

**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

WITNESS STATEMENT OF SARAH GREEN

Introduction

1. I, Sarah Green, am a Director of the charity, the End Violence Against Women Coalition (“EVAW”). I previously served as the charity’s Acting Director and before that its Campaigns Manager, leading on communications.
2. I make this statement in support of the judicial review claim brought by EVAW against the Director of Public Prosecutions (“DPP”) in respect of its change of practice from the merits-based approach to prosecution in cases of rape and serious sexual offences. I made the decision to pursue this legal challenge, with my Board of Trustees, because we were in agreement that the nationwide impact on the criminal justice system of such a significant change in direction by the Crown Prosecution

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Service (“CPS”) is a matter which is of overwhelming public importance. It is also of great concern to our member organisations and the women who use their services, for the reasons which are summarised in this statement. I believe that EVAW is an appropriate claimant because of our ability to draw on many years of policy work and data in this area, as well as the knowledge, expertise and experiences of EVAW’s many members across the women’s sector and the justice system.

3. As Director of an organisation dedicated to improving justice outcomes and human rights protection for women and girls, I felt that I had no choice but to challenge the DPP’s decision-making on this issue and not least when it became clear how drastic the impact of the CPS change was. As I will explain in this statement, we have had a close working relationship for many years with the CPS, and have often felt that through collaborative working we have been able positively to inform progress in prosecutorial understanding, training, policy and practice. In this instance, the decision to move away from the merits-based approach has been made without any prior consultation and in our view ostensibly without an evidence-base. We have raised our concerns repeatedly with the current Director since his appointment in 2018, hoping that he would reverse the change in direction implemented before his tenure, but have been unsuccessful in persuading him as to the gravity of the issue. It is, in my view, a significant change in practice, which suggests a change in understanding and interpretation of the duty to provide a standard of case-building and prosecution practice in rape cases. Such a standard should ensure that women, who are very disproportionately the victims of rape, and women with additional protected characteristics, are not discriminated against when seeking access to justice. It is also such a significant change that we wish to challenge the lack of consultation before it took place, when consultation with expert stakeholders has been established practice at the CPS for many years. .
4. The formal adoption and development of the merits-based approach to rape cases between 2009 and 2016 was not only a response to developments in the law but also seen as a watershed policy decision, reflecting a decisive commitment to raising standards in sexual offences cases. The CPS’ formal introduction of practice guidance on the merits-based approach was received publicly – and I believe also within the CPS – as a strategy for overcoming some of the particular difficulties

which arise in the context of prosecuting rape allegations, and its implementation perceptibly boosted both outcomes and confidence in the criminal justice system between 2009 and 2016. Indeed, the CPS itself has repeatedly referred to the adoption of regular training on the merits-based approach as a much-needed improvement in its service and a demonstration of its commitment to improving outcomes. It is notable that the CPS' Violence against Women and Girls Reports ("VAWG Reports") for the years 2010-11, 2011-12 and 2012-13 (full copies of which appear in the Judicial Review Claim Bundle, with relevant extracts also being exhibited to this witness statement), all drew attention to the adoption of the merits-based approach and correlated this with improvements in outcomes. The DPP also spoke publicly and extensively about the need for a new approach during his tenure.

5. Conversely, there appears to have been a concerted move away from the merits-based approach since 2017. Those of us in the women's sector have already been able to observe the impact of this change over time, which seems to us to include a widespread loss of confidence in the police and CPS, as well as a massive and exponential drop in the charging rate (with the overall conviction rate, notably, remaining around the same until 2017/18 and then falling substantially according to the latest figures for 2018/19). This is unsurprising to me, and I think will be unsurprising to anyone with experience in the women's sector who engaged with the CPS and other stakeholders around the proposed introduction of the merits-based approach in the early 2010s, and witnessed what a positive and considered change it represented for the culture within the justice system.
6. I believe it is critical to understand that the term 'merits-based approach' is not merely a buzzword or a 'way of thinking'. Nor has it lost its relevance. It is a pragmatic, best-practice approach which reflects developments in legislation and case-law over a number of years. Guidance and training on the merits-based approach was introduced after extensive consultation with frontline rape and sexual offences specialists, to enforce and reinforce the lessons learned from the significant difficulties that have historically plagued the policing and prosecution of rape and serious sexual offence cases. Such guidance was introduced from 2009 onwards partly in recognition that the criminal justice system was failing too often to bring sexual offenders to justice, particularly in cases where victims were vulnerable,

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mentally disordered and suffering other forms of abuse, where too often police officers or prosecutors placed undue weight on factors seen as harmful to their credibility and so failed to build cases and charge even where there was mounting evidence against offenders. This was, notoriously, a factor in the child sexual grooming cases of the early 2000s. In a widely reported serious case review conducted by the Rochdale Borough Safeguarding Children Board concerning victims of grooming, for example, it was noted that in one case the CPS had refused to prosecute on the basis that the child in question was “*known for going with men*”. The report identified that “[a] significant factor in the decision making by the CPS was the perception of [the girl’s] credibility” and that “the CPS focus appeared to be in looking for failings in the prosecution case rather than considering weaknesses in the case for the defence”. I attach an extract from this review, addressing the conclusions reached by the Board about the CPS’ approach, as **Exhibit SG/4**.

7. While the Code for Crown Prosecutors – which is a generic code for prosecutors working in all areas of crime – has developed over time, there remains in my view a need for supplementary guidance which assists prosecutors in applying the Full Code Test when approaching rape and other challenging sexual offence cases in accordance with the ‘merits-based approach’: by enabling them to understand how to build strong cases even where there will undoubtedly be particular scrutiny on a complainant’s account; how to assess the weight to be afforded to prima facie ‘undermining’ or ‘challenging’ factors that tend to be specific to rape and sexual offence cases; and how to make the most of weaknesses in the case for the defence.
8. The long-term impact of the removal of the merits-based approach, if it goes unchallenged, is not only a matter of concern to the EAW Coalition and its women’s sector membership but indeed risks jeopardising, in my view, all of our past and future work around the criminal justice system, which has always been a very significant part of what we do. I believe that future efforts that we make to engage and support victims and victim services, and to inform better policy and practice within the criminal justice system, will be rendered futile if there is a significantly reduced prospect of credible rape complaints being prosecuted with a resulting loss of confidence in the system. Similarly so if there is a failure to appreciate that human rights and equality law require decision-making on rape prosecution policy and

practice to be specifically mindful of possible impacts on women, including women with additional protected characteristics.

9. Finally, I do not accept that there is any reliable evidence to suggest that an overemphasis on the merits-based approach has led to too many rape and serious sexual offence cases being prosecuted without a proper assessment of their merits, as the Defendant has suggested in pre-action correspondence. For context, the CPS' VAWG report for 2007/08 (extracts of which I attach as **Exhibit SG/5**) – ten years ago, and prior to the adoption of the 'merits-based approach' – noted that the proportion of rape cases referred to the CPS in which a decision was made to charge had risen to 40%. The report recognised that this rate was too low, and pledged that "*further work is underway to improve charging rates*". By comparison, I note that between 2013/14 and 2016/17 – when the merits-based approach was firmly established as a guiding principle – 58% of rape cases were charged on average, a rise that one would surely expect given the CPS' commitment to improving the charging rate, and still barely more than half of all rape cases investigated by the police. Moreover, even if it had been the case that prosecutors in some areas were charging more zealously, we have seen, since the removal of the merits-based approach, that the charging rate for rape cases has dropped significantly below the 40% mark that was considered unsatisfactory ten years ago, which must surely be regarded as, at best, an over-correction.

About the End Violence Against Women Coalition

10. EVAW is a UK-wide coalition of more than 80 women's organisations working to end violence against women and girls in all its forms, including: sexual violence, domestic violence, forced marriage, sexual exploitation, FGM, stalking and harassment, on and offline. We were set up by our members in 2005 in order to have a unified voice calling for better national and local government responses to all forms of this abuse, and challenging the wider cultural attitudes in society that minimise or make excuses for it.
11. I joined EVAW in 2011 as Campaigns Manager. Prior to this I worked for some years in Campaigns at Amnesty International UK in particular on Amnesty's global

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campaign to 'Stop Violence Against Women', and before that I worked for other charities and for a Parliamentarian dealing with constituency casework. In 2014 I became Acting Director of the charity; in May 2016 I became Co-Director in a permanent jobshare arrangement with a colleague; and in July this year I became sole Director.

