

The need for children born as a result of rape to be recognised as ‘secondary victims’ in the Victims’ Bill (“Daisy’s Law”)

About Centre for Women’s Justice

Centre for Women’s Justice (CWJ) is a legal charity working to hold the state to account on the response to violence against women and girls. We are a lawyer-led organisation whose work focuses on challenging failings and discrimination against women in the criminal justice system.

About Daisy

Daisy is a woman who discovered in the 1990s that she had been born as a result of a rape. As a child, she was raised by an adoptive family, shielded from the truth about the circumstances of her birth. After turning 18, however, she requested her adoption file, hoping to learn more about her birth family – and was horrified to learn that her birth mother had become pregnant with her at just 13 years of age. It was even documented who the ‘father’ was: a 29-year-old man who, according to the records, had allegedly forced himself on his 13-year-old victim, but had denied paternity when confronted by the police. No criminal action had been taken against him at the time for his heinous offence.

Over the years that followed, Daisy established contact with her birth mother, and campaigned for her birth ‘father’ to be brought to justice, offering her DNA as evidence that could be used to prove the prosecution case. The man responsible – now in his 70s – was eventually convicted in 2020, with the benefit of evidence from both Daisy and her birth mother, and sentenced to 11 years’ imprisonment.

Daisy’s campaign for justice was praised at the sentencing hearing by the trial judge, who also observed in his Sentencing Remarks that she too was a ‘victim’, in many respects, of the abuse that had resulted in her birth. Her case raises a number of issues, including whether individuals who are conceived of rape should be regarded as secondary victims and complainants in their own right – recognising the terrible impact that such a discovery will inevitably have on those who discover the circumstances of their birth, as well as the importance of their evidence, potentially, to any criminal prosecution.

[For more information about Daisy’s case, please see [‘Daisy’s story’](#)]

Summary of briefing

CWJ is supporting Daisy’s call for individuals born as a result of rape to be recognised in the Victims’ Bill as secondary victims of crime for the first time.

Affording rape-conceived persons this status in statute will, it is hoped, help counter the dearth of safeguarding measures and support currently available for rape-conceived children (and adults), for whom such a discovery can be profoundly traumatic.

In addition, the recognition of rape-conceived persons as secondary victims – with their own statutory right to pursue a criminal complaint, if they wish to do so – will significantly improve the prospects of historic rape/child sexual abuse offences being recorded and even in prosecutions being brought, where appropriate, in cases where the pregnancy itself is compelling evidence of the crime.

How many children are born as a result of rape?

There is currently a concerning lack of data regarding the prevalence of rape-related pregnancies and births in the UK. This 'data gap' is in itself a further compelling reason to ensure that individuals conceived by rape are legally recognised – by law, and by all relevant public services – as secondary victims of crime.

However, an [evidence review commissioned by Centre for Women's Justice](#)¹ – conducted by independent researcher Dr Vicky Butterby and Dr Kate Butterby, a Postdoctoral Research Associate at Durham University – found that **between 2,080 and 3,356 children could have been conceived in rape during January 2021 to December 2021** in England and Wales alone.

We know, too, that between 2017 and 2020, at least **900 mothers** in the UK relied on the so-called 'rape clause' when applying for benefits: a statutory exception to the 'two-child cap' rule, which enables mothers who already have two children, and subsequently give birth to a child which they have conceived in rape, to claim child tax credit over and above the cap. (Women are only able to rely on this exception if they can prove that the conception of the relevant child was non-consensual.)

Comparisons with other developed countries may also be indicative. Federal data from the Center for Disease Control and Prevention ('CDC') in the United States, for example, suggests that 32,000 pregnancies in the United States occur each year as a result of rape, approximately 12,000 of which have typically been carried to term and raised by their birth mothers.

What impact does rape conception have on the children who are born as a result of rape?

Unsurprisingly, it has been reported that children born of rape are at risk of harm during childhood due to poor parent-child relationships, discrimination and stigmatisation, and identity issues.

