***A system to keep me safe: an exploratory study of bail use in rape cases***

*“He admitted to his crimes, he pleaded guilty, he was found guilty… bail - they released him. He’s killed himself and he’s left a suicide note blaming me. I was told by my police officer and the barrister, he was going to get 18 years in prison. That morning… I was homeless… I had no family and the only father I had known… killed himself.”*  Nicole.

**Introduction**

For victim-survivors of rape, coming forward to the police is often a time of increased personal risk and one of the primary concerns for women who decide to ‘break the silence’ is their immediate and ongoing protection and that of their family, whether the suspect is convicted or not. Therefore decisions on whether or not to impose bail on a suspect and under what conditions are inextricably linked with victim-survivors’ feelings of safety and their belief that their allegations have been taken seriously.

A review of the literature identified a conspicuous absence of the knowledge and experience of victim-survivors of sexual violence in research that has informed and influenced the course of bail policy and legislation. The review established a number of distinct and overlapping factors which explain why victim-survivors have an expectation that one of the aims of conditional bail is to protect them and why in many cases it fails to deliver on those expectations. These include:

1. There is no automatic or immediate protection for victim-survivors following reporting. In some cases there is a delay of weeks or months between reporting serious sexual offences to the police and subsequent conditional bail of suspects, leaving women and girls exposed as having spoken out but unprotected.
2. Criminal justice agencies market disingenuous messages of victim-survivors’ rights to safety and protection as a priority.
3. Bail represents an official evaluation of the seriousness of the offence of rape and applying conditional pre-charge bail goes some way towards affirming the value and credibility of victim-survivors.
4. Women are one of the groups at the highest risk of intimidation or retaliation during the criminal justice process and in particular female victim-survivors of domestic abuse and sexual offences.
5. There is no formal mechanism for victim-survivors’ perspectives of their own safety needs based on their experience of the danger posed by the suspect(s) to be taken into account by criminal justice agencies as part of their decision-making on granting bail, conditions or any alternative protective measures.
6. Victim-survivors’ voices have yet to be heard in the legal reform discussions on bail at any point, suggesting their views are considered irrelevant to the debate.
7. A suspect breaching police bail conditions is not an enforceable offence, therefore the police can be reluctant to respond to breaches which they view as actively disruptive to their workloads.
8. Data on bail and conditions granted at any stage; pre-charge (police bail); post-charge; or post-conviction is not routinely collected or monitored by any criminal justice agency.

Research Aims

Despite research evidence that women who experience sexual violence are at increased risk of reprisals, surprisingly little research has explored the victim-survivor perspective of bail at any point in the criminal justice process; pre-charge, post-charge or post-conviction. This study examined this methodological gap in evidence from the perspective of victim-survivors where bail, with or without conditions was granted to suspects of rape pre-charge and perpetrators of rape post-conviction. It also explored the corresponding effects on the views and behaviour of professionals.

Pre-charge and post-conviction bail were examined with regard to the influence of their use on adult female victim-survivors’ experiences of the criminal justice process.

Research Methodology

The research comprised ten in-depth qualitative interviews with six adult female victim-survivors of rape, two Independent Sexual Violence Advisors (ISVAs) and two police officers responsible for investigating sexual offences to explore the impact of bail from varying perspectives. Participants were accessed through one Rape Crisis Centre and one Police Force in the same area. Findings underwent a systematic process of thematic analysis.

Findings

The findings showed:

1. Victim-survivors’ safety is impacted, both by the significant reduction of the use of pre-charge bail and by the fact that conditional pre-charge bail is used as affirmation influencing victim-survivor protection in the wider safeguarding system.

2. Data for post-conviction bail suggested that on average nine per cent or 100 of those convicted of rape each year are given bail post-conviction (parliament.uk, 2014) with devastating impacts on survivors.

3. Women’s claims for the safety and protection from the point of reporting rape, promised by the criminal justice system, are not automatic but discretionary and secondary to the needs of the investigation process.