12. EVAW's members include many support services who run refuges, helplines and other specialist support services in their communities, working directly with survivors of sexual violence, as well as research and policy experts. EVAW promotes policy and practice that is directed at preventing abuse before it happens, including through a better Criminal Justice System response, a better response from schools and health services, and improved local government planning. Since its formation, EVAW has significantly influenced government policy on violence against women and girls. We are a company limited by guarantee and a registered charity.

Our work in relation to the criminal justice system

13. EVAW frequently advises Government Ministers, advisers and civil servants across Departments, Opposition MPs, other elected people and policy makers on issues relating to violence against women and girls. We have played a significant role in the development of the Government's Strategy in this area and are a member of the Home Office's Violence Against Women and Girls Stakeholder Group, which monitors implementation of the cross-government VAWG Strategy. We attend and have presented at Inter-Ministerial Group meetings on the VAWG Strategy.
14. EVAW has submitted written evidence to many Parliamentary Select Committee Inquiries, including the Women and Equalities Select Committee inquiry into sexual violence in schools, the same committee's inquiry into sexual harassment, the Home Office Select Committee inquiry into prostitution, the Justice Committee inquiry into disclosure, and the Education Select Committee's inquiry into sex education and personal, social, health and economic education. EVAW gave oral evidence to the Joint Committee on Human Rights' inquiry on violence against women and girls, the Justice Select Committee inquiry into disclosure, and to the Leveson Inquiry.

15. EVAW has been involved in agenda-setting work on sexual harassment (publishing the first significant national prevalence surveys) and as Westminster was hit by scandal in 2017-2018 following a number of #MeToo revelations, we were invited to advise on new Westminster codes of conduct for political workers.
16. In London we are members of the Mayor of London's VAWG Board which oversees the delivery of the Mayor of London's VAWG Strategy. London is also where the Metropolitan Police Force, London CPS, the courts service and multiple other statutory services including health, local councils and Transport for London, are held to account for their performance and contribution to ending and preventing VAWG across the city.
17. We sit on the Executive Board of the UK Council on Internet Safety, where alongside Government Ministers, internet companies and others voluntary groups we advise on policy to end and prevent online abuse in ever emerging new forms.
18. The CPS has worked with us since our creation in 2005, and makes clear that its VAWG strategy and action plans take on board the recommendations from EVAW, as well as working to the standards and rights set out by the UN and the Council of Europe on women's human rights and ending VAWG. EVAW is trusted for our expertise and our willingness to work in collaboration with other organisations in order to improve outcomes for women and girls. In 2006, the CPS was assessed for the first time by EVAW and was awarded the highest marks across Government for its work on violence against women. EVAW recommended further work by the CPS to reduce attrition rates in relation to rape, domestic violence, stalking and child sexual abuse.
19. Since 2012 EVAW has been a member of the CPS VAWG 'ECG' ('External Consultation Group') Stakeholder group and has attended scores of formal and extra ad hoc meetings at the CPS to input and be consulted on policy and practice in relation to all forms of VAWG.
20. Through all these groups we are consulted regularly, both formally and informally, by politicians, officials across Departments and those within the Criminal Justice

System on what is happening to women and girls and what needs to be changed. I will say more about the CPS' history of consulting the voluntary sector under the heading 'Previous consultations', below.

21. EVAW is approached by national print, broadcast and online media every week to comment on VAWG related news stories and we give hundreds of comments and interviews every year, many including critique of criminal justice policy and practice. We have briefed scores of MPs and other decision makers. Our elections work has enabled our members to reach candidates at election times, and has led to manifesto commitments from main political parties, and influence on Government. We have helped to change perspectives on 'emerging issues' (e.g. "revenge porn" or "image-based abuse"); and have helped resist regressive measures (e.g. welfare system changes which discriminate against women who have been or are at risk of abuse; disclosure practice in rape investigations; black cab rapist John Worboys' proposed release from prison on parole).
22. In all these ways we bring new and emerging issues to decision makers, we advise on building data and knowledge of scale and nature of abuse, and we give evidence-based advice on what needs to change from policing through to prosecution, health interventions, schools, the welfare system, housing and more.
23. EVAW does not often litigate, seeking instead to collaborate, building good trusting relationships with criminal justice and other statutory agencies, in order to bring our knowledge related to women's experiences into policy influencing and the wider debate. Before this present case, the most significant other legal action we have taken part in was the case of *DSD*, involving a human rights claim brought against the Metropolitan Police Service by victims of the 'black cab rapist' John Worboys, in which we intervened alongside three other women's organisations. This intervention was during my tenure as Co-Director and was an action about which I felt strongly. As with the present case, I firmly believed that intervention was right and of high strategic importance, as did my Co-Director, not just because it was a women's rights issue but because the failings concerned were egregious, because the victims' decision to hold the police accountable in order to improve its future practice represented a 'watershed' moment in building human rights protection for women,

and because we felt able to add value to the proceedings by intervening. It appeared that the Supreme Court agreed with us in all respects, as our intervention was allowed, as were the victims' claims. The Supreme Court confirmed, in a landmark decision, that victims of serious sexual violence have a human right to have their police complaints properly investigated and afforded a chance to go to trial. We have supported other less high profile early legal proceedings against a small number of schools and local authorities, as well as a university, after these educational institutions failed in their duty to protect and safeguard when girls and young women were raped and sexually assaulted. This action has been largely successful, has set important precedent, and not least through reporting in the specialist education press has widened understanding of schools' specific duty to protect girls and aim to prevent sexual assault.

24. I believe that the CPS' removal of the merits-based approach is a moment of similarly 'landmark' significance for the women's sector and the women who use our services. It risks permanently affecting trust and confidence in the justice system when it comes to violence against women and girls, as well as allowing vast numbers of sex offenders to go unpunished. In light of the very significant drop in the charging rate I believe that this has already been the impact of the change in practice.

Developments in law and the CPS' strategy around the prosecution of rape

25. Historically there have been considerable issues in prosecuting rape, some of which prevail to this day. Marital rape remained legal until 1991. Reporting rates for rape have always been much lower than the known prevalence rates, which research shows is related to fears of not being believed, and not wanting to go through the possible trauma of investigation and trial.
26. In and around the year 2000, several reports were released assessing the overall prosecution process in rape cases following a marked decrease in prosecution and conviction rates. I attach as **Exhibit SG/6** one 1999 Home Office Research Study, entitled '*A question of evidence? Investigating and prosecuting rape in the 1990s*', which showed that the conviction rate for rape had dropped from 24% in 1985 to 9%

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in 1997. The report recognised the need for proactive efforts on the part of criminal justice bodies to drive improvements.

