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# **The London School of Economics and Political Science**

Communicating safety: How do institutional stakeholders mobilise the myth of bail as protection to shape the status, position and safety of women who report rape?

**Sarah Jane Learmonth**

A thesis submitted to the Department of Media and Communications of the London School of Economics and Political Science for the degree of Doctor of Philosophy,  
London, June 2025.

## **Declaration**

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## **Abstract**

Previous research has revealed gaps in understanding of where trust in the efficacy of the justice system to adequately safeguard victim-survivors of rape (post-reporting) originates, but it is clear on many occasions that trust is misplaced. This research illuminates the discursive tactics that connect bail with victim-survivor protection and explore this discourse as a contested site of meaning for women who report rape and professionals. Using a theoretical synthesis of myth, affect and discourse, I follow the relational effects of commitments to bail as protection, how they travel across institutions, groups and individuals and what the consequences are for victim-survivors of rape.

Given the limited evidence base on bail use, a qualitative methodology centring women's experiences and expectations of bail as protection was chosen in dialogue with associated data sources. These include interviews with women victim-survivors, criminal justice actors and professionals from specialist sexual and domestic abuse organisations, social care, education, housing, health, justice campaigners and a court reporter. Documentary analysis of texts spanned national guidance from criminal justice agencies, government reviews and independent justice inspectorates, as well as documents from the specialist women's sector. Findings reveal the ineffectiveness of bail as protection to be widely understood by criminal justice actors who preserve the myth of bail as protection through practices of productive and reliable ignorance, to maintain its legitimacy with victim-survivors. Professionals who mediate between criminal justice actors and victim-survivors, find themselves in anxious spaces of affective tension caused by ignorance, ambiguity and uncertainty. Suspicions that bail as protection is a myth sit awkwardly with limited possible actions and work against their professional commitment to victim-survivors. The consequences for victim-survivors affect their credibility, responsibilities, status as a victim, protection claims - and ultimately advantage suspected rapists.

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During the five years the research took, life happened, not just to me of course, but to everyone involved. I came to think of my two supervisors, Professor Lee Edwards and Professor Shani Orgad, like Olympic athletes, women at the top of their game, constantly working at a level to which I have briefly aspired and whose generosity with their intelligence was both welcome and intimidating. I don't know how any PhD researcher could successfully finish without great supervisors, and I know how lucky I was to have them. I can only apologise for my possessive apostrophes which were a constant lottery.

Last, but by no means least, I dedicated my Masters degree to my Mum, Jackie Frost, who died on 9<sup>th</sup> February 2000 at 63 years old, leaving my brother, sister and I bereft. This PhD is dedicated to my brother, Matthew, who was diagnosed with terminal cancer just before I started the research and died on 2<sup>nd</sup> September 2021 at 60 years old, leaving my sister, Katie and I devastated.

My big brother filled the gap for me that a proud father might have taken, and I miss him every day. Matthew, this one's for you.

# Table of Contents

<b>Glossary of terms and definitions</b> .....	10
Victim, survivor or woman? .....	10
Professionals.....	10
Perpetrator .....	11
Released Under Investigation (RUI) .....	11
Bail .....	11
Pre-charge or Police Bail .....	11
Pre-charge Bail Reform .....	12
Post-charge or Court bail .....	13
Post-conviction bail.....	14
Civil protection orders (CPOs) .....	15
Non-molestation Order (NMO) .....	15
Domestic Violence Protection Notice (DVPN).....	16
Domestic Violence Prevention Order (DVPO).....	16
Domestic Abuse Protection Order (DAPO) .....	17
Super-complaint .....	18
Procedural justice .....	18
<b>1: Introduction</b> .....	19
1.1 The myth of bail as protection .....	21
1.2 Foundational contributions from feminist scholarship .....	23
1.3 Research Questions .....	27
1.4 Structure of the thesis .....	29
<b>2: Following Bail as Protection: Theories of Myth, Discourse and Victim-survivor’s Experiences</b> .....	32
2.1 Introduction.....	32
2.2 Canonical Myth Theorists.....	34
2.2.1 Structure .....	34
2.2.2 Boundaries .....	36

2.2.3 Power relations .....	40
2.3 Feminist Criticism and Evolution of Myth Theory .....	45
2.3.1 Boundaries .....	46
2.3.2 Power relations .....	49
2.3.3 Destiny .....	52
2.4 Consequences of Myth .....	54
2.4.1 Gendered Labour .....	55
2.5 Conceptual Framework .....	62
<b>3: Methodology</b> .....	67
3.1 Introduction .....	67
3.2 Methodological Rationale .....	67
3.2.1 Research Aims .....	67
3.2.2 Feminist Standpoint Epistemology and Reflexivity .....	69
3.3 Research Rationale .....	71
3.4 Data Collection: Using Interviews and Texts .....	72
3.5 Semi-structured interviews .....	73
3.5.1 Participants and Recruitment.....	74
3.5.2 Ethical Considerations and Consent.....	80
3.5.3 Topic guides and Interviews .....	83
3.5.4 Transcriptions .....	85
3.6 Texts.....	86
3.6.1 Search Strategy .....	87
3.7 Data Analysis .....	89
3.7.1 Pilot Study .....	91
3.7.2 Preliminary interview analysis .....	93
3.7.3 Secondary interview analysis .....	94
3.8 Limitations.....	96
3.9 Conclusion .....	97
<b>4: Uncovering the gaps: A grey literature analysis of bail and the myth of protection.</b> .....	99

4.1 Introduction .....	99
4.2 Inclusion criteria .....	100
4.3 Bail discourse – the legal and institutional ideal.....	101
4.3.1 Who is legally a victim? .....	102
4.3.2 Victim-survivor safety and care .....	102
4.3.3 Victim-survivor consultation .....	103
4.3.4 Victim-survivor understanding of bail and conditions .....	104
4.3.5 Suspect management.....	104
4.3.6 Proactive enforcement of bail conditions .....	105
4.3.7 Sharing relevant information .....	105
4.4 Bail discourse in institutional practice .....	107
4.4.1 Who is legally a victim? .....	107
4.4.2 Victim-survivor safety and care .....	110
4.4.3 Victim-survivor consultation .....	114
4.4.4 Victim-survivor understanding of bail and conditions .....	114
4.4.5 Suspect management.....	118
4.4.6 Proactive enforcement of bail conditions .....	119
4.4.7 Sharing relevant Information .....	124
4.5 Bail discourse in the women’s sector.....	127
4.5.1 Victim-survivor safety and care .....	127
4.5.2 Victim-survivor consultation .....	130
4.5.3 Victim-survivor/public understanding of bail conditions.....	130
4.5.4 Criminal justice understanding of bail conditions .....	131
4.5.5 Suspect Management.....	132
4.5.6 Proactive enforcement of bail conditions .....	134
4.5.7 Sharing Relevant Information .....	135
4.6 Conclusion .....	137
<b>5: Believing in Bail: The Hidden Costs of Protection Myths for Women in the Justice System .....</b>	<b>139</b>
5.1 Key terms.....	139

5.1.1 Productive or reliable ignorance and pernicious effects. ....	139
5.1.2 Commitment carriers .....	139
5.1.3 Rationalisation and justification .....	140
5.1.4 Ambiguity and uncertainty .....	140
5.2 Introduction.....	141
5.3 Productive, reliable ignorance and pernicious effects .....	142
5.3.2 Dependence of productive ignorance on women’s reliable ignorance .....	146
5.3.3 Producing ignorance through discourse .....	155
5.4 Commitment Carriers.....	159
5.4.1 Women as commitment carriers .....	160
5.4.2 Criminal justice actors’ commitment carrying as an act of care .....	161
5.5 Boundaries of space.....	165
5.5.1 Private or public space .....	165
5.5.2 Pre-charge and post-charge bail spaces .....	168
5.6 Conclusion .....	170
<b>6: Bail Conditions and the Burden on Victim-Survivors: How the Myth of Protection Shifts Responsibility .....</b>	<b>172</b>
6.1 Introduction.....	172
6.2 Responsibilisation.....	173
6.2.1 Credibility: Deficit and Excess .....	173
6.2.2 The role of evidence.....	175
6.2.3 Conforming to the ‘ideal’ victim identity .....	181
6.2.4 Institutional silence .....	187
6.2.5 Victim-survivor labour .....	190
6.3 Conclusion .....	199
<b>7: Between Knowledge and Ignorance: Professionals, Ambiguity and the Myth of Bail as Protection .....</b>	<b>201</b>
7.1 Introduction.....	201
7.2 Ignorance and Pernicious Effects .....	202
7.2.1 Deflecting knowledge .....	203

7.2.2 Justifying ignorance .....	211
7.3 Carrying commitment in affective hotspots .....	214
7.3.1 Affective hotspots .....	214
7.3.2 Silence and adapted discourse .....	220
7.3.3 Self-doubt.....	222
7.4 Ambiguity across boundaries .....	224
7.4.1 Prevalence of ambiguity.....	224
7.4.2 Post-hoc rationalisation.....	227
7.5 Conclusion.....	229
<b>8: Conclusion</b> .....	231
8.1 Research questions and summary of findings.....	231
8.2 Contribution to scholarship .....	237
8.2.1 Ignorance .....	238
8.2.2 Ambiguity .....	239
8.2.3 Gendered stereotypes .....	241
8.2.4 Methodological contribution .....	243
8.3 Research recommendations .....	245
8.3.1 Victim-survivor participant research focus .....	245
8.3.2 Making connections .....	246
<b>References</b> .....	251
Appendices .....	273
Appendix 1: Protection mechanisms for women before, during and after reporting sexual or domestic violence .....	273
Appendix 2: Participant information sheets .....	279
Appendix 3: Interview consent form .....	285
Appendix 4: Topic Guides .....	286
Appendix 5: Overview of women victim-survivors .....	290

## Glossary of terms and definitions

This section provides an explanation and definition of the key terms relevant to the research topic.

### Victim, survivor or woman?

Police documents tend to follow the lead in the Victim's Code (MoJ, 2024) and refer to those who have reported a crime as 'victims', defined as:

*'a person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;*

*a close relative (or a nominated family spokesperson) of a person whose death was directly caused by a criminal offence'* (MoJ, 2024: 3).

After a suspect has been charged, the CPS refer to victims as 'complainants' or 'witnesses', defined as: 'someone who has reported a crime which hasn't yet been proven in court' (CPS, 2020: 2).

However, the way women identify themselves, as victims, survivors or something else completely, changes over time (Kelly, 1988). Therefore, this research will refer to women subjected to rape by either the pseudonym they chose, by their name, if they have chosen to drop their anonymity after a guilty verdict, or as women wherever possible. Where it is not possible, they will be referred to as victim-survivors to honour their agency and resistance in the face of trauma for which they were in no way responsible. The various criminal justice terminologies will be used where absolutely necessary.

### Professionals

There are a number of professionals across different organisations referred to in the research. All are specialists with experience of managing sexual violence or domestic abuse cases within their chosen field of expertise.

Most of the participant job titles are self-explanatory, apart from Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs) who are advocates offered to survivors of sexual violence and domestic violence respectively. They provide practical and emotional support and information to survivors,

whether or not they have reported to the police, need support during or after a trial or after the police or CPS drop their case. ISVAs and IDVAs are survivor-led roles that work with other statutory partner agencies to provide non-judgemental, wraparound support, helping survivors navigate systems with which they are unfamiliar.

## Perpetrator

*‘What distinguishes a feminist approach to working with survivors of sexual violence are the values and ethos that are at its foundation. Part of this approach is both the empowerment of and belief in [women].*

*For this reason, aside from any legal outcomes, the men responsible for sexual violence and associated harms inflicted on women and girls are referred to throughout as perpetrators [or abusers]. They are named suspects or defendants only when this refers to legal processes where this status is relevant’ (Learmonth, 2018: 7).*

## Released Under Investigation (RUI)

RUI is offered to suspects of crime at the discretion of the police where bail is not considered necessary and proportionate but further investigation is appropriate. When a suspect is RUI, it is without any legal framework, time limits, or constraints on their freedom of movement or association.

## Bail

### Pre-charge or Police Bail

Pre-charge bail is defined within the 1984, Police and Criminal Evidence Act (PACE). Sometimes called police bail, it can only be applied after arrest, allowing police officers to continue an investigation without a suspect being detained in custody. Suspects can be released on bail with or without conditions.

Unconditional bail is used as a suspect management tool, requiring them to: ‘answer their bail at a specific time, date and location’ (CoP, 2022: 19). If a suspect fails to answer bail, they are guilty of an offence.

Conditional bail ‘allows officers to attach conditions to bail, which may help to protect victims or witnesses, preserve evidence and mitigate the risk of further criminality’ (CoP,

2022: 5) and all conditions must be able to be monitored and enforced by the police (ibid: 18).

Any protections offered by pre-charge bail end immediately if the police decide not to extend the bail period or a case is dropped by the police or CPS as requiring no further action.

### Pre-charge Bail Reform

In 2022, the Police, Crime, Sentencing and Courts Act replaced the presumption for or against pre-charge bail with a neutral position where pre-charge bail is applied at the discretion of police officers 'where necessary and proportionate' (CoP, 2022: 1). In deciding whether pre-charge bail or conditions are appropriate, officers must consider the need to:

- *secure suspects surrender to custody*
- *prevent further offending*
- *safeguard victims and witnesses, taking into account any vulnerabilities where these have been identified by the custody officer*
- *safeguard the suspect where vulnerabilities have been identified by the custody officer*
- *manage risk to the public* (CoP, 2022: 6).

However: 'bail with conditions should always be considered in any domestic or sexual abuse cases' (ibid: 6).

The 2022 reform (Police, Crime, Sentencing and Courts Act) included returning the initial pre-charge bail period to 3 months authorised by a police Sergeant. Bail can be extended by 3 months twice more; 3 to 6 months by a rank of Inspector or above and 6 to 9 months by a rank of Superintendent or above. Further extensions beyond 9 months must be referred to a magistrates court for authorisation. Victim-survivors of serious sexual offences and domestic abuse are entitled to be informed of any changes in pre-charge bail or conditions within one day and police officers have a statutory duty to seek victim's views on any bail conditions applied: 'if reasonably practicable' (Police, Crime, Sentencing and Courts Act, 2022).

## Varying conditions

Bail conditions may be varied at the request of the suspect or their legal representation. No similar provision allows victims or the police to vary conditions, however, at the discretion of the officer, victims may request changes which comply with the requirements for bail conditions. In this case, varying conditions can only be achieved in person, when the suspect is in front of the custody officer, answering bail.

## Breach of pre-charge bail

Breaching conditions is not an offence. Suspects who breach their pre-charge bail conditions can only be arrested and re-bailed where there is not enough evidence to refer the case to the CPS for a charging decision (CoP, 2022).

In these circumstances, once the police have arrested the suspect they are encouraged to consider applying for a Civil Protection Order (see section below) as well as conditional bail or checking whether a Protection Order is already in place and may have been breached. The primary reason being that breaching a Protection Order is a criminal offence where breaching pre-charge bail conditions is not (CoP, 2022).

## Kay's Law

The 2022 reforms were named 'Kay's Law' (Gov.uk, 2022a) in memory of Kay Richardson who reported her estranged husband for rape in 2018. When the police released him under investigation, he entered her home with the keys the police had given him and murdered Kay.

## Post-charge or Court bail

Where there is sufficient evidence to charge a suspect, they may be bailed to appear at magistrates court. Post-charge, there is a presumption in favour of granting bail. Prior to the suspect's first appearance at court and where the CPS has received either the police case file or relevant case information, the prosecutor will ask the police for their view on existing and future bail and conditions (CPS, 2023) before the hearing. This information should include any previous or current Civil Protection Orders (see section below) and any breaches of those. As with pre-charge bail, post-charge bail conditions may only be applied: 'to protect victims or witnesses, preserve evidence and mitigate the risk of further criminality' (CoP, 2022: 5).

Again, as with pre-charge bail, types of conditions are unlimited but must meet the threshold of being: 'necessary, reasonable, proportionate and capable of being enforced' (CPS, 2023). Courts also have the power to impose electronic tagging, with or without GPS or a curfew on suspects.

Any protections offered by post-charge bail end immediately if the Court decides not to extend the bail period, the case is dropped by the police or CPS or in the event there is a not guilty verdict at trial.

### Varying conditions

The prosecutor can apply to vary bail conditions, impose conditions or revoke bail if relevant information was not made available to the court at the previous hearing. Either the prosecution or defence may apply to the court to vary conditions, impose conditions or revoke bail after the first bail hearing.

### Breach of post-charge bail

As with pre-charge bail, breaching post-charge bail conditions is not an offence, nor is it contempt of court. However, a suspect's failure to answer bail at the designated time, date and location is an offence.

The police have the power to arrest suspects if they have: 'reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions' (CPS, 2023). The suspect must then be brought before the magistrates court and their case disposed of within 24 hours.

Magistrates can remand or vary bail conditions if they believe a suspect will not answer bail or has breached/is likely to breach bail conditions. If they are unable to decide that either of these are legitimate concerns, they must re-bail the suspect with the same conditions as before.

### Post-conviction bail

Post-conviction and pre-sentencing there can be a delay of a few weeks or sometimes months. During this time, a convicted offender can be granted bail.

*'Section 4 of the Bail Act (1976) states that bail should be granted to:*

*‘A person who, having been convicted of an offence, and whose case has been adjourned for reports to be obtained before sentence.’*

*Therefore a convicted offender has the right to apply for bail between conviction and sentencing. The right to bail post-conviction does not necessarily depend on the nature of the offence committed.*

*If the offender is convicted of an offence likely to receive a custodial sentence, bail may not be granted if the court believes that the defendant may:*

- *Fail to surrender to custody*
- *Commit another offence whilst on bail or previously failed to comply with bail conditions*
- *Interfere with or intimidate witnesses or otherwise obstruct the course of justice’*  
(Learmonth, 2018: 6).

However, there is ‘no general right to bail for convicted persons’ (CPS, 2023: ‘Exceptions to the right to bail’ Note 5) in hearings for subsequent offences.

### **Breach of post-conviction bail**

If a suspect fails to answer bail at the designated time, date and location they are guilty of an offence, however breaching post-conviction bail conditions is not an offence.

### **Civil protection orders (CPOs)**

There are various separate types of civil protection orders designed to address specific issues. Some protection orders are applied for and granted through family court and some through criminal court.

Please see Appendix 1 for a summary of all available protection orders and their characteristics. The orders defined below are the most commonly used in domestic abuse cases.

### **Non-molestation Order (NMO)**

Individual women subjected to abuse or police officers can apply for an NMO in Family Court for which there is no court fee. Obtaining an order is not guaranteed, judges will review evidence of the need for protection and risk of harm before making a decision on the balance of probabilities.

Conditions can be tailored to women's individual situations and needs and obtaining an order can take as little as 24 hours. An NMO places constraints on an abuser's behaviour, communication or contact with a woman which usually last for between 6-12 months. Women are told the dates when the protection order will start and finish, so can apply for extensions in good time, where necessary. Perpetrators may attend the court hearing in person (CoP, 2018).

### Breach of an NMO

Breaches are a criminal offence and are dealt with in criminal court (CoP, 2018).

### Domestic Violence Protection Notice (DVPN)

This is an immediate 48-hour protection notice authorised by a senior police officer. The police can then apply for a Domestic Violence Prevention Order (DVPO) or Domestic Abuse Protection Order (DAPO) (see below). This mechanism is only available if the perpetrator is on bail without conditions (CPS, 2022).

### Breach of a DVPN

Breaches will be considered by a court only if there has been an application for a DVPO/DAPO. In this case, breaching a DVPN is a civil offence of contempt of court and can result in a fine or up to two months in prison (CPS, 2022).

### Domestic Violence Prevention Order (DVPO)

DVPOs are generally applied for by the police at magistrates court, although courts, victim-survivors and specified third parties can also apply. An order lasts for between 14 to 28 days.

This mechanism is only available if the perpetrator is on bail without conditions.

Where it is decided it is necessary to protect the victim-survivor, DVPOs provide the police and magistrates with the power to:

- *'enforce non-molestation of the victim.*
- *stop an offender from contacting the victim.*
- *prevent an offender from evicting/excluding the victim from a premises (their household).*

- *remove an offender from a premises (their household); and/or,*
- *prevent an offender from returning to a premises (their household) for a period of up to 28 days’ (CPS, 2022).*

DVPOs were replaced by Domestic Abuse Protection Orders (DAPOs, see below) in five pilot areas in April 2024 (Domestic Abuse Act, 2021).

### Breach of a DVPO

Breaching a DVPO is a civil offence of contempt of court and can result in a fine or up to two months in prison (ibid).

### Domestic Abuse Protection Order (DAPO)

From April, 2024-2026, DAPOs are being piloted across Police Authorities in Gwent, Greater Manchester and three London boroughs (Home Office, 2024a). DVPOs will still be in use in all other Police Authorities.

In pilot areas, a DVPN (see above) will be known as a Domestic Abuse Protection Notice (DAPN). However, breaches of DAPNs can be heard by a magistrate before the DAPO hearing and can result in a perpetrator being held in custody or bailed with or without conditions.

DAPOs can be used where: ‘bail conditions do not provide sufficient protection for the victim’ (Home Office, 2024a: 26) or in conjunction with bail conditions as long as they do not: ‘conflict with the conditions sought as part of a DAPO application’ (ibid: 27).

Victims and specified third parties can apply for a DAPO directly to the family court. Criminal, family, and civil courts are able to authorise a DAPO during existing court proceedings which do not have to be domestic abuse related. Since the Police will not be involved in all these cases, the family or civil courts will notify the police before and again at the point when a DAPO has to be authorised.

DAPOs can impose prohibitive and positive requirements on perpetrators such as no contact with the victim or attending an addiction programme, respectively. Courts will be able to impose electronic tagging where appropriate and DAPOs generally last between six to twelve months but can be extended where necessary.

DAPO conditions can be varied by the court to accommodate for changes in perpetrator risk. Perpetrators will be obliged to notify the police of their name and address and any changes to that information.

DAPOs will only be granted if the court is satisfied it is necessary and proportionate to protect a victim. The scope of protection covers all forms of domestic abuse defined in the Domestic Abuse Act (2021).

### Breach of a DAPO

Breaching a DAPO is a criminal offence regardless of the authorising court, with a maximum penalty of up to five years in prison, a fine or both. Breaches can also be dealt with in civil court as contempt of court where, for instance, a victim-survivor does not wish to support criminal proceedings.

### Super-complaint

‘A super-complaint is a complaint that “a feature, or combination of features, of policing in England and Wales by one or more than one police force is, or appears to be, significantly harming the interests of the public” (Police Reform Act, 2002: s29A cited in CoP, HMICFRS and IOPC, 2021:7). Super-complaints can only be submitted for consideration by organisations designated by the Home Office (Gov.uk, 2022b).

### Procedural justice

The definition of procedural justice in this research is taken from the work of Hohl, Johnson and Molisso (2022) who developed a ‘feminist scholarship informed Procedural Justice framework’ (ibid: 253) designed specifically for police investigations into rape and serious sexual offences but which ‘applies across criminal justice contexts’ (ibid: 259). In this framework, procedural justice is defined within the notion of procedural fairness, split into four distinct components of voice, dignity and respect, neutrality and trustworthy motives (ibid: 254). Within the context of rape reporting and investigations, the four components form a dialogue between ‘the symbolic power of police actions’ (ibid: 257) and the ‘needs, identities, experiences, and positionalities’ (ibid: 259) of different women.

# 1: Introduction

*“We thought bail was useless before, but now...!”* (Independent Sexual Violence Advisor, 2016)

In late 2016 I started my eighth year working as a Communications and Policy Officer for a Rape Crisis Centre. It was an unusual job marked by an urgent need for deeper public understanding of the everyday plight of victim-survivors, coupled with a requirement for confidentiality that was more often motivated or legally mandated by protecting others than the women themselves. Having decided upon bail use as a dissertation topic for my Masters degree (Learmonth, 2018), one of the Independent Sexual Violence Advisors (for definition see Glossary) commented on the upcoming reform to pre-charge bail (Policing and Crime Act, 2017: Part 4): *“We thought bail was useless before, but now...!”*

The background to the 2017 bail reform (ibid) started with a documentary on the Jimmy Savile sexual abuse scandal (*The other side of Jimmy Savile*, 2012) which opened the floodgates for hundreds more allegations against household names popular to broadcasting. The resulting criminal investigation, Operation Yewtree, had serious implications for respected institutions such as the BBC and NHS Trusts, and was said to form a watershed moment for victim-survivors (Smith, 2016). The pre-charge conditional bail of a number of celebrities lead to claims high-profile men were being subjected to a ‘witch-hunt’ (Parliament.uk, 2015). The celebrity backlash resulted in hasty government reform, brought in to reduce the time suspects spent on bail and reduce its use in favour of a voluntary interview (Policing and Crime Act, 2017: Part 4). Despite the police and CPS voicing serious concerns on the adverse impacts for rape and serious sexual assault cases (Parliament.uk, 2015), my MA dissertation found the victim-survivor perspective did not form any part of the evidence to the bail consultation (Learmonth, 2018). It seemed the watershed moment (Smith, 2016) had been short-lived. In fact, victims of any crime had never been asked their views in policy or research on the effectiveness of bail, conditions, or responses to breaches (Learmonth, 2018; Home Office, 2021b). Not only that, but there was no data against which to evaluate or monitor the effectiveness of bail use (Learmonth, 2018). I was convinced that once my dissertation became public, there would be campaigns, further research...

There was not.

Within the first three months of the pre-charge bail reform, bail use in domestic abuse cases dropped nationally by 65% in favour of suspects being released without constraints (CWJ, 2019). A series of predictable adverse effects on victim-survivors of sexual violence and domestic abuse (HMICFRS, 2019; CoP, HMICFRS and IOPC, 2021) led to another reform of pre-charge bail in 2022 (Police, Crime, Sentencing and Courts Act). This replaced the presumption against bail with a neutral position where applying bail was based on police officer's discretion and expertise. The 2022 reform was called 'Kay's Law' after Kay Richardson, whose ex-partner was arrested for rape and assault and released under investigation without constraints but with the keys to her house. He let himself into her home and violently murdered Kay on 20 September 2018 (Gov.uk, 2022a). Post 2022, research suggests applying an initial pre-charge bail period in sexual violence and domestic abuse cases has resumed (Hucklesby, 2024), although the Independent Sexual Violence Advisors and Independent Domestic Violence Advisors (for definition see Glossary) I interviewed anecdotally contradicted those findings.

The constraints of bail from the suspect, defendant or convict perspective have attracted much debate (Hucklesby, 2023; Smith, 2021; Trottier, 2022; Yule et al, 2022). What has not ignited much curiosity is how bail conditions, which do not legally apply to victim-survivors, nevertheless, fundamentally constrain their freedoms during the criminal justice process. The 2022 (Police, Crime, Sentencing and Courts Act) pre-charge bail reform brought in a statutory duty for police officers to seek the views of victim-survivors on their safety needs. This has sparked slightly more interest in the effectiveness of bail for victims of crime, however, not enough for any investment in research from the victim perspective (Hucklesby, 2024).

Since completing my MA dissertation, a number of issues continued to provoke me, not least, the representation by specialist women's organisations of conditional bail as a poorly policed but otherwise effective victim-survivor protective mechanism (CWJ, 2019; 2021). Although part of the issue, it did not address a crucial aspect, namely: public, professional and victim-survivor's understanding of what 'bail' means throughout the criminal justice process. It became a habit of mine to search government and women's sector reports focusing on male violence against women for mention of bail. The pattern

I observed was that bail was either absent or briefly referenced as an unquestioned symbol of victim-survivor protection abstracted from women's circumstances. For example, a report from the Victim's Commissioner (Molina and Poppleton, 2020) which follows 'a survivor's journey through the criminal justice system, from reporting to court' (ibid: 8), usefully noted the proportion of perpetrators released on conditional bail. However, it did not identify how effective the conditions were, merely indicating the two conditions regularly used, or whether they were applied pre-charge, post-charge or post-conviction. Bail is not mentioned again apart from in extracts from the Victim's Code (MoJ, 2024). I observed newspaper articles often referred to bail in rape cases, but not whether it was pre or post-charge, never reporting what the conditions of bail were and never explaining post-conviction bail. Taking an example at random, Taiwo Abodunde was murdered by her husband while two Police officers stood outside her home discussing whether they had grounds to enter (Corbishley, 2025). The perpetrator was on bail at the time, but the news article does not tell us what type of bail or whether he had conditions and so missed an opportunity to explore why that was not considered sufficient grounds to enter the property (ibid).

Significantly absent from policy and research covering male violence against women were women's experiences of bail use through the criminal justice system, rather than on pre-charge, post-charge or post-conviction bail as separate legal mechanisms effecting perpetrators. The indifference to understanding the (dis)connections between the legal distinctions (Boyle, 2019), left any impact on women's lives in a "grey area" (ibid: 25) since conditions of bail do not legally apply to victim-survivors. In making bail an object of research a theoretical framework was required that attended to the function of what was said, by who, as well as what, or who, was left out, suppressed or muted as part of knowledge production.

### 1.1 The myth of bail as protection

As Epstein and Goodman (2019) state: 'we have known for decades that participation in a criminal prosecution can increase a woman's risk of retaliatory violence: studies show that twenty to thirty percent of perpetrators reassault their targets before the criminal court process is over' (173). Furthermore, the escalation of perpetrator reprisals at the

point of or post-separation includes evidence of an increased risk of murder to women (Epstein and Goodman, 2019; Monckton Smith, 2020).

