedural queries that we raised on page 2 of Friday's letter?

71 AE

N244

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form: https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter

Name of court Admin Court	Claim no. CO/3753/2020
Fee account no. (If applicable)	**Help with Fees – Ref. no.** (If applicable)
	H W F – –
Warrant no. (If applicable)	
Claimant's name (including ref.) End Violence Against Women Coalition	
Defendant's name (including ref.) Director of Public Prosecutions	
Date	17.2.20

1. What is your name or, if you are a legal representative, the name of your firm?

   Kate Ellis, Centre for Women's Justice

2. Are you a ☐ Claimant ☐ Defendant ☑ Legal Representative

   ☐ Other *(please specify)*

   If you are a legal representative whom do you represent? The Claimant

3. What order are you asking the court to make and why?

   An order vacating the half-day permission hearing listed on Thursday 27th February 2020 at 2pm, and re-listing the hearing for a full day before a two-judge Divisional Court at a slightly later date.

4. Have you attached a draft of the order you are applying for? ☑ Yes ☐ No

5. How do you want to have this application dealt with? ☐ at a hearing ☑ without a hearing ☐ at a telephone hearing

6. How long do you think the hearing will last? ☐ Hours ☐ Minutes

   Is this time estimate agreed by all parties? ☐ Yes ☐ No

7. Give details of any fixed trial date or period

8. What level of Judge does your hearing need?

9. Who should be served with this application? The Defendant

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

71 AF

10. What information will you be relying on, in support of your application?

- ☐ the attached witness statement
- ☐ the statement of case
- ☑ the evidence set out in the box below

If necessary, please continue on a separate sheet.

The Claimant's Leading Counsel and Leading Junior are both unavailable on 27.02.20, Leading Counsel due to a prior court commitment in the High Court QBD. We would be most grateful to the court and the Defendant for accommodating a hearing at a later date in order to allow the Claimant to be represented by Leading Counsel.

Furthermore, the Claimant submits that a full day hearing is essential. As per the order of Supperstone J dated 14.2.20, the hearing will deal with five case management issues of some complexity, as well as the substantive permission decision. Given the sheer volume of material already before the court (including 11 files of evidence by the Claimant, the Defendant's extensive reply, their recently annexed HMCPSI report of almost 200 pages and further material from the Claimant going to the heart of the claim) and the complexity of the issues at play, a half-day hearing cannot be sufficient.

Pursuant to our correspondence dated 14.2.20 (enclosed), the Claimant awaits the court's clarification on two procedural queries. Pending that clarification, the Claimant submits that this permission hearing should be dealt with by way of a full day hearing before a Divisional Court of two judges, at a slightly later date to the hearing currently listed. The Claimant submits that, in particular, if this is to be our only 'bite at the cherry' with regards to permission, then this strongly militates towards this. It is in the interests of justice to grant the Claimant's application to vacate.

Statement of Truth

(~~I believe~~) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true.

Signed Kate Ellis Dated 17.2.20

Applicant('s legal representative)('s litigation friend)

Full name Kate Ellis

Name of applicant's legal representative's firm Centre for Women's Justice

Position or office held Solicitor

(if signing on behalf of firm or company)

11. Signature and address details

Signed Kate Ellis Dated 17.2.20

Applicant('s legal representative's) ~~('s litigation friend)~~

Position or office held Solicitor, Centre for Women's Justice

(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

Oxford House, Derbyshire Street, Bethnal Green, London

Postcode E2 6HG

If applicable	
Phone no.	020 7092 1807
Fax no.	
DX no.	40901 Bethnal Green
Ref no.	EVAWX01-01

E-mail address [redacted]

71 AG

CO/3753/2019

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

In the matter of an application for Judicial Review

BETWEEN:

THE QUEEN
On the application of
END VIOLENCE AGAINST WOMEN COALITION

Claimant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

[Draft] ORDER

FURTHER TO the Order of Supperstone J dated 14th February 2020, listing case management issues and the question of permission for a half-day hearing on 27th February 2020 ("the hearing")

AND UPON the Claimant's correspondence to the Court dated 14th February 2020

AND UPON the Claimant's application to vacate the hearing listed on the 27th February 2020

It is hereby ORDERED:

1. The hearing listed on the 27th February 2020 shall be vacated.

2. A hearing shall be listed pursuant to the Order of Supperstone J for a full day before a Divisional Court of two judges on ……..