27. While public attitudes have improved, it must be recognised that prosecutors still face significant challenges in securing convictions. Even in 2018, a large-scale public attitudes survey by YouGov for EAW found for example that a third of members of the public interviewed thought that sex without consent but without violence was not usually rape. I attach our report of this survey as **Exhibit SG/7**. It seems clear from this that prosecutors and the judiciary may still have significant work to do to overcome jury prejudices in this area of crime.
28. There has also, however, been significant change and progress, which has been driven by legislators but also crucially by the CPS, working in conjunction with the Government and the police. In the 2000s, the Sexual Offences Act 2003 introduced for the first time into statute the concept of reasonable belief in consent; on seeking consent as well as giving consent. Later, the CPS VAWG Strategy in 2007 and changes made to the process of investigating and prosecuting rape offences, alongside and backed by the broader Home Office-led VAWG Strategy from 2010, contributed to a marked shift from the attitudes of the 1990s and earlier periods. The 2000s and early 2010s also saw the commissioning of a significant amount of research into the investigation and prosecution of rape; the obstacles to prosecution and conviction; and the strategies that work in ensuring best practice. I believe that this research went on to inform a significant amount of good guidance introduced in the 2010s.
29. Over a number of years, criminal law and procedure – and with it, prosecutorial guidance – has evolved to facilitate (in principle) convictions where there is a credible complaint of rape, even where the suspect is known to the victim and there is no injury; even where an offender professes an ‘honest’ but unreasonable belief in consent; even where it is ‘one person’s word against another’; even where the complainant does not perhaps correspond with juries’ ideas of a ‘perfect’ victim; even, in other words, where the case is – by the standard of your average criminal prosecution – ‘difficult’. Complainants are now entitled to anonymity and in some circumstances special measures to enable them to come forward and provide best

evidence. They are entitled to certain minimum service provisions under the Victims' Code, which came into effect in 2006. Funding was designated by the Home Office in 2010 to commission specialist Independent Sexual Violence Advocates ("ISVAs") around the country, in recognition of the fact that victim-centred advocacy works long term to improve justice outcomes. Such change is essential to ensuring that rape is sanctioned and deterred and that those who are at risk are reasonably protected. Human rights-based law and policy-making does not accept that rape is just an inevitable crime which will always be difficult to evidence. Organisations across the women's sector acknowledged the improvements that were taking place within the system though recognised there was still much more to be done.

The positive work of the CPS in tackling sexual violence

30. There has been dedicated work by successive DPPs who have recognised the seriousness and harm of this crime and lead pioneering strategic work to improve VAWG prosecutions. For a number of years, this has been consultation-led. Since 2009 moreover, the 'merits-based approach' has been at the heart of the CPS' public-facing VAWG strategy.
31. The first specific policy for Prosecuting Cases of Rape – of which I am aware – was published in 2004. In 2008 the CPS was also the first public authority to launch a VAWG strategy, based on a gendered understanding of the causes of VAWG and its connection to women's inequality. I refer to the publication 'Violence against Women: Strategy and Action Plans', attached as **Exhibit SG/8**, which explains the aim of the strategy as being to "*provide an overarching framework to tackle crimes of [violence against women] that have been committed primarily by men, within a dynamic of power and control*".
32. From around 2010, following the case of *F (B)*, the term 'merits-based approach' began to appear in the CPS' guidance. As noted above, the CPS' VAWG Reports have heavily promoted its commitment to the merits-based approach and credited the merits-based approach with improving practice. The 2011-12 VAWG Report (**Exhibit SG/1**) provided a series of case studies said to '*illustrat[e] improvements in rape prosecutions through the merits-based approach; the introduction of Rape and*

Serious Sexual Offences (RASSO) Units; victim confidence; youth cases; multi-agency training and local support for victims through Independent Sexual Violence Advisers (ISVAs)'. One such case study referred throughout to the application of the merits-based approach and reads:

“The CPS prosecuted this case robustly with the reviewing lawyer applying the merits-based approach. The victim’s account and capacity raised questions for the prosecution who were well aware that it was likely she was targeted precisely because of these vulnerabilities. However these concerns were outweighed by the merits of her evidence, which clearly identified her assailants and confirmed the nature of the assaults she had suffered. This was reflected in the judge’s findings in relation to the victim, accepting her evidence, which involved some voluntary association with the defendants and an acceptance that she had not explicitly refused consent, whilst rejecting the suggestion of willing consent. The jury convicted both boys and they were sentenced to detention.”

Meanwhile in the then DPP’s Foreword to the 2012-2013 Report (**Exhibit SG/2**) the Director flagged the significance of commitment to and trainings on the merits-based approach:

“Our focus over the last few years has been honed to understand the vulnerability and intimidation of VAWG victims. A combination of factors has led to these improvements. [...]

We have worked to challenge the myths and stereotypes about rape victims, selecting and training specialist rape prosecutors to adopt a merits-based approach to cases. Our work in this area was supported by the report by Alison Levitt QC on Charging perverting the course of justice and wasting police time in cases involving allegedly false rape and domestic violence allegations, published in March 2013, which found that false allegations in these situations are rare.”

This report went on to state that 873 rape specialist prosecutors had been trained in the merits-based approach to deal with rape prosecutions by March 2013.

33. A number of other decisions were made by the CPS at around the same time to ensure that it had a clear and consistent nationwide policy on prosecuting cases of rape, as well as to ensure that prosecutors were as well-trained as possible to address the particular difficulties that arise in rape and sexual offence cases. In 2010, the charity 'Mind' produced a "mental health toolkit" for advocates and prosecutors in conjunction with the CPS, the General Council of the Bar, and the Law Society citing the proper application of the 'merits-based approach' as a means to ensure lawful decision making and equal access to justice for individuals with mental health disorders (at pp.15-18). I attach this toolkit as **Exhibit SG/9**. By 2011-12 it was the norm that charging decisions were to be made only by the CPS and by prosecutors in the Rape and Serious Sexual Offences ("RASSO") team. Also in 2012 the CPS held a further consultation with women's groups inviting feedback on a proposed updated Policy on Prosecuting Rape. Finally, in 2013, as referred to in paragraph 32 above, the CPS produced the report '*Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Alleged False Rape and Domestic Violence*' which relied on research in order to dispel the myths surrounding rape allegations. I attach this report as **Exhibit SG/43**. It showed in their case study period how, compared with 5,651 rape prosecutions, only 35 prosecutions for false allegations of rape were made. It appeared that the report had been commissioned to undermine some of the misinformation around women who are accused of lying about abuse, and encourage a culture of 'belief', rather than a culture of disbelief.
34. In June 2014, after a year's examination of a fall in police referrals to the CPS among other issues, a Joint CPS and Police Action Plan on Rape was published, leading to a co-ordinated programme of work, implemented by the Police and CPS, led by the DPP and National Policing Leads. I attach the Action Plan as **Exhibit SG/10**. The work included a focus on all frontline workers gaining an understanding of the law on consent including specific attention on the issues related to vulnerable complainants; clear attention on the 'early investigative advice' practice between police and CPS; regional workshops bringing police and CPS leads together to improve practice and make it more consistent; and considerable new accountability

measures. Significant work by the CPS around this conscious strategy to improve rape justice outcomes included the introduction of critical additional guidance for prosecutors on consent, vulnerable complainants, and case-building in rape cases. The new guidance introduced included the dissemination to RASSO prosecutors of primary legal guidance on the “merits-based approach”, set out in the document entitled *‘Code for Crown Prosecutors – the Merits Based Approach’* in April 2015 which, until 2017, remained in force. The introduction of this legal guidance reflected the fact that the merits-based approach had already been incorporated into other RASSO materials and was by now routinely being reinforced in trainings and VAWG publications.

35. I am aware that refresher training was also delivered to prosecutors in 2015 and 2016 which emphasised the merits-based approach and provided examples of it in application.
36. This work, together with the other cumulative efforts detailed above, led to a rise in the volume of prosecutions and convictions in cases initially flagged as rape, reaching the highest volumes ever recorded by CPS. The CPS’ VAWG Report in 2016-17 (**Exhibit SG/11**) reported an 11.8% increase in reported rape prosecutions in 2016/17 compared to the previous year (5,190 up from 4,643) and an 11.2% rise in the volume of convictions (2,991 up from 2,689). The report states that of all police referrals for rape 55.5% were charged compared with 57.0% in 2015– 16. The CPS rape conviction rate stayed steady at 57.6% in 2016-17 from 57.9% in 2015-16 (outcome from charge to conviction). This should be assessed against the very significant rise in the volume of rape prosecutions and convictions and is testament to what can be achieved with strong leadership, strategy and intention brought to bear on the extremely difficult challenge of prosecuting rape in an adversarial legal system. It was not perfect but real progress was being made.
37. The CPS’ approach throughout the years 2008 to 2016 included working closely with specialist women’s groups to really understand the dynamics and drivers of these offences. This was combined with better analysis of the data around what was happening in rape cases, and developing guidance and approaches which led to more

confident decision making, especially around which cases to charge. RASSO prosecutors have said to us that they experienced a step change following the introduction of guidance including the merits-based approach to applying the code test. Guidance ensuring police and prosecutors look at whether consent had been sought as well as given, in line with the law, led to more and better questioning and investigation of defendants. This new approach meant prosecutors were more proactive, especially with cases which had typically been hard to prosecute: i.e. the majority of rape complaints in a domestic violence context or where there is an existing acquaintance between the parties.