Given that the criminal justice process can take years (RCEW, 2023), it is imperative bail is effective, being as it is, the primary mechanism for protecting women who report crimes of male violence. Thus, examining the connections and gaps that made up the concept of bail from the perspectives of women victim-survivors felt urgent.

Reflecting on the discourses I had heard and read over nine years at the Rape Crisis Centre, and afterwards, three related concerns appeared particularly relevant to the persistent belief that bail was a simple mechanism, synonymous with victim-survivor's safety.

Firstly, women survivors rarely spoke about 'bail' per se. They spoke of an expectation that those with the power and responsibility to keep them safe and protected would do so (Learmonth, 2018). If this belief was disappointed, it exacerbated their feelings of criminal justice betrayal and their own terror at how much more vulnerable they felt after reporting (WNC, 2009). They certainly did not speak in terms of 'pre-charge' or 'post-charge' bail (Learmonth, 2018). From the perspective of women victim-survivors, when bail as protection was inadequate in terms of the conditions applied or responses to breaches, they interpreted this as a lack of care by individual officers, not a failure of the mechanism (ibid: 30). The power of their attachment to bail as protection was firmly connected to their anticipation of their own safety and the safety of others after reporting (Hohl et al, 2023), projected desires that began to wear out, unravel and ultimately become problematic because the promise bail conveyed was too vital to lose (Berlant, 2011; Learmonth, 2018). This relationship of victim-survivors with bail as protection operated as a mode of 'cruel optimism' (Berlant, 2011: 13), in a combination of discourse and affect that exerted enduring power effects (Wetherell, 2012; 2013).

Secondly, in institutional discourse, bail was spoken about as primarily a victim protection mechanism (CoP, 2018: 14) without any meaningful reference to issues that impacted victim-survivors (CoP, HMICFRS and IOPC, 2021). The word 'bail' was used as shorthand, symbolising victim protection while allowing the silence, presence or absence of information in documents and criminal justice spaces, to indicate multiple

possible meanings. The interpretations of bail as protection varied enormously regulated by context, experience and position, for instance, a victim-survivor, an Independent Sexual Violence Advisor or a Police officer (Learmonth, 2018). In conceptual terms, bail as protection had the characteristics of a myth. Not a false belief but a 'black box' of possibilities, offering or suppressing discourse, thereby adapting bail's meaning to appeal to a specific audience as it travelled across groups (Barthes, 1993).

Third and lastly, connections across the full bail process were not explored or explained in any government or criminal justice policy, guidance or report, allowing the focus of attention to remain solely on police officer's bail practices (Learmonth, 2018). Ignoring bail as a related sequence of information-sharing and decision-making left the role and practices of the CPS, prosecution, magistrates, judiciary and other institutional connections hidden and unexplored. Furthermore, this also left what lay behind criminal justice and professional motivations or aversions to bail use unconsidered, obscuring how affect flows as an inseparable aspect of the circulation of power (Pedwell and Whitehead, 2012; Ahmed, 2014). Investigating the myth of bail as protection from the perspective of victim-survivors therefore required an examination of how meanings travelled into institutional and specialist support domains, outside criminal justice, and their consequences for victim-survivors. The point of departure for these reflections was based in a wealth of feminist thinking over many years, much of which I was introduced to during my Masters degree. What follows is a brief overview of the research that fueled my desire to interrogate bail use from the perspective of women victim-survivors of rape, with thanks to feminist academics who continue to do essential work tackling male violence against women and girls.

## 1.2 Foundational contributions from feminist scholarship

During the 1970's and 1980's, feminist academics identified and named practices of male sexual violence against women and girls and their differing forms across everyday spaces. In the home, as a private extension of patriarchal power (Dobash and Dobash, 1979), at work, linking male economic power over women to sexual coercion (MacKinnon, 1979) and in public places, describing the ways in which women's freedom is constrained by strategies minimising the possibility of male violence (Stanko, 1985).

Kelly (1988) conceptualised male violence from the perspective of women's encounters throughout their lives, capturing the range of forms abuses can take as they were described by the women who experienced them. Her use of a 'continuum' (74) of sexual violence as an analytical device, rather than a descriptive term, permitted the capture of the full extent of men's behaviour that was described by women as 'abusive' (ibid) but was not always reflected in law.

Over time, Kelly's continuum of sexual violence (1988) has been adapted to include other contexts, intersections and connections. For example, although early feminist researchers documented the point of separation was often when women were at the highest risk of serious violence or murder from a male partner (Dobash and Dobash, 1979; Barnard, Vera and Newman, 1982), the concept of post-separation abuse was developed more fully as part of a pattern of power and control from the 1990's (for example Kelly and Burton, 1998; Kelly, Sharp and Klein, 2014). Research evidenced that separation does not end the abuse, men merely change the form it takes as part of an unbroken continuum of male violence against women (Kelly, 1988) which constrains the boundaries of women's lives, isolating them from community, family and opportunities (Kelly, 2003). Continuum theory was again extended through Stark's (2007) contribution explaining how a perpetrator's coercive control post-separation denies women their freedom. Goodman and Epstein (2008) investigated coercive control from a specifically victim-survivor-centred perspective to demonstrate how men's abuse post-separation was facilitated by gender blind institutional policies. Their work illustrated the way gendered power dynamics maintained the ability of men to abuse women and their children post-separation through financial manipulation, custody battles and emotional intimidation (ibid).

Feminist analysis of the evidence led to a conclusion that women's fears of male violence were entirely legitimate and often based on previous encounters of intimidation, threats or sexual abuse by the quite unremarkable men in their lives (Stanko, 1985; Kelly, 1988). Feminist research revealed the accepted societal 'gender order' (Connell, 2002: 3) was an asymmetric structural hierarchy benefitting men, although not equally, and oppressing women (ibid), who found their behaviour being blamed for men's abuses (Stanko, 1985; MacKinnon, 1979; Fileborn and Vera-Gray, 2017).

Women's individual frustrations were related by feminist researchers to the recognition that their encounters were inextricably linked to broader structural systems of female oppression and male entitlement that degraded women's status as subjects, leaving men to abuse with 'virtual impunity' (Kelly, Sharp and Klein, 2014: 44). Fraser (2007) proposed that the bias inherent in gendered subjectivity denied women the collective and participatory equality that would hold men accountable for their behaviour both socially and legally. Herman (2005) described how victim-survivor's rational feelings of anger, indignation and resentment were frowned upon by justice agencies. Instead, they expected 'victims of even the most atrocious crimes establish the purity of their motives before seeking redress' (577), particularly if they wished to exercise their rights to inclusion in the criminal justice process. One of Herman's research participants, a woman victim-survivor who reported domestic abuse to the authorities, said of the process:

“Even though you will know more about the facts of the case, since you are only a witness, you will not be consulted, and decisions will be arbitrarily made that end up being to the defendant's advantage” (Herman, 2005: 582).

Kelly (2016) connected spaces where men's abuse is enabled, to situated power and control which manifested in making certain contexts conducive to male violence against women and its facilitation. She theorised such spaces are characterised by: 'institutionalised power and authority that creates a sense of [male] entitlement, to which there [...] still is, limited external challenge' (Kelly, 2016: 1). The consequence of arbitrary decision-making in such contexts can leave women in a position where they restrict their mobility and increase their labour as part of an attempt to reduce further violence. Kelly named the significant time, energy and resources women were obliged to undertake to protect themselves and their families 'safety work' (2012).

Vera-Gray and Kelly (2020) described how performing safety work by women becomes an invisible: 'requirement, producing a set of gendered expectations that have a huge amount of influence over our actions and beliefs' (222). Since the work is not visible but nevertheless essential, those women who fail to successfully constrain their freedoms may find themselves blamed for their actions (ibid). However, those who are successful in avoiding male violence may in fact be '*reducing* their levels of victimization' (Vera-Gray

and Kelly, 2020: 225. Emphasis in original). The safety practices of women therefore remain both unacknowledged and expected, a paradox which allows the widely accepted view that women's fear of crime is exaggerated and irrational to persist while ignoring the gendered power relations that constrain women's freedom (ibid).

This overview has traced key developments in feminist research relevant to an exploration of bail use that have fundamentally reshaped understandings of male violence against women. Early feminist scholars exposed how sexual and physical violence permeates the daily routines of women's lives—at home, work, and in public spaces—revealing these harms not as spontaneous or isolated incidents but expressions of broader patriarchal power (Dobash and Dobash, 1979; MacKinnon, 1979; Stanko, 1985). Kelly's (1988) conceptualisation of a continuum of sexual violence reframed the analytical lens by recognising and connecting men's abuses that fall outside narrow legal definitions but are nonetheless deeply harmful in women's lived experience.

Subsequent feminist research developed this continuum across time, for instance, uncovering how abuse persists and often intensifies after separation, refuting assumptions that leaving a perpetrator restores safety (Kelly and Burton, 1998; Kelly, Sharp and Klein, 2014). Building on concepts such as coercive control and post-separation abuse highlighted the structural and institutional conditions that enable men to maintain power, often with the support of policies that reinforced gender inequality (Stark, 2007; Epstein and Goodman, 2008).

Collectively, feminist scholars demonstrated that women's fears of male violence are rational responses to lived histories of threat, intimidation, and harm (Stanko, 1985; Kelly, 1988). They exposed the asymmetrical gender order that excuses men's behaviours while placing responsibility on women to avoid victimisation (Connell, 2002; Fileborn and Vera-Gray, 2017). The concept of women's "safety work" (Kelly, 2012) further revealed the unseen labour required of women to navigate dangerous environments and mitigate risks created by men's actions.

Taken together, this body of research shifted the focus from individual incidents to systemic patterns of gendered power, showing how male violence is sustained through

cultural norms, institutional practices, and everyday inequalities. It provides a critical foundation for understanding the contemporary dynamics of gendered harm and the structural barriers abused women continue to face when seeking safety and protection from criminal justice.

The next section introduces the scope and focus of the research, culminating with research questions that align with the objectives of the study.

### 1.3 Research Questions

Given the lack of information connecting bail to the various criminal justice domains involved in its use, to victim-survivor concerns or to its persistent resonance as effective victim protection, the research sought to apply another adaptation of the continuum of sexual violence (Kelly, 1988), what Boyle (2019) calls ‘continuum thinking’ (21). Navigating discourses of bail as protection from a number of disparate subject perspectives aimed to deconstruct its production, operation, function and consequences for victim-survivors as a myth object. However, the association of knowledge and power with beliefs in myth theory (Barthes, 1993; Eliade, 1961; Malan, 2016) also requires an explanation of what happens affectively to perpetuate the myth of bail as protection. Putting the affective in dialogue with myth discourse to recognise ‘feeling as knowledge’ (Hemmings, 2012: 151) also permits a focus on women’s dissonance when bail fails to protect, characterised as a: ‘distinction between experience and the world’ (Hemmings, 2012: 157). ‘Continuum thinking’ (Boyle, 2019: 21) allows for the separation and examination of the myth of bail as protection into its component parts, broadly made up of the ‘mythos’, or rational purpose of the myth and the ‘mimesis’, or its symbolic representation within prevailing relations of power (Malan, 2016). The advantage of approaching bail as protection as a myth was the identification and analysis of connections across different contexts, between the material realities of women’s safety and patterns of affective-discursive practices by criminal justice and professional actors (Wetherell, 2013; Åhäll, 2018). The affective-discursive interrogation of criminal justice and professional actors and spaces, as well as victim-survivors also offered opportunities to look ‘beyond what is already known and assumed’ (Pedwell and Whitehead, 2012: 117) and disrupt the gendered logic of a ‘rational’ versus ‘emotional’ binary that can position women at a disadvantage.

Furthermore, a feminist standpoint attending to a gendered articulation of power would require engaging with how women's subjectivities are constrained, constructed and evaluated through sequences of affective-discursive practices of the myth of bail as protection. This would uncover for the first time, points of victim-survivor resistance, exploring how women's challenges to established knowledge affect how their identities are perceived, and the implications of that for reconfiguring the bail as protection myth.

The primary and secondary research questions were therefore developed to guide an exploration of how the myth of bail as protection is preserved by affective-discourses, reconciling tensions, reinforcing hierarchies and fixing subject positions between women victim-survivors of rape, criminal justice actors and other professionals who work with or support women subjected to rape:

**Primary research question:** Communicating safety: How do institutional stakeholders mobilise the myth of bail as protection to shape the status, position and safety of women who report rape?

**RQ2:** How does bail-as-protection persist as a myth and what are its component parts?

**RQ3:** What are the elements of continuity and change of the bail myth as it travels across contexts?

**RQ4:** Within the practices and decisions that sustain the bail myth, are there possibilities of resistance for women victim-survivors, and if so, where?

## 1.4 Structure of the thesis

Having outlined a summary of the background, rationale and research questions for the thesis, this section provides an overview of the remaining seven chapters.

Chapter 2 presents a literature review of myth, discourse, and affect theories, concluding with the primary components of the theoretical framework. It starts by discussing the concept of myth by canonical theorists and its significance to the functioning, formation, and implications of how individuals and groups are perceived and perceive themselves. It moves on to literature exploring myth's complexities, including how elements travel across boundaries, the significance of power, how spaces become sacred and the consequences of myth to women's social position. Next, feminist literature is introduced to develop concepts and language recognising how women construct themselves and are constructed in relation to myth. It introduces the way myth functions through affective-discursive practices to assign responsibilities to women, a key theme that emerged from participant interviews. The final part of the chapter establishes an interdisciplinary model that lends itself to demonstrating the affective-discursive influence of myth on how women's social identities and subjectivities are positioned, responsabilised and disciplined.

Having outlined my theoretical framework, Chapter 3 moves on to the methodology. Starting by situating the feminist standpoint epistemology of the research project, I then outline the research rationale including the key dialectic of the affective in the discursive functioning of myth (Wetherell, 2012). Moving on, I describe the tools and challenges that formed the process of recruiting over thirty participants from groups across public institutions, criminal justice agencies and victim-survivors. Particular attention is paid to access, consent and ethical concerns, specifically approaching victim-survivors' contributions from an asset rather than deficit-focused perspective (Mortimer, Fileborn and Henry, 2021). The search strategy for texts describes a process of 'bricolage' (Lévi-Strauss, 1962) which required stitching together fragments of documents across government departments, criminal justice agencies and specialist sexual and domestic violence organisations. I describe the benefits of piloting the data collection and analysis which greatly improved participant recruitment ethically and practically, and refined the synthesis of myth, discourse and affect theories as a conceptual framework for data

analysis. I outline how analysing women victim-survivors, criminal justice actors and professionals' interviews resulted in themes, some of which were group specific and others, overlapping across groups. The final section covers the limitations of the research.

With the theoretical framework and methodology in place, Chapter 4 sets the scene with an analysis of bail through grey literature across government, criminal justice, justice campaigners and the specialist women's sector. Bail discourse is examined against its legal and institutional 'ideal' representation as a victim-focused protection mechanism spanning the criminal justice process. The findings describe contradictions, inconsistencies and absences in bail discourse that travel literally and symbolically, unencumbered by scrutiny. By putting diverse documents in dialogue with each other, the chapter starts to reveal how the myth of bail is preserved and reproduced through hegemonic power relations.

Following the analysis of grey literature, Chapter 5 is the first of three chapters focussed on participant interview data. It explores how and where the myth of bail as protection operates between victim-survivors and criminal justice actors and agencies. The chapter starts by outlining the key terms that emerged as thematic concepts through the data analysis and moves on to illustrate how productive ignorance (Mays, 2019) defends the myth of bail as protection while simultaneously deflecting responsibility back to women for their safety. The analysis moves on to show how keeping women reliably ignorant (Dotson, 2011) is essential to encourage their faith in criminal justice commitments to the myth of bail as protection, despite bail conditions restricting women's mobility and freedom. It starts a process of unravelling how flexible interpretations of bail as protection by criminal justice actors sustain an illusion of its effectiveness, to the detriment of women's safety. These findings support the claim that the pernicious effects of the bail as protection myth reflect a tolerance of harm to women that is embedded into power structures.

Chapter 6 continues the dialectic between women's interviews and those of criminal justice actors, identifying the consequences of the myth of bail as protection on victim-survivors. The chapter illustrates the ways in which the criminal justice practices discussed in Chapter 5 coerce women's responsabilisation in three ways: a) women's

actions with regard to bail and conditions are evaluated against their credibility, making criminal justice responses conditional; b) victim-survivors' claims to protection are undermined if they do not conform to stereotypically gendered victim behaviours, including passive compliance with the demands of criminal justice actors; and c) women responsabilised for their safety had to take on forms of labour that left them unsafe and devalued. This chapter demonstrates how the myth of bail as protection decontextualises women's allegations of rape, to the benefit of perpetrators.

Moving the focus from criminal justice actors to other professionals, Chapter 7 follows the myth of bail as protection as it travels from criminal justice domains across to professional participants: domestic and sexual abuse specialists in health; social care; housing and education; Independent Sexual Violence Advisors; Independent Domestic Violence Advisors and support workers in specialist services. The chapter demonstrates how professionals who work in the space between criminal justice and victim-survivors are left to make sense of inconsistent bail decisions through processes of justification in sites of extreme affective tension. Furthermore, the chapter demonstrates how the unpredictability, contradiction and inconsistency of bail identified in Chapters 5 and 6 result in a prevalence of ambiguity and uncertainty as key findings in professional data. Finally, it shows how reassuring and supporting victim-survivors led to professionals adapting their discourse in compensation for bail's failures and the constantly shifting boundaries of criminal justice interpretations of bail.

Chapter 8 concludes by outlining the main findings of the thesis along with recommendations for research, policy and practice. I present a summary of how the thesis has addressed the research questions and the contributions to theoretical and methodological knowledge. I argue that the myth of bail as protection depends on ignorance and ambiguity as strategies of power to discipline and responsabilise women who report rape. I summarise how it serves to reinforce the gendered oppression of women through traditional divisions of roles and spaces and further, that this unacknowledged labour by women preserves the anecdotal effectiveness of the myth of bail as protection to institutional advantage. Finally, I consider avenues of further scholarship and investigation into bail, as well as recommendations for policy and practice.

## **2: Following Bail as Protection: Theories of Myth, Discourse and Victim-survivor's Experiences**

### **2.1 Introduction**

This chapter describes the conceptualisation of myth and its importance to the operation, constitution and consequences of how individuals and groups are understood by others and understand themselves. It will introduce myth, discourse and affect as the main pillars of my theoretical framework, providing a solid foundation to explore the research questions.

The purpose of the research project is to deconstruct the mythic symbols and discourses of bail as protection from the perspective of women victim-survivors of rape, demonstrating how and to what ends the myth functions. An examination of its influence on social practices and patterns across spatial and temporal boundaries is intended to allow the myth of bail as victim-survivor protection to be reinterpreted across multiple victim-survivor and professional perspectives.

Section 2.2 starts by outlining the theoretical approaches to myth that are relevant to the research question, initially through the contributions of Claude Lévi-Strauss, Roland Barthes, Paul Ricoeur and Mircea Eliade to explore myth's complex structural and transformational particularities. This section then moves to discussing how relationships between elements combine to form a myth story reflecting dominant beliefs and experiences; the boundary conditions of myth as it moves, motivated by territory, crisis (Malan, 2016) or affective rupture (Eliade, 1961); and how the meaning of the mythical object is endowed with possibility in multiple ways (Eliade, 1961; Barthes, 1993; Lévi-Strauss, 1968; Ricoeur, 1973), structured by power relations (Barthes, 1993; Malan, 2016). In this context I examine the construction of identities as destiny (Ricoeur and Kearney, 1978; Eliade, 1961) using the example of the historic social positioning of women and men (Lévi-Strauss, 1969; Franklin, Lury and Stacey, 1991; Rubin, 1975) and lastly, I analyse the effect sacred spaces (Eliade, 1961) have on the unchallenged legitimacy and circulation of myth discourse in terms of inclusion and exclusion, affective attachments and knowledge (Farkas and Schou, 2018; Berlant, 2011). The

connections of myth discourse with the affect theories of Wetherell (2012) and Berlant (2011) are explicitly introduced into the discussion to further illuminate its significance.

Section 2.3 discusses feminist critiques of the canonical theories of myth, pointing out the yawning gaps left by universally male perspectives (Rowbotham, 1973; Alcoff, 1988). They developed theories on the boundaries obstructing women's knowledge production (Pereira, 2012) and evolved feminist concepts and language to both deconstruct and reconstruct myth discourse (Braidotti, 2011; Spivak and Harasym, 1990). Subjectivity and positionality were recognised as key elements influencing how women construct themselves and are constructed in relation to power (Alcoff, 1988; Barthes, 1993) which politely marginalises the credibility of knowledges consistently positioned as 'against' (Spivak, 1988; Fricker, 2007). They challenged the subjugated construction of women as natural (Franklin, Lucy and Stacy, 1991), revealing coercive structures impacting on women's ability to convey knowledge, be heard and be silenced (Yanow, 1992; Pohlhaus, 2012).

Spaces of inclusion and exclusion in discourse and decision-making are explored, as well as how those can result in testimonial, hermeneutical (Fricker, 2007), participatory (Hookway, 2010) and sometimes wilful injustices (Pohlhaus, 2017).

The chapter moves on in section 2.4, to discuss the consequences of how myths function through affective- discursive practices (Wetherell, 2012) to affectively attach (Berlant, 2011) responsibility to women as a natural aspect of their role (Rose and Miller, 1992; McLeod, 2015). The burden of unmasking and reinterpreting myths from marginalised perspectives is discussed as the labour of social action to combat injustices (Hemmings, 2012) along with ethical and epistemic power effects of such positioning (Fricker, 2007; Dotson, 2014). Finally, the work of non-performative discourse (Ahmed, 2012) is discussed, revealing how circulating myth discourse fails to deliver progress.

In the final part of the chapter, section 2.5 establishes a model to follow how the myth of bail as protection is persistently upheld from the perspective of women survivors. It will identify points of complementarity or conflict between theoretical ideas to reveal previously obscured and mediating perimeters, social relations or power hierarchies operating between specific subjectivities and spaces.

## 2.2 Canonical Myth Theorists

This section reviews how four key theorists; Lévi-Strauss, Barthes, Ricoeur and Eliade describe the operation of myth and its social consequences across themes relevant to my research question. The section also puts myth, and the discourse it depends on, into relation with affect theory to construct a dialectic developed for the study's conceptual framework.

### 2.2.1 Structure

Structural anthropologist and ethnologist, Lévi-Strauss conceptualises myth systems as a type of grammatical structure for mythical language based on symbolic and social rules and patterns. The basic meaningful elements, or 'mythemes' (Lévi-Strauss, 1955) are made up of a combination of terms or concepts that carry the roles or functions of myth. Each term can have many possible functions, and combinations of 'mythemes' can be stitched together using concepts borrowed from older or newly introduced terms and functions to create patchworks of variations used to provide culturally contemporary explanations.

Lévi-Strauss (1955) describes myth comprised of three distinct units; a) 'langue', which is the enduring structure of the myth object, existing in the past, present and future; b) 'parole', which exists in linear time as a moment or event; and finally c) the myth story, whose contraction or expansion does not damage the underlying framework of its structure.

Barthes, one of the founders of semiotics, similarly theorises myth as 'a system of communication...a message; it is a mode of signification, a form' (1993: 109). Barthes extends myth structure, describing it as an overlapping semiological chain where the sign comprised of the associated signifier and signified in the first sequence, becomes the signifier in the second sequence. In this construction, the second sequence is connected to the 'full' (ibid) meaning and history of the signifier in sequence one, but is itself empty, borrowing whatever elements of the original signifier that are needed to support the purposes of the myth and discarding any that do not, every time the myth is used.

The significant contribution of Ricoeur (1978), as a philosopher, was understanding the engagement of the self with the symbolic, whether communicated by language, text or other phenomena, in a dialectic relationship of interpretation. Similarly, Eliade, an influential scholar of theology, 'understood myth as a sacred story' (Yermakova, 2019: 180) where certain behaviours enacted by certain groups of people become heroic and exemplary (Eliade, 1961).

Ricoeur's use of religion and literature to describe how 'the symbol gives rise to thought' (Ricoeur, 1967: 348) mirrors Eliade's (Piscitelli, 1980) analysis of how subjects 'read' themselves through the 'ritual-dramatic portrayal' (Piscitelli, 1980: 293) of religious and classical myths. For both Ricoeur and Eliade, the structural aspects of myth are predominantly contained within the dynamic relationship between the self and symbol, where signs communicate a literal meaning, as well as a meaning intention that offers the familiar in place of the ambiguous. Ricoeur (Piscitelli, 1980: 288-289) posits that what meaning a subject interprets through discourse will be mediated by their subjectivity (a consciously knowing or unknowing subject), their intention (intended meaning), their references (empirical, rational, judgemental) and their intersubjectivity (common understandings, experiences, judgements).

While the meaning of myth does not originate from its structure, contradictions between meaning and experience for Barthes, Ricoeur, Eliade and Lévi-Strauss are resolved through elements and concepts that are determined by attitudes, beliefs and motivations. Therefore, myths evolve in a dynamic relational process enacted through prevailing and situated social behaviours and practices, organised hierarchically around specific social categories.

Importantly for this research then, myths are stories constructed from elements and concepts, both historical and contemporary, expressed to achieve a particular societal function. Myth understanding is a matter of discursive interpretation where the apparently rational take-up of mythic forms and concepts is dependent on each subject's position, operating in dialogue with affect to satisfactorily familiarise empirical reality (Wetherell, 2012). In turn, this preserves the value of the myth thereby maintaining existing power relations.

## 2.2.2 Boundaries

In Lévi-Straussian (1971) terms, dismantling the composition of the myth provides a method to demonstrate how it crosses geographic, professional and temporal boundaries, transforming and in turn being transformed by different contexts, subject groups or institutions (Lévi-Strauss, 1950). As mythical objects discursively move beyond the boundaries of their origin, concepts are combined as ‘bricolage’ (Lévi-Strauss, 1962), regulated by first-hand experience or observation (ibid). These speculative thoughts work to inscribe the mythic objects’ legitimacy and are rooted in motivated beliefs but ‘chaperoned’ (Ricoeur and Kearney, 1978: 115) by reason, described by Lévi-Strauss as concepts that are: ‘good to think’ (1962: 132), appearing rational and logical rather than emotional or based on instinct. Mythic discourse can therefore be ‘the bearer of possible worlds’ (Ricoeur & Kearney 1978: 117) opening up or closing down opportunities for knowledge and understanding across different times, spaces and subject positions.

Eliade (1959) points to fundamental differences between what he calls, ‘profane’ or everyday spaces, and those that are ‘sacred’ (11). He (1959) suggests that separating differences by what is ‘rational and non-rational’ (10) misses the key characteristics of the boundary conditions.

Eliade describes five conditions that are particularly relevant to this research.

Firstly, that a person’s bodily or representational inclusion or exclusion from a space creates meaning affectively, even before any discursive explanation, with access to them feeling ‘generally secret, initiatory’ (Eliade, 1961: 32). There is a deliberate ‘demarcation and differentiation from the ‘outside’’ (Holloway, 2003: 1962), with permission from an insider required for temporary access by ordinary people (Eliade, 1961).

Secondly, what Eliade (1961) calls ‘dreams’, may arguably be the affectively modulated imaginings of those excluded from certain spaces about what powers they have and how they will be used. Such an interpretation may be produced by an affective attachment to a transformative ‘good-life fantasy’ (Berlant, 2011: 260), socially repeated and readily available in everyday spaces. Where Eliade (1961) states that ‘the dream lacks the constitutive dimensions of the myth... ‘ (16), it is an assumption from a privileged subject

position. What are constituted as dreams, and what as myths and by whom, depends on who is included and who excluded by privilege of access and knowledge. Consequently, those marginalised and unfamiliar with the rites, rituals and language of the exclusive space may have their anticipated imaginings framed by those included as 'infantile or aberrant' (Eliade, 1961: 24).

Thirdly, sacred spaces are reserved for those who are invited or initiated and whose unique skills are exclusively capable of bringing about order. The establishment of what becomes accepted as order, happens away from: 'everyday, ordinary life, while the sacred is the existential, it contains the essence or in other words the reasons and purposes of things' (Petlevych, 2020). Legitimizing power held at a distance from ordinary people consolidates a situation where knowledge production is understood to be benevolently held by those in a superior position, for the benefit of all.

Rituals in sacred spaces are performed and intellectually owned by those with superior hierarchical power to enforce the importance of the myth. The purpose of rituals' functions is revealed to excluded groups and individuals, only if it is in the interests of privileged groups to do so. Eliade describes the 'qualitatively different' (1959: 15) characteristics of a sacred space in terms of felt 'experience' (119), it is the awe-inspiring proximity to a space previously kept remote where myth becomes: 'a truth that is absolute' (96).

Fourthly, a repetition of a limited number of acceptable gestures, behaviours, clothing and language in sacred space is a constant boundary reinforcement for the uninitiated visitor. Specific practices have been invented to affect a deliberate distinction from those external to it, practices understood by Eliade and Lévi-Strauss as recognisably ritualistic and performative (Holloway, 2003). Ricoeur's (1973) suggestion that freedom also requires 'a language that is convenient to describe existing as an individual in this world' (Ricoeur, (1973) cited in Malan, 2016: 6), is at odds with the rules of these spaces and suggests freedom within them is deliberately constructed as an impossibility for ordinary people.