3. Costs in the case.

Dated the **day of** **2020**

71 AH

Government
Legal Department

Administrative Court Office
The Royal Courts of Justice
Strand
London
WC2A 2LL

[redacted]

DX 123243, Westminster 12 **www.gov.uk/gld**

By email only: [redacted]
administrativecourtoffice.caseprogression@hmcts.x.gsi.gov.uk

Your ref: **CO3753/2019**

Our ref: **Z1910105/FAB/DS4**

17 February 2020

Dear Sirs

CO3753/2019 - End Violence Against Women Coalition v DPP

We write further to the Claimant's correspondence dated 14 February 2020 and in anticipation of the Claimant's N244 form which it is understood the Claimant will be filing in order to formalise its application to vacate the hearing listed for the 27 February 2020.

As indicated separately to the Claimant, the Defendant does not consent to this application. The Defendant agrees with the Court that half a day will suffice for the hearing and the Defendant can make the date listed pursuant to the order of Mr Justice Supperstone.

However, should the Court be minded to re-list the hearing date, we should be grateful if any new date is also fixed for the convenience of the Defendant's Counsel and dates to avoid/the details of Counsel's clerks can be provided in those circumstances, should the Court find it helpful.

Please note that the Claimant's representatives are copied to this correspondence.

Yours faithfully

[redacted]

Fo

D
F
E

cc. Kate Ellis, Centre For Women's Justice on behalf of the Claimant [redacted]

[redacted]

71AI

info@centreforwomensjustice.org.uk
Oxford House, Derbyshire Street,
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DX 40901 Bethnal Green
020 7092 1807
centreforwomensjustice.org.uk
Charity No: 1169213

Your Ref: Z1910105/FAB/B4
Our Ref: EVAWX01-01
Date: 11th March 2020

[redacted]

BY EMAIL ONLY

Dear [redacted]

Re: EVAW v DPP – Further evidence

With apologies for the regrettably late notice prior to service of your skeleton, we enclose herewith three documents which will now be filed with the court and on which we will seek to rely at the hearing on the 17th March 2020:

i. Second Statement of Harriet Wistrich, signed and dated today;
ii. Exhibit HW/5: Second Statement of "XX" (unsigned, for reasons Ms Wistrich has explained in her statement);
iii. Exhibit HW/6: Statement of "YY" (unsigned, for reasons Ms Wistrich has explained in my statement).

My intention in serving you with these documents today (including the very recently obtained statements of XX and YY) is that you will have one working day tomorrow to amend your skeleton argument if necessary to address points raised in these documents before your skeleton is finalised, or in any event to take the new evidence into account. In order to serve these today, however, Ms Wistrich has had to exhibit unsigned versions of the statements, albeit with the express permission today of both witnesses, as we are still awaiting receipt of signed copies in the post. As indicated in Ms Wistrich's statement, the unsigned exhibits will be replaced with signed versions as soon as we have received them.

We propose to insert this evidence into the court's and both parties' evidential bundles for the hearing, together with this correspondence so that it is clear when they were served. We will therefore revert as soon as possible with a revised index.

Yours sincerely

71AJ

Kate Ellis
Solicitor
CENTRE FOR WOMEN'S JUSTICE
[redacted]

71 AK

Government
Legal Department

Ms Kate Ellis
Centre for Women's Justice
Oxford House
Derbyshire Street
London
E2 6HG

[redacted]

By email only: [redacted]

Your ref: **KE/EVAWX01-01**
Our ref: **Z1910105/FAB/DS4**

12 March 2020

Dear Ms Ellis

CO3753/2019 - End Violence Against Women Coalition v The Director of Public Prosecutions

I write further to your correspondence of yesterday's date.

I refer you to our letter to the Court dated 10 February 2020, the contents of which I do not intend to repeat here. Suffice it to say, that we do not consider that the service of an additional three witness statements, the evening prior to skeleton arguments being due, is an acceptable way of conducting litigation.

Please note that we intend to lodge our skeleton argument, as agreed, by midday today. Please confirm urgently by return that you intend to abide by this agreement.

Yours sincerely

Fo
D
F
E

[redacted]

[redacted]