The literature review conducted for Centre for Women's Justice by independent researchers² highlighted a range of evidence indicating that rape conception, as might be expected, tends to have a profoundly negative impact on both mothers and children. One report in 2014 found that nearly 85% of children born of rape were reported by their mothers to display concerning

¹ For the full findings of this review, please see '[Children Conceived in rape: A rapid evidence review for the Centre for Women's Justice](#)'. The report sets out the findings of a 'rapid evidence review' privately commissioned by Centre for Women's Justice in 2022, for the primary purpose of providing CWJ with information about the literature available on the subject of 'rape conception', and the evidence that it affords as to the prevalence of this issue and its impact. The review was carried out by the authors on an independent basis, and not as part of a Durham University project/commission. Since the review was in effect an 'evidence review', all references within the report to research/studies is to research which already exists: no new studies were undertaken by the authors to arrive at, or test, the evidence presented by the available literature.

² See above.

behaviours such as issues with development, unexplained physical pain, aggressive behaviour or persistent feelings of sadness.

The review found evidence that abuse and neglect towards children conceived in rape could be common, given that mothers may feel 'reminded' by the child of the rapist – particularly in cases where the child is male – or of the horrific ordeal they have been through, and as a consequence will often experience conflicting and oscillating feelings towards the child.

There is evidence that both mothers and children will, as a consequence, often suffer from attachment difficulties, which in turn can profoundly negatively affect a child's development as well as his/her wellbeing generally throughout life. Mothers may even struggle with feelings of shame and disgust towards children that they have conceived in rape, feelings that are also then echoed by children themselves in many cases, if they are aware of the circumstances of their conception. Indeed, children conceived in rape have reported worries over whether they will have inherited 'evil genes' from their father; there is evidence that children who learn about their father's crime may experience depression, anxiety, secondary trauma, eating disorders and no sense of identity or 'belonging'.

Children who are raised by their birth mother may be stigmatised and rejected by their mother's community, and not know their father's, meaning that they feel ostracised and grow up deprived of social networks and support. Children who are given up for adoption, meanwhile, may have additional difficulties forming any positive sense of identity, and feel strongly that they do not belong in their adoptive family or community. Worse still, where the child conceived in rape is a different race to their mother or adoptive parents, their ostracisation may be aggravated by racial difference or outright racism from family members and members of the community.

Perhaps unsurprisingly, given the diverse negative social consequences of growing up as a child conceived in rape, research has found evidence of poorer educational outcomes generally for children who are born due to an unintended pregnancy. It seems likely that the distress and trauma of finding out that they have been conceived in rape – for those children who do find out – may be a factor: there is evidence that when a child learns about their identity, this can have an impact on their behaviour and cause them to rebel against the adults in their lives.

There is evidence that being conceived in rape can even have an impact on a child's health and physical development. Research suggests that mothers may even make different choices about their health, and the health of their child, where they have conceived in rape. They may for example not seek prenatal care as early as they should do, and when the children are born, they may not receive the vaccinations they need,

All of these various negative impacts will naturally take a severe toll on a child's mental health. Indeed, children born as a result of rape are more likely to suffer from severe psychological disorders in adulthood, the most common of which are Post Traumatic Stress Disorder, depression, and anxiety. Some researchers who have examined the impact of rape conception on children have **specifically** recommended that such children should be perceived as 'secondary rape victims' and that this should always inform research and clinical practice in this area³.

³ Elisa van Ee, Rolf J. Kleber, *ibid*.

In Daisy's case, the sexual abuse that led to her birth has directly and very significantly impacted on her life – from birth through to adulthood – in a number of ways, including:

- Her immediate placement in adoptive care as a baby, and the loss of any possibility of a relationship with her birth parents, given the traumatic circumstances of her conception;
- The distress caused by not knowing who her parents were throughout childhood, or the circumstances of her birth;
- The exceptionally painful discovery, as an adult, that she had been born as the result of a violent crime, and the difficulties that this caused when she sought to build a relationship with her birth mother;
- Profound difficulties in reconciling the circumstances of her birth/childhood with a positive sense of identity; attachment anxiety; sadness and anxiety around loss, rejection and familial relationships.