Perceptions and Realities of Bail

Credibility of Allegations

*‘They obviously are not taking into account the fact that they have just unconditionally bailed a child rapist’ he said, ’if they genuinely believed that this is what had happened to you… there’s no way’* (Angie).

* It was of great importance to victim-survivors that the strength of the bail conditions demonstrated how seriously the police took the offence and validated the severity of their allegations and the corresponding risks victim-survivors and others faced.
* When a suspect was arrested, questioned and conditional bail was granted, it suggested to family and friends that the allegation was credible and influenced the level of support victim-survivors received.
* Conversely an absence of legal constraints on suspects’ freedom of movement meant social acknowledgement of the allegations and corresponding support for the victim-survivor was unlikely. This was experienced by victim-survivors as a further humiliation based on indifference by the authorities.
* Whether they went on to obtain a conviction or not, victim-survivors gained a sense of justice being served as a consequence of suspects on conditional pre-charge bail having to report to the police station regularly or being re-arrested for breaching bail conditions.
* Both victim-survivors and ISVAs talked about victim-survivors feeling worse off after reporting and bail conditions were applied. Victim-survivors who had thoughts about withdrawing from the criminal justice process as a result of feeling unsafe, remained engaged predominantly because they wanted vindication.

Safety

*“He moved within two hundred feet of my house… he used what he could within what his bail conditions were, so he moved over the road, to watch me instead. It was an abuse in itself… for him to see me... it was horrific… and I don’t understand how he was allowed to do it.”* (Rhiannon)*.*

* None of the women who participated knew how the police assessed the risk posed by the suspect and had expected restrictions to be placed on suspects’ to reduce the risk of reprisals. The victim-survivors’ estimate of the suspects’ current and future risk was based on their experience of multiple sexual offences as an established pattern of behaviour. In their opinion, this knowledge should have been central to decision-making on bail conditions.
* Victim-survivors expected to be entitled not only to personal safety but to dignity and were distressed when bail conditions were too inadequate to allow this.
* The women entered the criminal justice system believing the impression given by criminal justice agencies that the suspect would be arrested straight away and that they would be given immediate protection and support. In reality the evidence needs of the investigation generally delayed the arrest and therefore any protective measures such as conditional bail, leaving victim-survivors unprotected after coming forward, sometimes for months.
* Victim-survivors expected the conditions applied to bail to reflect the risk suspects posed and the corresponding safeguards required to protect, not only them but others, however most felt the conditions were not effective. Decisions on pre-charge bail and conditions are down to the interpretation of each individual police officer on a case by case basis.
* Where rape suspects are voluntarily interviewed or where conditions of pre-charge bail are inadequate, victim-survivors are faced with the reality that they must restrict their own freedom to avoid the suspect and reduce the risk of reprisals.
* The only formal method of taking the victim-survivor perspective as part of decisions on bail at any stage is in the Victim Personal Statement (VPS) which allows ‘victims to express their concerns in relation to bail or the fear of intimidation by or on behalf of the defendant’ (CPS.gov.uk, 2013). However, in practice it is only used where a suspect is convicted, at the point of sentencing and is not considered by the police to be relevant to decisions on bail conditions.
* The manipulation and control by abusers that forms a characteristic feature of sexual violence appeared in some cases to be explicitly condoned through bail conditions that allowed suspects to continue to terrorise victim-survivors with the tacit permission of the authorities. Personal safety and the safety of their children was expected by victim-survivors to be a right when they reported to the police, where pre-charge conditional bail did not meet these expectations it was viewed by victim-survivors as an additional abuse perpetrated by the very institutions that were supposed to protect them.
* When breaches of pre-charge bail conditions were not followed up by the police, victim-survivors felt they were no safer having reported and in most cases felt less safe.
* The protection of victim-survivors did not appear to be a core element in why pre-charge or post-conviction bail was used and the conditions applied could actually reduce a woman’s safety and increase her chances of re-victimisation.

Changes to Pre-charge Bail

*“Post-April… our office* [Sexual Offences Team] *conditional bail rate has probably dropped by about 80%. We can’t work this system.”* (Police Officer).