Lastly, the obligatory rituals adhered to in sacred spaces move to a different temporal rhythm than in everyday spaces that: 'appears under the paradoxical aspect of a circular

time, reversible and recoverable, a sort of eternal mythical present that is periodically reintegrated by means of rites' (Eliade, 1959: 71). So, time in sacred spaces may not be measured in everyday terms of progress or urgency, but can be circular and discontinuous, a characteristic that further alienates those without knowledge or previous experience.

Eliade's distinction between sacred and profane spaces reveals how spatial and temporal boundaries can determine who can access, interpret, and participate in the power of the myth.

As a required operating condition for crossing boundaries, myths are scrutinised for satisfactory meaning, a mechanism facilitating their movement:

'In all cases, boundary condition refers to the empirical evidence from outside the realm of the myths being analysed, which Lévi-Strauss carefully identified in each case as the necessity of the crossing of a spatiotemporal boundary' (Santucci et al, 2020: 1706).

The transformational approach suggested by Lévi-Strauss (1955) describes points of intersection across boundaries (whether visible or not) where concepts of agency and dominance provide opportunities for ideological and politically powerful projects to strengthen their position. Merely re-telling or repeating the myth is not sufficient for its survival. Rather, meaning must be coded through strategies of inclusion and exclusion associated with the value of each ritual, symbol and concept (Doja, 2008).

The meaning and explanation offered by mythic thought presents a coherent narrative that looks to each situated group like knowledge or truth where: 'what counts is that myth is believed to be true by those whose myth it is, and theories seek to figure out why adherents believe in myths and not on whether or not myths are actually true' (Segal, 2020: 4). Ricoeur (cited in Malan, 2016) refers to the difference between 'mythos' (4), the plot or the rational purpose given to the myth within prevailing circumstances and 'mimesis' (4), or the imitative representation of the real world which conveys meaning through signifying power.

Therefore, the stability of the myth is illusory: with changing contexts, elements disappear, return or are displaced, to offer and maintain an apparently natural social order based on symbolic rules and practices. The mythic conditions of existence across boundaries, in Lévi-Strauss's theory are characterised not only by discourse or what is empirically observable, but also by our thoughts about what we hear and see: 'Empirical facts re-emerge as figures of speech, or, more precisely, figures of thought (Garber, 2008: 14).

Although structuralist theories have been accused of a derisory attitude to affect (Hook, 2011) the interlocking relation between the empirical and thoughts goes beyond rational considerations, towards the speculative imaginaries that subjects share and identify with as part of a group. The fundamental affiliation of knowledge and beliefs across myth theory appears to place the affective firmly in relation with the discursive (Wetherell, 2013), as part of the myth function to appeal to a context of familiarity as it travels. The capacity of myth to blur the distinction between affect and factual foundation is the contribution of mythical thinking which provides: 'a logical model capable of overcoming a contradiction' (Lévi-Strauss, 1955: 443).

The combination of myth and affect also emerges as integral to Eliade's notion of boundaries, defining them as as: 'the frontier that distinguishes and opposes two worlds - and at the same time the paradoxical place where those worlds communicate' (1959: 25). He describes how leaving the ordinary world and entering a 'sacred world' (ibid) involves compliance to rites, rituals and habits in order to be permitted across a threshold where chosen officials symbolically enact power.

Where discourse produces and is in turn produced by affective attachments or aversions to the mythical object as it moves between boundaries and individuals, it is a key dialectic of power. The relationship with, and access to boundaried and specifically spaces characterised by alienating rules and rituals, constructs subject positions by producing an epistemological hierarchy, reinforcing the myth story as it travels (Berlant, 2011).

There are conceptual distinctions between what constitutes a boundary, for this theoretical framework, the focus is on those boundaries explored by the canonical

theorists that stem from social and organising practices which separate or bind subjects and groups across different spaces and times.

Furthermore, opening the boundary to spaces constructed as sacred to knowledge from subjects previously excluded, is identified by Ricoeur (Ricoeur and Kearney, 1978) as an action which merely alters the boundary form, without delivering performative change. Ricoeur (Ricoeur and Kearney, 1978) likens the travel of myth across boundaries to the development of language, which suggests that for knowledge to be accepted, the situational discourse of dominant groups must be used, or the speaker risks being unable to communicate at all (Fricker, 2007).

In summary, the myth's power lies in its ability to travel and transform across boundaries, combining affect with discourse to maintain legitimacy while simultaneously regulating boundary conditions of knowledge, inclusion, and resistance.

### 2.2.3 Power relations

Each theorist discussed above suggests systems of signification independent of the literal meaning of the original myth signifier. Combinations of idea and image lead to a 'confusion of signifier and signified, or word and thing, of figurative and literal sense' (Lévi-Strauss, 1968: 62), where the mythic object is composed of a set of events, the sequence of which, according to Lévi-Strauss, is arbitrary (Cook, 1980: 145). Lévi-Strauss (1950) is the first to theorise the idea of the 'floating signifier', what Barthes (1993) later terms an 'empty signifier' (267), as a sign or idea whose meaning is not fixed: 'but is subject to the constant process of redefinition and appropriation' (Hall, 1996: 8). Ricoeur refers to the multivocality of symbolic language (1973: 221) formed by power relations, rather than abstracted characteristics, developing and acquiring its meaning in a repeating process where: 'a contingent decision is made between what is included and excluded from particular discourses' (Farkas and Schou, 2018: 301).

Barthes (1993) suggests those who are 'producers' (128) of myth 'aim at an ultra-signification' (ibid: 133) indicating that mythic metalanguage makes a deliberate call to affect in how it is articulated and expressed. A conspicuous impression of truth creates an impact which, even if the myth is later found to be flawed, can resolve inconvenient contradictory rationales to the satisfaction of those individuals and groups to whom it

appeals, as a method of conserving existing power relations. Ricoeur explains that myths form a matrix of power distribution, which assigns their value and function in hierarchical relation to each other, other groups and any individuals who participate in them (Ricoeur cited in Malan, 2016).

Therefore, the affective-discursive representation by privileged actors of other subject's identities can revise another's value and position according to power effects portrayed as legitimate and reasonable (Wetherell, 2012). Those positioned as producers of myth (Barthes, 1993: 128) consolidate their power as the amplification of language is interpreted as reality, its value signified by the associated value assigned to the actors who speak or validate it. Barthes' myth schema bypasses Lévi-Strauss's generalising structural principles, where an actors' status facilitates them avoiding having to explain the prominence of some myth elements rather than others.

Any distribution of power, however, is also subject to societal relations of organisation that privilege some groups and disadvantage others (Connell, 1987). Structural modes of relation regarding, for instance, race, class and sex, are historically constituted, build social order and assign subject positions through situated practices. Therefore, how myth operates to distribute an actor's role is discursively relational but not arbitrary (Connell, 1987). Where groups or individuals move away from their assigned function, they are seen as challenging the power matrix and the associated histories that fix subjects' roles as natural (Malan, 2016).

Wetherell (2013) argues that discourse does not merely influence subject positioning 'through context-dependent semiotic practices' (Breeze, 2018: 26), it communicates intent by affectively structuring relations of performative force (Wetherell, 2012). She reveals how normative social and institutional rituals and patterns of behaviour, repeated between individuals, construct and solidify asymmetric power relations and subjectivities (ibid), based on what she calls: 'affective-discursive practice' (Wetherell, 2013: 356). Subjects both adopt and are assigned positions, in response to affective-discursive meanings related to their status, expectations and experience (Wetherell, 2013; Berlant, 2011).

Where Barthes (1993) places subjects in discursive relation to myth, Berlant (2011) recognises the blurring of the boundaries between roles and functions by virtue of the affective register of discourse. In her approach, the power of mythic discourse hinges on subjects' contextual affective-discursive attachment to anticipated desires in relation to the myth object; a concept she calls: 'cruel optimism' (Berlant, 2011: 13). Berlant (2011) structures the relationship in three main modes of attachment: 'sustaining' (2), involving a disposition to repeatedly have faith your desired outcome will be achieved this time, in spite of previous disappointments; 'flourishing' (169), anticipating or achieving feelings of satisfaction; and 'harm', where: 'the loss of what's not working is more unbearable than the having of it' (Berlant, 2011: 24).

Myths operate not only as symbolic systems but also as affective structures that promise resolution, especially in moments of crisis. Eliade (1961) describes the potent appeal of mythic discourse as a promise of proximity to and benefit from power. However, he points out that mythic power and force are only effective if they are venerated. 'The recital of the myths' (Eliade, 1961: 36) as a solution to a crisis, particularly in sacred spaces is deeply, if not exclusively, symbolic. Adherence relies on faith, where communities understand the symbolic signification of model behaviour handed down in stories of: 'heroes who enact National destiny' (Kearney, 1978: 130). Meanings become decipherable as an integrated aspect of a value system operating to 'sum up and justify a whole doctrine' (Eliade, 1961: 68), symbolically implying effective solutions, sometimes based on nothing more than an article of faith.

Mythic rituals which imitate and gesture to power that is discovered to be symbolic only, do not destroy the myth, but put individuals in a position where they either abandon themselves to their 'extreme distress' (Eliade, 1961: 136), or faithfully repeat their rituals as a condition of optimism (Berlant, 2011). For those who rely on the promises of mythical force, reaping the benefits of mythic power demands ritual compliance as an essential part of the exchange.

Therefore, myths operate as 'the norms it is important not to transgress' (Eliade, 1961: 32), exemplary models which function as cautionary tales for others to emulate or avoid, as 'congenial to the sensibilities and ideology' (Eliade, 1961: 39) prevailing in contemporary society. Where adherence to such norms causes isolation, deprivation or

harm (Berlant, 2011), Eliade (1961) notes that: ‘for every traditional society, suffering has a ritual value’ (207). Symbols and rituals which call to a respect for the traditions and subject positions of the past in the present, pass on the knowledge necessary for the repetition of the myth across time.

Integrating theories of myth discourse with affect is generative in exploring the powerful ways in which myths persist, as well as their consequences for individuals situated according to their status. Myth harnesses an assemblage of discourse and affect (Wetherell, 2013; 2012) to publicly communicate and circulate meaning ‘beyond rational calculation’ (Berlant, 2011: 2), the power effects of which can be relentlessly enduring. The discipline such power can exert on autonomy of action is influenced by relational hierarchies of inclusion or exclusion, in spaces constructed as sacred.

#### 2.2.4 Destiny

Myth constructs a symbolic or discursive narrative with the purpose of illustrating an acceptable code of conduct. It suggests such behaviour is assumed or destined by hiding its motivated nature behind unquestioned authority.

Ricoeur (Ricoeur and Kearney, 1978) and Eliade (1961), as Barthes (1993), suggest that the unrecognised or ‘naïve’ (Ricoeur and Kearney, 1978: 114) consumption of myth content and motivation leads to its distorted use: ‘because modern man [sic.] has lost his [sic.] awareness of the important role which myth plays in his [sic.] life, it manifests itself in deviant ways’ (Ricoeur and Kearney, 1978: 114). Hence the importance of being a critical decipherer of how myths operate in contemporary society, to protect against their ‘deviant’ (ibid) presentation.

Barthes describes the combination of form and meaning as a distortion; an ‘alibi’ or a ‘value’ (1993: 123), identifying the associated mythical concept as constructed to appeal to a specific audience, for whom it performs a particular function. Barthes’ (1993) myth system provides explanations that appear to be based on logical considerations, with the elements attached to the concept giving the impression of being inescapably natural and neutral, as part of a deliberately motivated and instrumentalising campaign.

Eliade (1961) looks to classical mythology to connect how contemporary and accepted social practices originate in historical myth:

‘That is why they are the exemplary models for human behaviour... When a God or a civilising Hero ordained a mode of behaviour... he not only assured the reality of that behaviour (for until then the practice in question was non-existent, was not in use and so was “unreal”), but by the very fact that this behaviour was his invention, it is also... a divine creation’ (Eliade, 1961: 15).

However, the mythic appeal to a better future identified by Lévi-Strauss, Ricoeur, Eliade and Barthes, is underpinned by a tradition of thought in structural and classical myth theory that accepts female oppression as a natural aspect of social practice (Franklin, Lury & Stacy, 1991). The a priori construction of women as commodities, for instance (Lévi-Strauss, 1969), is presented as universal and unquestioned, placing patriarchal dominance as a fixed and arbitrary sign. The history and connotations of women’s oppression have become natural facts. There is a recognition of the fundamental social positions of men and women but no need to critique their implications any further (Franklin, Lury & Stacey, 1991; Rubin, 1975). Historical norms and expectations of female and male behaviour set a societal agenda that can make opportunities, exclusion or subordination of women appear self-evident. Labelling myth creation as agentic, or its consumption as passive, ultimately fixes subaltern groups (Spivak, 1988) in a disempowered position based on their deficiencies, rather than hegemonic attachments to myth in spaces where symbolic traditions function to maintain the status quo.

Consequently, rather than a subject’s position being based on naivety or knowing, it is more likely they become destination roles according to practices supporting traditional constructions of gendered behaviour.

In conclusion, myths operate to provide familiar explanations in differing forms, to successfully travel across boundaries. They support and extend the existing distribution of power, in part by attempting to fix subject positions and roles as destiny, and use exclusive spaces and rituals accessible only to the initiated when power is requested by ordinary people. The universal and tenacious nature of myths indicates their consequences serve a vital function.

The following section explores feminist literature criticising and advancing the concepts of canonical theorists and offering perspectives on the combination of discourse and affect in myth to centre women as subjects.

### 2.3 Feminist Criticism and Evolution of Myth Theory

Where canonical theorists identified the arbitrary nature of mythic content of forms and concepts, the consequences for some groups are neither objective nor socially arbitrary. The evolution of myth theory by feminist critics pointed out that the structural and classical forms and concepts, universally accepted by canonical theorists, supported stereotypes based on a predominantly male perspective of the world where: ‘the exclusion of women from all existing language demonstrates our profound alienation from any culture which can generalise itself’ (Rowbotham, 1973: 34).

If language is, as the canonical theorists suggest, our means of classifying the world through a symbolic order, rules which operate by allocating forms, concepts and symbols only according to men’s meanings will result in commonly accepted distortions based on epistemic limitations (Spender, 1980). For instance, Strinati (1995) notes of Barthes’ suggestion that a bunch of roses signifies passion, that: ‘They might even connote sexual harassment’ (125). A sign that is broadly understood to signify romantic love is a good example of how ‘floating signifiers’ (Lévi-Strauss, 1968) can simultaneously gesture to multiple contradictory meanings in contextual relation to a subject’s position, across intersecting characteristics including race, class and sex.

Beauvoir’s (1953) view of myth in 1949, nearly ten years before Barthes’ (1993) famous essay ‘Myth Today’, criticised both the deceit of myth, and its particular concern for women’s subjectivity, stating: ‘The myth of Woman substitutes for an authentic relationship with an autonomous existent the immobile contemplation of a mirage’ (1953: 322). Feminist thinkers such as Lauter (1984) later challenged ‘the exclusion of ‘Woman’ from the human realm’ (113) through enduring mythic portrayals that function to suppress female subjectivity (Kjellgren, 2021). Lauter (1984) presents a possibility of women’s myth-making that is distinctly collective and relational, indirectly supporting Beauvoir’s assertion that there is no emancipation for women who: ‘still dream in men’s dreams’ (1953, 196).

To release women from the binds of mythologically constructed 'womanhood', feminist scholars developed new theories enlarging the scope of what was previously accepted as 'rational' by decisively relating affect to mythic discourse. A theoretical framework that includes feminist thinking wishes not only to identify acts of mythmaking but also to: 'establish viable relationships with the myths that result from them' (Lauter, 1984: 6). Consequently, the research will take a feminist approach which addresses the shortcomings of the canonical theorists. The following sections move on to discuss the contributions of feminist theorists to the overarching theoretical framework.

### 2.3.1 Boundaries

Where the validity of myths is defined within a framework of true or false and discussed in spaces where women's participation, knowledge and belonging is constrained or absent, it bypasses issues concerning contextual symbolic and discursive power effects on the conceptualisation of women's subjugated positions. Unmasking the myth may enrich a woman's consciousness, but it does not decrease her suffering. It's only outcome may serve to pass on knowledge that reproduces established forms of male power (Nyhagen, 2019), with women relegated to a passive role.

The canonical theorists identified boundary conditions as transforming those mythical concepts in a manner which appeared rational. Ricoeur and Lévi-Strauss particularly understood the importance of language and discourse to the inscription of legitimacy, where experience and objective reasoning 'chaperone' (Ricoeur and Kearney, 1978: 115) motivated beliefs. The gap in knowledge filled by feminist academics describes the many methods used to obstruct the experience or reasoning of individuals or groups from being integrated into the canon of knowledge, across previously invisible boundary lines.

For example, Pereira (2012) investigates how traditional belief systems that historically diminished the voices of women academics, welcomed feminist perspectives up to 'the discursive boundary' (ibid: 296), at which threshold they were separated from 'proper' academic knowledge. Women academics were permitted the role of knowledge producer, as long as it fell short of threatening or alienating the status quo.

Pereira (2012) points out the doubly neutralising impact of a non-feminist subject position giving the impression of appealing to balance and reason, combined with fluid

institutional and epistemic boundary thresholds that shift position according to context and convenience. In terms of truth and power effects, superficial inoculative responses can successfully frame feminist thought and knowledge as outside of the mainstream and, in an affectively comforting return to the point of departure, discursively situates it as intellectually and intrinsically lacking.

Interpretations of marginalised groups' experiences can therefore become hermeneutical resources routinely used by powerful groups within spaces that remain inaccessible to the individual or group under discussion (Dotson, 2014). The feelings that erupt in marginalised individuals as a consequence, serve only to justify the structural barriers that exclude them. The ability to contribute and participate is in the order of ventriloquism, where information they offer from outside the boundary is sifted and expressed by a third-party epistemic agent qualified in the rites, rituals and language that structure what and how those included in the space receive knowledge.

In spaces where dominant knowers are separated from those with marginalised experience:

‘moral and political discourse... blocks the transmission of knowledge that ought to make a normative claim on those for whom the knowledge is intended, presenting instead a distorted picture resulting from faulty epistemic resources.’ (Pohlhaus, 2012: 731).

The use of those resources unifies the experience of knowers, becoming: ‘second nature once one has developed a facility in using them, and because epistemic resources work to coordinate knowers in relation to the world and one another’ (ibid: 731). As such, the credibility of those marginalised can be legitimately said not to be the issue because the impenetrability of the boundary ensures they are ignorant of such practices.

The negative epistemic consequences both cause and perpetuate injustices that Pohlhaus (2012) suggests are practised in any of three ways:

‘First, they wrong particular knowers as knowers, for example suppressing a knower’s testimony or by making it difficult for particular knowers to know what it is in their interest to know... [and] by using epistemic practices and institutions’(13).

In the absence of a shared understanding of the situation, those unfamiliar with the rules of bounded spaces: 'are not certain about what questions to ask, and if questions are posed, the situation is ill-defined to the point where a clear answer will not be forthcoming' (Daft and Lengel, 1986: 556-7). In a mythological sense, marginalised knowledge is a mystery (Dotson, 2014) to epistemic institutions which are structured to keep it on the outside:

*'Someone may be recognized as a possessor and transmitter of knowledge, but not as someone who purveys information that is useful or relevant in the current context... In that case, we treat the person as a non-participant, not just as a non-knower'* (Hookway, 2010: 158).

Maintainers of myth are unified, incentivised and coordinated as epistemic agents, where any acts of faith are marketed as a factual basis of the myth's effectiveness without the need for externally measured evidence.

Decipherers of myth understand the consequences but not how bounded spaces operate. Objections by those excluded to carrying the weight of the injustice can be seen as a threat to establishment-approved ways and encounter considerable and consistent opposition. Berlant describes the affective outcome when the myth object shares the burden, delivering: 'the energy of feeling relational, general, reciprocal, and accumulative' (2011: 43). In contrast, to be excluded from the opportunity to share the burden and associated positive feelings can create suffering, isolation, vulnerability and in some cases, crisis (Berlant, 2011: 62).

Fricker (2007) introduces the notion of 'systemic testimonial injustice' (27) that 'tracks' (ibid: 27) a subject through time and space, denying them the ability to convey their knowledge within and across social and institutional boundaries. The systemic aspect is central to how 'epistemic injustice' (27) is embodied by the social construction and positionality of those who suffer from what she calls: 'identity prejudice' (29). The term 'tracking' is also used by Marcus (1995) in describing multi-site research designed to follow the discourse and semiology across previously unconnected 'locations of cultural production' (109). He refers to how Lévi-Straussian myth analysis is being updated to include spheres of contemporary life by researchers mapping how myths are

reconfigured to: 'serve state and institutional orders' (ibid: 109). In this conception, a 'site' is located wherever the myth story is told, indicating how boundaries can be instantly raised or lowered as a symbolic and discursive power effect.

What is accepted as a rational parsing of mythic elements across boundaries (Lévi-Strauss, 1955), may, in fact, be a prejudicial attachment: 'resistant to counterevidence as a result of "an ethically bad affective investment"' (Fricker, 2007 cited in Dotson, 2012: 26). The resulting negative credibility judgements justify the exclusion of individuals or groups from participating at all in institutional decision-making structures. Within this context, the differentiation between myth and truth, or reality, will be dependent on the value or position assigned to the actors who speak or validate it, via a hegemonic process. Haraway (1997) clarifies that rationality is in fact just another form of storytelling, and crossing domains may result in a distinctive telling as an interpretation of reality, a story that could be told differently. Clarifying the deconstruction of 'rational' and 'irrational' boundaries, Braidotti bridges the gap between them, claiming that: 'affectivity governs the truth value of an idea' (2011: 247).

In the face of myth theories that on the one hand provided a framework for the analysis of contradictory meanings and their functions, and on the other, 'obscured the difference in power relations in the constitution of difference' (Franklin, Lury & Stacey, 1991: 179-80), theorists started to evolve their own language and interpretations to overcome these limitations. The next section explores myth as a mechanism for maintaining and reproducing hierarchies of power.

### 2.3.2 Power relations

Within the structure of the myth, Barthes (1993) designates the second mythological system power over the first, to represent it as a partial truth or fiction that privileges particular versions of social reality and shared meanings. The power imbalance implied, read through a feminist lens, naturalises the division, with women's lack of societal agency generally putting them in the position of consuming myth. Correspondingly, the visibility and audibility of men making them the de facto myth producers, reflecting the power positions permitted by dominant ideology (Rowbotham, 1973). This position functions to place women in a David and Goliath struggle to assert their subjectivity and

more importantly have it recognised. Repeated illustrations of gendered power effects accumulate to 'create a sense of solidity and recognition' (Berlant, 2011: 87) which accrue factual value over time.

Alcoff (1988) emphasises the significance of both subjectivity and positionality where: 'woman as a political point of departure makes it possible to see, for instance, gender-biased language that in the absence of that departure point women often do not even notice' (Alcoff, 1988: 432). Conaghan and Russell's (2014) view on sameness and difference concurs, citing that feminist theory had 'long ago' (36) recognised: 'Comparisons always rely upon a standard of measurement and it is upon the selection of that standard that claims of sameness and difference generally turn' (ibid: 36). The consideration of gender, for instance, is particularly relevant with respect to rape and how it is treated throughout the criminal justice system, given that it is: 'disproportionately a crime that men do to women' (Conaghan and Russell, 2014: 37).

Fricker (2007) describes the testimonial injustice inherent in the degraded position of women in the justice system as a 'source of information' (131), in contrast to an 'informant' (131), as the felt difference between subject or 'knower' and object. She terms this 'epistemic objectification' (133) which 'signifies a more general denial of their subjectivity' (133), undermining an individual's humanity and experiences as merely the means of achieving a goal.

Fricker (2007) comprehensively examines the power effects of epistemological myths by the privileging or prejudicing of individuals or groups on the basis of their: 'identity power' (16). Her perspective on the ethical burden of those with 'credibility excess' (18) reveals opportunities for situated expedience by an authority figure who is also a knowledge holder; for instance, a victim-survivor of rape and a police officer. The officer may not be in a position to give the woman the reassurance of safety she craves, but cannot be too honest or their credibility, and the victim-survivor's confidence is irreparably damaged. The officer may not want to mislead them but there are a number of choices available, including answering in a way that is convenient and practical, although possibly politic and most advantageous to the investigation. The 'identity power' (16) of an authority figure gives their speech or silences the air of depoliticised innocence where, despite withholding knowledge from the victim-survivor, they retain a position that is: 'ethically

non-culpable' (23). The privilege shown by police officers towards the investigative process, which may prejudice the victim-survivor, does not necessarily indicate an 'ethically bad motivation' (35), particularly where organisational accountability and accepted patterns of professional practice affect how officers represent the prevailing circumstances (Shortland et al, 2020). Women victim-survivor's 'resources developed from marginalized situatedness are: "experience rich"' (Pohlhaus, 2012: 721). However dominant knowers are not always required to investigate concerns, and it is not in their interest to cede epistemic authority to marginalised groups by admitting mistakes and accepting corrections. Habituated standards of epistemic behaviour create a hierarchy associated with the privilege of being part of a powerful institution, creating what Pohlhaus (2017) calls: 'epistemic classes, one of (purportedly ideal) knowers, and the other of sub-knowers' (17).

Such tribulations sit in an established system raised above any particular conception of its limitations. However, 'those dominantly situated may be encouraged to develop a kind of epistemic arrogance... an epistemic laziness with regard to knowing the world well in light of those oppressed by the [social] contract' (Pohlhaus, 2017: 17), thereby incentivising those with a credibility surplus to actively disqualify aspects of human experience. Pohlhaus (2017) refers to the use of testimony by individuals as 'epistemic tokens' (22) that: 'reinforce[s] the background assumption that the experience of harm by some groups is not plausible or reliable on its own' (Pohlhaus, 2017: 22). In bounded spaces, valid 'epistemic tokens' (ibid) require the representation of those with a credibility surplus to act as gatekeepers to what knowledge is deemed appropriate.

Yanow (1992) connects myths to functions that cannot be publicly voiced because they are considered in some way controversial. She explains that fertile ground for myth production is at the point where two irreconcilable conditions collide: 'Faced with such incommensurables, people often create myths that hold competing values in a tension of temporary resolution and direct attention elsewhere' (399). Any contradiction between the two issues 'remains suspended as long as the group maintains its belief in the myth' (Yanow: 1992: 402), thereby maintaining public silences about tacitly understood policy incompatibilities. The function is to mask tensions and discomfort by

closing down further inquiry and directing attention to what can be known, whilst the silence around contradictions strives to ensure they do not become subject to public or institutional discourse.

Pohlhaus (2017) calls this impasse ‘willful hermeneutical ignorance’ (722), when discourse is knowingly misinterpreted or suppressed through the: ‘active use of *faulty* epistemic resources to systematically misunderstand’ (ibid: 730). Interesting again, is the reference to floating signifiers where policy myths are written or spoken, perhaps explicitly, but in a way that simultaneously allows for multiple possible interpretations. The signification of the myth becomes an affectively loaded sign that communicates to ‘knowers’ within an institution the conflicted discourse it masks and consequently, discursively maintains the successful deflection of attention from controversial issues.

As a result, nothing about the knowledge exclusion indicates a problem with the epistemic systems themselves, leaving the responsibility to accommodate inadequacies an individual concern. As the following section goes on to discuss, fixing certain groups as ‘knowers’, destines those excluded as naturally distanced from power.

### 2.3.3 Destiny

The mythic appeal to a better future identified by Lévi-Strauss, Ricoeur and Barthes, is underpinned by a tradition of thought that accepts female oppression as destiny. Franklin, Lury & Stacy (1991) point out that the work of Lévi-Strauss: ‘takes the exchange of women as the original or founding cultural moment, thus creating an essentialist tautology from a feminist point of view and providing little hope of ever-changing patriarchal society’ (179). The construction of women as commodities is presented as unquestioned, placing patriarchal dominance as a sign which has, at least viewed through the feminist eye, ceased to be arbitrary.

Alcoff (1988) identifies a fundamental issue in canonical myth theory, that it is unable to tackle sexism because of its: ‘construction of a subject by a discourse that weaves knowledge and power into a coercive structure’ (415). Relying on a gender-blind engagement, it ‘reinvokes that mechanism in its supposed solution’ (ibid: 415) leaving no room for a female subject to manoeuvre, resist or challenge the power effects of discourse. However, she warns of a feminist struggle motivated constantly by

deconstruction, 'only and always against' (ibid: 418-19) when pointing out the subjugated construction of women in binary opposition to men. Spivak and Harasym (1990) suggest instead an awareness of how discourse 'constitutes the narrative of its own production' (14), working with narratives, not against them. Specifically, they single out as objects of investigation: 'rationalist narratives of the knowing subject, full of a certain sort of benevolence towards others, wanting to welcome those others into his own—and I use the pronoun advisedly—into his own understanding' (Spivak and Harasym, 1990: 21). What Spivak and Harasym suggest is 'affirmative deconstruction' (ibid) where carefully formulated questions examine areas of doubt, absence, 'rhetorical gestures' (ibid) and the: 'structure of production' (ibid). The aim is to disrupt authoritative narratives rather than continuously: 'making choices according to old rules' (ibid).