Taken together, these circumstances have resulted in lasting mental and emotional harm, for which Daisy has required long-term counselling.

It is unsurprising in these circumstances that for Daisy it was exceptionally important to see her birth father brought to justice for the harm that he had caused her, **directly**, by his crime. The fact that there is currently no mechanism for rape-conceived persons – because they themselves are not recognised as victims – to access justice if their birth mother cannot, or is unwilling to, support a prosecution can act as a further aggravating factor. What is more, if rape conception was recognised as a serious harm giving rise to specific safeguarding obligations and support needs, Daisy and other rape-conceived children would have had somewhere to turn for help.

The necessity of recognising rape-conceived persons as potential complainants in criminal investigations

When Daisy first tried to report her birth father's historic rape of her mother to the police, she was told that she had no legal right to pursue such a complaint, and that there was nothing further the police could do to bring the offender to justice.

This, she was told, is because persons born as a result of rape are not currently recognised within the Victims' Code as victims of crime. Therefore, if a rape-conceived person decides to make a complaint, as Daisy did, about the rape to the police – hoping to assist the police in identifying a suspect, with the benefit of their own DNA – their complaint is unlikely to be investigated, still less prosecuted. Indeed, their allegation may **even** be 'no-crimed'.

Nor does a rape-conceived person who complains to the police have any legal right to request reasons for, or a review of, the decision not to investigate further, since they are not entitled to any of the rights set out in the Victims' Code.

Evidence of a pregnancy, and the DNA of a child, may in some cases be sufficient evidence to mount a prosecution in circumstances where, for example, the direct victim of the rape was a child at the time that she fell pregnant, and cannot therefore legally have consented to intercourse. This means that if the 'direct' victim of the rape is not available to support a prosecution – for example because she is now deceased, or it is not possible to trace her – it may in some instances be possible to secure a conviction based solely on a complaint pursued by the direct victim's rape-conceived son or daughter. Indeed, in these circumstances, the child – given the information and DNA evidence they are able to provide – is the only 'victim'

or complainant left who is capable of supporting a prosecution, and is likely to be a central witness in any potential trial.

Yet in practice, as Daisy's experience demonstrates, police forces are currently unlikely to take **any** action if a rape-conceived person does come forward to make a complaint, volunteering their DNA. Given that they are not defined in law as a victim, they are likely to be informed by the police that they cannot pursue a complaint in their own right, and that that is an end to the matter.

Clearly, it is unlikely to be possible to identify and prosecute offenders – absent evidence from the 'direct' victim of the rape – in **all** cases. However, where it is documented for example that a child has been conceived to a mother who is well under the legal age of consent, by an adult, and where the child is willing to provide DNA and support a prosecution, it is clearly important that the offence is at least recorded and investigated with a view to deciding whether to prosecute. A criminal investigation may even uncover other offences committed by a suspect towards children.

Daisy's case is not an isolated one. The case of Tasnim Lowe and her mother, for example, reported last year in the *Mirror*⁴, perfectly illustrates the need for rape-conceived persons to be recognised as potential complainants, absent direct evidence from an abused victim. Ms Lowe's birth mother became pregnant with her when she was just 14 years old, and was then tragically murdered by the man who had groomed and impregnated her. Although Ms Lowe's birth father has been prosecuted in connection with the murders, he has never been prosecuted in connection with a single sexual offence in connection with his victim's abuse, and consequently will not be required to sign onto the Sex Offenders' Register when he is released.

The need for increased use of so-called 'evidence-led' prosecutions of crimes relating to child sexual abuse – where direct victims themselves are unable to give evidence themselves at court, but a prosecution can be built on the other incriminating evidence that is available – is clear. In March 2021, the think-tank Centre for Social Justice published '*Unsafe Children: Driving up our country's response to child sexual abuse and exploitation*', a report analysing the horrifying scale of child sexual abuse within the UK, and calling for a range of reforms and practical measures designed to tackle the problem. The report followed an investigation chaired by former Home Secretary Sajid Javid, and supported by a range of experts in the field. The report concluded that to ensure a more robust response to offending against children, law enforcement authorities to undertake more proactive operations exploring the possibility of victimless/evidence-led prosecutions of child sexual abuse – given the many difficulties of relying upon victims of such offending to give evidence at trial – **'including with cases of a child conceived in CSA'**. We believe that formally recognising children conceived in rape as victims of crime is the first important step in effecting the change that the CSJ has recommended on a policing level.