* The police force in the study had seen an 80% reduction in the use of pre-charge bail for sexual offence allegations since the changes to bail legislation in April 2017 and were less likely to extend pre-charge bail where it was granted. The repercussions on victim-survivors were significant.
* Victim-survivors’ safety is doubly impacted, both by the reduction of the police use of pre-charge bail and by the fact that conditional pre-charge bail is used as affirmation influencing victim-survivor protection in the wider safeguarding system.
* Victim-survivors were left to arrange their own protection in the form of civil orders, a process that is not straightforward, there is no guarantee the order will be granted and suspects can defend themselves in person. The ISVAs found that victim-survivors having to see their abuser to have any chance of obtaining protection was re-traumatising for women.
* Bail dates had an important influence on keeping a focus on investigation timescales. Police officers voiced concerns that the significant drop in their use of conditional pre-charge bail would increase investigation delays and consequently, withdrawal rates by victim-victim-survivors.
* Pre-charge conditional bail had previously been used as a method of partnership working between the police and other agencies, for instance to accommodate delays in social care assessments or to avoid criticism with regard to potentially difficult decisions on managing suspects in a position of trust. Police officers were clear that their reduction in pre-charge bail use would need to be followed by a change in the way their partners worked and more robust disciplinary policies within organisations.
* Pre-charge bail conditions on a suspect send a message to professionals of the seriousness of the case. Therefore the significant reduction in police use of pre-charge conditional bail leaves a gap in protection of victim-survivors that may not be addressed by policy and practice in institutions such as schools, universities, workplaces or social care.

Post-Conviction Bail for Rape

*“He got released on bail, even though he admitted to his crimes and then, on the day of sentencing, he killed himself. And on that morning, I was chucked out because of it. That’s why I haven’t got any family.”* (Nicole)*.*

* Post-conviction bail was originally introduced for non-custodial offences however data suggests the non-custodial premise is no longer relevant in practice, with on average nine per cent (approximately 100) convicted rapists being granted bail post-conviction each year in England and Wales.
* Victim-survivors who were subjected to the perpetrator being granted bail post-conviction came away from the justice system deeply disillusioned, believing it was intrinsically designed to advantage rapists.
* The exasperation of victim-survivors, ISVAs and police officers recognised the heightened risk of perpetrators committing suicide or absconding and where the perpetrator was granted post-conviction bail. The impact on victim-survivors was described as *‘absolutely devastating.’*

Victim-Survivor Rights

Rights to Information

* Victim-survivors left the criminal justice system with unanswered questions that continued to trouble them. For instance, they wanted to understand why post-conviction bail was granted to a rapist and why breaches of bail conditions were not addressed.
* Updates from the police are entitlements contained in the Victims’ Code however, information as an exchange was considered by the victim-survivors to be equally vital to their feelings of security and power. Part of that was to have a say in what they needed to feel safe.
* Police officers provided information to victim-survivors constrained by their need to manage victim-survivor expectations and where pre-charge bail conditions are breached officers tended not to tell victim-survivors this was unenforceable. However officer attitudes to pre-charge bail breaches in rape cases could result in reports of breaches by suspects not being dealt with for days.

Civil Orders

* In contrast to bail conditions, breaking the terms of a civil order is an offence and if the police investigation is dropped and bail conditions immediately come to an end, the protection of a civil order will remain intact for as long as the order is valid.
* There is no obstacle prohibiting victim-survivors from obtaining protection via a civil order at the same time as having bail conditions but victim-survivors and ISVAs were regularly told by some police officers and domestic violence services that they were not entitled to apply for a civil order if bail conditions were in place, however inadequate for their safety needs they were.