38. I do not think it is coincidental that it was in 2012 – following the first reported nationwide trainings for RASSO prosecutors on the application of the merits-based approach in rape and sexual abuse cases, and concerted efforts to consult the women’s sector around improvements to its rape prosecution policy – that some of the worst known grooming and child sexual exploitation gangs were finally, and successfully, prosecuted. These were cases which had always been very hard to bring to trial, with often very little physical and forensic evidence and victims who had been ‘groomed’ or who had earlier been considered ‘challenging’ as potential witnesses. When questioned around sexual consent by the defence, for example, the girls in child sexual exploitation cases would be likely to answer that they had regarded the defendant as their boyfriend, and they had agreed to go here and there in his car, and even to undertake criminal activity at his request. Before the change in approach, prosecutors would have tended to assume these young girls would make poor witnesses and not be believed by a jury. It was the co-ordinated strategic approach, with agencies working together to build a case around the law on seeking as well as giving consent and recognition of vulnerability, which made these convictions possible. This is where the merits-based approach guidance significantly assists as, in my view, it ensures that prosecutors do not place excessive or definitive weight in deciding whether to charge on factors which may make a complainant easy to stereotype, or a case appear ‘challenging’. This may include factors such as the complainant being young, vulnerable, inarticulate, promiscuous or working-class. Emphasis is instead put on case-building to establish whether there is evidence which undermines the accused’s account. Rather than rule out charging difficult cases or abandoning those that they predict the jury would reject – which would effectively

mean decriminalising some rape cases – the CPS’ more recent approach (that is, up until 2016/17) has been to learn from past failures.

39. The deliberate work of the police and the CPS to understand the barriers to rape prosecutions and improve practice also, in my view, assisted them to understand the significance of inequality as a factor in the non-investigation and non-prosecution of rape. Research shows that BME women and girls are less likely to report rape than white women, and in London are less likely to see their cases charged. What has been learnt about child sexual exploitation and barriers to prosecution has shown how age and social background are critical factors in offenders’ choice of victim. Specialists working with people with learning disabilities report that those who have been sexually abused have difficulty getting people to take them seriously when they try to access justice. In 2014, VAWG adviser to the Metropolitan Police, Professor Betsy Stanko argued that rape was being effectively decriminalised in the cases of vulnerable victims such as children and those with learning disabilities or mental health problems. I attach a summary of this research as **Exhibit SG/12**.
40. In 2017, the CPS published a report looking back over 10 years since the launch of the VAWG strategy, and it showed that significant progress had been made in prosecuting some of the most serious and hard to prosecute cases because of this intentional strategic approach. In the year ending March 2001 the number of reported rapes to the police was 8,593, representing only 0.17% of all recorded crime. This contrasts with over 41,000 rapes reported to police in year ending March 2017. I attach official national statistics referring to this progress as **Exhibit SG/13**. Between 2007-08 and 2016-17, convictions for sexual offences including rape and child sexual abuse rose from 7,997 to 13,712, an 71.5% rise over the ten-year period. I attach the CPS’ VAWG Report for 2016-17, containing this data, as **Exhibit SG/11**.
41. It is hard to overstate the impact the CPS’ strategic work to tackle VAWG crimes had on everyone involved with the system. Rape Crisis workers saw increasing willingness from the police to investigate reports of rape and more positive charging decisions. As more cases worked their way through the system, victims became more willing to report and trust that they would be able to access justice. As more cases reached court and were prosecuted, everyone from victims to perpetrators observed

that this crime was being taken seriously. This creates a critical feedback loop, giving confidence to everyone in the system - the police could see the evidence needed, how the tests were applied and charging decisions made, which resulted in stronger investigations and cases built.

Previous consultations

42. It has been our experience, historically at least, that the CPS would regularly and extensively consult publicly before materially changing its guidance, policy or practice around rape and serious sexual offences prosecutions, often specifically encouraging responses from the voluntary sector, including women's organisations and survivor groups.
43. As noted at paragraph 19 above, the CPS has, for a number of years, been organising and attending VAWG External Consultation Group ('ECG') meetings with representatives of the CPS (particularly Policy Leads), policing bodies and representatives of the voluntary sector to consult on criminal justice system policy and practice specifically in relation to 'VAWG' offences like rape and sexual offences and domestic violence. This is in recognition, we think, of the fact that this is an area in which the CPS understands that it benefits from the views of experts in the women's sector and victims' representatives in order to identify and tackle problems. At these meetings there is often discussion and consultation on relatively detailed aspects of internal and external material generated by the CPS to support best practice. Often during the meeting representatives of the voluntary sector will request the opportunity for a follow-up or more detailed consultation, and such requests are routinely granted. As noted above, EVAW has been a member of the ECG since 2009.
44. I attach as **SG/14** minutes from an early example of one such meeting that took place in 2009, to demonstrate that extensive consultation and engagement at these meetings has been commonplace for a long time. It can be noted from these minutes that 'external' participants from the voluntary sector or academic institutions are not just kept informed of 'high-level' changes in policy. They are typically briefed and consulted, in relatively minute detail, on the *implementation* of policy and on

practical operational issues, including but not limited to the adoption of new draft best practice guidance; aide-memoires for prosecutors; data collection; internal reviews; and so on. The minutes show that the external participants will often also ask to be consulted on draft documents or plans mentioned at the meeting on which they have not already been consulted.

45. EAW staff minutes of other ECG meetings between 2009 and 2019 are available and can be provided to the Court on request. Attendees at meetings for the CPS also routinely keep their own, formal minutes of these meetings and I assume therefore that these are already available to the Defendant. From the minutes that I have recently reviewed, I am reminded that:

- a. One productive ECG meeting that EAW staff attended on the 11th June 2013 provides a good example of the breadth and depth of input that is typically invited from women's sector representatives at these meetings. In the course of this particular meeting, attendees were informed about the CPS' VAWG Action Plan for that year, consultations on proposed external and internal legal guidance in relation to the prosecution of child sexual abuse, rape, and extreme pornography; guidelines on social media prosecutions, charging in cases of allegedly false rape allegations, and the scope of the VRR scheme; and measures proposed for tackling domestic violence cases involving victim non-engagement/withdrawal. They were also consulted at the same meeting on purely internal matters, including internal policy and training for prosecutors regarding domestic violence. This, I think, is a good example of the degree of close partnership and consultation that has been the norm between the CPS and the women's sector when any significant area of policy or practice is addressed; indeed, even where the policy or practice materials under discussion are for internal use only. I provide the minutes to this meeting as Exhibit **SG/15**.
- b. At a meeting on the 9th December 2015, the minutes, provided as Exhibit **SG/16**, demonstrate that attendees were invited to discuss a 'Rape training update' which listed a range of new rape training programmes for prosecutors and advocates within the CPS, including for example a course entitled 'Understanding Consent for Advocates'. This has been the norm, and demonstrates that there has been a

particular expectation of transparency around any changes to training for prosecutors around rape, which is such a particularly sensitive and difficult area. Policy and training updates in relation to rape specifically are common at these meetings.

- c. Similarly, at a meeting on the 1st June 2016, attendees were provided with the CPS' VAWG Work Plan for 2015-16, authored by the CPS VAWG Strategy Manager. This offered a detailed overview of proposed changes to policy, training, e-learning and action plans in relation to the full range of VAWG offences, including rape and serious sexual offences. In the section covering rape and serious sexual offences, the plan stated: *"Implementation of rape training strategy (consent and allegedly false rape allegations completed in all Areas, regional workshops completed, RASSO induction training completed and rolling programme for rest of year for new prosecutors, refresher RASSO training plans completed roll out currently for completion by early summer; e-learning and youth training prepare by summer; advocate induction training refresher September)"*. I attach the CPS VAWG Work Plan as Exhibit **SG/17**.