The report also notes specifically that children conceived in abuse:

'should also be considered secondary victims who deserve support and recognition. They could be crucial in pursuing prosecutions against their fathers should their mothers not wish to. Government should also establish the extent to which they are able to access

⁴ <https://www.mirror.co.uk/news/uk-news/sex-predator-who-killed-teen-20796475>

victim/survivor services and consider how best to ensure this access can be enhanced, for example by recognising these children as victims in the upcoming Victims' Law.'

If rape-conceived persons were recognised as secondary victims in law, with a statutory right to file a complaint with the police in relation to the crime, it is hoped that this would result not only in access to the rights enshrined within the Victims' Code, but also in improved training and guidance for police and prosecutors on the ground, better equipping them to consider evidence-based prosecutions when challenging cases such as these arise.

Even in the many cases where a prosecution may not be possible, the fact that a rape-conceived person has a statutory right to pursue a complaint is more likely to result in their disclosure being, at the very least, properly recorded and crimed. This is a valuable outcome in itself, particularly if the suspect later comes to the police's attention again as a possible serial offender. Any records that the police hold of allegations made against that suspect previously which have resulted in 'non-convictions' may serve as useful intelligence, or even evidence, when attempting to bring him to justice for further crimes.

How would the law ensure that there is a balance between the interests and rights of both mother and child?

In cases where the 'direct' victim of the rape is still alive and traceable, it may be that her opposition to the prosecution (if applicable) will be a factor for the Crown Prosecution Service to take into account in weighing whether there would be 'public interest' in a prosecution at any one time. It is of course important that the direct victim feels that she has agency and choice when approached about a historic, traumatic crime of this nature that she herself has not pursued: her wishes must of course be balanced with those of her child.

Under the Code for Crown Prosecutors, Crown Prosecutors are already required to consider whether there is sufficient public interest in a prosecution before making any charging decision, taking into account a range of factors for and against. It would also be open to the Director of Public Prosecutions to introduce new bespoke guidance specifically addressing the approach to be taken to evidential and public interest tests when considering charges arising from a rape-conceived person's complaint – much as he has done, in the past, in respect of other sensitive areas of crime.

If there are specific concerns that the direct victim will suffer harm or unnecessary distress if a prosecution is pursued, the Crown Prosecution Service will always have the discretion, in other words, not to prosecute.

Conversely, in cases where the direct victim is essentially neutral to the prospect of a prosecution, and simply has compelling reasons not to give evidence at trial, it may still be possible and indeed in the public interest to pursue a prosecution.

These are not dissimilar to the kinds of considerations that are taken into account when the Crown Prosecution Service decides whether to proceed with a 'victimless' or 'evidence-led' prosecution in a context of domestic abuse, so there is no reason to believe that they would not be properly and sensitively considered in this context, too.

Wider recognition and improved safeguarding and support for rape-conceived children

In some ways, the position of rape-conceived children is not dissimilar from that of children who grow up witnessing one of their parents suffering from domestic abuse – and the latter **are** now recognised in law as victims of crime.

Section 3 of the Domestic Abuse Act 2021 provides that a child who witnesses and/or experience the effects of domestic abuse, and who is related to the adult being abused and/or the perpetrator, should be recognised as a **secondary victim** of that domestic abuse.