Alcoff's solution mirrors the Barthesian and Lévi-Straussian appeal of mythic discourse, in suggesting that feminism must 'have a positive alternative, a vision of a better future' (1988: 419), but contradicts Barthes' assertion that: 'revolutionary language proper cannot be mythical' (1993: 146). That women's voices when raised in emancipatory struggle for their rights are viewed as improper may still hold true, since the liberation of women necessarily involves feminist discourse that is positioned outside of and challenges patriarchal norms. Alcoff (1988) criticises the denial of subjectivity in the universalisation of so-called, neutral and objective discursive structures across history, which neatly side-step the relevance and stereotyping of sex, race and class to the production of knowledge. As Rowbotham (1973) concluded, this rejection of the significance of social positioning made it impossible to confront the condition that: 'all existing culture is male-defined and that the very notion of objectivity can be equated with masculinity' (37).

In the context of 'relations of reciprocity' (140), Fricker (2007) discusses how women's speech can 'altogether fail to register in male hearers' testimonial sensibility' (141) in a: 'silencing effect' (142). The silencing of women carries a message that is, by contrast, loud and clear: 'even relatively inconsequential testimonial injustices can carry a symbolic weight to the effect that the speaker is less than a full epistemic subject: the injustice sends the message that they are not fit for participation in the practice that originally generates the very idea of a knower' (Fricker, 2007: 145). As Ahmed (2012)

points out, the very question of participation precludes a starting position distinctly outside, of having to be specifically invited. Berlant (2011) calls the affective consequences of exclusion a process of ‘dissolving’ (3), as a practice of accommodating the slow erosion of trust and confidence.

Fricker’s (2007) conceptualisation connecting testimonial injustice, identity and credibility deficit with silence describes a pre-emptive mode where a speaker’s contribution is not considered of sufficient interest to be requested. Hookway (2010) names this ‘participatory injustice’ that is:

‘directed at someone’s functioning as a participant in discussion, deliberation, and inquiry does not simply cause the victim to lose epistemic confidence more generally. Rather it questions the possession of capacities that are necessary for participation in these kinds of epistemic activities’ (160).

Dotson (2014) identifies epistemic systems that function as the institution intended, that is, inadequate with regard to specific epistemic tasks as part of its design. Thus, ‘within a given community of knowers’ (ibid: 115) resistance to change sits within ‘relations of privilege’ (ibid: 125) that present inertia as an irrefutable aspect of the organisational culture (ibid). Maintaining the inadequacy perpetuates and perpetrates wilful epistemic injustice that Pohlhaus (2017) calls: ‘contributory injustice’ (19). In these cases, systems refuse or deny the need to develop or use more appropriate epistemic resources, thereby sustaining the exclusion of particular knowledge from collective understanding.

The contemporary persistence of myths operating in an asymmetric gendered hierarchy present complex and fluid processes of meaning-making that feminist scholars have pointed out, are not universal, rational or neutral. The consequences of pervasive myths on women as well as their relationship with them, are discussed in the following section,

## 2.4 Consequences of Myth

Myth and rituals reflect and reproduce the gender orders prevailing in contemporary society, with women positioned as challenging power relations to reinterpret constraining beliefs (Alcoff, 1988; Ahmed, 2012; Nyhagen, 2019). Therefore, processes of demythologisation and demystification present distinct obstacles from differing and intersecting subject positions. The following discussion explores the consequences of

myth functioning through discursive practices to affectively attach responsibility to women, reinforcing the status quo. It investigates how myths can be deciphered as spaces for resistance and creating new, shared meanings, and how non-performative discourse (Ahmed, 2014) allows myths to circulate without delivering progress.

#### 2.4.1 Gendered Labour

Repeating the gendered subject positions accepted by the canonical myth theorists epistemically limits the ability to respond to the enduring power of myth in the present. In contrast, feminist research provides the possibility to combine the building blocks of the myth theorists in section 2.2, in dialogue with contemporary thinking to explicitly centre women's lives in the consequences of myth.

Rowbotham explains that before there can be a feminist movement, there must be a: 'recognition by the oppressed of a general situation of domination. You can't begin to find your own power until you have consciously recognised your non-power' (Rowbotham, 1973: 38). Interpretation and reinterpretation of myths for women and other groups whose knowledge is marginalised, therefore necessitates the labour of reinterpreting concepts that have taken root as the shorthand of the mythical sign and naming them in longhand before women are able to propose solutions.

Ricoeur advocates for individuals to strive for freedom from the false consciousness of uncritically consuming myth:

'What starts as a negative unmasking enterprise, concludes in positive affirmation, as man [sic.], freed by the necessity of knowledge, re-appropriates his [sic.] substance by mastering alienated forces and thus enters into transparency, which is the end of false consciousness' (Ricoeur (1973) cited in Malan, 2016: 4).

Ricoeur identifies demythologisation as a step further in the questioning process; a reinterpretation of the myth based on the knowledge of it being purely symbolic in purpose (Ricoeur (1973) cited in Malan, 2016). He states this necessitates restoration of the myth as symbol, 'liberating the symbolic function' (ibid: 6) of the myth so it is possible to distinguish the false rationality. Demystification, reinterpretation or destruction of the

myth, according to Ricoeur, involves ‘an intense listening act’ (ibid: 6), where silence and actions speak as loudly as words.

No agency is conferred onto the participant to influence whether the knowledge she acquires from such realisation also provides her with the resources to end her conditions of oppression. As Malan (2016) notes, she is involuntarily ‘assimilated to what is signified’ (5), . In this conception, women are ‘epistemically objectified’ (Fricker, 2007:133) as a means to an end. They are unable to be heard as subjects (Fricker, 2007: Spivak, 1988) unless they are benevolently afforded temporary status as ‘epistemic tokens’ (Pohlhaus, 2017: 22) by those with the privilege to give them brief agency.

Fricker (2007) gave this gap in communicative resources a name ‘hermeneutical injustice’ (6), described as: ‘the unequal disadvantage [deriving] from the fact that members of the group that is most disadvantaged by the gap are, in some degree, hermeneutically marginalized—that is, they participate unequally in the practices through which social meanings are generated’ (ibid: 6). Deficient conceptualisations of marginalised lives can prevent group members from communicating an intelligible account of their experiences to others, and even on occasion to themselves.

If accepted epistemic resources fail when tested by the experiences of groups or individuals, they develop their own explanations. In part, explanations attempt to resolve the: ‘tension and the urgency... produce[d] when epistemic resources are at odds with one’s experienced world that signals a need to recalibrate and/or create new epistemic resources for knowing the world more adequately’ (Pohlhaus, 2012: 720). Thus, a subjugated and situated position creates knowledge outside of or in conflict with recognised models of behaviour or resources.

Given myth’s ability to appeal to motivated beliefs, Fricker’s (2007) suggestion of changing embedded prejudicial attitudes as a top-down version of Rowbotham’s (1973) call for the oppressed to first recognise their own position, requires effective engagement with: ‘those who aim to reduce prejudice in their judgements of credibility’ (Fricker, 2007: 41). For the dominant knower to do this however, is ‘difficult’ (Pohlhaus, 2012), ‘disorientating’, and requires acceptance of the possible loss of their: ‘unearned privilege’ (ibid: 721). Hemmings (2012) proposes that: ‘in order to know differently we

have to feel differently' (150). Therefore, without a reinterpretation that appeals to both thoughts and feelings, identifying a myth without an acceptable substitute is likely to permit the myth to continue. This is particularly the case when inadequacies predominantly burden marginal or muted groups.

For women, confronting limitations and managing cognitive and emotional responses is a constant epistemic labour that is often not worthwhile, since truly cooperative rather than coercive relations are rare. Presenting such marginalised knowledge may even have the opposite effect where proponents are regarded as less competent precisely because of what they know (Pohlhaus, 2017). In this case, epistemic labour is coercively extracted from them to build their case in the service of others (ibid), using epistemic power held by dominant knowers which reproduces exploitative practices that can be damaging.

Kearney (1978) citing Scheler (1976) describes the potential consequences for women used against their will:

'Revenge tends to be transformed into resentment the more it is directed against lasting situations which are felt to be injurious but beyond one's 'control' - in other words, the more the injury is experienced as a destiny' (132).

Kearney connects power relations to affect by appearing to suggest, as more contemporary feminist scholars have claimed: 'that oppression is often carried out at an affective level (Zembylas, 2018: 120). However, the repeated manifestation of optimism and disappointment is in no way guaranteed to compel action on behalf of an oppressed group.

Alcoff (1988) explains that in naming the needs and demands of women, we risk invoking what she calls 'companion beliefs' based on the very myths we are trying to deconstruct. Her response to this dilemma is to argue that subjectivity cannot be constructed solely in discourse, but that habits, practices and experiences are also vital to meaning. 'It seems both possible and desirable to construe a gendered subjectivity in relation to concrete habits, practices, and discourses while at the same time recognizing the fluidity of these' (Alcoff, 1988: 431), thereby recognising women's needs as dynamically and symbolically affected by social construction, rather than fixed as stereotypically female. The demystification of a partially deciphered mythic symbol or discourse, coupled with

the hermeneutic labour required to bridge gaps in communicative resources, acts as an effective barrier to demythologisation and remythologisation. Haraway (1997) describes the role of mythmaker as a form of work through social action, to promote the recognition of new myths as legitimate. To normalise new myths as viable alternatives to dominant myths, again puts women and girls in the position of being 'against' more established practices. For women who find themselves outside established norms, developing the language to express a myth story that is sufficiently appealing to be acceptable can be too heavy a burden. As Lévi-Strauss (1955) points out, transformations of the order, terms or functions of the myth do not affect its underlying structure as the myth works continuously to justify its original form.

Berlant's (2011) theory of 'cruel optimism' explains the affective loyalties that motivate a desire to continue to believe in the power of the myth object, despite its flaws. Where consuming a myth is the product of affective attachment to its promises, individuals or groups may prefer ignorance to deciphering weaknesses. Therefore, subject positions are relational to the myth and situated in terms of their flexibility of movement, and attachments can be dynamic, according to their consequences.

To be injured by mythic power requires a proximity to it or at the very least, sufficient engagement to achieve an 'unmasking' of the knowledge that you are not free, or the agent of your own liberation. On occasion, activating 'sacred power' (Kearney, 1978: 131) obligates a woman, voluntarily or coercively, to a sacrificial exchange through which patriarchal narratives lock her into responsibility and compliance. Conforming to stereotypical actions confirms her gendered moral superiority and by contrast, the shame of women who challenge or object (Eliade, 1961). If she were to break 'the taboo of silence and speak, she renders herself guilty' (Eliade, 1961: 46) and so must accept the suffering for which gendered discursive logic dictates she is responsible as a natural aspect of womanhood.

The burden of female responsibility functions as a 'misdirecting gesture' (Berlant, 2011: 101), obscuring structural or relational factors that might be instrumental. Gender-specific responsibilities are described by Berlant (2011) as 'affective bargains passed as obligation and care' (209), a transference of disciplining effects, not power, meaning

compliance may be performed physically but with affective reactions that can be unenthusiastic, resentful or harmful (Kearney, 1978; Berlant, 2011).

What is demanded of the 'responsible' woman is action likely to result in personal loss, not only in sacrificial terms but also the affective-discursive 'loss of faith' (Berlant, 2011: 166) in the myth's: 'good life fantasy' (ibid: 260). Responsibilisation work (Rose and Miller, 1992) therefore resonates as a method by which a woman achieves 'a conventional hallmark of femininity' (McLeod, 2015: 3), a positioning indexed to Fricker's (2007) conceptions of credibility excess and deficit.

Inoculative changes protect the larger failures of myth from systemic scrutiny (Barthes, 1993: 150). Berlant (2011) refers to such organising attachments as 'structures of relationality' (13) which reinforce the ordinary, everyday oppression of women as a class, particularly in times of crisis.

Male-defined model behaviour (Eliade, 1961; Lévi-Strauss, 1962; Spender, 1980), has separated women from their reality and history, demanding they live, or at least perform, a qualitatively different style of life based on the mythological ideal woman (Beauvoir, 1953). Taking agency through proximity to the power of myth, however, does not allow a woman to escape 'the fact that she is trapped in the narratives man has told about her' (Kjellgren, 2021: 66), it merely replaces one method of oppression with another. In summary, myth functions to sustain unequal gendered power relations by responsabilising women, while offering temporary or superficial inoculations that reimpose the very oppression they claim to address.

Finally, Eliade (1961) tells us: 'Deciphering the meanings of myths and symbols – is repaid by a considerable enrichment of consciousness' (9), however knowledge of inadequacy, falsehoods or inequality does not necessarily lead to improvement but sometimes to resentment and distress (Kearney, 1978). An uncovering of knowledge without the power to effect change leads into the next section, exploring the consequences of mythic discourse when its circulation enables or blocks action.

## 2.4.2 Non-performative Discourse

This section draws from Ahmed's (2012) theory of non-performative discourse in an institutional context to explain the contribution of myth to the unequal distribution of responsibility to women. Ahmed (2012) suggests discursive regimes purporting to address specific issues not only give myth new forms and processes, but discursive practices become a substitute for the very action they describe (11). She explores affective investments in law and policy discourse, where the action implied is left 'unfinished' (ibid), leaving the words spoken as purely performative and symbolic. Her investigation usefully complements Wetherell's affective-discursive scrutiny of the everyday 'gaps between affective experience and hegemonic cultural narratives' (2012: 71), by exploring how such gaps evidence the non-performative nature of the narratives.

Ahmed (2012) offers an echo of Barthes' (1993) critique of myth discourse as a distorting signification, describing institutional 'statements of commitment [which] are non-performatives: they do not bring about the effects they name' (Ahmed, 2012: 17). Myth in this case, works in dialogue with affect to naturalise familiar practices to insiders, with the expectations of those outside labelled naïve or ignorant (Ahmed, 2012; Eliade, 1961; Piscitelli, 1980). The work of discourse in this case, includes its circulation to keep statements of commitment on the agenda, generating an impression of recognition, priority and action. Ahmed points out that statements as pledges, represent what institutions are 'for' or 'against' but rarely what action they will take.

'In my model of the non-performative, the failure of the speech act to do what it says is not a failure of intent or even circumstance, *but is actually what the speech act is doing*. Such speech acts are taken up *as if* they are performatives (as if they have brought about the effects they name), such that the names come to stand in for the effects.' (Ahmed, 2012:117 emphasis in the original).

Ahmed identifies several institutionally useful functions for non-performative discourse; firstly, statements can be referenced for or against an individual's actions as consistent or inconsistent with them, and therefore a reason to include or exclude those individuals. Secondly, statements can obstruct or support action as congruent with institutional principles or purpose (Ahmed, 2012: 120-121) and finally, non-

performative discourse can describe: ‘an intangible thing that is given tangible qualities in institutional talk’ (ibid: 130).

Passing official decision-making responsibilities to spaces and individuals at a distance from the original point of concern, is characterised by Ahmed (2012) as a ‘structure of deferral’ (122). Within spaces of authority, the original concern competes with other institutional interests which can justify decisions or action being withheld or delayed. Therefore, commitments made are not necessarily commitments enacted, and decisions communicated back into everyday spaces can result in disappointment (Ahmed, 2012; Berlant, 2011).

Ahmed (2012) points to the time taken to complete obligatory rituals of decision-making that indicate serious consideration and progress. However, where discourse in such spaces is non-performative, the amount of time spent is discontinuous, indicative only of the ritual itself. When non-performative discourse is working as it is designed to, communication is circulating and symbolising action where ‘saying’ stands in for ‘doing’.

Ricoeur’s (cited in Malan, 2016) explanation of how myths form a matrix of power distribution is extended by Ahmed (2012) to an affective and unevenly distributed network of commitment to the myth (134). Where individuals become ‘commitment carriers’ (Ahmed, 2012: 130) on behalf of institutions, their attachment to the myth story is both optimistic and anxious. The circulation of non-performative discourse by ‘commitment carriers’ implies the action promised by the commitment ‘as if it describes what already exists’ (ibid: 139), leaving ‘commitment carriers’ with the uneasy responsibility to close or explain any gap between what is said and what is done. The implications of the discourse confer valuable attributes on the institution, which it claims and publicly promotes as a legitimate, routine characterisation, which Ahmed calls: ‘ritualised speech’ (2012: 58).

In a demonstration of Ricoeur’s conception of the ‘multivocality of symbolic language’ (Ricoeur (1973) cited in Malan, 2016: 6), mythic speech moves through institutions and across boundaries of inclusion and exclusion, sacred and everyday spaces, non-performatives and action, to cement the legitimising values it wishes to accrue,

distributing power and responsibilities. The affective value associated with institutionally approved symbolic language resists, avoids or blocks the inclusion of alternatives by: 'evoking the pleasures of consumption' (Ahmed, 2012: 69).

The aim of developing the theory structure was to establish a fundamental connection between myth, discourse and affect, and to examine the consequences for women as subjects. The following section brings together the key concepts from the literature review that will provide the framework for the research.

## 2.5 Conceptual Framework

In this section I summarise the theoretical framework from the review of literature. I propose a model to follow the myth that persistently upholds bail as protection in rape cases from the perspective of women survivors. The theoretical review is deliberately interdisciplinary, taking strands from communications and media, cultural, feminist and legal studies, because bail as an object of study is itself not clearly bounded. The concept of 'bricolage' put forward by Lévi-Strauss (1962) resonates with the theoretical and methodological decision to examine bail discourse as it travels (Marcus, 1995) across a number of different but connected disciplines, a topic I will cover in more detail in the following methodology chapter. This obliges the use of theories which can track the relational effects of discourse and affect, and how they travel across institutions, groups and individuals (Marcus, 1995: 97).

The structure of myth, as discussed by the canonical theorists, allows for the separation of the 'mythos' and 'mimesis' (Malan, 2016: 4) as critical mechanisms of its communication. Although the meaning of myth does not come from its structure, the elements and concepts that prevail are indicative of normative societal attitudes and beliefs, sitting within relations of power. Institutional beliefs create an understanding of how the power and meaning of bail is distributed within and across professions and in the minds of women victim-survivors. Dismantling the composition of the myth provides a method to demonstrate how it crosses spatial, professional and temporal boundaries, transforming and transformed by different operating conditions and contexts (Lévi-Strauss, 1971).

Boundaries can be affectively, discursively or symbolically raised and lowered in an instant (Fricker, 2007; Marcus, 1995), they can appear as an affective ‘rupture’ (Eliade, 1961: 116) or a crisis (Malan, 2016), they can be epistemic, testimonial or hermeneutic (Fricker, 2007), moral or ethical (Dotson, 2014) and impermeable (Hookway, 2010). The exclusion of groups or individuals from spaces signifies their status as less than non-knowers, their presence is simply irrelevant - they are ‘non-participants’ (Hookway, 2010) whose role is fixed as destiny through their interpretation by dominant knowers. An ability to explore the influence of the myth on victim-survivor’s claims for protection, at what points and under what conditions, requires an understanding of how roles are assigned and fixed as natural (Malan, 2016; Barthes, 1993; Eliade, 1961).

The conceptual approach makes the work of feminist theorists indispensable to engaging with the topic.

For women who report rape and have expectations of bail as victim-survivor protection, the role of myth consumer is not clear cut. Following women’s discourse (Marcus, 1995) will demonstrate what degrees of blindness and insight myth-consuming women go through. For instance, what types of consumers are they; involuntary, coerced, silenced, passive or complicit, and at what points and how do they move in and out of the role of decipherer or producer. Transformations of role will indicate boundaries and attachments (Berlant, 2011) that demonstrate the unmasking of the myth and its contradictions (Lévi-Strauss, 1950; Ricoeur, 1967), including how women’s growing knowledge is received by criminal justice actors and professionals with an affective and credibility commitment to the myth (Yanow, 1992; Pohlhaus, 2012; 2017).

Conventional ideas of agency and resistance as types of exemplary victim-survivor behaviour will also sit within women’s affective desire for bail as protection to be a reality. The impact of women moving from having faith to experiencing the myth’s weaknesses is contingent on their subjectivity and positionality, and consequently, could impact positively or negatively on criminal justice actors’ and professionals’ attitudes to women as they seek to reinscribe their legitimacy. It is important to pay attention to how symbolism and rituals used in institutional spaces by epistemic agents (Villalba-Lázaro, 2020) can coerce and discipline women victim-survivors to follow model behaviours uncritically, with transgression threatened by a withdrawal of mythic

force (Ricoeur and Kearney, 1978; Alcoff, 1988). Any suffering on the part of those who do comply, is the price extracted for a temporary annexing of mythical power (Kearney, 1978).

Ahmed's (2012) theory of non-performative discourse identifies the mythic elements of meaning and the repetition of the concept through different forms as a distortion at the heart of the myth signification. However, Berlant (2011) recognises the importance of both subjectivity and the connection of contextual affective-discursive relations in modes of attachment to myth in her concept of 'cruel optimism' (Berlant, 2011: 13). Whether the unmasking of myth results in demystification is indexed to the discursive and affective values subjects hold and from what position. Berlant (2011) recognises how 'structure[s] of relationality' (13) to the myth can influence a subject's position, involuntarily or coercively isolating them in the process. The myth's distortions can travel across boundaries into inaccessible sacred spaces where dominant knowers' representations can maintain the legitimacy of non-performative discourse and rituals (Eliade, 1963; Ahmed, 2012; Dotson, 2014).

The consequence of a woman who has identified the myth as cut off from her community indicates knowledge of the myth that remains: 'repressed' (Steeves, 1987: 111). Conceptions of injustices as they relate to 'knowing', conveying knowledge and participating, whether physically or representationally, are hinged to subjects' being included, positioned 'against' (Alcoff, 1988) or absent from (Hookway, 2010) sacred spaces. The subject position of those who fully understand the limitations of the myth, but wilfully maintain the deceit, may find it more comfortable for women to comply with a myth consumer role (Pohlhaus, 2017).

The critical elements for myth preservation are therefore a combination of subject position, identity and the inclusion or exclusion of those subjects and identities in spaces significant to the power of myth. Those with a vested interest in maintaining the myth make deliberate appeals to affect in a process of 'ultra-signification' (Barthes, 1993: 133) to conserve existing power relations by attaching positive anticipation (Berlant, 2011) to compliance with the myth.

Myths form collective identities based on a history and tradition of normative attitudes and beliefs to which individual identities, borne of individual experiences, may not conform (Spender, 1980). In this research, the emphasis on a female victim-survivor perspective is deliberately intended to question systems of belief that privilege institutional values as the only feasible option. Presenting critical insights into institutional systems that are exclusionary, the research aims to disrupt the maintenance of those practices. Women labour under the weight of tradition, but the associated myths do not necessarily have to be consistently endorsed within prevailing ideologies, and so this framework attempts to make room for a retelling of the myth of bail as protection.

Questioning the inevitability of institutional oppression that undermines the status of victim-survivors during a potentially years-long investigation, aims to detach dominant practices from their established, naturalised position. Extending the frame of reference to an analysis of mythic discourse opens possibilities to raise important issues affecting both victim-survivors who report rape and the ability of criminal justice agencies to protect them.

A solution to how marginalised subjects and identities can successfully produce myths does not appear to have yet been effectively theorised (Spivak, 1988). However, what is possible with the theoretical framework proposed, is to reveal the barriers to knowledge production, the spaces, rites and rituals that fix roles as destiny for some, along with the impact of this positioning. This includes where boundaries are raised or lowered, under what conditions and the way in which power is distributed to allow the myth of bail as protection to persist. This gives rise to the following research questions:

**Primary research question:** Communicating safety: How do institutional stakeholders mobilise the myth of bail as protection to shape the status, position and safety of women who report rape?

**RQ2:** How does bail-as-protection emerge as a myth and what are its component parts?

**RQ3:** What are the elements of continuity and change of the bail myth as it travels across contexts?

**RQ4:** Within the practices and decisions that sustain the bail myth, are there possibilities of resistance for women victim-survivors, and if so, where?

The framework provides tools to address the research questions by revealing the naturalised component parts of the myth, illustrating boundaries, power relations, spaces or commitments as constructed and motivated by affect, rather than arbitrary. Tracking the way in which the myth travels across temporal and spatial boundaries will demonstrate how women's subject positions can be benevolently or coercively constrained in ways that permit or deny understanding or knowledge in relation to the power to protect. This will include how women's positioning demands they comply with responsibilities associated with a socially acceptable feminine identity as a disciplining condition of temporary access to the power of the myth. Lastly, in the context of the myth of bail as protection, the conceptual framework pinpoints sites where women victim-survivors can resist and challenge the myth's damaging limitations.

The next chapter moves on to present the methodology rationale and design, explaining the importance of a feminist philosophy to the research, the process of data collection and analysis, along with an overview of the ethical challenges involved.

## **3: Methodology**

### **3.1 Introduction**

Previous research has revealed gaps in understanding of where the efficacy of the justice system to adequately safeguard victim-survivors of rape post-reporting originates (Learmonth, 2018; WNC, 2009) but it is clear on many occasions that trust is misplaced (CWJ, 2019). The primary aim of this research is to explore how power at the nexus of myth, discourse and affect persistently upholds bail as protection in rape cases, despite contradictory survivor experiences and institutional practices. Given the ‘very limited evidence base’ (Home Office, 2021b: 7) on bail use, a qualitative methodology centring women’s experiences and expectations of bail as protection has been chosen to explore the research goals (Price and Murnan, 2004).

In this chapter, I outline what data I am collecting and why, presenting my methodological decision to combine myth (Barthes, 1993; Levi-Strauss, 1955; Eliade, 1961; Ricoeur, 1973), affect (Wetherell, 2013; Ahmed, 2012; Berlant, 2011) and discourse (Wetherell, 2012) to explore bail as protection. I highlight the feminist philosophy that guides this research, the process of data collection and analysis, present the ethical challenges and in conclusion, outline the research limitations.

### **3.2 Methodological Rationale**

#### **3.2.1 Research Aims**

The aims of this research are to reveal the discursive and affective practices in spaces that connect bail with victim-survivor protection and to explore how this discourse is constructed and constructs the identities of women who report rape. To achieve these aims, I have chosen to incorporate a variety of data sources, including interviews with women victim-survivors, police officers, barristers, specialist sexual and domestic abuse support workers, a social worker, welfare and disciplinary workers in education, housing workers, a health specialist, justice campaigners and a court reporter. Organisational reports are also reviewed from the police, CPS, government departments as well as specialist women’s sector, criminal justice reform reports and consultation responses. The methodological approach proposed shows, for the first time, the

tensions and hierarchies produced between different subject positions, as well as the subsequent affective encounters fostered by asymmetric power enacted through bail as protection discourse.

The analysis seeks to investigate how discourses from criminal justice agencies and related institutions help construct, support, develop and possibly challenge the myth of bail as protection. Examining the ‘multivocality’ (Ricoeur, 1973: 221) of bail discourse as it travels between institutions in public policy and practice demonstrates the power relations that exert truth effects on victim-survivors. Thus, putting organisational reports and first-person interview data in dialogue with each other allows the analysis to track (Marcus, 1995) meanings and practices across criminal justice, professional and public boundaries, to explore bail as a myth object (Malan, 2016).

An assessment of bail as protection from the perspective of female victim-survivors aims to question institutional and professional positions, identities and relations, challenging the validity of meanings that have previously been taken for granted in discourse. Evaluating bail’s current efficacy from the victim-survivor perspective, might therefore provide opportunities to leverage an extended safeguarding framework yielding more effective, victim-survivor-centred options (Terwiel, 2020a).

The questions that follow offer a framework to guide the research with the primary question supported by four secondary questions:

**Primary research question:** Communicating safety: How do institutional stakeholders mobilise the myth of bail as protection to shape the status, position and safety of women who report rape?

**RQ2:** How does bail-as-protection persist as a myth and what are its component parts?

**RQ3:** What are the elements of continuity and change of the bail myth as it travels across contexts?

**RQ4:** Within the practices and decisions that sustain the bail myth, are there possibilities of resistance for women victim-survivors, and if so, where?

### 3.2.2 Feminist Standpoint Epistemology and Reflexivity

I have spent many years thinking about how my research methodologies are influenced by feminism, seeking to centre and honour the agency and experiences of female survivors of sexual violence as primary sources of knowledge. The research aims and methodological framework I have chosen to reflect my position as a feminist, a former Rape Crisis worker and a white, middle class, middle-aged, able-bodied woman. I have consistently worked with survivors of sexual violence either in Rape Crisis Centres or as a victim-survivor-focused researcher since 2009; as such, I have experience of conducting interviews and focus groups and of the ethical and moral concerns of co-producing research with women, men and children who have been raped. However, this does not mean that I am untouched by the stories I have heard from women survivors as part of the research process. Rather, it motivates my deliberately feminist critique, aiming to reposition and reconstruct their experiences of bail use as legitimate knowledge. The grey literature analysis (Chapter 4) demonstrates that women have claimed knowledge regarding the weaknesses of bail for many years, yielding little in the way of results against the 'self-authorising claims of the dominant group' (Bar On, 1992: 96), a historical bias which this research seeks to address.

As Wetherell (2012) points out, the feminisation of 'emotion' versus its masculine opposite of 'reason' is a debate of simultaneous potential and risk for feminist research. Conceptualising 'feeling as knowledge' (Hemmings, 2012: 151) requires its location within structures of power relations as a: 'circuit through which power is felt, imagined, mediated, negotiated and/or contested' (Pedwell and Whitehead, 2012). Feminist epistemology therefore allows space to examine 'how power is manifested through feeling [...] and knowledge production is circulated through discourses and affectivity' (Liljeström, 2015: 17) by professionals within and across multiple public institutions and women subjected to rape. The methodology is also designed to overcome the limitations of dominant empiricist barriers to understandings of bail (Harding, 1992). Therefore, my methodological commitment to affect in combination with myth and discourse analysis invites a feminist perspective to ways of knowing and not knowing that recognises the relation between affect and epistemology as situated, rather than homogenous within particular groups (Intemann, 2015).