46. One of the conclusions that can be drawn from the meeting minutes is that requests and recommendations expressed by external members of the ECG at these meetings are listened to and routinely incorporated into CPS policy. EVAW's minutes record multiple examples of issues being raised at meetings and adopted. They also demonstrate that ECG members will often request opportunities for further consultation, or a separate roundtable meeting, in relation to a particular issue or policy document discussed; and these requests are commonly granted. In addition, the minutes record that the CPS repeatedly voiced its commitment to the direct involvement of voluntary sector representatives in its policy work. The value of these meetings, and of the CPS' commitment to collaborative working, is clearly recognised both by policy leads at the CPS and by voluntary sector members: in one meeting on the 25th April 2017, for example, multiple members of the ECG commented that the existence of the ECG provided very effective dialogue between the CPS and the third sector, enabling them to add value and shape to the CPS' VAWG work. The minutes, provided as Exhibit **SG/18**, note that: *"There was consensus that the delegates attend many departmental groups but the ECG is up*

there with the most effective. One attendee also praised the CPS for building in enough time for organisations to effectively respond to consultations and making positive use of their expertise”. Another attendee commented that, “there seemed to be an equal partnership with ECG acting as critical friends”.

47. I can also think of a large number of other examples of cross-sector engagement demonstrating how careful the CPS have traditionally been to consult the voluntary sector and other women’s sector experts – whether formally or informally – about developments to VAWG-related guidance. I will provide some such historic examples below, which I have collated with assistance from other colleagues within the women’s sector who have alerted me to events and consultations in which they have also participated over the last 20 years.

48. In 2003, the CPS were involved in the organisation of a national, cross-sector conference, entitled ‘*Rape: Effective Investigation leading to Successful Prosecution of Known Offenders*’. The conference afforded policy-makers from the CPS and policing bodies the opportunity to hear from women’s sector experts, academics and campaigners – who delivered workshops and seminars at the conference and were involved in its organisation – about criminal justice strategies which work. I attach minutes from this conference as Exhibit **SG/19**. The stated aims of the conference (extracted from minutes) included the following (emphasis in the original):

- **Seminars:** fully introduce changes to rape prosecution and reporting represented by Government White Paper **Protecting the Public** (pub. Nov. 2002)
- debate reforms of issue of consent, medical evidence and previous sexual history
- examine problems and examples of good practice in Police investigation of rape, training of frontline officers
- discuss recent developments in victim and witness care, particularly **Sexual Assault Referral Centres (SARCs)**
- compare investigation and prosecution in USA with UK practice, identify areas of good practice
- **Workshop** (*Implications of the New Legal Framework: Consent and Previous Sexual History*)

- *make recommendations for further improvements*
- *Lilith suggestions*

49. In 2007, the Solicitor General and the then DPP facilitated a two-day multi-agency conference for prosecutors, policing leads and voluntary sector organisations alike, the title of which was ‘*Prosecuting Rape Conference 2007: Working Together: Building Better Cases*’. The conference included presentations and workshops delivered by representatives of victim/survivor services and other voluntary sector organisations with recognised expertise on the criminal justice system and VAWG issues. I attach minutes as Exhibit **SG/20**.
50. In November 2007, the CPS launched a public consultation on its draft Violence against Women Strategy and Action Plans. I attach as **Exhibit SG/21** the CPS summary of responses given to the consultation, published in 2008. The document includes at page 27 a list of the twenty-eight public sector organisations which responded to the consultation.
51. In 2008, the CPS issued a public consultation on updates to its CPS Policy for prosecuting cases of rape. The consultation paper, which I attach as Exhibit **SG/22**, stated that its aim was “*to inform the policy and practice of the Crown Prosecution Service (CPS) in relation to prosecuting cases of rape*”. It also stated: “*The CPS has responsibility for reviewing cases of rape and applying the Code for Crown Prosecutors to decide whether or not there should be a prosecution. To assist prosecutors making that decision we intend to review our current policy and practice by consulting publicly and internally on the issues raised in this document*”. The consultation paper then set out a draft Policy Statement for review by those responding to the consultation, and asked responders a series of broad questions, which allowed responders to make comments about any aspect of the Rape Policy Statement. A number of women’s sector organisations responded to this consultation.
52. In 2008-9, the CPS held wider discussions with women’s sector organisations concerning rape prosecutions; these were organised via the Rape Monitoring Group coordinated by the Home Office. The focus of the discussions was the falling conviction rate, and the problem of poor public understanding of the realities of rape.

53. In March 2009, the CPS issued a press release confirming that revised public policies on the prosecution of rape and domestic violence had been established. The press release, which I attach as Exhibit **SG/23**, stated (emphasis added):

“The policies follow a public consultation and focus groups with organisations, criminal justice agencies and individuals. They are aimed at those who support victims of rape and domestic violence, professionally or personally.

Director of Public Prosecutions, Keir Starmer QC, said: “Prosecutors are under a constant duty to keep up with the law and social attitudes. This is especially so when handling cases of rape and domestic violence, which present us with many issues to be aware of when dealing with victims. The feedback from the consultation has been invaluable and we will continue to work to improve the service we offer.”

The Solicitor General, Vera Baird QC, said: “We are determined to tackle rape and domestic violence effectively with the help of the voluntary sector.”

54. In 2011, the DPP issued a public consultation on new proposed guidance for prosecutors around the proper approach to ‘false retractions’ by rape complainants and subsequent prosecution for perverting the course of justice, to which a number of voluntary sector organisations responded. I attach a press release announcing this consultation as **Exhibit SG/24**.

55. In April 2011, the CPS drafted new Guidance for Prosecutors in relation to female genital mutilation (FGM). The draft policy document was distributed to a wide range of women’s sector organisations, asking for commentary on the CPS’ proposed approach to prosecutions in these cases. I attach a record of this consultation as **Exhibit SG/25**.

56. In March 2013, Dr Nina Burrowes produced a report entitled ‘*Responding to the challenge of rape myths in court. A guide for prosecutors*’. Alison Saunders, as Chief

Crown Prosecutor, wrote the report's foreword, noting that she "*welcome[d] Dr Burrowes' examples of how prosecutors can shape narratives and draft case theories that effectively challenge the myths that arise in the course of the trial.*" She also stated that, "*All of this can usefully be referenced in the training the CPS delivers to its specialist prosecutors*". The report itself was drafted following a meeting in City Hall on 30th January 2012, at which Alison Saunders gave a presentation on the prosecution of rape and serious sexual offences to an audience that included both prosecutors and staff from women's sector organisations, and stated that she welcomed input from her audience as to how to challenge myths and stereotypes concerning rape held by jurors. I attach Dr Burrowes' report as **Exhibit SG/26**.

57. In 2013, the CPS issued a public consultation on new guidelines for prosecutors on prosecuting child sexual abuse cases. As well as opening the new guidance up to public consultation, a press release issued on the 6th March 2013 announced that: "*...ACPO and the CPS will host a series of roundtables with bodies and individuals with responsibility, interest or expertise in the field in order to explore and road test the revised guidance on investigating and prosecuting sexual assault cases. Roundtables will convene in the coming weeks with judges; front line investigators; health and social services representatives; statutory bodies such as the Victim Commissioner and the Children's Commissioner; support and campaigning bodies such as the NSPCC, Refuge and CAADA; expert lawyers; and expert academics*". I attach this press release in full as **Exhibit SG/27**. It is notable that the resulting guidelines for prosecutors issued in October 2013, the relevant extract of which I attach as **Exhibit SG/28**, contained a section explaining and reinforcing the 'merits-based approach' to prosecutions, but as with other practice guidance, this section has now been removed in its entirety from the current version of the guidelines available online. According to a historic press release, which I attach as **SG/29**, Rape Crisis England and Wales heralded the 2013 guidelines in their original form as a "*fundamental shift*" in the way child sexual abuse cases are to be prosecuted, but noted that this guidance would be similarly relevant to the prosecution of adult sexual offences.