Rights to Protection

* A victim-survivor’s entitlement to protection from the point of reporting, forms part of the rhetoric of criminal justice strategies, website communications, responses to research with victim-survivors and their policy for prosecuting rape. It forms part of the Victims’ Code and the victim-survivor perspective on what protection means to them is an integral part of the VPS. However these claims are disingenuous at best, dangerous at worst.
* Despite victim-survivors of rape not having a legal right to immediate and automatic protection criminal justice authorities continue to assure victims of their safety and protection as a priority without the means to deliver on it. This leaves women’s legitimate claims for safety and protection after reporting rape unfulfilled.

Conclusions

*“The person who knows the biggest risk to themselves, no matter how many qualifications you’ve got or how long you’ve been in the police force, is the victim themselves.” (Neesha).*

* Victim-survivors were shocked and distressed when they realised their safety and protection was not a priority for the criminal justice system. This study reinforces the necessity of linking victim-survivors’ personal experiences to implications for bail legislation, policy and practice which professes to protect those who report sexual violence.
* Bail represents an official evaluation of the seriousness of the offence of rape and applying conditional pre-charge bail not only went some way towards affirming the value and credibility of victim-survivors but also influenced responses from statutory agencies, institutions, workplaces, family, friends and communities.
* There is a safety gap where delays in arresting a suspect and applying protective measures of any kind leave victim-survivors vulnerable to reprisals. The minimum victim-survivors should expect from the justice system is that it puts their protection at the centre from the point of disclosure.
* The safety gap widens when women’s knowledge and insight into the danger posed by the suspect is not part of decision-making on protective measures. Victim-survivors who come forward and expose themselves to the significant risks associated with that, need reassurance that the protection put in place meets their needs.
* The gap widens still further as women who may wish to apply for civil protection orders are denied the opportunity and support from services if pre-charge bail conditions are in place, whether they meet her protection needs or not.
* The criminal justice system has specified that criminal proceedings and therefore protective measures are deemed to begin on the arrest of a suspect and not at the point where a victim-survivor reports. What protections they receive at any point in the criminal justice process are not automatic but given at the discretion of the police, CPS or courts. However government rhetoric, criminal justice policy, cross government strategy goals tackling violence against women and police websites tell victim-survivors a very different story, one of their safety as a priority.

This raises a question of whether government and criminal justice agencies are guilty of misrepresenting their ability to provide the most basic protection.

* Post-conviction bail is being granted in approximately 100 cases of rape each year. Neither the Ministry of Justice, nor individual police forces collect or collate data on the numbers of rapists who are bailed post-conviction. Without data, it is not possible to review the appropriateness of courts’ use of post-conviction bail for sexual offences such as rape or the numbers of convicted rapists who abscond, commit suicide or reoffend on post-conviction bail.

Recommendations

The following areas would benefit from further examination to improve women’s experiences of the justice system:

* Research with victim-survivors to establish the full extent of safety gaps and their locations in the bail process, building on those identified in this study, exploring their implications for criminal and civil justice legislation, policy and practice. In particular the implementation of immediate and unconditional protection for victim-survivors who report to the police and decision-making on post-conviction bail.
* Research to further identify/substantiate the influence of applying bail conditions in cases of sexual violence on the responses of other agencies and institutions, including workplaces, schools and universities. In particular the influence on safeguarding and protection.
* Research to further identify/substantiate the impact of bail arrangements on a victim-survivor's physical and mental health, her future relationship with her family and her recovery.
* Clarify the accessibility of Civil Orders to victim-survivors when bail, with or without conditions, has been granted.
* The scope of the VPS should explicitly and unequivocally include obtaining victim-survivors’ views on bail conditions/protection needs.
* Comprehensive pre-charge and post-conviction bail data should be collected and published by the accountable Ministry for the purposes of review and possible reform. This should include associated conditions and breaches including absconding, reoffending and suicides.
* To avoid misrepresentation, criminal justice agencies need to audit the messages they promote, to ensure they accurately reflect the reality of what they offer and what victims and victim-survivors need and expect from them.

Gaps in the safety and protection needs of women who report rape must be addressed from the point of reporting, throughout the criminal justice process and beyond conviction. It is of paramount importance that victim-survivors effectively participate in discussions on legislation and policy to meet these basic needs.