Persistent criticism of qualitative research on the basis of empirical inadequacy (Kerr, 2010) brings with it the issue of what constitutes relevant empirical data. Additionally, it is not enough simply to have data indicating the number of suspected rapists without bail conditions or whose bail breach is not followed up - a feminist standpoint is curious to understand how this affects the lives of women (Westmarland, 2001). The diversification of participants in the research is in part, its strength, because gathering the data from a wide but connected community may 'yield epistemic advantages' (Intemann, 2015: 275) reflective of the differences between institutions as well as women victim-survivors. However, understanding my own position as a partial observer functioned as a method of accountability with regard to exploring and unravelling these differences. A feminist standpoint therefore aims to deliver epistemic benefits for those whose experiences have historically been excluded within hierarchical power structures (Intemann, 2015).

The interview data collected for this research was considerable; thirty-three interviews, nearly five hundred pages of transcription from forty hours of recordings. The task of analysis often felt overwhelming, and focused writing every day was key to managing feelings of ethical responsibility as well as the sadness and frustration that goes hand in hand with stories of how male violence and the criminal justice system oppress women. Reading Silverman was instructive: 'when planning the topics of your data chapters, do not assume that you must tell the 'whole story'. There is no 'whole story', there is only the story that you want to tell' (2017: 485). What also helped in making sense of the emotions expressed by participants and myself was the use of affect theory to examine those feelings as an integral part of the data's story. Telling the 'whole story' of bail from the perspective of women subjected to rape was simply not possible, but stimulating interest in challenges to policy, practice and possibilities for further research felt like a start.

Harding (1992) describes the researcher as 'the thinker whose consciousness is bifurcated, the outsider within, the marginal person now located at the center' (65), similarly Barthes (1993) identifies 'decipherers' (128) of myth as isolated and cut off from their community by their knowledge. As a feminist researcher, both I, and women victim-survivors encountered each other in that solitary space to share our decipherings as a 'process of coming to know that bit of knowledge' (Alcoff and Potter, 1992: 8), thereby

starting a small, connected community. The affective outcome of sharing knowledge through research as ‘narrative therapy’ (Brison, 2002: 77) can be reciprocal and cumulative (Berlant, 2011) and that is certainly one of the aims of a feminist standpoint. Whether the epistemic community adopting the research findings and recommendations expands is fundamentally an issue of accountability that I, women victim-survivors and perhaps other professional participants, can demand of our knowledge producers.

I have struggled to express what continues to motivate me in my endeavours and consistently come back to one word: love. Perhaps better defined as feminist love, it is based on freedom and the collective power of women to transform and unify (Alejandro, 2021). That love feels like a confession at odds with academic writing is both in part why I have never admitted it before and why I do now, as a commitment to *being* reflexive rather than ‘doing’ reflexivity (Alejandro, 2021). As feminist research explicitly seeks to recognise and reduce power imbalances within the process (Luff, 1999), I cannot claim to occupy a neutral position, unconsciously and consciously analysing: ‘the data from my own political, personal and intellectual perspective’ (Letherby, 2002: p4). Navigating interviews with women survivors as well as criminal justice and other professional actors, required acknowledgement of my own erupting affective responses, even as I listened to those of my participants.

My hope is the research builds on the work of feminist researchers worldwide who have paved the way in tackling male violence against women. It is always with the deepest thanks to women themselves who gift first person experiences of their lives and without whose labour, determination and courage the world would be a poorer place.

### 3.3 Research Rationale

The grey literature analysis in Chapter 4 shows many women consistently raise issues with specialist workers such as Independent Sexual Violence Advisors (ISVAs), Independent Domestic Violence Advisors (IDVAs) and in research (CWJ, 2019; 2021; RCEW, 2023; Advance, 2024; CWJ and Imkaan, 2023), that conditional bail is an inadequate method of protection during the criminal justice process. Nevertheless, institutionally authoritative discourse maintains that little is known about bail use from the victim perspective (Home Office, 2021b).

Therefore ‘empirically following the thread’ (Marcus, 1995: 97) of women victim-survivors’ attachment to discourses of bail as protection, to include the professionals and institutions through which its use is practiced, is designed to pursue a more speculative exploration of bail. The methodological approach of viewing texts as ‘bricolage’ (Levi-Strauss, 1962) allows for the patchwork of data currently available on bail to be stitched together from the perspective of women subjected to rape. Reconstructing the myth of bail as protection from a fresh subject position may generate valuable feminist knowledge, demonstrating how rituals and patterns of behaviour are repeated in spaces of epistemic authority that reinforce the status quo by attaching responsibility to women (Rose and Miller, 1992).

When interviews illustrating practice, and documents illustrating policy and guidance are analysed alongside each other, the aim was to reveal how victim-survivors are positioned and constructed as subjects, epistemic objects (Fricker, 2007) or non-participants (Hookway, 2010) through bail use by institutional actors within and outside of criminal justice organisations. This opens up the possibility that workplaces and communities, as well as public institutions, should form part of a larger response to safeguarding victim-survivors of rape, outside of criminal justice.

### 3.4 Data Collection: Using Interviews and Texts

The rationale of centring discourse, affect and myth to conceptualise bail’s persistent status as victim-survivor protection in rape cases, invited an exploration of discursive sites related to the experiences of women. The combination of methodologies problematizes bail as protection in order: ‘to disrupt how problems and solutions alike are perceived’ (Terwiel, 2020b: 2). Advancing the understanding of how the discourse of bail as protection influences the experiences of victim-survivors of rape by bringing together different perspectives of data: ‘is especially relevant where evidence under scrutiny is extremely limited’ (Frog and Lukin, 2015: 14).

Committing to listening to victims-survivors accounts and situating them in relation to institutional discourses was an opportunity to privilege women’s testimonies as central to the meaning of bail. Therefore, it was vital to draw the data from numerous sources across a range of domains, connected to women’s needs for safety after reporting rape,

in an effort to explore bail as a myth object specifically related to their protection. The data sources are outlined in more detail below.

### 3.5 Semi-structured interviews

The interview method was deliberately chosen to accommodate the diverse range of intended participants, from women victim-survivors of rape to criminal justice agencies and professionals working in institutions mentioned by women or connected to the duty to safeguard women after reporting.

Interviewing participants in agencies responsible for decision-making on bail and conditions, or for women's safeguarding more broadly, as potentially 'defended subjects' (Hollway and Jefferson, 2000: 27) was a concern. It was essential to obtain quality data as there was very little publicly available academic or grey literature on bail use written from the perspective of victims of any crime, let alone victim-survivors of rape (Home Office, 2021b).

Hollway and Jefferson (2000) identify the following possible characteristics of research participants who may be defensive of their profession or their individual professional reputation. Some of these may apply to any of the interviewees but were felt to be particularly relevant to criminal justice professionals:

1. 'may not hear the question through the same meaning-frame as that of the interviewer or other interviewees;
2. are invested in particular positions in discourses to protect vulnerable aspects of self;
3. may not know why they experience or feel things in the way that they do;
4. are motivated, largely unconsciously, to disguise the meaning of at least some of their feelings and actions' (Hollway and Jefferson, 2000: 27).

Another crucial aspect of the interview method was not to objectify the interviewees by diminishing, as far as possible, the imbalance of power in the research relationship (Stanley and Wise, 1983). Women's accounts could be constrained by the perceived power of the researcher (Hollway and Jefferson, 2000), however, by contrast, some of the professionals were in positions of power and privilege in relation to the researcher

(Mikecz, 2012). Therefore, establishing trust and credibility was an essential part of the interview process, from the initial email or social media contact using the participant information, to the interview itself. Given the vastly differing perspectives of participants and the need to accommodate how people 'produce themselves' (Rapley, 2001: 308) as competent in relation to their experience, profession and/or institution, the interview method required a combination of flexibility and focus. Semi-structured interviews were chosen with open-ended questions and follow-up requests, to expand or clarify answers that would encourage participants to: 'raise issues that were important to them and express their own meanings and interpretations' (Shiner and Newburn, 1997: 520)). The questions would function to gently bring the conversation back to perspectives of bail and safety practices where necessary. Each interview finished with an open-ended question to check participants had no outstanding comments, whether on the subject of bail or any other topic (Healey and Rawlinson, 1993).

The questions in the topic guide were flexible with the aim of being responsive to the participants, as well as: 'conversations with a purpose' (Burgess, 1984: 102). However, they specifically covered participant experiences of bail use, process of bail, function of bail, expectations, communication between professionals and victim-survivors, and amongst different professional groups, and their understanding of bail as a protection mechanism. The range of questions was designed to elicit empirical information and knowledge, as well as explore their practice, subject positions, affective attachments or aversions to bail and any relational effects of discourse and affect travelling across individuals, groups and institutions (Marcus, 1995).

### 3.5.1 Participants and Recruitment

The rationale for deciding which professional participants to recruit was a combination of the agencies identified by the Home Office, 'Domestic Abuse: Statutory Guidance Framework' (2022) as responsible for addressing domestic abuse, and any specific roles within those institutions and specialist women's organisations identified in interviews with women victim-survivors. The target roles for professional participants were as follows: police officers, CPS lawyers, barristers, magistrates, universities, social care,

housing, health, Independent Sexual Violence Advisors (ISVAs), Independent Domestic Violence Advisors (IDVAs) and family law solicitors.

Finding and then building trust with completely different groups of participants such that they felt confident to agree to an interview was the result of a range of measures, and some groups proved inaccessible.

In the first instance, participants were contacted about the research via initial emails or social media messages to introduce the study and invite their involvement. Subsequently, comprehensive participant information was sent to victim-survivors, criminal justice actors and professionals if they expressed an interest in the research, as was a consent form (see Appendices 2 and 3) that included the opportunity to withdraw from the research at any time without providing a reason, including after the interview.

The following section 3.5.2 discusses ethical considerations and explains the consent form in more detail.

Both documents were branded with the LSE Media and Communications logo. Emphasising academic and institutional credentials was intended to attract criminal justice and professional participants as well as reduce any perceived status imbalance between them and the researcher (Welch et al, 2002). In particular, I was keen to recruit from criminal justice actors and professionals working in 'sacred spaces' (Eliade, 1961) such as bail hearings, where power is exercised without women's participation, while also being aware that their work lives were likely to be extremely busy. The positions, identities and pre-conceptions of researcher and participant are dynamic during the recruitment process (Mason-Bish, 2019), a fluidity which can be exacerbated by the topic under research. As such, I assessed some participants as having status representing a barrier that I would need to break through, however what became clear was participants generally, whatever their role, were inclined to take part if the research was presented as relevant to their experiences (Berger, 2015). As a result, giving them the opportunity to tell their story allowed many to reflect on bail use as an under-researched topic, and our associated positions shifted in relation to each other during our conversation.

Secondly, as part of my grey literature search, I found the differences between bail and civil protection orders initially confusing, in part due to the reform and proliferation of

orders focused on domestic abuse (CoP, 2018; Home Office, 2024a). As a result, I shared a table (see Appendix 1) for comment on LinkedIn, a professional networking social media platform. To my surprise, professionals from police authorities, housing associations, social care, charities, local councillors and domestic abuse trainers commented that they also found information on protection orders hard to keep up with and shared the table online.

Thirty people asked for a copy to be emailed to them so they could share it with their networks and internal teams, at which point I took the opportunity to ask them if they would participate in the research and/or share the participant information. Offering to share this small piece of work online and responding positively to comments built rapport, positioned my knowledge as being in tune with participant motivations (Negrin et al, 2022) and at the same time, demonstrated I was open to learning from others' expertise. The research offered no incentive for participation, however the gesture of gifting knowledgeable labour allowed me to ask for support in return which yielded participants from the police, housing, specialist women's organisations and one victim-survivor.

Thirdly, having worked in a Rape Crisis Centre, I had several personal contacts which I hoped might aid recruitment of women, particularly those in marginalised groups who had reported rape such as prostituted women, black and minoritised women, disabled women and so on. I therefore contacted women in frontline and second tier women's organisations that I knew, or knew of me and my research, to request if they would canvas for participants. Criteria for women participants included, having reported rape or serious sexual abuse, the perpetrator having been granted bail at any stage in the investigation or prosecution, being over 18 years old, fluent spoken English and no ongoing police or CPS investigation. All contacts replied positively and agreed to share the participant information but only two women were recruited as a result, although the professional sample snowballed from those contacts with participants from housing, education, Independent Sexual Violence Advisors (ISVAs), Independent Domestic Violence Advisors (IDVAs), magistrates and a family law solicitor.

Of interest in this method of recruitment was the response of magistrates, where a personal introduction led to three individuals agreeing to participate in an interview.

Magistrates require permission from the Judicial Office, Human Resources team to take part in research, but it proved impossible for either me or the magistrates themselves to get a response. In some frustration, I emailed the Magistrates' Association, to be informed that they do not support PhD research. This led me to search for alternatives, interviewing the CEO of a justice campaigning organisation who used to be a magistrate and a court reporter as alternatives. It also directed part of my grey literature search towards oral and written consultation responses from the Magistrates' Association relevant to bail use.

Fourthly, I emailed and followed up with a targeted list of twenty-nine frontline organisations that specialised in supporting deaf women, disabled women, black and minority ethnic women, older women, prostituted women, homeless women and refugee and asylum-seeking women with whom I had no previous involvement. Organisations were deliberately chosen across England and Wales to avoid a geographic bias and provide a breadth of experiences in the data. Unsurprisingly, this was the least fruitful but most time-consuming. Some organisations told me the women they supported were constantly asked to participate in academic projects and were 'exhausted' by contributing to the research of others, or that the organisations themselves had no capacity to identify women who might want to participate.

By far the most frequent response from specialist support organisations was that the more vulnerable or marginalised the women, the less likely they were to report having been subjected to rape and if they did report, they were more likely to withdraw from the process. The second most common reason given by organisations was a combination of bail no longer being applied by the police in the majority of rape cases, or women who reported having no idea whether bail had been applied in their cases or not. It is possible this second reason is connected to victim-survivor withdrawals from the justice process, however this is outside the scope of the research.

Finally, by far the most productive method of recruitment without previous connections was X, a public social media platform, where conversations online led to five women, two barristers, a court reporter, a health specialist, two justice campaigners and two police officers agreeing to participate. Posting up a general tweet about my research with the poster attached as a picture did not get many responses, I only have a small number of

around 1,500 followers, and tagging X users with large follower bases into my recruitment tweet also failed to generate much engagement. However direct conversations with individuals demonstrating compassion, knowledge and genuine interest, built trust and credibility which allowed me to make a request for people’s time.

The health specialist was recruited from outside of the England and Wales legal jurisdiction. Despite women mentioning the importance of safety post-reporting when they were heavily pregnant or in hospital after giving birth, the response from personal contacts in midwifery and others contacted independently, was that bail was not relevant to their role. This caused a problem in that health participants were not motivated to take part, therefore, when a health specialist contacted me from Scotland, outside the England and Wales legal jurisdiction of the research, I chose to interview her.

The eventual number of women victim-survivors, criminal justice and professional participants in Table 3.5.1.1 below.

### 3.5.1.1 Table of Participants

<b>Participant</b>	<b>Number interviewed</b>	<b>Sex</b>	<b>Locations</b>	<b>Specialism</b>
Victim-Survivors 9 adult survivors of rape.  1 born from her mother’s rape.	10	All female	1 Cambridgeshire 1 Cornwall 1 Ireland 1 Lancashire 4 London 1 Sussex 1 Tyne & Wear	All experienced the perpetrator being granted pre and/or post-charge bail. Most for more than 12 months. None post-conviction bail.
Police	5	All male	1 DS Surrey 1 DS Hampshire 1 DS Durham 1 DS Nottinghamshire 1 Retired Chief Superintendent*	Responsible for applying bail in adult domestic/sexual offence units, 1 in trafficking unit
Barristers	2	1 Female 1 male	National	RASSO* cases
Family Law Solicitor	1	Female	West Yorkshire	Represents women victim-survivors of rape through civil

				protection order applications.
Child Protection Social Worker	1	Female	West Midlands	Working with children & parents/guardians.
Health Specialist	1	Female	Scotland	Domestic abuse victims-survivors
Housing Specialists	2	All Female	1 West Midlands 1 North East	Domestic abuse victims-survivors
University Welfare Officer & University Disciplinary Manager	2	All Female	West Midlands	Welfare/disciplinary in rape cases.
ISVA	3	All Female	1 Brighton 1 Cornwall 1 Cambridgeshire	Independent Sexual Violence Advisers
IDVA	2	All Female	1 West Midlands 1 Oxfordshire	Independent Domestic Violence Advisers
Support Worker	1	Female	Cornwall	Learning disabled women
Justice Reform Campaigners	2	All Female	National	1 Criminal justice focused 1 Rape victim's rights focused
Court Reporter	1	Male	National	Public interest including RASSO** cases.
<b>Total</b>	<b>33</b>			

\*The retired officer was a Chief Inspector who specifically requested his last work location remain anonymous. He is therefore referred to as 'Retired Chief Inspector' throughout.

\*\*RASSO – Rape and Serious Sexual Offences

A thumbnail sketch of each victim-survivor participant is available at Appendix 5.

All criminal cases had been concluded before our interview.

Justice outcomes for women victim-survivor participants were as follows:

- Five women's rape cases went to trial, with three guilty and two not guilty verdicts
- Two women had the rape offence dropped by the CPS but continued to trial for other connected offences, with one guilty and one not guilty verdict
- Two women's rape cases were dropped (no further action) at the police stage
- In one woman's case, the CPS offered no evidence one month before the trial date, only informing her afterwards.

With regard to bail breaches:

- Three women were confident there had been no breaches of bail by the perpetrator
- Two women were unsure what the bail conditions were and therefore whether there had been any breaches
- Four women reported breaches of bail, three of them multiple times
- One woman was not aware bail conditions were connected to her safety, had not seen the rapist's face during the attack and was not permitted by the CPS to see a photograph of him, so could not have reported a breach of bail.

### 3.5.2 Ethical Considerations and Consent.

The responsibility for conducting ethical research includes protecting both participants and researcher from harm. The research follows ethical principles which guide studies with women participants who have experienced sexual violence (Downes, Kelly and Westmarland, 2014: 1), in particular to consider them as active agents and stakeholders in research aimed at social justice and change.

Consent in feminist research is an ongoing process of ethical thinking (Clark and Walker, 2011) with participants which attends to contextual responsibilities when interviewing women who have experienced trauma. Signing consent forms is just one moment of confirming participants are fully informed and irrespective of signing the form, participants could withdraw up to an agreed point in the writing of the research. All participants were offered a written summary of the research once it is completed (Cromer and Newman, 2011). The consent form (see Appendix 3) was designed to allow women victim-survivors and other participants to agree to all, or only some of the

requests. Most participants digitally signed the consent form and emailed it before the interview, some signed in person and others verbally agreed to consent at the beginning of our recorded online interview. No participants had any questions about the consent form, however some wanted to know more about the research before the interview started and some, once the interview had ended. None of the women victim-survivors were living with the perpetrator at the time of their participation.

Given the feminist participatory principles and ethics of the research process, it felt respectful to offer each woman victim-survivor a digital copy of the interview recording their own voices and experiences, although few accepted. If other participants had requested a copy of their interview, I would have been happy to oblige, however none did.

Qualitative research with potentially vulnerable participants such as victim-survivors of rape, includes risk management as an essential ethical framework, exemplified by LSE's research ethics approval. This ensures research is based in participant respect and autonomy but also rigorous academically, and in its consideration of potential risks and harms to participants and the researcher, herself. The research was approved by LSE's research ethics committee in December 2021, before any participants were recruited.

All participants were offered anonymity, although some of the women had waived their anonymity after the perpetrator was found guilty to campaign for justice system improvements through media work. Other women who did not get a guilty verdict, were using pseudonyms on social media platforms to speak out, campaign and find communities of support (O'Neill, 2018). Therefore, some women specifically requested their real name be used and as part of the ethics of sharing decision-making power, in circumstances where they had obtained a guilty verdict, I agreed. In order to maintain the privacy of participating criminal justice actors and professionals and encourage open discussions, their identities are all anonymised. A few criminal justice participants were concerned about how they would be referred to and the assumption that it is best practice to always anonymise professional participants in sensitive research may sit in tension with significant contributions to knowledge (Godfrey-Faussett, 2022). This aspect of anonymisation would benefit from further consideration in future research.

I made no assumptions about what women victim-survivor participants might need in terms of support during or after the interview. All had been, or were currently engaged with various services and groups, some in high profile campaigns, and giving information regarding support services was a matter of discussion based on the women's understanding of their own needs and my experience having worked in a Rape Crisis Centre. All of the women victim-survivor participants independently echoed feminist scholars' criticism of 'trauma discourse' (Mortimer, Fileborn and Henry, 2021: 145) as deficit rather than asset focused. They all informed me that participating in research, campaigns, consultations and media reporting was an important and positive part of their healing. Also significant in terms of 'trauma discourse' (ibid) was the women's strongly held belief that the behaviour and attitude of individuals working in criminal justice agencies had traumatised them as much as, if not more than the rape itself.

As a consequence of encountering many of the women survivors on X, the social media platform, I connected some of the women to each other online (without declaring they had participated), as well as to other women on X that were either survivors or closely associated with a survivor. The women very quickly built a supportive community online, met each other in-person and communicate regularly on a WhatsApp group. They have subsequently joined each other on protests, campaigns and podcasts and I continue to promote and support them online including referring them to journalists, government organisations and consultations where appropriate. I have also worked with one of the women to launch a podcast called '[Take the Stand](#)' which offers a place for any victim-survivor of rape to read out their Victim Impact Statement, predominantly for the first time.

Lastly, I was unable to recruit victim-survivor participants who were or had been homeless or prostituted, and I interviewed only one victim-survivor of colour and few disabled women. This was partly because they rarely report being subjected to sexual violence but possibly, also because of my position as a white, able-bodied, middle-class woman.

### 3.5.3 Topic guides and Interviews

The topic guide (see Appendix 4) for each set of participants was related to their professional or personal role but allowed for discussion of elements regarding bail and protection of victim-survivors that emerged as important to their feelings and understanding. Questions for each topic guide were informed by the literature review in Chapter 2 and previous research (Learmonth, 2018), and a common core of questions were developed that applied across all participants.

Interviews lasted between 45 and 90 minutes whether online or in person, and participant information and consent forms requested permission for the conversations to be audio recorded and subsequently transcribed. Before each interview, participants were asked if they had any questions about the research or their consent and were then asked if they were ready for me to start the recording. Some participants, both women and professionals outside criminal justice, expressed worries they had no information relevant or useful to the research, they were reassured they were not the only person to have such thoughts and that I had a series of questions designed to draw out their experiences. After the first couple of questions, it was rare that they did not have a great deal to say.

I opened the interview with a broad question, asking if they could tell me about themselves and what made them decide to take part in the research. In most cases, their answers dictated the order of the follow-on questions or clarifications. The questions became so familiar to me that I was comfortable with the order and phrasing of them changing according to the flow of the interview conversation. All participants addressed a number of the questions naturally, as part of the conversation, with their experiences structuring what felt important to them during their account. The question “what do you think is the purpose of bail?” from the perspective of criminal justice actors, professionals and victim-survivors, consistently remained the same and was always asked towards the end of the interview. Having had the opportunity to talk about their empirical experience of and practices around bail for at least half an hour to an hour beforehand, the answers to this particular question were more revealing of relational, situated and affective attachments or aversions.

I initially chose to offer women victim-survivors a face-to-face interview which was accepted by seven women with the eighth woman preferring to be interviewed over Zoom. After what was intended to be the end of the data collection phase, two further women participated who I interviewed over Zoom; one who was in Northern Ireland and another who I had met on X. The ethical concerns of conducting online interviews around sensitive topics have traditionally (Sproull & Kiesler, 1986) included restricted rapport-building due to less non-verbal, social context cues, issues of participant privacy, emotional distress and technology issues (Lobe, Morgan and Hoffman, 2022). While meeting women in person was my preferred option, it had always been my intention to interview criminal justice actors and professionals online to accommodate for widely dispersed participant locations and the advantage of squeezing an interview into busy diaries (Pocock et al, 2021).

Since the COVID pandemic and the ubiquity of video-based applications for everyday use, such as WhatsApp and Facebook, online discussions have become far more familiar to many people (Lobe, Morgan and Hoffman, 2021) and, in certain respects, can provide more agency to participants in terms of muting, turning off their camera, halting recordings or requesting a break (Thunberg and Arnell, 2021). I found that applying the same ethics and care to online interviews as I would to those in person meant that both interview types met the needs of target populations and my own need to recruit from a wide range of professionals and locations (Lobe, Morgan and Hoffman, 2021).

Women who participated were offered a copy of the interview recording with only three of ten women accepting the offer. Reasons for refusing were for some, a combination of not wanting to hear themselves talking, or talking about their experience specifically, and for others, having talked about it so many times, they no longer felt the need to retain their testimony. The women who participated were strongly invested in their interviews being used to improve the experiences of others and offering them a copy of their words was one small way of ethically acknowledging: 'the production, dissemination, and control of access to information and knowledge dissemination are all issues of power' (Brabeck, 2021: 457). Although all research participants should have some control over their data, this is particularly crucial for women who 'have had their control, agency, and

dignity taken from them' (Campbell et al, 2023: 61) and why I did not proactively offer the recording to professional participants.

Each interview ended with me asking whether the participant had anything else they wished to add or to talk about. Women victim-survivors wanted to know what might change for the better as a result of the research whereas criminal justice and professional participants either thanked me for the opportunity to think through bail use in a way they never had before or brought up specific areas of policy and practice that troubled them. Many of these additional areas were out of the research scope. Some victim-survivors asked me if I had been subjected to male violence, a question I engaged with and answered openly as part of my commitment to understanding my own participation experiences (Decker et al, 2011) as well as a feeling of 'we', rather than 'us' and 'them' in the research process (Brooke and True, 2008). This aspect of the research is discussed in more detail in Section 3.2.2 above.

### 3.5.4 Transcriptions

One of the research objectives is to analyse the mythic and affective in the discursive to: 'produce textured, lively analyses of multiple modes of engagement and to understand the working of power through patterns of assemblage' (Wetherell, 2013: 349). Therefore, transcriptions from the Zoom audio were verbatim, initially passed through the 'Transcribe' tool in Word, with the subsequent document checked and edited word-by-word for accuracy against the audio. Transcripts were supplemented by notes taken immediately after each interview.

There were thirty-three transcript documents in all, ranging from ten to twenty-eight pages in length. Names, locations, some dates and other possible identifying elements were redacted in all transcripts, according to the need for participant anonymity. Data was kept on a secure server at LSE with all copies of the interviews removed from portable devices as soon as they were uploaded to the server.

As an aside, Microsoft Word is too coy to transcribe the words 'rape' or 'rapist', substituting stars (\*) for each letter, implying a judgement that such dirty words should not be visible. I found this censoring hypocritical and patronising, as well as a decision that is neither neutral nor Microsoft's to make.

### 3.6 Texts

In the process of researching bail and reading for this research, it has become clear that the boundaries of bail discourse from the victim-survivor perspective are not easily described, mainly because of the methodological absence of any crime victims across decades of research and policy on bail (CoP, 2016; 2017; Hucklesby, 2015, HASC, 2015). So, building on Marcus (1995), I decided to follow the discourse rather than prescribing analysis based only within institutional boundaries. However, the scarcity of focus on bail from the victim perspective of any crime type resulted in bail discourse travelling predominantly across criminal justice agencies' legal, guidance, policy and evaluation documents. References to discourses in interviews provided alternative directions to follow, but bail use and agencies' corresponding responsibilities to victim-survivors outside of criminal justice was either absent or a non-performative, circular ritual (Dept for Education, 2024; Home Office, 2022; HMICFRS, CoP and IOPC, 2024).

Searching for references to bail in other domains such as housing, social care and health brought up information on the needs of suspects or defendants who were on bail, support services for victim-survivors of domestic and sexual abuse or no mention of bail at all. I could find nothing in a selection of national policies and guidance on domestic and sexual abuse clarifying the victim-survivor protection responsibilities of institutions such as housing, social care and the Children and Family Court Advisory and Support Service (CAFCASS), where a perpetrator was on conditional bail for domestic or sexual abuse (Ministry of Housing, Communities and Local Government, 2021; BASW, 2021; CAFCASS, 2024; Dept of Health, 2014; RCN, 2024).

The study of documents as 'vehicles of discourse' (Freeman and Maybin, 2011: 160) carrying ideological allegiances is an essential part of capturing the point where: 'practices of government become formal or official to the extent that they are documented' (Freeman and Maybin, 2011: 156). Consequently, texts were collated following government discourses on tackling, investigating and prosecuting rape and serious sexual offences which focused on bail, referenced bail or where bail was conspicuously absent. Others were from specialist women's organisations supporting and/or advocating for women victim-survivors, some of whose staff participated in an interview. Further texts were included from justice reform organisations who

responded to government policy and practice and offered evidence from the perspective of those who work with victim-survivors and victim-survivors themselves.

### 3.6.1 Search Strategy

Due to the lack of evidence with regard to bail (Home Office, 2021b), searches for grey literature initially used terms in combination, such as ‘rape’, ‘prosecution’, ‘CPS’, ‘women’, ‘victims’, ‘police’, ‘criminal justice’, along with ‘bail’, adding parameters to narrow searches within institutional domains such as ‘housing’, ‘remand’, ‘disability’, ‘homeless’, ‘black and minoritised’, ‘older’, ‘elderly’, ‘social care’, ‘social worker’, ‘university’ and ‘education’. A number of high-profile government documents specifically aimed at identifying issues with the criminal justice process for victim-survivors of rape from ‘end-to-end’ were included, whether they contained reference to bail or not.