58. In April 2014, the CPS convened a National Scrutiny Panel on Rape, attended by police, prosecutors, academics and victims' groups. External members of the Panel

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include Professor Liz Kelly from London Metropolitan University, Ruth Mason from EVAW, Dianne Whitfield from Coventry Rape and Serious Abuse Centre, Michelle Stoops (an Independent Sexual Violence Advisor Manager) and Betsy Stanko from the London Mayor's Office for Policing and Crime. Out of this Panel came the first detailed Joint CPS Police Action Plan on Rape that I have referred to at paragraph 34 above, which identified a programme of activity necessary to deliver investigation and prosecution outcomes, including clear primary guidance and training on the merits-based approach. The Action Plan was announced by the DPP and the national policing lead for adult sexual offences in June 2014. In announcing the plan Alison Saunders led with the following: "*The new action plan makes very clear that, as with cases of child sexual abuse, the focus of any investigation and case preparation should not be on the credibility of the victim but on the credibility of the overall allegation, including the actions of the suspect*". These comments were reported by the *Guardian* newspaper on the 6th June 2014, in an article which I attach as Exhibit **SG/30**, and I have attached the Joint Action Plan itself as Exhibit **SG/10**. It can be seen that the plan was developed with the direct input of the experts and voluntary sector representatives who formed the Scrutiny Panel.

59. The CPS actively sought out ongoing contributions from women's sector organisations after the National Scrutiny Panel. In a confidential document circulated to the external members of the panel mentioned above, the CPS declared its intentions to develop a Professional Practice on Rape document "*for consultation and finalization by the end of 2014*"; to "*develop and oversee police decisions to take no further action in rape cases; reporting bi-annually to the Police Rape Working Group which includes involvement from third sector organisations and the CPS*"; and to "*gather information from...third sector organisations to better understand issues in relation to court listings and timeliness for rape cases*". In the resulting Joint Action Plan, as action point 10, the CPS states that they intend to hold a further "*National Conference*" on rape involving "*all rape specialist prosecutors, police rape leads and third sector organisations*".

60. As I have explained at paragraph 35 above, one consequence of this Action Plan was a recognition that additional guidance and training was required for prosecutors on case-building in rape cases – particularly those involving evidential issues around

consent, or vulnerable complainants – to include the introduction new detailed guidance and training materials on the merits-based approach.

61. In January 2014, staff from the CPS' VAWG Strategy team convened a meeting with representatives from women's sector organisations including Professor Liz Kelly of London Metropolitan University, as well as staff from EVAW and Women's Aid, to discuss the issue of vulnerable RASSO victims, in particular how vulnerabilities including mental health or learning difficulties might impact a victim's credibility during prosecution. The notes written by a CPS staff member summarising the meeting, which I attach as **Exhibit SG/31** demonstrate that detailed account was taken of the women's sector organisations' views on not only guiding principles in relation to vulnerable victims, but also the specific forms of evidence which might be used, as well as the detail of trial procedure including the use of special measures and how prosecutors might address the jury regarding victims' mental health difficulties.

62. Also in 2014 the CPS consulted on an entire package of revised CPS and police guidance and training covering a range of areas addressing violence against women and girls, including: guidance on charging allegedly 'false' rape or domestic violence complainants; guidance for police on when to 'crime' or 'no crime' offences; considerations relating to drug-assisted rape; a checklist for police/CPS in dealing with individuals with intellectual disabilities; considerations for interview planning in relation to sexual offences; considerations relating to bail and remand; a new risk assessment checklist for use by the police in VAWG cases; guidelines in handling young complainants; and the new national policing curriculum.

In June 2014, the Metropolitan Police Service and the DPP jointly commissioned an Independent Review into the investigation and prosecution of rape in London by the Rt Hon Dame Elish Angiolini DBE QC. The joint response document published by the MPS and CPS following the Independent Review was published in June 2015. I attach this document as **Exhibit SG/32**. The document again highlights the CPS' commitment to the use of consultation with third sector organisations as crucial to improvement of its work in relation to rape and other sexual offences. For example, following a recommendation by Dame Angiolini that the number of cases designated as requiring 'no further action' by the MPS was measured, the CPS/MPS response

document states that this is being done, and that NFA decisions in RASSO cases will be monitored by ‘scrutiny panels’. The report states at page 28 that, “*both the CPS and MPS external partners will be invited to participate in the panels to ensure that such decisions are legal and ethical.*” In addition, the document states at page 27 that, “*consultation work will be conducted with the Victims’ Focus and Rape Reference Groups to determine what the outcome measures [for complainants] should be... CPS London will also be consulted as part of this work.*”

63. The CPS’ Annual VAWG Report for 2015-16 stated that “*at a national level the...ECG, involving key VAWG expert groups, continues to advise the CPS VAWG team.*”¹ The report referred to a particular public consultation regarding social media offences and whether a new section on specific VAWG offences on social media should be included in existing CPS guidance, given the rise of controlling and sexually-motivated forms of online offending targeting women and girls. The public consultation was launched on March 2016 and closed in May 2016, following which finalised guidelines were intended to be published in September 2016.² I attach the relevant extract from the 2015-16 Report as **Exhibit SG/33**.
64. The ECG continued to provide advice and expertise to the CPS throughout 2016-17, as documented in the VAWG Report for that year. Alison Saunders thanked stakeholders from the ECG for their “*support and expert advice*” over the previous twelve months in her foreword to the report. In addition to the ECG, Local Scrutiny and Involvement Panels (LSIPs) are forums in which local stakeholders can provide advice to CPS on specific issues relating to VAWG. The 2016-17 report noted that in that year, LSIPs worked on issues including coercive or controlling behaviour, ethnicity and Black and Minority Ethnic (BAME) victims [pA8]; technology, communication with victims, support from ISVAs and cases within domestic abuse scenarios [pA17]; communication with victims and clearance of the public gallery [pA23]; and, regarding honour-based violence, “CPS East Midlands held an LSIP to discuss the challenges of prosecuting abuse within BAME communities, the impact of cultural/societal expectations on them, their vulnerabilities, the influence of faith

¹ VAWG Report 2015-16, p18

² VAWG Report 2015-16, p21

communities and the CPS safeguarding responsibilities” [pA23]. I attach all relevant extracts from the 2016-17 Report as **Exhibit SG/11**.

65. Women’s sector organisations have also been asked to contribute to CPS policies in relation to stalking and harassment. The 2016-17 Report refers to the CPS’ intention to improve performance in this area in 2017-18 “*through...monitoring and consultation with victims’ groups*”. The document also states that in 2016-17, “*The CPS stalking and harassment working group, consisting of cross-government CJS specialist and third sector agency representatives, revised stalking training for prosecutors*”.³
66. Even more recently, the CPS has continued to consult the VAWG sector in relation to a host of issues. In 2018, the CPS started a consultation on new draft guidance relating to the use of pre-trial therapy notes in criminal proceedings. In June 2019, the CPS also consulted on its draft Statutory Equality, Diversity and Inclusion Objectives 2019-2022. Notably these include a stated objective to ‘*improve the CPS approach to service delivery and casework in relation to violence against women and girls*’, and under this a key activity: ‘*Engage with stakeholders to review CPS’ approach to casework involving victims, witnesses, and defendants with mental health issues and learning disabilities, to improve their experiences of the Criminal Justice System*’. I attach the ‘Draft Objectives’ circulated for response as Exhibit **SG/34**.

Justification for the changes to the merits-based approach

67. I refer to the Detailed Statement of Facts and Grounds which sets out the circumstances in which the change in policy and/or practice giving rise to this challenge arose including the RASSO roadshows conducted by Greg McGill and Neil Moore and the removal of reference to the Merits Based Approach from guidance and training materials. I refer also to the statement of XX, which deals with the same topic, and the statistics demonstrating the sharp drop in charges since 2017.

³ VAWG Report 2016-17, pA13

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Finally, I refer to the expert report of Professor Abigail Adams which provides evidence to support the impact these changes have had on charging rates.