A factsheet published by the government about the Domestic Abuse Bill provides important insight into the rationale behind affording children of abusive partnerships this status:

- *'Part 1 of the Act provides that a child who sees or hears, or experiences the effects of, domestic abuse and is related to the person being abused or the perpetrator is also to be regarded as a victim of domestic abuse. **This will help to ensure that locally commissioned services consider and address the needs of children affected by domestic abuse.***
- *'Recognising the impact of domestic abuse on children **will ensure that domestic abuse is properly understood and that in seeking to tackle this abhorrent crime and provide support services to survivors and their children.***

The Statutory Guidance on the Domestic Abuse Act 2021, published on the 19th October 2021, notes that 'harm' in this context can include the impact on children's development (paragraph 82) – much in the same way that the fact of being conceived in rape can impact, in myriad ways, on the upbringing that a child will have, even before they discover that the distressing circumstances of their birth.

Likewise, the Statutory Guidance recognises at paragraphs 193 and 195 that:

Providing support to both children and the non-abusive parent is essential and the child's voice should always be considered. There should be a focus on the importance of joint and parallel work for victims, including children and a range of services to sensitively address and overcome the harm domestic abuse has caused to the non-abusive parent-child relationship. This should also include appropriate access to relevant services for the perpetrator alongside clear accountability that the perpetrator is responsible for the harm caused.'

...Children and young people should be offered support based on their individual needs, with a range of interventions, so that each child is able to access the specialised help they require. This could include: access to psychoeducational support, therapeutic services (for example counselling) or specialist children's workers.'

When these provisions of the Domestic Abuse Bill were debated in the House of Lords, it was widely accepted that children who witness domestic abuse were '*hidden victims*' of abuse, deprived of adequate understanding and support, and would remain so unless and until they were properly recognised in law as victims in their own right⁵. Particular concerns were expressed about the indirect impact of abuse on children's mental health, as well as their physical and mental development.

Significantly, a number of Peers noted that the trauma caused to children who actually born of or into an abusive relationship might well begin long before the child is even capable of

⁵ <https://hansard.parliament.uk/Lords/2021-01-05/debates/1384371F-73F4-40BC-A44A-B0358CF839B6/DomesticAbuseBill?highlight=domestic%20abuse%20act%202021#contribution-A52B6C44-0E9D-4B5B-8D70-88D897A5CCDE>

seeing and understanding that abuse – possibly even before their birth. Baroness Stroud for example, whose comments were supported by others, cited evidence that exposure to domestic abuse between the point of conception and the age of two is associated with adverse outcomes including poor mental and physical health, lower academic achievement and impaired social development – and that a mother’s emotional state following abuse can even have a direct influence on foetal development by altering the environment in the womb.

All of this was linked back to the imperative on Government to legislate to ensure that the needs of these ‘hidden victims’ could be recognised and met, in terms of service provision.

It is clear from the research we have cited, from Daisy’s account, and from the accounts of other rape-conceived persons who have spoken out publicly about their experiences, that they too are absolutely ‘hidden ‘victims’ of a crime, who are likely to be profoundly affected by the abusive context of their conception and their birth, in ways that are not dissimilar from the range harms discussed above. The practical and psychological consequences of rape conception for the wellbeing and development of children – persisting well into adulthood – are likely to be **very** significant, and cannot merely be dismissed as collateral or secondary. It is important as a matter of principle that they are recognised as additional victims of this devastating crime and treated with the dignity that is, or should be, afforded by this status.

This legal recognition will be an essential tool in ensuring greater awareness and understanding of rape conception and its impact, on both mothers and children – in much the same way that the Domestic Abuse 2021 sought to improve public understanding of the complex consequences of domestic abuse on families. What is more, placing the ‘victim rights’ of rape-conceived persons on a statutory footing will also enable and ensure that locally commissioned services are alerted to safeguarding risks, and addressing the needs of people who are grappling with the consequences of being conceived in rape. This may be particularly – although not exclusively – essential in circumstances where the rape-conceived person is **still a child** under the age of 18 when they discover the circumstances of their birth, and is in need of (for example) psychoeducational or therapeutic support, a safeguarding plan in place if appropriate to address risks of neglect or developmental harm, and/or a specialist support worker who understands their needs.

Joint support is also frequently needed by mothers and their children in these challenging circumstances – where, for example, a mother has chosen to raise the child despite the circumstances of their birth – in much the same way that some commissioned services provide joint support for family members affected by domestic abuse.