Secondary searches were completed within these documents using a number of broader, criminal justice, specialist women’s services and victim-survivor-focused terms such as, ‘protection’, ‘civil orders’, ‘safeguarding’, ‘safety’ and ‘risk’, ‘remand’ as well as ‘bail’ and ‘bail conditions’. This was as a direct result of interviews with victim-survivors confirming that too often, they were not informed about the purpose of bail, whether it had been applied in their case or if it had, what the conditions were. It was also a consequence of bail being infrequently mentioned in documents from both criminal justice and other public sector institutions that are often engaged with women victim-survivors of male violence (Home Office, 2022). Additional texts snowballed from government documents which referenced previously written reports covering overlapping perspectives of policy and practice evaluation, or first-hand testimony from criminal justice actors such as barristers or magistrates, and victim-survivors.

Although earlier texts were referenced as part of a historical and contextual situation of bail legislation and policy, the sample was narrowed down by concentrating on the period from 2018 to 2024. This is intended to take into account the significant changes in pre-charge bail legislation in 2017 (Gov.uk) which subsequently led to a devastating drop in bail use (CWJ, 2019) and the modification of these reforms in 2022 (Police, Crime, Sentencing and Courts Act) as an attempt to address the issue.

Once the process was complete, the sample consisted of forty-five texts spanning national guidance from criminal justice agencies, government reviews of agency processes and reviews of agencies' practice by justice inspectorates who sit independently of statutory agencies and government. The documents focused on sexual violence and domestic abuse and/or criminal justice issues, mentioning bail use, the effectiveness of bail, bail law or bail as an intersecting issue of concern. Documents from the women's sector were focused on specialist sexual or domestic violence services reporting gaps in the safety of women and children who reported male violence that included bail use. These reports included evidence from women victim-survivors, specialist lawyers, frontline and second tier specialist services, academics and ISVAs and IDVAs from services mentioned by some victim-survivor participants in their interview. Additional texts were from organisations campaigning for justice reform which discussed bail but were not specifically focused on male violence against women and girls.

What was striking in some documents (Home Office, VKPP, NPCC and CoP, 2024; CWJ and Imkaan, 2023) was the use of a woman's case study referencing the danger to her of bail breaches and the failure of criminal justice agencies to appropriately respond, sometimes leading to the loss of a woman's life, without bail being mentioned again throughout an otherwise comprehensive report. This was also apparent in Domestic Homicide Reviews (DHR) which do occasionally mention bail as a point of failure (Standing Together, 2015) but do not record it (Home Office, 2016; 2024b), despite poor practice with regard to breaches of conditions identified as a contributing factor to women's deaths (Standing Together, 2015; CWJ and Imkaan, 2023).

The data analysis technique of 'bricolage' (Lévi-Strauss, 1962) follows bail discourse through documents describing policy and guidance, to evaluations of practice, and first-person evidence to government consultations. First-person interviews follow bail discourse on practices within criminal justice agencies and those engaged with women victim-survivors during the justice process. Stitching these dispersed fragments together to construct a different perspective of bail required an analytical framework that could follow the relational effects of discourse that privileges women as subjects.

### 3.7 Data Analysis

The absence of the voices and experiences of victims of any offences, let alone victim-survivors of sexual or domestic violence, in bail discourse (Learmonth, 2018) is a persistent methodological flaw in a mechanism presented as primarily for victim protection (CoP, 2018). As a result, the analysis foregrounds data from victim-survivor interviews as an essential source of previously missing knowledge.

This systemic lack of statistical data on bail (Home Office, 2021b; Justice, 2023) is a persistent barrier to empirical research, knowledge and visibility. Therefore, the data is necessarily qualitative, made up of ‘talk and texts’ (Wetherell et al, 2001: i) the analysis of which was interpreted through a synthesis of discourse, myth and affect theories.

Discourse analysis in this research, is a process of looking for patterns and signification of bail as protection which produce and sustain it as a mythical object. Discourse is the way in which bail meanings and effects travel across institutional domains, in and out of spaces, both everyday and sacred (Eliade, 1961). Strategies of affect in the discursive, mobilise or stifle responses to and understandings of bail. Affect through discourse will be analysed in terms of how it produces the subjectivities and identities of the research participants, and its consequences, particularly for women victim-survivors, and how this in turn maintains the myth of bail as protection.

Discourse is interpreted broadly as a: ‘cluster of ideas that provide ways of talking about issues’ (Lovett, Coy and Kelly, 2018: 6). The analysis critically engaged with differing perspectives and power positions from which ways of knowing about bail as protection produce, circulate and make-meaning. Data analysis will give primacy to victim-survivor’s voices as part of a feminist investigation (Åhäll, 2018) recognising counter-discourse (Alcoff and Gray, 1993) as valuable, as well as relevant points of resistance influencing how women subjected to sexual violence construct themselves and are constructed in relation to power (Alcoff, 1988).

The relation between mythic and affective discourse lends itself to a focus on constructions of identity, ideology and power (Wetherell, 2012). This perspective of data analysis will demonstrate the influence of the affective-discursive dynamics of bail on how women victim-survivor’s social identities and subjectivities are positioned,

responsibilised (Rose and Miller, 1992) and disciplined across discursive fields. The analysis will pursue the idea that subjects can be regulated and constituted by the affective-discursive patterning that characterises myth, thus what is represented as apolitical logic may conceal an affective interpellation forming mythic conditions of existence (Persson and Petersson, 2014; Della Sala, 2017).

Because bail cannot be interrogated through empirical verification, using myth, discourse, and affect in a conceptual framework provides tools essential to the analysis. A more detailed discussion can be found in Chapter 2, but in summary, myth allows for reflexive research exploring concepts that carry with them a sense of implicit authority and collective social understanding (Fricker, 2007). Since our knowledge of what is ‘true’ is mediated through experts, bail as protection is absorbed through discourse filtered by authoritative individuals or institutions who are generally distanced from everyday spaces (Petlevych, 2020). Discourse accepted as knowledgeable truth then motivates social beliefs, whose effects contribute to material reality in relation to a subjects’ identity and positioning (Dotson, 2014). Therefore, the power of any attachment to a particular myth is constructed as contextually relevant to our individual experience of the practices of those authorities (Berlant, 2011).

Interviews and supporting texts are analysed to draw out how discourse is delivered and received and, just as crucially, how gaps and silences carry meaning: ‘within sequences of action’ (Goodwin, 2006: 6; Åhäll, 2018; Wetherell, 2012). The aim is to see first-person interviews and texts as situated material to develop knowledge (Frank, 1995) rather than data to support existing theories.

Since victim-survivor’s voices in bail discourse have been notably absent (Learmonth, 2018), it is essential that the analysis foregrounds interviews with them as primary sources of knowledge. A focus on practices, however, necessarily leads to multiplicity in participants and texts, since realities enacted each make up fractional elements of the assemblage (Wetherell, 2012). An analysis of discourses constructed by individuals and institutions responsible for the protection of the public as well as ISVAs and IDVAs working in specialist women’s support organisations (see Table of Participants, Section 3.5.1.1 and Glossary for definition of terms), will reveal how and where the myth of bail as protection functions and with what consequences. The methodologies used for

analysis question bail's framing as 'arbitrary, rarely neutral, and always powerful (Nader, 1996: 4), opening up: 'contested epistemological spaces' (Yeatman, 1994: 191). Åhäll puts it succinctly: '[t]he methodological approach is about how, through a moment of affective dissonance, a representational gap is identified, and a feminist curiosity about gender, agency and political violence is sparked' (2018: 47).

### 3.7.1 Pilot Study

A preliminary pilot of the methodology and analysis was revealing. The original intention was to use a case study methodology with women's testimonies as the central hub, then the testimonies of women's family, friends and institutions around her at the time the perpetrator was on bail, as spokes which influenced her understanding of her safety. These extended 'hub and spoke' case studies would focus on a holistic understanding of how bail use affects the lives of women who report rape across a broader landscape of their lives.

However, although the first two women I interviewed consented to provide the institutions, contacts or names of those who had been instrumental to their understanding and expectations of protection during the investigation and prosecution process, I came across some expected and unexpected obstacles.

Institutional responses to requests for an interview were rare, despite my contacts with them keeping the woman anonymous and removing any indication of whether their influence had been positive or negative. One institution replied that I could submit written questions only, to which they would respond if they chose, another referred me to their website safeguarding policy which did not mention bail. Although I had envisaged there being some difficulties in gaining access, it became clear that engaging 'spoke' stakeholders from specific institutions named by women survivors would take more time than was feasible with no guarantee of participation (Welch et al, 2002).

Where I had expected less in the way of access concerns was recruiting family and friends to participate as a manifestation of their support (Banyard et al, 2010). My expectation grossly underestimated the impact of secondary trauma on this cohort (Ahrens and Aldana, 2012). Some expressed a willingness to participate but subsequently withdrew by ceasing to reply to communications from me. Their reasons

were not made explicit, but by keeping in contact with some of the women I interviewed, I was aware the traumatic impacts of rape and the behaviours of criminal justice agencies and actors were long-lasting, damaging and raw. It was my belief that those closest to the women and witnessed the consequences of their victimisation, experienced a similar sense of exhaustion as some of the groups of women I contacted who decided not to participate (see section 3.5.1 above).

Ethically and practically, immediate changes to the methodology were required. Instead of only interviewing institutions and organisations directly engaged with the women, I decided to target those organisations and roles mentioned as important by women participants but widen recruitment across England and Wales. For instance, where women mentioned a hospital maternity unit, recruitment for participants could be from any maternity unit prepared to contribute. I also targeted professionals in agencies identified by the Home Office, 'Domestic Abuse: Statutory Guidance Framework' (2022) as having a safeguarding duty for victim-survivors of sexual and domestic abuse.

The changes greatly improved the effectiveness of participant recruitment and broadened the types of institutions from which participants came. For example, the women interviewed did not mention housing as an issue, however the Home Office (2022) framework lists 'local housing and homelessness teams' (1) as having statutory victim-survivor safeguarding duties. Interviews with housing specialists yielded a huge amount of information regarding bail use and its impact on women subjected to domestic abuse which would have been absent with the original methodology.

A pilot of the data analysis took data from a study on the use of bail in rape cases (Learmonth, 2018), chosen in the absence of any alternative research from the victim or victim-survivor perspective, and the government response to a public consultation on pre-charge bail (Home Office, 2021a).

After the pilot analysis, my primary supervisor, Professor Lee Edwards and I met to brainstorm the key connections, dependencies and drivers between myth, discourse and affect theories. The subsequent rewriting of the theoretical framework helped to unearth my own voice and responsibility as an author (Kerr, 2020). The pilot study, although initially disappointing, led to refinements addressing weaknesses in the

methodology and theory that resulted in a more effective analysis of the data through the conceptual framework.

### 3.7.2 Preliminary interview analysis

The thirty-three interview transcripts that made up my participant sample were split into three groups for preliminary analysis. Please refer to the table at section 3.5.1.1 for more information:

Group 1: Eleven participants made up of: nine victim-survivors of rape, one woman born of her mother's rape plus one victim's rights focused justice reform campaigner who was also a victim-survivor of sexual violence.

Group 2: Ten participants made up of: five police officers, two barristers, one family law solicitor, one court reporter and one criminal justice focused justice reform campaigner.

Group 3: Twelve participants made up of: one child protection social worker, one health specialist, two housing specialists, one university welfare officer, one university disciplinary manager, three ISVAs, two IDVAs and one support worker of learning disabled women, Separating groups allowed for analysis across overlapping and distinct group key patterns. Some of these were initially introduced based on interview notes made during the process of transcription, some as a result of the Grey Literature Analysis (Chapter 4) some from the Literature Review (Chapter 2), and others from reading and re-reading the transcripts. Following Miles and Huberman (1994), I also observed where participants repeated phrases, words or similar anecdotes which indicated the most repeated patterns. Codes were applied using an inductive approach: 'strongly linked to the data themselves' (Patton, 1990 cited in Braun & Clarke, 2006: 83). The process was not linear and required iterations of reflection on the data set and revision of codes numerous times to settle on an interpretation derived from the data. Text length within coded data ranged from a sentence to a few paragraphs and each code was given a description to try and keep the consistency of instances identified (Flick, 2009). This was initially completed in Word before importing into NVivo 14 for further analysis.

### 3.7.3 Secondary interview analysis

The victim-survivor and criminal justice datasets (Groups 1 and 2 above) were initially analysed together through the conceptual framework. The twenty-one transcripts from Groups 1 and 2 were imported into Nvivo 14 and assigned to one or more of twenty-seven codes, corresponding to five key patterns across the data :

1. Threat and escalation
2. Inclusion and exclusion
3. Waiting and its consequences
4. 'Affective bargaining' (Berlant, 2011: 95)
5. Non-performative rituals and circularity

Each key pattern contained between four and six codes which were edited through the process to ensure they were described in a way that promoted their identification across the initial two datasets of participants. For example, the 'affective bargaining' pattern contained the six codes below:

1. Affect as empirically observable practices of participants. E.g. sharing fear-inducing or strategically partial information to motivate women victim-survivors to particular action.
2. Practices based on past, present and anticipated future – what counts/matters.
3. The 'work of attachment' (Berlant, 2011: 94), ambivalence or aversion, creating subjectivities e.g. the ideal victim-survivor who leaves a perpetrator based on traditional norms. Jarring changes to victim-survivor circumstances reframed as logical/desirable.
4. Foregrounding the potential for a positive outcome and backgrounding the costs of achieving it.
5. Coercing victim-survivor's 'safety work' (Kelly, 2012) that obliged them to expend time, energy and resources to protect themselves or as an act of care.
6. How stakeholders circulate statements of commitment (Ahmed, 2012) to bail as protection as an interpretation of their moral and/or professional obligations.

An iterative process of coding, re-reading transcripts along with the theoretical framework led to further academic reading based on insights and relationships that were not initially anticipated. The result was the development of five themes that were applied to victim-survivors and criminal justice actors' interviews. As a result codes were reorganised across these themes to better represent the meaning of the data as it related to the research questions as follows:

1. Forms of ignorance
2. Commitment carriers (Ahmed, 2012)
3. Boundaries of knowledge and space
4. Responsibilisation (Rose and Miller, 1992) of women through:
  - a. Credibility evaluations
  - b. 'Ideal' victim identity (Christie, 1986)
  - c. Victim-survivor labour

After completing the secondary analysis of victim-survivors and criminal justice actors' interviews, I moved on to coding the twelve professionals' interviews (Group 3 above). It was immediately clear that the professional's data overlapped with some of the codes and themes used to analyse Groups 1 and 2 but some were not applicable. I decided to add 'Ambiguity' as a theme from the professional interview data, so the final themes became as follows:

1. Forms of ignorance
2. Commitment carriers (Ahmed, 2012)
3. Ambiguity

The use of NVivo 14 software allowed for an easier mechanism of identifying thematic connections between and within the groups I had created. Consolidating the codes within NVivo 14 according to the data patterns, led to fresh and relevant insights that expanded the theoretical framework beyond the original concepts outlined in Chapter 2.

It is important to note that the research analysis was not a standard thematic process in that, interpreting meaning and knowledge from these patterns required parsing the participant's words as part of the themes through the conceptual and theoretical framework. This secondary analysis obliges the researcher to have previously immersed

herself in the texts and conceptual framework, as well as having a sufficiently robust theoretical framework to create meaning.

In conclusion, the process provided a clear characterisation of the relationships between the three groups of participants and the implications and consequences of the myth of bail as protection for women who are subjected to rape.

### 3.8 Limitations

There are a number of limitations to note;

1. The research will be carried out under England and Wales law only.
2. Participant recruitment of particularly marginalised victim-survivor groups such as, homeless women, prostituted women and minority ethnic women was unsuccessful for a variety of reasons (see section 3.5.1, Participant Recruitment above). Given the under-researched nature of bail use across the entire criminal justice process, marginalised groups would benefit from targeted research that recognises their unique needs, positions and barriers by a researcher with an established trusted relationship.
3. Data collected applies predominantly to pre and post-charge bail rather than post-conviction bail which remains a critically under-researched area from the victim-survivor perspective.
4. The 'limited evidence base' (Home Office, 2021b: 7) on bail has been accommodated within the methodological design. However, the lack of statistical and monitoring data on bail practices remains a void in information that Government should consider a grave flaw if they are serious about delivering on their promise of bail as an effective protection mechanism for women and children victim-survivors of domestic and sexual abuse.
5. The thoughts put forward in this thesis will only be transformed into knowledge when they are adopted by a larger community (Harding, 1992), and this process is, to a large extent, out of my control.

Despite these limitations, the value of this thesis is in the new knowledge of the implications and importance of bail use across the entire criminal justice system for victim-survivors. The research challenges the presumption of bail as victim-survivor

protection with grey literature and first-person evidence, setting the scene for bail as protection to be included in its own right, as an object of inquiry across academia, policy and practice.

### 3.9 Conclusion

This chapter presented the research design and rationale, a description of the participants, their recruitment and interview process. It outlined the research strategies along with researcher decision-making processes as part of the data analysis, as well as the research limitations.

The methodology focuses on the perspective of victim-survivors, however it became clear that bail as protection would benefit from research prioritising each criminal justice agency, each professional institution or organisation, and the people working in them who are responsible for women's safety. Identifying gaps and poor practice in the bail process is simply a starting point, the questions this raises are based on cultural and personal affective motivation and it is to the theories of affect that 'rational' government institutions must turn. In affect as a feminist theory and methodology I found, not the 'constitutive other of "reason"' (Åhäll, 2018: 37) but a method of exploring the related effects of demoralisation, resignation, deflection and uncertainty on bail practices by criminal justice and professional actors on decision-making, attitudes, discourse and behaviour.

The benefits of a methodology following the discourse of bail, was also a challenge to data collection and analysis. Interviewing across a diversity of groups and actors meant the analysis and its structure into chapters would be an organic process to accommodate connected but contradictory and conflicting views. Putting previously disconnected texts and participant interviews in dialogue with each other through a synthesis of myth, discourse and affect will uncover empirical findings as well as presumptions, judgements and value systems, all of which are relevant to the research questions. This aims to reveal patterns of incoherence, inconsistency and absence across the interview and text datasets that will raise compelling concerns about bail as protection. The key dialectic of the affective in the discursive functioning of myth (Wetherell, 2012) is intended to explain how bails' power circulates beyond rational considerations (Wetherell, 2013) and ultimately how this influences responses to and

support for victim-survivors during the justice process (Lupton, 2013; Bergstrand and Jasper, 2018). The methodology will explore how affect establishes familiar explanations for poor bail decisions (Piscitelli, 1980; Wetherell, 2012) thereby resisting institutional change.

A feminist methodology that rejects isolated legal distinctions of bail, and instead, follows the travel of myth, affect and discourse and their relation to power, is a deliberate decision to engage in 'continuum thinking' (Boyle, 2019: 19), where the limits of bail as an object of research are, as far as possible, set by women victim-survivors.

The following chapter presents the analysis and discussion of the grey literature data, starting a process of unravelling the tensions and conflicts contained in bail practices. It is my sincere hope this research helps to improve the experiences of all victim-survivors.

## **4: Uncovering the gaps: A grey literature analysis of bail and the myth of protection.**

### **4.1 Introduction**

The strength of a review is in no small part dependent on the availability and quality of relevant literature, however research on bail use from the perspective of victims and specifically victim-survivors of sexual and domestic violence, is scarce (Learmonth, 2018, Home Office, 2021b). Therefore, the range of documents included is broad and multi-disciplinary, combining limited evidence to: ‘make the most of available resources’ (Lévi-Strauss, 1966: 17).

The advantage of approaching texts as ‘bricolage’ (Lévi-Strauss, 1962), or rather, as a researcher ‘bricoleuse’, is the opportunity to put independently created texts in dialogue with each other. Tracking the interpretations to meanings across institutional and organisational texts (Marcus, 1995) reveals the evolution of practices in different spaces, professions and across boundary conditions that perpetuate the myth of bail as protection. When put in a position of speaking directly to each other, texts which interpret bail illustrate contradictions and constructions, betraying what forms, concepts and subjectivities are fixed, and what are fluid, under what conditions (Barthes, 1993).

The review is presented across four sections; the first is a short summary of the document inclusion criteria, the second examines discourse on bail in criminal justice and government literature particularly as it refers to victim-survivors. Documents written by criminal justice agencies promote the ideal characterisation of themselves, the construction of bail as protection and its effectiveness. Correspondingly, these set the scene for the subject position of women victim-survivors of male violence and their advocates in the women’s sector.

The third section identifies where the ideal discourse of bail, set out in criminal justice and government literature is contrasted with behaviours, attitudes and actions in practice. It follows contradictions and absences through documents that demonstrate the communicated ideal discourse of bail as victim-survivor-focussed protection, is an affective-discursive: ‘fantasy image’ (Ahmed, 2014: 129).

The fourth and final section explores the circulation of bail discourse as it is carried through national specialist women's organisations which advocate for victim-survivors of rape and whose member services host the ISVA and IDVA roles, some of whom participated in interviews. It illustrates pragmatic compromises regarding their knowledge of how valid institutional commitments to bail as protection might be, as well as the uneven consequences for victim-survivors: 'behind the hopeful narrative' (Ahmed, 2012: 134).

## 4.2 Inclusion criteria

The documents reviewed are a combination of national guidance from criminal justice agencies, government reviews of agency processes and reviews of agencies' practice by justice inspectorates who sit independently of statutory agencies and government. Documents relating to bail in the women's sector are particularly focussed on national specialist sexual or domestic violence services reporting their concern for the safety of women and children who report male violence. These reports include evidence from victim-survivors, specialist lawyers, frontline and second tier specialist services and academics. Additional information is drawn from organisations campaigning for justice reform who are not specifically focused on male violence against women.

Search terms such as 'education + bail' or 'safety + housing + bail' almost exclusively returned information relevant to suspects' or defendants' rights rather than victim-survivor-focussed concerns. Therefore the 'scavenging' (Baker and Nelson, 2005: 344) technique of bricolage has led to a review of diverse grey literature texts. Nevertheless, to develop a pattern from this multiple domain patchwork, relevant to the research question, texts were included that had two or more of the following characteristics:

1. From a specialist women's organisation that hosted ISVA or IDVA roles, some of whom supported women victim-survivors who participated in an interview, or their related national organisation.
2. Focussed specifically on sexual violence against women or domestic abuse policy and mentioned bail use, the effectiveness of bail, bail law or bail as an intersecting issue of concern.

3. Focussed specifically on the gaps in protection of women subjected to male violence through criminal and/or connected civil mechanisms.
4. Focussed on legal or policy reform with particular reference to bail and/or remand as connected concerns.

For a more detailed description of the document numbers, types and selection process, please refer to the methodology in Chapter 3.

The following section outlines how criminal justice agencies present bail as an ideal and victim-survivor-focussed mechanism of protection for women and their children after reporting rape.

### 4.3 Bail discourse – the legal and institutional ideal

Institutional responses to well-documented failures in the criminal justice system (HM Govt, 2021a; 2021b) to live up to its ideals frame concerns as temporary in: ‘a narrative of national recovery’ (Ahmed, 2014: 109). Institutions that commit to improving practices on behalf of their beneficiaries remain valued and valuable, so a discursive act that ‘demonstrates accountability and responsiveness’ (Edwards, 2020: 1549) generates a continuous identity associated with the institution, whose power effects rise above any mistakes made in the past or present.

This section is taken from institutional documents provided as a ‘public service to which self-interest is subordinated’ (Edwards, 2020: 1547) and whose publication is primarily positioned as motivated by practices grounded in accountability.

Although bail can be applied to a suspect of any crime, this research is focused on its’ use in cases where women have reported rape, whether in a domestic abuse or sexual violence context. Where documents refer to ‘victims’, I have repeated that language, nevertheless I use ‘victim-survivor’ when specifically discussing women subjected to rape.

‘Suspect management’ is included because of its distinct corollary with ‘victim safety and care’; if a suspect is effectively managed throughout a rape investigation and prosecution, the victim-survivor feels, and is, safe and cared for.

The full definition of the terms used in this section can be found in the ‘Glossary’.

### 4.3.1 Who is legally a victim?

The updated Victim's Code (MoJ, 2024) clarifies a victim is someone who has been subjected to harm caused by a criminal offence 'committed, or subject to criminal proceedings' (ibid) to acknowledge a victim's rights before charge or conviction.

For the first time, the Domestic Abuse Act (2021) defined children as victims of domestic abuse in their own right if they: "see, hear or otherwise experience the effects of abuse" (ibid: Part1, Section 3).

Also for the first time, people born of rape are acknowledged as victims in their own right, in an amendment to the Victim and Prisoner's Act (2024). The reform is called 'Daisy's Law' after the woman who successfully campaigned for the change in legislation (CWJ, 2023).

### 4.3.2 Victim-survivor safety and care

Pre-charge bail guidance states: '[t]he primary consideration of an officer determining bail conditions should be the safety and protection of the victim, children and the suspect' (CoP, 2018: 11) and officers should: 'ensure that bail conditions help to protect victims, children and witnesses from intimidation and abuse and do not conflict with existing court orders' (ibid: 12). Custody officers are reminded: [w]hen considering granting pre-charge bail to domestic abuse suspects... that delays can compromise the safety of the victim, any children and others associated with the allegation made' (CoP, 2018: 11).

Before officers release a suspect on bail, the guidance recommends officers inform them that:

*'it is the suspect's responsibility (not the victim's) to comply fully with any bail conditions. Any breaches of bail will be treated as such even if the suspect and/or victim state that they have reconciled or the victim has made contact with the suspect' (CoP: 2018: 13).*

However, it is important to note that if a suspect, defendant or rapist fails to answer bail, they are guilty of an offence, however breaching bail conditions pre-charge, post-charge or post-conviction is not an offence (PACE, 1984; CPS, 2023; Bail Act, 1976: Section 4).

Responsibility for breaches resting with the defendant is echoed in the CPS (2024) legal guidance on domestic abuse which also recommends that post-charge: '[p]rosecutors should ensure that any bail conditions requested prioritise the safety of the adult and child victim and any dependents.' This is accompanied by an extensive list of locations, spaces and circumstances that should be considered with regard to bail conditions safeguarding both women and children (ibid: 'Bail and Remand').

Pre-charge, post-charge and post-conviction bail conditions are intended: 'to protect victims or witnesses, preserve evidence and mitigate the risk of further criminality' (CoP, 2022: 5). The types and number of conditions applied to a suspect are unlimited but must meet the threshold of being: 'necessary, reasonable, proportionate and capable of being enforced' (CPS, 2023). Nevertheless: 'bail with conditions should always be considered in any domestic or sexual abuse cases' (CoP, 2022: 6).

Finally, criminal justice agencies are required to respond to victims sensitively, demonstrating 'care and compassion' (Crest Advisory, 2023: 3) rather than merely complying with the process, and should provide: 'empathetic support or considering individual victim's experiences' (CJI, 2023: 5).

#### 4.3.3 Victim-survivor consultation

Before applying pre-charge bail conditions, police officers have a statutory duty to seek victim-survivor's views on any bail conditions applied: 'if reasonably practicable' (Police, Crime, Sentencing and Courts Act, 2022). Additionally: 'Custody officers should refer to victim statements, interview records and any available victim personal statements before making decisions relating to conditional bail' (CoP, 2018: 11). However, it is not necessary for the police to consult a victim-survivor before deciding to end bail and conditions after an initial three months, or at any other point during the investigation, only to inform them of what decisions have been made within a day (MoJ, 2024).

Once the CPS decide there is enough evidence to charge a suspect and: 'when dealing with [post-charge] bail hearings in court, prosecutors should ensure that the victim's views are considered, in deciding whether to seek a remand in custody' (CPS, 2023: 'Victims and Witnesses').

In any further hearings relevant to bail such as appeal, varying conditions, assessing breaches, bail extensions or remand hearings: '[p]rosecutors must keep the issue of bail under review throughout the life of the case' (CPS, 2023: 'The Right to Bail').

#### 4.3.4 Victim-survivor understanding of bail and conditions

According to the Victim's Code (MoJ, 2024), victim-survivors of rape have the right to be told within one working day when a suspect is released on bail, whether he is on pre or post-charge bail, what conditions are applied and any subsequent changes to those (MoJ, 2024: 22 and 24), along with any explanations necessary.

Where victim-survivors have trouble understanding or retaining information, the first right in the Victim's Code (MoJ, 2024) states that: '[y]ou have the Right [sic] to be helped to understand what is happening and to be understood' (ibid: 12). This includes consideration of 'any relevant personal characteristics which may affect your ability to understand' (ibid: 12) and any assistance required: 'due to the impact of the crime' (ibid: 12).

Victim-survivors also have the right to be told the date, time and location of any hearing relating to their case (including bail and remand hearings), and the right to attend those hearings. If victim-survivors choose not to attend, they have the right to be informed of the outcome of any hearing within one working day (MoJ, 2024: 27).

The obligation to ensure all victims receive their rights applies to all criminal justice agencies, including the police, CPS, courts services and the probation service (MoJ, 2024). Data collected on the Victim's Code (MoJ, 2024) across responsible institutions (ibid) is required not only to assess technical compliance, but also the quality of interaction with victims (CJJI, 2023: 5).