68. It is impossible to discern the reasons or evidence base for the course of action taken in the roadshows and/or the changes to the guidance and training materials concerning the merits based approach. EVAW and our members have consistently raised concerns about the removal of the merits based approach with the CPS – at the regular stakeholder group meetings, through media commentary, including debating with Greg McGill on the World at One on BBC Radio 4, and directly with the DPP.
69. With my fellow co-Director at the time I wrote to Max Hill, the new DPP, in November 2018 when matters first came to light in a report in the Guardian newspaper. We then met with Mr Hill in January 2019, together with some of his senior staff. I attach as **Exhibit SG/3** notes of that meeting which were taken by both myself and Heather Harvey who attended on behalf of the women’s organization Nia. I should make clear that these notes are not formal minutes; Heather and I made them for internal purposes and they therefore record our contemporaneous reactions to the points made by Mr Hill and the other CPS staff. Nonetheless, I think they do accurately record what took place at the meeting – certainly they are consistent with my recollection, which is that both the DPP and his staff failed to clearly answer the question which we posed as to whether the merits-based approach had been abandoned. However, as the notes record, we were told, when pressed, that there had been “*judicial feedback...*”; there were “*some concerns*” and “*some conversations*” about the merits based approach; that some prosecutors had “*misunderstood*” or “*misapplied*” the merits based approach; been “*too optimistic*”; and there was a need for a “*proper investigative mindset*”. This all suggested to me at the time that the CPS had in fact moved away from a merits based approach, whatever terminology it was using to obfuscate the issue.
70. We asked the CPS to explain at that meeting what the evidence base was for the change in approach. However, the CPS were not able to provide us with any evidence or even a report into the impact of the MBA, positive or negative, which might have formed an evidence base and instigated this change in direction. Given the critical part the introduction of the merits-based approach played in encouraging

prosecutors to make more positive charging decisions and getting some of the harder cases to court, making the change without a robust evidence base and very good reasons for doing it seems extraordinary.

71. EVAW and our members are perplexed by this reversal. It runs contrary the direction the CPS had been travelling since the introduction of the VAWG strategy in 2007. At the point when more victims than ever before were reporting sexual violence to the police and asking for justice, for those responsible for prosecuting these crimes to take deliberate steps to remove measures which had proven effective in increasing convictions, particularly in the more challenging cases, seems perverse. The state is obliged to investigate and prosecute rape. We are concerned that these changes suggest the CPS is failing in its duty. As I have already explained, failing to ensure effective prosecution in rape cases disproportionately affects and therefore discriminates against women.

72. The change in policy/practice also simply feels wrong to all of us who have observed it in the survivor support sector because we have worked closely with the CPS formally and informally for many years. We have been consulted about both major and minor policy as well as practice changes on a constant and ongoing basis. However, this major change never came to our attention, was never put to discussion at the ECG VAWG stakeholder group and, as such, we feel as though it has happened covertly. If this is what has happened it is profoundly disrespectful of our expertise, our commitment and our time spent working with the CPS for over a decade.

Why we are bringing this challenge

73. As I have stated, EVAW's policy has always been to engage with other bodies working to protect women and girls, and to work with them constructively, helping to facilitate improvements in policies and procedures, and to advise on how to improve processes. We do not therefore take this step of litigating against the DPP lightly – particularly after so many years of fruitful engagement between the CPS and EVAW – but see it as a last resort. The evidence we have is that the CPS has taken the retrograde step of moving away from the merits based approach, and that their new

charging practice may have undermined the ability of the wider criminal justice system to successfully deal with rape and sexual assault.

74. Evidence suggests that reporting of rape is still on the rise. In the year ending December 2018, the police recorded a total of 159,740 sexual offences, including 57,600 rapes. I attach the Government's 'Crime Outcomes in England and Wales' for the year to December 2018 as **Exhibit SG/35**. This is an increase of 3.2% in sexual assaults and 3.56% in rapes on 2017, where there were 154,781 sexual offences recorded, including 55,622 rapes: see **Exhibit SG/36**, 'Crime Outcomes in England and Wales' for the year to December 2017. Overwhelmingly the victims of these crimes are women or girls. Sexual offences have reached the highest volume recorded since the introduction of the National Crime Recording Standard ("NCRS") in April 2002. Victims of sexual offences now represent 6.8% of all victim-based crime. Repeat offending by perpetrators of sexual violence is common and so early intervention is crucial in order to prevent further abuse: see **Exhibit SG/37**, the '*Ending Violence against Women and Girls Strategy: 2016-2020*' published by the Government in 2016.

75. This enormous increase in volumes of reported rape, which started around 2012 and has grown every year, needs to be understood as a very significant, deep social and cultural change which is under way in the UK and beyond, and whose drivers stretch far beyond the criminal justice system. Those working in support services with abuse survivors, and activists around women's rights, believe that these last few years have seen a shift in some social attitudes to rape, a reduction in the stigma associated with disclosing that one is a victim-survivor, a greater willingness to believe those who disclose, a wide-ranging ongoing 'social conversation' conducted online and offline about the different behaviours that are part of sexual assault and how they are related to inequality and more. The high profile criminal trials of multiple "celebrities" accused of sexual abuse from 2012, alongside the multiple child sexual exploitation trials and convictions led to some national soul-searching about how adults had repeatedly looked the other way while girls, boys and vulnerable people were abused in our towns and in state institutions. This has led to a deeper shared understanding about who commits abuse, and how victim-blaming allows it to be hidden. These social attitude changes are on a par with the 'sexual liberation' changes of previous

decades. They cannot be controlled or driven from any center, and certainly not by the state, but they are extremely socially significant because they change public expectations of the justice system, and at the bottom line they have driven the enormous increase in reporting. Again, the state including criminal justice agencies cannot ever hope to drive this; but they are charged with keeping up with the expectation for justice. Instead, the CPS has responded, we believe, by mechanically raising the bar.

76. Rape nonetheless remains an extremely underreported crime. It is estimated that until fairly recently (around 2014) only about 15% of victims report their assault to the police: see data collected by Rape Crisis England and Wales, attached as **Exhibit SG/38**. Those who do report have a right to have that report investigated and, if possible, prosecuted. Many report because they think they should and will receive justice, which means seeing the person who attacked them held to account for their crimes. Many survivors believe they have a duty to other women to report their assailant to the police, thinking that in doing so they could prevent them hurting someone else. This feeling lay behind the rape victim, DSD's, determination to report that she had been raped by John Worboys to the police, and her subsequent years of legal challenge against their appalling response. If it becomes known that the system will not adequately respond when rape is reported, confidence in the system of justice will be significantly undermined.

77. It is known from research that cases of 'stranger rape' – where the primary investigative issue may be identification of the suspect and evidencing whether sexual acts took place – have a higher conviction rate. According to statistics from the Ministry of Justice, Home Office and Office for National Statistics, however, around 90% of rapes are carried out by perpetrators known to the complainant: see **Exhibit SG/39**, a report from 2012 which cites this statistic. This makes the task of the prosecutor difficult, but it is an absolute fact of the nature of this serious and harmful crime (perpetrators choose victims on the basis of calculations about credibility and getting away with it), and therefore also the content of a prosecutor's role. For this reason, it is critical, in my view, that prosecutors do not balk at the complex case-building required or presumptions about jury prejudices; they must

work to enforce the law on rape and presume it will be clearly explained in a courtroom.

