

Witness Name: Gregor McGill
Statement No.: 2
Exhibits:
Dated: 28.09.20

THE INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE

Witness Statement of Gregor McGill

I, Gregor McGill, will say as follows:

1. I provide this statement on behalf of the Crown Prosecution Service ('CPS') in response to the updated 'topic' list, received on 13 August 2020 and the statement of Harriet Wistrich (**INQ005168**), received 20 August, specifically on the issue of the ongoing judicial review between the End Violence Against Women Coalition and the Director of Public Prosecutions.
2. Ms Wistrich outlines at para 99 onwards the substance of EVAW's claim. These are matters which are not accepted by the CPS and about which substantial evidence has been served and continues to be served as part of our defence to the Judicial Review. Whilst these matters are still sub judice it would not be appropriate for me to comment upon these matters in detail. However, I have been asked to provide a short supplementary statement solely addressing this issue in brief terms and I do so herewith.
3. The CPS makes decisions based upon the test set out in the Code for Crown Prosecutors (the Code); the first stage being the evidential stage and whether there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. That test has remained and remains the same. It applies to every single offence no matter how minor or serious.
4. The 'merits-based approach' (MBA) simply describes how the evidential stage of the Code Test should be applied. The term was coined in the case of FB¹. In assessing whether or not there is sufficient evidence for a realistic prospect of conviction the Court explained that prosecutors should not apply a 'bookmaker's approach', making a prediction on how a jury might react to the evidence, they should look at the merits of the whole evidential case objectively when reaching a decision (the 'merits-based approach').
5. Legal Guidance and training was produced at that time and prosecutors were reminded to apply the 'merits-based approach' in all cases. However, by 2016 there was

¹ R (FB) v DPP [2009] EWHC 106 (Admin)

evidence that training provided on the merits-based approach had caused confusion amongst some RASSO prosecutors. It was being seen by some as a 'different' test. This created a risk that a suspect could be charged in circumstances where the evidential stage of the Code was not met. Additional training was therefore delivered to remedy this by myself and the DPP's Legal Advisor, and references to the merits-based approach removed from our legal guidance.

6. It should be noted that removal of the MBA guidance was to avoid the confusion which was being caused. The CPS continues to ensure that there is no place for myths and stereotypes in prosecutorial decision making and our legal guidance in that regard remains in place. In addition, the Code makes clear that decision making must be objective and impartial. There is no foundation for the suggestion that removing the MBA guidance signalled a move towards a 'bookmakers approach'. For clarity, the CPS does not support any application of a so-called 'bookmakers approach'.
7. The CPS recognises, and shares Ms Wistrich's concern, that there is a growing gap between the number of rape offences reported, and the number of cases going to court. We have expressed our concerns publicly. However, we reject any suggestion that this has been caused by removing the MBA guidance. We have produced detailed evidence for the Judicial Review which highlights a downward trend in receipt of **all** pre-charge cases being referred to the CPS, not only for rape but all other non-rape cases since 2010. In addition, there has been a commensurate decline in the number of cases charged by both CPS **and** the Police (i.e. the police are also charging fewer cases themselves) over the same time period. It is therefore incongruous to suggest that activities of the CPS lead to the police charging less cases themselves and submitting less cases to the CPS. Receipts for rape cases have certainly declined, but at the same rate as receipts for all other non-rape cases too. This suggests that the issue is wider than rape and sexual offence cases alone. The CPS is a demand-led organisation and can only make decisions on those cases which are passed to us. That said, we accept that there is more we can do to ensure that the police have the ability to access legal advice from our prosecutors at an early stage in the case, in accordance with our guidelines and the agreed protocols, and we are working closely with police colleagues to see how we can improve our systems in order to expand the volume of cases coming in to the CPS and continuing through to court.
8. The reasons behind these falls are very complex, and a whole system approach is necessary to address them. HMCPSI in their 2019 Inspection concluded that they were unable to answer this question following their inspection of CPS work on rape. The Cross-Government review, in which the CPS is participating, was established to understand the reasons behind the falls. The Government has also now confirmed a joint HMICFRS and HMCPSI thematic inspection of both the police and the CPS's response to RASSO cases will commence in the autumn, which we hope will provide further clarity on this issue. It is accepted by CWJ that this "should provide a more complete picture of the current problems in rape prosecutions."
9. Ms Wistrich talks of an 'alarming increase of NFA decisions', i.e. cases in which the CPS advise that no further action should be taken. Since 2013 the CPS charge rate in rape cases (where a legal decision is made) generally sits at around 63% (i.e. 63% of

cases are charged and 37% result in no further action). In 2018/19, decisions to charge reduced to a low of less than 50% although our most recent figures suggest decision making has returned to just below the 63% average (at 58.7% in 2019/20).

10. At para 103 Ms Wistrich refers to 21 cases she has collated in support of the contention that the CPS has returned to the 'bookmaker's approach'. In her view those cases had 'compelling evidence in favour of a prosecution'. As the Inquiry knows, the CPS operates a Victims Right to Review scheme in which complainants are entitled to seek a review of a prosecution decision where they consider that the wrong decision has been reached in their case. The CPS has invited the CWJ to invoke the VRR process for any of those cases which have not already been subject of a VRR.
11. It is important to emphasise that the CPS are not complacent about our role here. We recognise that there needs to be a reduction in the gap between reported offences and the number of cases going to court. We have published our commitment to this in a five year plan (RASSO 2025²). We are working closely with the police to address the reduction in cases being provided to the CPS and we are looking to encourage early engagement with pilots on EIA models and interventions ongoing across the country. We know that there is a long way to go to improve the picture in every aspect of rape cases – from police receipts, to charging, to taking cases to court and convictions and we do not underestimate the scale of the challenge. But it is recognised that there is no single reason for this complex landscape. Along with colleagues across the criminal justice system we are determined to find solutions and hope to rebuild confidence that every case will be dealt with expertly and fairly and in accordance with our Code.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:

DPA

Dated: 28.09.20

² <https://www.cps.gov.uk/publication/rape-and-serious-sexual-offences-rasso-2025>