#### 4.3.5 Suspect management

Pre-charge, post-charge and post-conviction bail is used as a management tool requiring suspects, defendants or rapists respectively, to: 'answer their bail at a specific time, date and location' (CoP, 2022: 19). If they fail to answer bail, they are guilty of an offence however breaching bail conditions pre-charge, post-charge or post-conviction is not an offence (PACE, 1984; CPS, 2023: Bail Act, 1976: Section 4).

Post-charge, magistrate pronouncement cards (Sentencing Council, 2021) inform a defendant that: 'If you do not come back to court at that date and time, you may commit an offence. You could be arrested, fined or sent to prison. If you commit an offence while on bail your sentence will be greater'.

The time periods and extensions that govern bail also help to regulate the length of police investigations, where regular scrutiny of a case provides a framework for timely progress (Centre for Crime and Justice Studies, 2019).

#### 4.3.6 Proactive enforcement of bail conditions

Policing bail breaches, pre, post-charge and post-conviction is proactive: '[c]ompliance with bail conditions should be actively enforced so that perpetrators understand that there are consequences to their actions and victims can have improved confidence that the police will take action in the event of a breach' (CoP, 2018: 15).

Despite breaching bail conditions pre, post-charge or post-conviction not being an offence (PACE, 1984; CPS, 2023; Bail Act, 1976: Section 4), reported bail breaches can be used to build a case for current or additional charges: 'if properly documented' (CoP, 2018: 15).

Once the Police have arrested the suspect for breaching bail conditions, they are encouraged to enhance victim-survivor safety by applying for a civil protection order (CPO – see Glossary for definition) as well as conditional bail, and check whether a CPO is already in place and may have been breached (CoP, 2022).

Post-charge, a defendant who breaches his conditions will be brought before the magistrate's court within 24 hours. It is the responsibility of the police to provide 'sufficient information' (CoP, 2018: 16) to evidence the breach, including officers giving 'live evidence' (ibid: 16) which: 'can be very persuasive' (ibid: 16).

#### 4.3.7 Sharing relevant information

Police case files should be as comprehensive as possible which: 'assists in the effective prosecution of the case and can be used in the protection of the victim and any children when applying for a remand in custody' (CoP, 2018: 7). If a victim-survivor chooses to withdraw their statement, any other evidence regarding the suspect becomes central to

proving the case (ibid: 7), such as relationship status, previous threats or offending (such as witness intimidation), licence conditions, CPOs and breaches of those or of bail conditions pre-charge (ibid: 7-8). The CPS will be made aware of this information as relevant to bail decisions when the police request charging advice (CoP, 2018: 9).

Once bail with conditions is applied, police 'control rooms and intelligence databases are updated regarding bail conditions, in case of future calls' from victim-survivors reporting breaches or witness intimidation (CoP, 2018: 13). Throughout the progress of the case, any changes to bail and conditions at any point are updated across relevant databases, control rooms and operational units (ibid: 17).

Before a sexual or domestic abuse case comes before the magistrate's court, post-charge, the CPS are obliged to review and record evidence relevant to a defendant's pre-charge bail or remand status, as well as provide instruction on the prosecutors' approach to the post-charge bail hearing. Prior to the suspect's first appearance at court or an application to vary bail conditions, and where the CPS have received either the police case file or relevant case information, the prosecutor will ask the police for their view on existing and future bail and conditions (CPS, 2023) before the hearing. This should include any relevant information such as previous or current CPOs and any breaches of those:

*'It is vital that Prosecutors recommend the appropriate course of action to a Court in connection with bail and that sufficient comprehensive information is available to a Court in connection with the decision whether or not to grant bail' (CPS, 2023: 'Introduction').*

In addition, the magistrates themselves have 'a right and a duty to ensure that [the court] has all the information needed to make the decision' (Judicial College, 2023: 32) on bail or remand. This should include relevant victim-survivor's views communicated by the prosecutor, as per the requirements summarised in the 'Victim Consultation' section above.

In conclusion, the institutional ideal of bail as protection is presented as a victim-survivor-focused, connected and sequential process. Once victim-survivors have given their witness statements, provided a Victim Impact Statement and any views on

their safety needs, their bail requirements are spoken and decided upon by criminal justice actors. The constraints bail applies to a perpetrator are presented as definitive rather than negotiable, for instance all bail breaches are dealt with in the same way, rather than evaluated against a hierarchy of seriousness. This creates the perception that the danger posed by perpetrators is controlled through independent and expert consideration of their behaviour by criminal justice actors. The documents identify criminal justice institutions and their actors as the locus of rational knowledge and associated decision-making. Affective knowledge resides only in the woman, her statements and protection claims.

The next section examines whether the ideal discourse of bail is reflected in practice across the numerous criminal justice domains where decisions on women's safety are taken.

#### 4.4 Bail discourse in institutional practice

The presence or absence of bail discourse across domains illustrates how meanings are constructed by women who report rape as well as the professionals and criminal justice actors they rely on, in spaces only accessible to those who hold positions of power. Those locations, such as court hearings, are generally associated with values of expertise, knowledge and credibility (Fricker, 2007; Dotson, 2014).

To understand how ideal institutional discourses are translated into practice, it is necessary to examine criminal justice and government literature that connects bail use, policy and law. Following criminal justice constructions of bail as protection and its effectiveness also reveals how victim-survivors are positioned in relation to their knowledge and understanding of bail.

##### 4.4.1 Who is legally a victim?

CPS Legal Guidance on domestic abuse (2024: 'Bail and Remand') recommends that:

*'[p]rosecutors should ensure that any bail conditions requested prioritise the safety of the adult and child victim and any dependents. The victim should retain as much freedom of movement as possible by curbing the ability of the defendant to approach or intimidate them, such as at home, on the way to work, school or*

*college, regular social venues, extended family homes, when taking children to school, or when socialising with friends’.*

This excerpt suggests that women who fear reprisals can successfully request bail conditions based on their experiences of an abusive man, however this is not the case. Bail conditions can only be applied where there is evidence to do so that fits the interpretation of the Bail Act (1976), and women’s freedom, anticipation of intimidation or further abuse is rarely considered sufficient to meet the requirements of being necessary, proportionate and enforceable. For instance, the Phase 2 report of the ‘Joint Thematic Inspection of the Police and CPS’s response to rape’ (CJJI, 2022) cautions that: ‘[p]rosecutors should not accept, without careful enquiry, any unjustified or unsupported assertions about risk if release on bail were to take place’ (112).

However, the recommendation to ensure bail conditions prioritise children as well as adults does sit firmly within the current legal framework. The Domestic Abuse Act (2021) defines children as victims of domestic abuse in their own right where they: “see, hear or otherwise experience the effects of abuse” (Part 1, section 3). However, within a few paragraphs of CPS (2024) guidance, the meaning intention behind protecting children discursively drifts: ‘[a]rrangements regarding child contact will be managed by the family court and generally will not be a matter considered within a bail hearing’ (‘Bail and Remand’). Including children with their mother as named victims on bail conditions is a perfectly legal option and family court may arrange for child contact to be supervised away from the family home or, depending on how conditions ‘curb the ability of the defendant to approach or intimidate’ (ibid: ‘Bail and Remand’), bail may appropriately preclude any contact.

Indeed, policy on domestic abuse within the Children and Family Court Advisory Service (CAFCAS) originally recommended that prohibiting child contact with a convicted or suspected sex offender should be a safeguarding ‘starting point’:

*‘a parent being investigated by the Police for a sexual offence, has a conviction for a sexual offence and/or has served a prison sentence for a sexual offence, provides a clear starting point to inform a recommendation for a child not to spend time with that parent due to the significant risks that exist. In protecting victims of domestic*

*abuse, any departure from this starting point must be supported by a compelling rationale'* (FJGS, 2024).

This guidance has since been watered down by CAFCAS to individual assessments of children's risk of harm, taking into account an alleged or convicted perpetrator's: 'previous history and patterns of behaviour, reports of or known domestic abuse, safeguarding checks, previous findings of fact and criminal history' (Cafcass, 2025: 3).

Nevertheless, where there is, or has been, a criminal case against a parent, children as legally recognised victims of domestic abuse (Domestic Abuse Act, 2021) are being denied their lawful inclusion in bail conditions. Rhetorical commitments preserving the status quo allow 'institutional talk' (Ahmed, 2012: 130) to bestow the myth of bail as protection with the tangible impression of effective safeguarding while obstructing action on that very safeguarding. Legislative commitments to making children legal victims of domestic abuse in their own right (Domestic Abuse Act, 2021) are not necessarily enacted, while still justified as completely congruent with institutional principles. The discursive gesturing towards the priority of child safeguarding as an ideal, while simultaneously avoiding applying conditional bail to legitimately and legally halt child contact for the duration of a rape prosecution is therefore, satisfactorily reconciled.

Discourse on bail use and agencies' responses to victim-survivors outside of criminal justice was either absent or a non-performative, circular ritual. For instance, 'Keeping Children Safe in Education' (Dept for Education, 2024) has a small section 'Considering bail conditions' (ibid, 2024; 129) consisting of seventeen lines, the first seven tell us of the existence of pre and post-charge bail, with or without conditions and released under investigation. There is no mention of post-conviction bail. It goes on to describe addressing risk as a balance between the 'stress and trauma' (ibid: 129) of a victim-survivor and the 'rights of an unconvicted person' (ibid: 129). Moral commitments are no substitute for legal rights, and it is only the perpetrator that is positioned here as being protected under the law. Victim-survivors must rely on compassion, and education institutions are recommended to depend on the police investigation team for assistance on: 'arrangements' (ibid: 129). In terms of circularity, it follows a pattern of specific non-performative elements (Ahmed, 2012); bail is a victim-survivor protection mechanism, its use is decided by the police and courts, victim-survivors must demonstrate an

undefined level of ‘trauma’, but perpetrators have ‘rights’ and if in doubt, refer back to the police. The Home Office (2022) ‘Domestic Abuse Statutory Guidance’ which ‘focuses on [multi-agency] support for victims’ (12) follows an almost identical sequence. The circularity of logic implies an institution’s actions will be deliberate and intentional, but following the process takes you back in a non-performative loop. (Ahmed, 2012). Such gaps and absences allow institutional policy and practice purporting to address victim-survivor protection through bail conditions to generate a mythologised impression of priority and action that remains purely symbolic.

National government policy is held up as exemplary, yet there is only a vague notion of public institutions’ responsibilities to protect victim-survivors of rape during an investigation and prosecution, despite a perpetrator being on post-charge conditional bail for up to three years before trial (Ames, 2024). The clearly defined ‘rights’ of the accused contrasted with a victim-survivor’s nebulous ‘stress and trauma’ indicate concrete obligations to those suspected of rape as opposed to non-committal statements with regard to those subjected to rape. The selective nature of institutional bail discourse promotes the myth of bail’s protective qualities through a non-performative suggestion that power relations between women and the abuser have been authoritatively reconfigured in her favour.

#### 4.4.2 Victim-survivor safety and care

In 2019 the Government commissioned the ‘End to End Rape Review’ (HM Govt, 2021a: 3), the findings and actions of which were published two years later (ibid). The first aim of the report was to address the significant reduction in adult rape cases being: ‘referred [by the police to the CPS], charged [by the CPS] or reaching court’ (HM Govt, 2021a: 3). The second was to understand why: ‘one in two victims withdraw from rape investigations (ibid: i). An associated report published by the Home Affairs Select Committee (HASC, 2022) confirmed the ‘the typical delay between an offence of rape and the completion of the resulting criminal case increased to 1,000 days in 2021’ (15) with the same report quoting a, then, QC and Chair of the Bar Council stating: ‘most people accused of [rape] are on bail’ (ibid: 73).

Bail is not mentioned once in the 'End to End Rape Review' (HM Govt, 2021a) suggesting victim-survivor protection measures were considered irrelevant with regard to any alleviation of women's distress during the median time of over two and a half years to complete a rape case (HASC, 2022). Where bail is mentioned as part of the Home Affairs Select Committee report (2022), it is only to explain that those on remand are a priority for trial, which does not include the majority of rape defendants who, it is asserted, are on bail (ibid: 73). That there is no data evidence to support such a statement begs the question of why the assertion of extensive bail use was consumed as fact without further exploration. The most obvious answer is the indexing of credibility and value to the words spoken by a, then, QC and Chair of the Bar Association, despite specialist frontline women's organisations and barristers working with survivors of rape evidencing the exact opposite (CWJ, 2019; HM Govt, 2021b: 67).

What the myth signifies here is that bail is widely and satisfactorily used across criminal justice agencies and simultaneously, that scrutinising bail use is not relevant to the significant percentage of women's withdrawals after reporting sexual offences. The complete absence of bail in the 'End to End Rape Review' (HM Govt, 2021a) reinforces the power effects of a myth boundary which maintains a public silence, pre-emptively closing down inquiry in favour of multiple possible and seemingly adequate explanations. This creates a separation between areas where bail decisions are made, and everyday spaces shaped by women's expectations that decision-making power is in the hands of a competent and informed authority (Braidotti, 2011; Fricker, 2007).

In the same year as the 'End to end rape review' (HM Govt, 2021a), the 'Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales' (HM Govt, 2021b) was published. Despite also being named an 'end-to-end review' (ibid: 8) aiming 'to explore the experiences and views of the Police, CPS, support services, solicitors, barristers, defence practitioners and judges' (ibid: 8) the report does not refer to post-charge or post-conviction bail for rape defendants and perpetrators at all.

Again, in 2021, the College of Policing (CoP), Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and the Independent Office for Police Conduct (IOPC) responded to a super-complaint from the Centre for Women's Justice (CWJ,

2019). The super-complaint accused the police of: ‘failing to use protective measures, namely bail, non-molestation orders, Domestic Violence Protection Notices and Domestic Violence Protection Orders and restraining orders, to protect women and girls’ (CWJ, 2019 cited in CoP, HMIC and IOPC, 2021: 4).

The response (CoP, HMICFRS and IOPC, 2021) specifically focussed on pre-charge bail and makes this explicit; post-charge and post-conviction bail are not mentioned. Its reflection that ‘[t]here is evidence that imposing pre-charge bail on a suspected perpetrator, and the conditions attached to it, are linked with victims’ feelings of safety’ (CoP, HMIC and IOPC, 2021: 8) reveals an institutional understanding that bail creates an illusion, symbolic of protection which victim-survivors are encouraged to have faith in. The word ‘bail’ stands in for victim-survivor safety, presented by commitments whose sole function is to gesture towards reassuring and concrete future actions (Ahmed, 2012). Since the ideal discourse of pre-charge bail guidance states victim-survivor ‘safety and protection’ is the ‘primary consideration of an officer determining bail conditions’ (CoP, 2018: 11), this is arguably an admission by the police and CPS of their failure to achieve bail’s primary purpose.

Putting the documents in dialogue reveals pre-charge bail is simultaneously signified by two contradictory meanings in relation to context and convenience. Shifting discursive boundaries allow a woman’s feelings of safety when conditional bail is applied to be positioned by institutional actors as naïve and irrational, an interpretation by justice agencies that degrades the credibility of victim-survivors . Situated expedience, therefore, conserves the power of authorities to narrate the myth of bail as either a key victim-survivor protection mechanism or an affective attachment peculiar to victim-survivors of sexual and domestic violence.

The extensive list of places, spaces and circumstances identified by CPS (2024) guidance that should be considered with regard to bail conditions initially appears reassuringly comprehensive:

*‘at home, on the way to work, school or college, regular social venues, extended family homes, when taking children to school, or when socialising with friends’*  
(CPS, 2024: ‘Bail and Remand’).

There is no legally specified list of bail conditions, any condition can be requested (Judicial College, 2023: 36) and there is no limit on the number of conditions that can be applied (HoC, 2023a: 17), as long as they fit the criteria in the Bail Act (1976). However, in evidence to the Justice Committee (HoC, 2023b), the former chair of the Magistrates' Association was quoted as saying:

'simplicity was often key to the successful compliance of individuals with bail conditions... the court should not impose more than two or three conditions on a defendant, otherwise adherence to the conditions can become "ridiculously complicated"' (33).

As part of the original evidence, he reads out 'a written list of conditions' (HoC, 2022: 15) used by magistrates which are in fact, just '[e]xamples of frequently used bail conditions and the risk they are designed to address' (Judicial College, 2023: 35) from the Adult Court Bench Book.

Through repeated use a limited number of bail conditions acquire currency, and so conditions that exist merely as 'examples', over time, come to symbolise the only legitimate options. The list represents a tradition of respect for those magistrates and their decisions that have gone before, and forms a pattern that forecloses opportunities for contextual creativity in safeguarding women and children, in favour of the status quo:

*'in practice, most courts stick to a small range of conditions such as residence requirements, curfews, and banning defendants from seeing specific people. However, the lack of a framework setting out appropriate conditions leaves these conditions at the courts' discretion and therefore the conditions an individual could be subjected to is often dependent on where their case is heard'* (HoC, 2023b: 33).

Within this context, it is extremely unlikely that the relatively new statutory duty on police officers to ask victim-survivors their views on bail conditions (Police, Crime, Sentencing and Courts Act, 2022: Section 50B (5)) will in any way challenge the existing power relations that only assign legitimacy to a small number of familiar choices. The epistemological myth that limiting bail conditions protects the majority of women who report rape is supported by the credibility excess (Fricker, 2007) of those institutional actors whose myth it is.

#### 4.4.3 Victim-survivor consultation

The End-to-End Rape Review (HM Govt, 2021a) states: 'We must also capture better data on the victims' experience of the criminal justice system at each stage of the process' (4). However, the selection of what data and at what stages is taken by those with elevated epistemological and value status, in spaces women who report rape only have access to as 'sources of information' (Fricker, 2007: 131) rather than knowledgeable participants.

The complete absence of bail from the review (HM Govt, 2021a) strongly indicates that the effectiveness of bail as an end-to-end victim-survivor protection mechanism, potentially starting from when a woman reports rape and ending after a rapist's conviction, will consequently be absent from any data captured. The exclusion of bail as protection indicates there are no known systemic issues, leaving the responsibility of accommodating inadequacies to individual victim-survivors.

#### 4.4.4 Victim-survivor understanding of bail and conditions

The response to the CWJ's super-complaint accusing the police of failing to use protective measures on behalf of women and girls (CWJ, 2019; CoP, HMICFRS and IOPC, 2021) references 'The Tackling Violence Against Women and Girls Strategy' (HM Govt, 2021c). The strategy (ibid) refers to concerns regarding bail in a third report, the 'Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales' (HM Govt, 2021b). This third report acknowledges both ISVA and barrister concerns that increased numbers of suspects released under investigation (RUI – see Glossary for definition) in serious sexual offence cases leave victim-survivors: 'with the protections of bail removed and the process taking longer, victims could be at greater risk of harassment or intimidation by perpetrators to encourage victim withdrawal' (HM Govt, 2021b: 67). Implicit in the reference to 'RUI', is that the concern refers to pre-charge bail, however the use of the term 'bail' throughout the report never makes this clear, even to the extent that, in the glossary of terms and definitions (HM Govt, 2021b: 6), 'RUI' is explained but 'bail' whether pre-charge, post-charge or post-conviction is not.

The response to the super complaint (CoP, HMICFRS and IOPC, 2021) spells out a critical issue with pre-charge bail that equally applies to post-charge and post-conviction bail use: '[t]here has been only limited research on the question of whether imposing pre-charge bail increases either the actual or perceived safety of victims' (CoP, HMICFRS and IOPC, 2021: 8). The truth value of bail as protection is in the position of the actors telling its story, resonating in women through relations of power that shape their understanding of their material safety. Criminal justice agencies are therefore aware that bail as protection is a myth, but what counts is that bail and conditions are believed to be effective by those whose myths they are, whether they are victim-survivors wanting safety, criminal justice actors accepting only limited bail conditions as effective, or perpetrators of rape adhering to constraints.

The unchallenged legitimacy and continuous discursive circulation of bail as a victim-survivor safety mechanism (CoP, 2018; CPS, 2024) are institutionally acknowledged (CoP, HMICFRS and IOPC, 2021) as accepted by women who report serious sexual offences. This functions through the practices of criminal justice institutions to establish in women a hopeful proximity to the power to protect them from abusive men. Mythic rituals that gesture to power that is symbolic are still valuable methods of sharing meaning where: 'imposing bail with conditions can communicate to victim-survivors, suspected perpetrators and support organisations that the matter is being taken seriously' (CoP, HMICFRS and IOPC, 2021: 8).

How far that meaning is uncritically consumed in its' travels, however, contributes to bail decisions that reinforce women's oppression where systemic failures create a demand for individual victim-survivors to take responsibility for their own protection. For example, 'a failure to impose bail may limit the victim's ability to gain access to other services such as support and housing options and civil orders' (CoP, HMICFRS and IOPC, 2021: 8-9). If failing to impose bail limits the possibility of a CPO, imposing bail has the same effect: 'whilst there is no prohibition in law on a NMO [non-molestation order] being granted alongside bail, in practice NMOs are often refused on the grounds that there is another form of protection' (CWJ, 2019: 33).

In consequence, the 'symbolic signification' (Ricoeur, 1967: 355) of the presence of bail and conditions indicates a victim-survivor is not entitled to claim further protection from

a CPO. Whereas the absence of bail indicates she is overstating her entitlements to CPO's or housing support. The affective investment of institutions in bail as protection retains epistemic primacy over women victim-survivor's knowledge, positioning her identity in relation to conceptions of credibility excess and deficit (Fricker, 2007). These can reinforce axes of oppression that impact some women more than others across multiple institutional domains. The assessment of her claims, rather than the claims themselves, are consumed as truth effects. These effects are justified by the signifying power of the bail myth despite a real possibility of its application being withheld, delayed or applied due to other institutional interests or motivations affectively competing in spaces of authority .

One of the five 'key insights' (CoP, HMICFRS and IOPC, 2021: 43) in the response to the super-complaint (CWJ, 2019) was that applying bail increased women's feelings of safety. However, as part of this discussion another important insight is revealed that merited no further comment throughout the report:

*'[a]wareness of the application of bail or RUI was low among the victims interviewed. Victims did not understand the difference between RUI and bail, but they did understand when they were told a suspect could not do something... victims also frequently were unsure if bail was applied, and if it had been, whether it was pre or post charge' (CoP, HMICFRS and IOPC, 2021: 43).*

The position and subjectivity of women in this short description is clear; they are fixed and naturalised as 'unknowers'. They are excluded in discourse and decision-making, with their understanding of bail disconnected from the criminal process, limited to suspect constraints and sometimes, not even that. Practices that keep women who have reported rape in a subjugated position are unquestioned. Arguably, institutional frustration at the inadequacies of bail might over time shift routine practice towards not giving women sufficient information to be able to report a bail breach at all. An understanding of bail at any point exists across a boundary in a world where women hope officials benevolently enact power on behalf of their safety. The alienation of women victim-survivors from knowledge vital to their everyday lives accumulates power effects which accrue factual value, and consequently, the degraded position of women is not even noticed. The wider ramifications for women are manifest in their

disenfranchisement; they are unable to report breaches of bail conditions if they don't know whether bail was applied in their case, and without an explanation of the difference between pre-charge and post-charge bail or bail and RUI, they simply do not have the language to question what it is in their interest to know . Epistemically marginalising women allows their identity to be naturalised as naïve non-participants in the criminal process, rather than fully participating subjects, in a way that looks so innocent, it is undeserving of comment.

Consulting victim-survivors on their views of what bail conditions are required is a statutory duty (Police, Crime, Sentencing and Courts Act, 2022: Section 50B (5)), however, there is a felt difference between being women being asked as a subject 'knower' or an object 'unknower' (Fricker, 2007). Women's undermined epistemic subjectivity in the justice system positions them where agencies can consult, then legitimately dismiss their requests regarding bail conditions as unreasonable, or irrelevant to achieving their investigative goal.

Nevertheless, a glance at the Victim's Code (MoJ, 2024) informs us in 'Right 1' (12) that '[y]ou have the Right to be helped to understand what is happening' (ibid) whatever your ability or familiarity with the English language. References are also made to a victim's right to be told about 'bail' (ibid: 24) or 'Police bail' (ibid: 22) but at no point does the Code use the terms 'pre-charge' or 'post-charge' bail, referring to 'Police bail' and 'bail' (24) respectively. There is also no mention of post-conviction bail and no definition of bail or explanation of its implications for victim-survivors at any point in the criminal justice process.

Information between criminal justice agencies and victim-survivors of sexual offences is unevenly distributed, despite a recent joint inspectorate report repeating that compliance with the Victims' Code requires: 'much more than a tick in a box to say something has happened... More importantly, there was no evidence that the victim had fully understood the update.' (CJJI, 2023: 29). Achieving epistemic justice requires more than merely addressing gaps and inadequacies in concepts and language. It must consider the failure of institutions to intelligibly communicate in a way that allows women the opportunity to actively make sense of their position when bail is applied and therefore to successfully and meaningfully be able to express their safety needs .

The joint inspectorate report aims are: ‘to assess how well the criminal justice system meets the needs of victims, from when a victim reports an offence to after the offender has been convicted’ (CJJI, 2023: 1). Although the report briefly mentions pre-charge bail, it focusses predominantly on CPS responsibilities with regard to post-charge bail, and in the section covering ‘The post-conviction stage’ (ibid: 47), post-conviction bail is not mentioned. When a hegemonic group is silent, it is not a passive act, but an active practice. Women who are recognised from report, through the investigation and prosecution, as having useful information to impart, are involuntarily repositioned as having no information relevant to post-conviction bail conditions. The silence sustaining the ignorance of women victim-survivors functions to allow those positioned as epistemic agents to justify treating them as non-participants (Hookway, 2010). Women’s knowledge of the perpetrator has been a means to an end and her voice is no longer heard as a subject, an ‘epistemic objectification’ (Fricker, 2007: 133) she will feel at an affective level.

#### 4.4.5 Suspect management

CPS Legal Guidance on Domestic Abuse (2024) directs prosecutors and the judiciary, referred to here as ‘the court’, to understand that:

*‘It is the defendant who is subject to bail conditions, not the victim. The court should make clear to defendants that any breaches will be taken very seriously.*

*Where a condition has been imposed for there to be no contact with the victim, it does not matter whether the victim has agreed contact, or if the victim-initiated contact with the defendant. It is the defendant who is subject to the bail conditions and is responsible for compliance until those conditions have been lifted.’* (ibid: ‘Bail and Remand’).

The discourse is designed to communicate that decisive action will be taken on behalf of victim-survivors by justice agencies, irrelevant of whether a woman is coerced or voluntarily continues contact with a perpetrator who is on conditional bail. The implication being that in all cases, the consequences for breaches of bail conditions are fully understood by actors in the justice system to be solely the responsibility of the perpetrator. However, a report by JUSTICE (2023), a law reform and human rights

organisation, identifies ‘a significant lack of published data shedding light on [bail] decision-making in the magistrates’ courts’ (1), leaving a potential gap between what is said and what is done.

Whether prosecutors and magistrates making decisions on post-charge breaches of conditional bail follow this guidance on who is responsible may not be established in research, but evidence of public attitudes confirms the credibility of a rape victim-survivor is symbolised through distinct stereotypical exemplary behaviours. CPS-commissioned research shows where a woman is raped in a domestically violent relationship, significance is placed on her failure to end the relationship, rather than on the perpetrator choosing to stop his abuse (CPS and Equally Ours, 2024: 39).

Under the heading ‘Knowledge Gaps’ (ibid: 49), the research found:

*‘[t]here was an expectation that communication between perpetrator and victim would be limited after a sexual attack, demonstrating that participants did not have an understanding of how rape is perpetrated, or understanding of rape acknowledgment (this may have particular salience to rape within domestic abuse). Participants said that victims who did not display the behaviour they expected would be less believable to them’* (CPS and Equally Ours, 2024: 49).

The expectations of women’s responses to the men who rape them interprets reality in relation to each subject’s position (Piscitelli, 1980; Wetherell, 2012). Magistrates are themselves drawn from members of the public and are judicially but not legally trained, therefore it would be likely they also hold similarly biased views to those found in the research. As a result, victim-survivor protection through conditional bail may be accessible only within a proscribed code of female conduct that appears neutral, rather than motivated according to patriarchal gendered expectations (Franklin, Lury & Stacey, 1991).

#### 4.4.6 Proactive enforcement of bail conditions

The response to the CWJ (2019) super complaint suggests that changes are in hand with regard to bail legislation that are anticipated to ‘help address the concerns’ (CoP, HMICFRS and IOPC, 2021: 9) raised. Collecting data on RUI and pre-charge bail (CoP,

HMICFRS and IOPC, 2021: 9), the need to commission research (ibid: 9) and to revisit making breaches of pre-charge bail a standalone offence (ibid: 9) are framed as potential solutions to the reduction in officers' use of pre-charge bail.

The report goes on to uncritically describe how Non-Molestation Orders (NMOs), for which data is collected, research has been commissioned, and which are subject to a standalone offence when breached, are inconsistently followed up by police officers. It explains that even when breaches are followed up, increasing number of cases 'are not proceeding' (ibid: 10) and further, that court sentencing for breaches has been reducing over a period of seven years (CoP, HMICFRS and IOPC, 2021: 10). Indicators of issues buried in the machinery of criminal justice agencies point to serious concerns which remain unaddressed. Reduced sentencing by the judiciary may well account in some part for women's reluctance to report breaches or support criminal proceedings, as well as explaining the reluctance of officers to follow up breaches and ultimately, the lack of effective deterrent for perpetrators.