78. There is an overwhelming public interest in prosecuting crimes of rape and serious sexual assault, because rape is an extremely harmful and serious crime for which the victim has a human right to justice, and also because the real threat of prosecution can act as a deterrent to perpetrators. The 2010 Stern Review summarised the views of victims and many experts on the impact of rape (see p.31): *“relationship problems, nightmares and flashbacks, depression and turning to drugs and alcohol. Victims can lose their self-confidence and no longer function well in the world of work. Some rape victims will blame themselves for what has happened to them. Some will feel shame. ... For some from minority communities rape was very difficult to talk or even think about”*. I attach Baroness Stern’s report as **Exhibit SG/40**.
79. The Criminal Justice System’s response to rape allegations is therefore particularly important. If women do not have faith that their complaints will be thoroughly investigated and prosecuted, they are far less likely to go to the police and a culture of impunity will prevail. The absence of the threat of prosecution has the potential to, in effect, de-criminalise rape in certain circumstances, particularly for the most victimised and vulnerable women and children. The inquiry reports into Rotherham and Rochdale child sexual exploitation scandals found that the experience of impunity increased and worsened the offenders’ behaviour. This is a persistent problem: an article published in the *Guardian* newspaper as recently as the 30th August 2019 concerning a recent grooming trial in Rotherham reported that the sentencing Judge had specifically lamented the *“totally ineffectual”* response of the relevant criminal authorities to child sexual exploitation over a period of ten years. I attach this article as **Exhibit SG/41**.
80. There is an obvious risk that the current CPS approach, whereby all refernces to and explanation of the merits-based approach has been removed from its internal and external guidance and training to prosecutors has even advocated a “touch on the tiller” in the opposite direction, is creating a negative feedback loop: prosecutors are making judgments about whether to charge RASSO cases based on what they think a jury would make of the credibility of the victim (the ‘bookmakers’ approach’). This

means they are less likely to charge more challenging cases, which means the police are reacting by not building these more challenging cases, leading to more cases NFA'd (designated 'No Further Action') at an earlier stage. Media reporting and unclear, defensive responses from CPS are likely to add to the negative signals to survivors who are considering whether to report.

81. If the criminal justice system is unable to effectively prosecute the vast majority of rapes which are reported, perpetrators will quickly learn that they can act with impunity and identify those who are least likely to be believed. This puts women as a whole at extreme risk of harm, because the deterrent effect of criminal sanctions is, in effect, removed. It puts girls at significant extra risk; it may put BME women and girls at extra risk; and it may put disabled women and girls at extra risk. The individual need for justice runs parallel with society's need for an effective deterrent and sanction in response to these very harmful crimes.

82. I firmly believe that the move in policy or practice away from the merits-based approach within the CPS has rolled back the legal protections for women by making it far harder – if not impossible – to bring prosecutions for rape and sexual assault. The July 2019 Home Office Crime Outcomes data (attached as **Exhibit SG/42**) reveals that the number of reported rapes which are now charged/summonsed is at one in 65. This is a crisis in access to justice and has frightening implications for the whole community.

83. Responding to earlier justice system data on poor justice outcomes, the Government in March 2019 commissioned a 'Rape Review' which is ongoing and which includes the close examination of statistics related to rape at every stage of the criminal justice process from initial report to conviction/acquittal. The Review has been advised to look closely into frontline police and prosecutor practices so as to try to ascertain whether the CPS 'raising the bar' has already sent a signal to police that the bar is higher and so not to bother seeking a charge on some cases, or whether the fall is happening due mostly to actual CPS decisions

Costs capping application

84. I hope it is clear from what I have already said that EAW is bringing this application to further the general public interest. We have no private interest in these proceedings but act to protect the overwhelming public interest in ensuring that rape is effectively investigated and prosecuted. If the claim succeeds then all women who report rapes, and in particular the vast majority whose perpetrator was known to them, are liable to benefit because there will no longer be a risk that, as a matter of practice or policy, the book-maker's approach will be applied in their cases and all prosecutors will be clear that the full code test requires them to apply the merits based approach. The benefits to this large class are huge and obvious. While the major beneficiaries will be rape victims, plainly the public interest at large will be served by restoring a measure of public confidence in the operation of the criminal justice system.
85. The nature of this challenge is not such that it can reasonably be left unresolved without risking very serious harm to the public interest. If the challenge is well founded it is vital that the illegality is declared so that steps can be taken to stop its damaging consequences. The huge amount of positive work that has been undertaken in the last decade by the CPS which has contributed to a notable rise in prosecutions and convictions in 'difficult' cases and an increase in the confidence of women and girls to report, risks being completely undone. EAW has sought to use all means available to it short of litigating to resolve the issues. The only means now available are through this challenge.
86. However, EAW is also very concerned about its potential costs exposure and therefore seeks a cost capping order. As detailed at paragraph 10 above, EAW has over 80 members who are delivering services which support women who've experienced violence and working to prevent VAWG, as well as lawyers, academics and activists. Many of our members are very small voluntary sector organisations who are working with women within communities, on issues including forced marriage, Female Genital Mutilation, so called 'honour' crimes, sexual and domestic violence.
87. We do not charge for membership because we believe even the smallest organisation needs to be part of our work. Nor do we accept any public money in order to retain

our independence and freedom to hold the state to account. All of our income comes from private trusts and foundations and a small number of individuals who are interested in our work.

88. Last year our total income was just under £400,000, of which around £310,000 was used to pay for staff and a small office space. The rest of our income was used for research and campaigning costs. This financial year we anticipate our income and expenditure to increase slightly (to around £450,000) and we have ambitious plans to deliver significant work over the next 12 months including on schools, the proposed Domestic Violence Bill, and work to increase the rights and access to justice of women with insecure immigration status.
89. Our organisation's reserves stand at £80,000 as of May 2018. These are specifically allocated for 'run down costs', namely rent, salaries and other liabilities, should EVAW need to close for any reason.
90. In 2019-20 we consider challenging the way the CPS responds to reports of rape and serious sexual assault a strategic priority as it has a significant impact on the experience of women who are increasingly asking for justice, and perpetrators of rape who can too often act with impunity. We have therefore set aside £15,000 in our 2019-20 budget to support this strategic litigation. This is a significant outlay and the maximum we can commit in this financial year in light of our current income and expenditure. We were only able to set aside this sum because of an unexpected and unbudgeted single unrestricted donation of £15,000.
91. We often support strategic litigation but have not ever previously brought a claim ourselves given the costs risk that that entails, which is why we do not normally have a budget for strategic litigation.
92. In addition to setting aside our own funding, we co-ordinated significant efforts in June 2019 to crowdfund towards legal costs for this case, knowing that this litigation was likely to be a matter of significant public interest. As a result of these efforts we have raised an additional sum of approximately £23,000 towards the costs of the case using the legal crowdfunding platform 'Crowdjustice'. After deduction of

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Crowdjustice's fee, and VAT, this fund stands at approximately £21,000. The crowdfunding platform remains open to donations but these have decreased incrementally over time now that the initial wave of media interest has passed. I can of course provide an update to the Court on our fundraising efforts in due course, if that would be of assistance.

93. EVAW has incurred moderate expert fees in the sum of £5,000 to date as it was necessary to instruct an expert statistician who could assist in disentangling the variety of publicly available data concerning changes in practices and outcomes within rape investigations, using formal methodology rather than inference. We may need to instruct her to provide a supplementary report if any further data is disclosed by the Defendant, and/or to ask her to attend a day's hearing if her presence is required at Court.
94. In addition to the statistician expert fees, there are other disbursements we are advised we will need to cover including court fees, reprographics, travel expenses etc. We therefore need to set aside a total of approximately £10,000 for disbursements.
95. The combination of (i) our £15,000 allocation and (ii) the estimated £25,000 net funds that we hope will have been raised by our crowdjustice campaign once we have issued the claim, amounts to £40,000. If we deduct the estimated total disbursements a sum of £30,000 remains available for the payment of the Defendant's costs in the event the claim fails. Our legal team who, as it will be apparent from the pleading and accompanying evidence attached, have undertaken a huge amount of work, have not received any remuneration to date. They are acting under conditional fee agreements according to which their fees are only payable by the Defendant in the event the claim succeeds.
96. In the event that a cost capping order limiting our cost liability to £30,000 is not granted, we will have no option but to discontinue the claim as we are simply unable to risk paying a greater sum in costs without preventing us from undertaking the other vital work to which we are already committed and without putting the future existence of the organisation at serious risk.

97. I would ask therefore that the court agrees to cap the Defendant's costs at the outset at this reasonable threshold, to provide EAW with some certainty that it can proceed with the claim.

Statement of truth

I believe that the facts stated in this witness statement are true.

A handwritten signature in black ink, appearing to be 'J. Lee', written over a dotted line.

Signed

Dated 19 September 2019