Therefore, proposing data collection, research and breaching bail as a standalone offence, although welcome, are inoculations (Barthes, 1993: 150), leaving the wider, systemic failures of the bail as protection myth unscrutinised. Despite breaching NMO's already being a standalone offence, issues of breaches not being followed up, not proceeding to court and reductions in sentencing when they do reach court, are acknowledged, but actions to address them left absent (Ahmed, 2012). Therefore it seems reasonable to argue that the proposal to make bail breaches a standalone offence will suffer from the same deficiencies. Nevertheless, offering a commitment to a new offence is a useful appearance of change for the better, while known systemic failures will still allow the bail as protection myth to remain unthreatened, non-performative, inadequate and symbolic, and women to remain in danger.

Since the report is focused on the actions of the police, a sign is raised at the beginning to recognise connected responsibilities across other institutions and organisations throughout the process:

*'[p]rotecting female victims isn't carried out by the Police in isolation: they work with many other organisations, including criminal justice partners, such as the*

*Crown Prosecution Service, the courts, Probation Service and the voluntary sector* (CoP, HMICFRS and IOPC: 2021: 5).

Despite the reference to processes linking partner organisations to women's protection, no link is made in the report between pre-charge, post-charge and post-conviction bail. It is the role of the police to monitor rape defendants who are conditionally bailed post-charge or post-conviction, make arrests for breaches and provide prosecutors with relevant information for bail or remand hearings (CPS, 2023; 'Sharing Relevant Information'). A focus on officer's use of bail (or CPOs) leaves undisturbed the 'structures of relationality' (Berlant, 2011: 13) that could expose the limited value of reforms in the face of criminal justice practices motivated by resignation, attachment or aversion to bail use right across the system, to the detriment of women's protection. The representation of bail in the collective knowledge of criminal justice agencies can degrade its value even while commitments to the contrary are communicated to victim-survivors by criminal justice actors.

How bail practices are influenced is illustrated by an Inspectorate report on the police and CPS's response to domestic violence which acknowledges: 'Police officers carry the essentially hidden demand of post-charge cases in addition to their live cases. This can result in less attention being given to these cases' (CJJI, 2022: 6). A structured hierarchy both demystifies and simultaneously justifies why this might be; one investigation is 'live', the another is not, giving them qualitatively different characteristics. Practices have developed in criminal justice spaces that 'hide the demand' on police officers of post-charge cases, reinforcing the distinction between those and 'live' cases and so providing an accepted operational rationale for inattention.

A police investigator describes their workload as: 'overwhelming' (CJJI, 2022: 26). A lack of institutional resources results in the transference of responsibilities onto women, who absorb a message communicated by the 'lack of enthusiasm' (ibid: 53) from officers that erodes their confidence in the criminal justice system.

College of Policing guidance on bail states that bail breaches may be used to build a case for current or additional charges: 'if properly documented' (CoP, 2018: 15). A page later, the same document admits: '[t]here is no prescribed content for a breach of bail file, but

there must be sufficient information available to the court to allow them to form the opinion that the bail conditions have been breached' (ibid: 16). The privileging or prejudicing of a woman's claims the perpetrator has breached his conditions is reliant on an officer having the time, experience and motivation to provide the prosecutor with such evidence as: 'a statement from the victim... an officer's statement, CCTV, copies of text messages' (ibid: 16). The more complete the types of evidence: 'the more likely the court is to form the opinion that the breach occurred. Live evidence from an officer, where relevant, can be very persuasive' (ibid). Officers will be well aware that if a breach is denied by the perpetrator: 'it is not unusual for a defendant to call witnesses to support his or her account. There is rarely a similar opportunity for the prosecution as they have no advance notice of the breach, prior to the defendant's arrival at court' (ibid).

Cultural practices evolve that reveal the prioritising decisions made in practice by criminal justice institutions. Evidence of the corrosion of officers' confidence in the value of spending precious time proactively challenging bail breaches is to be found in the current:

'lack of routine Police monitoring of compliance with conditions, the enforcement of conditions and the timely reporting of breaches which weakens confidence in conditional bail as an alternative to custodial remand' (HoC, 2023b: 33).

However, practices of non-performance denoting the low value and priority of bail travel across the criminal justice system with a Joint Inspectorate report finding:

*'[p]rosecutors didn't always set out their considerations on bail in the pre-charge review as they should. This means in many cases the court advocates had no instructions about bail. When there are no instructions, the prosecution advocate must read the case again, at pace, to decide whether to make an application for specific conditions to be attached to bail or for a remand in custody. This can sometimes lead to the prosecution advocate not applying for bail conditions or a remand into custody when they should have.'* (CJI, 2023: 35).

A CPS Inspectorate report in the same year tells us this is an embedded pattern of professional practice affecting two-thirds of cases going through the CPS (HMCPSI, 2023: 86). An inspection two years later (HMCPSI, 2025) reports the improved

compliance of the police in providing risk assessments to the CPS, (ibid: 20). However, there is no mention of the CPS compliance issues with regard to appropriately reviewing the need for conditional bail, post-charge, or scrutiny of the CPS failing to provide bail instructions to prosecution barristers (CJJI, 2023). These were raised as significant stand-alone problems in the 2023 inspection (HMCPSI, 2023: 86-87) but two years later, have disappeared (HMCPSI, 2025).

Non-performative bail discourse extends to investment in policy, with the Justice Committee noting they were:

*‘struck by the lack of guidance on the use of bail conditions. When sentencing, judges and magistrates must apply sentencing guidelines to determine the appropriate sentence. A framework for bail conditions, with accompanying guidance, could improve the effectiveness and consistency of the use of conditional bail’* (HoC, 2023b: 33).

Responses to the inadequacies of bail by public institutions can also motivate nothing more than the apathetic resignation of failure as inevitable. For example, a report on the police response to stalking (HMICFRS, CoP and IOPC, 2024) refers to a ‘lack of response by Police following breaches of protective orders [and] bail conditions’ ( 8, 91, 99), no ‘amendment to the risk assessment’ (91) after a breach, officers ‘reluctant’ to apply for CPOs if bail conditions are in place (17, 99), courts refusing CPOs if bail conditions are in place (99) and breaches of bail conditions not being seen as indicators of ‘serious, elevated risk’ (83, 90, 91).

The report goes on to make twenty-nine recommendations (ibid: 12), none of which mention the issues with bail and no further reference to bail is made. The institutional attachment to the bail as protection myth functions as a symbol to maintain power relations in the face of serious weaknesses and failures, where women’s compromised safety is accepted as inevitable.

Meaning is coded through repeated professional practices that are indexed to the value associated with the concept of bail, and behaviours replicated between individuals and institutions solidify structures of non-performance. It seems clear from the literature that many of the issues with bail as protection are already acknowledged by criminal justice

agencies and furthermore, those concerns are tolerated. Bail is a process woven throughout the criminal justice system rather than one particular agency, therefore points of accountability are distributed across multiple institutions. With no single locus of responsibility, the principal institutional reaction to this situation seems to be resignation of its inevitability.

#### 4.4.7 Sharing relevant Information

The government's 'Review into the Criminal Justice System response to adult rape and serious sexual offences across England and Wales' (HM Govt, 2021b) neglects to discuss the importance to post-charge conditional bail of a police decision to RUI a suspect pre-charge. Conditions applied pre-charge influence how likely the police are to recommend a rape defendant should be bailed with conditions post-charge, and how favourably a magistrate or judge will look on that request (CWJ, 2019).

The College of Policing guidance on bail makes the connection, stating:

'[w]here a suspect has been on Police bail with conditions, officers must not forget to reimpose them at the point of charge, unless the circumstances have changed and they are no longer applicable. If a defendant is bailed to court without conditions, magistrates are almost always persuaded by defence arguments that the Police must not have thought them necessary and that no further incidents have occurred, even where the CPS makes an application to add conditions to the bail' (CoP, 2018: 12).

The understanding here, is that it is not the circumstances and expressed protection needs of women reporting rape that influence whether post-charge conditional bail is applied on her behalf. The critical component is a sequence of events that have taken place elsewhere and without her participation. What is signified by police decisions to RUI, bail or bail with conditions is subsequently emptied of women's safety concerns. The myth of bail takes whatever elements of preceding events that suit its purposes to indicate the appropriate decision to make on her safeguarding, contingent only on what is included or excluded from the paperwork. Any misrepresentation of her protection needs is ritually bypassed in favour of the truth effects assigned to criminal justice actors who hold positions of power.

As decisions on bail move away from the woman who reported rape and into criminal justice spaces, institutional commitments to the myth of bail as protection overwrite her knowledge. For instance, before a sexual or domestic abuse case comes before the magistrate's court, the CPS are obliged to review and record a defendant's pre-charge bail or remand status, as well as the approach the prosecutor will take at the post-charge hearing. However, research evidence reveals that in the majority of cases, this action is simply not taken:

*'in two-thirds of the cases (180 cases or 66.7%) we assessed this aspect as not meeting the expected standard. Prosecutors were not identifying the suspect's bail status in their review, and/or, given the lack of instructions to the court prosecutor, were not evidencing any consideration of whether bail conditions would be appropriate'* (HMCPSI, 2023: 86).

The validity of the bail as protection myth increases as it moves further into criminal justice spaces and away from the woman under discussion. In this context, her experiences are filtered and expressed by institutional actors qualified in the rituals and language that structure how and what knowledge is received in such spaces.

Bail as a concept assumes different forms, with any distortions explained away in a form of 'epistemic arrogance' (Pohlhaus, 2017: 17). For instance, below, a magistrate denies responsibility or indeed any likelihood that court bail decisions he has taken or witnessed were not fully informed:

*'If a solicitor cannot do their job and they are not giving you sufficient information, or at least one option, that is not your fault as a bench of magistrates. In every court I have ever been in I can count on one hand the number of cases where there has not been sufficient information to make an informed decision regarding bail'* (HoC, 2022: 6-7).

The acknowledgment that conditions exist for uninformed decisions to be made on bail is immediately separated from that possibility in a defensive attachment (Ahmed, 2004) to the authority of the system, and its actors, as the ideal. The contradictory logic operates to protect and reinforce the bail as protection myth depending on the status of who systemic authority works for. Since: '[t]he court has a right and a duty to ensure that

it has all the information needed to make the decision' (Judicial College, 2023: 32) on bail or remand, it seems this obligation is, in practice, a faith-based assumption rather than a matter of fact (Ahmed, 2004). Further, it is a sustaining but prejudicial attachment by criminal justice actors, in spite of available evidence to the contrary. The legitimacy of judicial bail decisions, therefore, depend on those who take them remaining: 'largely ignorant of the unjust arrangements through which they benefit' (Pohlhaus, 2017: 17)

Similar epistemic practices are illustrated in a response to a Ministry of Justice consultation on 'Bail and Murder' (Judiciary of England and Wales, 2008), where a group of senior judges were asked if feedback on their bail decisions would be useful. They replied that feedback on the effectiveness of judicial bail decisions would be unlikely to: 'secure any useful end, given that bail decisions are essentially fact-dependent' (ibid: 6). The suppression of inquiry is in the judiciary's 'capacity as an epistemic institution' (Pohlhaus, 2017: 14) sharing unwavering belief in their knowledge, confident in their agreement that what is historically and self-referentially established makes feedback unnecessary. However, the hierarchical nature of who decides what is epistemically significant distorts knowledge production as a collective form of 'epistemic dysfunction' (Pohlhaus, 2017: 13) which incentivises 'targeted ignorances' (ibid: 18) in groups bestowed with the 'identity power' (Fricker, 2007: 16) conferred by dominant institutions.

Absences, silence, 'institutional talk' (Ahmed, 2012: 130), unevidenced assertion, contradiction between and within government and criminal justice policy and practice actively permit bail to avoid scrutiny. The consequences position women subjected to male violence in a double bind: responsible for their own safety despite institutional claims to protect them. Victim-survivors kept ignorant of systemic failures, naturally clingoptimistically to bail's promise of safety in a system that encourages that belief.. The literature suggests the rational and collective goals of bail as protection discourse, may in practice, be an unrealistic and idealised perspective.

It is in this context that the specialist women's sector works, sitting between criminal justice actors and victim-survivors, to reassure, support and improve the experiences of women who report rape. Women's organisations manoeuvre between deference to criminal justice statements of bail's effectiveness to protect, while not misleading or discouraging victim-survivors. The final section explores how bail as protection

discourse is reproduced or reconstructed within specialist women's organisations who advocate for women subjected to male violence.

## 4.5 Bail discourse in the women's sector

Specialist organisations dedicated to supporting women at possibly the most vulnerable and painful time in their lives are valued and trusted by those who use and need them. Their position, both working with and challenging the institutional power of criminal justice agencies, puts them in a unique location. Women's sector organisations have intersecting responsibilities to hold criminal justice agencies accountable for delivering protection for women they support, while in practical terms, having to accommodate bail's ineffectiveness. In the absence of alternatives, the myth of bail as protection offers the potential for victim-survivor-focused safety, a possibility to which specialist women's organisations are understandably, strongly attached.

This section examines how women's specialist sexual and domestic abuse organisations navigate bail as protection discourse and practice from their liminal position between criminal justice agencies and women victim-survivors of rape.

### 4.5.1 Victim-survivor safety and care

The focus of most women's organisations is to ensure the granting of bail conditions protects women in the context of it being: 'well known that separation and reporting to Police are periods of heightened risk in abusive relationships and the effectiveness of bail conditions can be critical' (CWJ, 2021: 2). The Homicide Timeline (Monckton Smith, 2020) identifies the point where women decide to leave and/or report the abuser as a 'trigger' (ibid: 1277) event, whether this separation is 'real or imagined' (ibid). This is the fourth in an eight-stage sequence of homicide risk (ibid). In this context, women's support organisations recognise: 'a lack of bail conditions makes [women] feel extremely insecure during a stressful and high-risk period following the reporting of an offence' (CWJ, 2019: 13).

The work of institutional language connecting bail with victim-survivor safety circulates and is repeated across justice and public domains as a fact; victim-survivor safety 'is given tangible qualities' (Ahmed, 2012: 130) when attached to the concept of bail. Unsurprisingly then, literature originating from organisations specialising in support for

women victim-survivors demand that the repeated language of bail as protection promoted by institutions, is delivered on in practice.

Circulating discourse also connects with an established value relationship across institutions between bail conditions and victim-survivor safety. Disqualifying the appropriateness of knowledge illustrating bail's limitations in spaces of power, sustains the signifying power of its effectiveness.

What is reproduced by such discourse is the denial of desperately needed and legally entitled victim-survivor protection whilst maintaining complete congruence with a commitment to values of victim-survivor safety. The Centre for Women's Justice super-complaint states clearly how a blind insistence on the effectiveness of bail precludes women from other protections:

‘whilst there is no prohibition in law on a NMO [non-molestation order] being granted alongside bail, in practice NMOs are often refused on the grounds that there is another form of protection’ (CWJ, 2019: 33; HMICFRS, CoP and IOPC, 2024).

Commitments to bail as protection speak from a multitude of affective and discursive perspectives shaped by police, CPS and judicial power relations. Thus, challenges to bail's non-performativity from one perspective can leave other epistemic limitations in the justice system undisturbed.

Frontline women's organisations confront many limitations in the bail system; perpetrator reoffending (CWJ, 2021; Advance, 2024; RCEW, 2023), lack of police and magistrates' enforcement for multiple breaches (RCEW, 2023; CWJ and Imkaan, 2023), leading to reduced victim-survivor confidence in reporting breaches and increased likelihood of withdrawal (CWJ, 2021; RCEW, 2023; Advance, 2024), lack of routine monitoring of conditions (Centre for Public Data, 2023; Criminal Justice Alliance, 2022), bail conditions rarely extended (CWJ, 2019, 2021; RCEW, 2023), use of a limited number of bail conditions (Centre for Public Data, 2023), no connection between risk assessments and bail conditions (CWJ and Imkaan, 2023; SCCJR, 2023) and the application of bail conditions incorrectly linked with justice agencies' perceptions of case strength (CWJ and Imkaan, 2023).

Women's organisations frame this confrontation in a more collaborative way, attempting to work with justice institutions to tackle issues with bail and conditions. For example, suggesting pre-charge bail breaches should become a criminal offence (RCEW, 2023) or that: 'a breach of bail conditions triggers a presumption that the Police use DVPN/Os' (CWJ, 2021: 2). However, the suggested solutions are detached from concerns the women's sector already has about the failures of police and magistrates to fund (Women's Aid, 2021), prioritise and understand (CWJ, EVAW, Imkaan and RCEW, 2020), respond to (Victim Support, 2019) or appropriately sentence for breaches of CPOs (Rights of Women, 2023) which are already a criminal offence (CoP, HMICFRS and IOPC, 2021). Nevertheless, the switch from 'bail' to 'DVPN/Os' recognises bail as an 'empty container', (Ahmed, 2012: 80) drained of its commitment to protect and therefore discarded in anticipation of a promise of future safety.

The work women's organisations do as 'commitment carriers' (Ahmed, 2012: 130) is a critical part of enabling justice agencies' discourse on bail as protection. Women in frontline organisations have a genuine desire for women who report rape to the police to be effectively protected from that point onwards. Therefore, as commitment carriers of the bail as protection myth, they have an optimistic and anxious attachment to: 'work *with* as well as *in* the gap between words and deeds' (Ahmed, 2012: 140, emphasis in original).

The circulation of what is too often, non-performative criminal justice bail discourse by women's sector commitment carriers implies to the women they support that action promised by the bail myth: 'describes what already exists' (ibid: 139). The implications leave individual women who work in frontline organisations with the responsibility to close or explain any gap between what is said and what is done. The result can lead to subjective feelings of uncertainty and doubt about the value of their work: '[s]upport workers feel undermined when they encourage victims to report breaches, but there is no Police response.' (CWJ, 2021: 2).

The abrogation by justice agencies of their responsibilities exacerbates women's fears and coerces disciplining effects such as limiting their movement, particularly in public spaces, or forcing them to relocate (CWJ, 2021; RCEW, 2023; Advance, 2024). The burden of responsibility falls disproportionately on victim-survivors: '[n]ot only were

women dealing with the Police and other agencies but they were still having to protect themselves (and their children) from their abusive partners' (SCCJR, 2023: 57). When safety work (Kelly, 2012) by women victim-survivors is a hidden requirement of bail, it sets: 'gendered expectations that have a huge amount of influence over our actions and beliefs' (Vera-Gray and Kelly, 2020: 269). Furthermore, this safety work that women undertake as a direct consequence of the non-performative nature of bail discourse obscures institutional failures to deliver on their commitment and preserves the publicly promoted illusion of bail's effectiveness.

#### 4.5.2 Victim-survivor consultation

The Centre for Women's Justice points out that victim-survivors should be consulted on what protection they need from bail conditions at every decision point, pre and post-charge, or at least at the same stages requiring consultation with the suspect and defendant (CWJ, 2021: 4). However they caution that it is not police practice to do so unless it is a statutory duty:

'It is not sufficient to say that it is open to officers to consult with victims if they wish, or that this can be included in the guidance... Based on current practice, we have no confidence that officers would consult' (CWJ, 2021: 4).

Having to be specifically invited to contribute what safety you require as a victim-survivor, confirms a starting position of distinctly outside the decision-making boundary (Ahmed, 2012). Despite victim-survivor consultation on bail conditions now being a statutory duty (Police, Crime, Sentencing and Courts Act, 2022), the lack of appropriate resources for women to make informed contributions perpetuates epistemic injustice in the bail system by design. The statutory duty merely distorts what form the injustice takes, thereby validating women's knowledge of their safety needs as untrustworthy or unwelcome interference, situated beyond the boundary of what is established as rational and appropriate.

#### 4.5.3 Victim-survivor/public understanding of bail conditions

Women's organisations demonstrate how victim-survivors of rape are subjected to the consequences but not the decisions taken about their safety. This is true not just at the

point bail and conditions are initially applied but throughout the process: “There is a lack of communication and a lack of transparency with the victim-survivor. This is especially the case regarding bail hearings. For example, if bail has been extended, [the victim-survivor] won’t know. No-one would have told them.” (Advance, 2024: 28).

The impact of a lack of communication, a lack of appropriate responses for breaches (Advance, 2024: 9), not knowing whether bail conditions will be extended or whether there are any conditions at all, releases feelings of anger and despair in women (CWJ, 2019) who must now protect themselves.

#### 4.5.4 Criminal justice understanding of bail conditions

Women’s sector organisations demonstrate a lack of bail conditions and enforcement as a long-standing pattern of practice (CWJ, 2019; 2021). However, the history of established practices unifies criminal justice actors across the entire process as epistemic agents. Preserving the traditional understanding of bail as protection necessitates the justice system remaining distanced and impenetrable to the epistemic labour of those on the outside.

The sense that criminal justice actors make of the operating conditions for bail use in practice is collectively recognised between justice agencies. For instance, if circumstances suggest there is a need for bail conditions to protect a woman after reporting rape, the police have the legal power of arrest on that basis alone (CWJ, 2019: 21). However, despite this resource being available, collective experience dominates, with officers ‘falsely believing that where a suspect is willing to attend voluntarily an arrest cannot be carried out’ (CWJ, 2019: 3) and therefore bail conditions cannot be applied.

The threshold for bail conditions must be ‘necessary and proportionate’ (CWJ, 2019: 3), a legal boundary which is undefined and left to the interpretation of police officers, magistrates and CPS prosecutors. The bail as protection myth presents opportunities for shared criminal justice actors’ knowledge on police, CPS, court and prison capacity to adjust practices amongst powerfully situated groups with women’s safety involuntarily excluded by: ‘a failure to correctly apply the legal test’ (ibid: 3).

Accordingly, criminal justice agencies' understanding of bail as protection becomes a matter of interpretation. The apparently rational take-up of particular mythic forms and concepts at any specific moment are dependent on each subject's position, operating in dialogue with each other (Wetherell, 2012). The variety of methods used as part of the myth of bail as protection to sideline women's safety and associated suspect management are discussed in the following section.

#### 4.5.5 Suspect Management

Discursively marginalising the safety of women subjected to rape can be presented as a reasonable assessment of their needs rather than a contested and subjective position. The benefit to criminal justice actors is that subsequent concessions on women's protection are therefore justifiable, leaving the myth of bail as protection unchallenged.

Women's sector and campaigning organisations identify how criminal justice practices develop from the bail as protection myth, motivated by acceptable practicalities that appear to be based on rational decision-making. They point out five ways in which women's safety is compromised or withheld in favour of foregrounding myth elements that suit specific agendas.

Firstly, RUI and unconditional pre-charge bail are more expedient and less expensive than conditional bail: 'it is far more convenient and less resource intensive for Police to interview by appointment, and avoid the onerous bail regime.' (CWJ, 2019: 3). The cost of monitoring and responding to breaches of bail conditions may have a bearing on police and magistrates' reluctance to extend those conditions throughout the criminal justice process (Centre for Public Data, 2023: 2; CWJ, 2019).

Second, a discourse of compromise is absorbed into judicial domains and influences whether and what bail conditions are deemed applicable and on what terms. Resulting practice can be justified by criminal justice actors in spaces distanced from victim-survivors' needs: '[r]eports suggest that some magistrates are not using all the conditions available to them because of the difficulties that Police forces would have monitoring them' (Centre for Public Data, 2023: 1; Criminal Justice Alliance, 2022). Even unconditional bail is deemed too onerous in some circumstances: 'some magistrates were not using the reporting to a Police station requirement after being told by local

Police they did not have the staff capacity to process people on bail reporting to them’ (Criminal Justice Alliance, 2022: 5).

Third, there is no Police or judicial statutory duty or guidance connecting risk assessments to the need for bail conditions:

‘There should be guidance on the level of risk faced by the victim that justifies bail conditions and how to balance the risk to the victim with rights of the suspect in a proportionate manner’ (CWJ, 2019: 24; see also Centre for Public Data, 2023; Criminal Justice Alliance, 2022).

Fourth, decisions to remand dangerous defendants may be replaced with conditional bail use due to pressure on prison space and not the level of threat to victim-survivors or the public post-charge (Centre for Public Data, 2023: 1; Criminal Justice Alliance, 2022). Furthermore, legal logic dictates that: ‘[r]emand should not be sought for an unconvicted defendant if there is no real prospect of a custodial sentence’ (Criminal Justice Alliance, 2022: 3). However, those convicted of rape who will receive a custodial sentence, are still entitled to post-conviction bail before sentencing rather than always remanded in custody.

Fifth, where investigations and prosecutions are not conducted by the police and CPS in a timely manner, bail conditions may not be extended. This decision is taken in isolation of victim-survivors safety needs: ‘the conditions to extend bail may not be met in many cases because investigations have not been progressed promptly. This situation leaves victims exposed through no fault of their own’ (CWJ, 2021: 4).

What is consistently absent from reports are the relational effects of bail discourse across institutions as cases journey through the different stages of the criminal justice process. The distribution of power with regard to bail use alters its meaning as it travels, contingent on context, concealed from women subjected to male violence. The following section moves on to explore multiple justifications given by criminal justice actors for safety compromises and the absence of material protections resulting from bail conditions to indicate how systemically embedded those limitations are.

#### 4.5.6 Proactive enforcement of bail conditions

Women's sector organisations demonstrate how shifting and multiple criminal justice interpretations of bail and its conditions are in part constructed in contextual relationship with police officers' frustrations at the inadequacy of bail. Nevertheless, the damaging consequences for women were equally as frustrating for women's sector organisations, themselves. For instance, where 'a history of breaches' (CWJ, 2019: 35) results in a police response that was 'very slow or no action at all' (ibid: 35) victim-survivors understandably 'expressed disappointment' (ibid: 35) and lost confidence in the police (CWJ, 2021: 2). Consequently, this behaviour emboldened some suspects to: 'feel that they can act with impunity whilst on pre-charge bail' (CWJ, 2021: 2). Such police practices are so deeply embedded that "responds effectively to breaches of orders and bail" was ranked highest for requiring improvement amongst specialist officers and second highest for frontline officers generally' (CWJ, 2019: 35). Thus, for many women who report rape, bail is a vivid demonstration of criminal justice powers used ineffectively or not at all.

However, from the perspective of police officers, the women's sector acknowledges:

'[a]s the only power available to Police following a breach of pre-charge bail is to arrest the suspect and release him again on bail, officers sometimes say [to victim-survivors of sexual and domestic abuse] there is nothing they can do' (CWJ, 2021: 2).

In practice, the police maintain silence about the incompatibility between conditional bail as victim-survivor protection and the practices they have developed in relation to perceived inadequacies of bail. Excluding women from this knowledge allows space for officers to divert attention instead to women's individual responsabilisation. For instance, women are made responsible for providing the police with sufficient evidence to corroborate a breach: "he isn't allowed to come anywhere near my stepdad but sent a friend down to threaten him instead but because it can't be proved that he was the one to send him down there was nothing the Police could do" (SSCJR, 2023: 34).

A report from a campaigning organisation on the lack of bail data mentions police complaints that 'conditions are often difficult to monitor or unenforceable' (Centre for

Public Data, 2023: 3) without explaining where the difficulties lie or why the police, who decide the bail conditions pre-charge and recommend them post-charge, would suggest unenforceable protection. However, this does justify the use by all justice agencies of a very limited number of standard bail conditions based on situated expedience for the police rather than the safety of the woman concerned.

The report goes on to interpret the reason for reducing numbers of arrests for breaching post-charge conditions as reduced offending on bail:

‘the number of arrests made whilst on bail have dropped every year since 2010, with less than 10% of those released on bail by magistrates’ courts offending’ (Centre for Public Data, 2023: 3; Parliament.uk, 2022).

The assertion of bail use as an effective deterrent and of conditions that successfully reduce offending legitimises institutional decision-making, despite the evidence that post-charge cases are given significantly less police attention (CJJI, 2022), which is likely to have a corresponding impact on the numbers of arrests for bail breaches. Practices that hide the demands on officers post-charge (CJJI, 2022), may also hide the volume of bail breaches, particularly if prevailing police practice is for officers to respond there is nothing they can do (CWJ, 2021; SSCJR, 2023)

Nevertheless, women’s sector reports do not make the connections across criminal justice spaces and actors that influence police discourse on the application and enforcement of bail conditions. The police have recalibrated their practices and ‘institutional talk’ (Ahmed, 2012: 130) around bail and conditions in relation to their experiences across their own and other justice domains, pre and post-charge and post-conviction.

The following section discusses the limitations of bail as protection as they relate to sharing relevant knowledge within the criminal justice system, where symbolic gestures can replace meaningful action.

#### 4.5.7 Sharing Relevant Information

The way in which information is filtered and shared between justice agencies is demonstrated by women’s organisations to make empirical or evidential knowledge

irrelevant. For instance, replacing the relevance of women's safety requirements as part of a sequence of events in criminal justice agencies unable to conceive their own limitations:

*'The ability of prosecutors to argue that bail conditions are necessary and proportionate to protect the victim when the case is heard at court is limited when the Police have already decided not to impose bail conditions. In addition, the lack of positive action by the Police in imposing bail conditions when appropriate could in certain circumstances allow the perpetrator to make representations regarding the seriousness of the behaviour alleged to have taken place'* (CWJ, 2019: 16).

The interlocking relation between privileged groups of criminal justice actors establishes a boundary foreclosing the option to revisit the appropriateness of granting bail conditions. Instead, any previous mistakes or misrepresentations of women's safety needs are embedded going forward by a system whose epistemic practices perpetuate the injustice by design.

In some circumstances, statements declaring commitments to sharing of relevant information on bail stand in for the action they describe. For example, when bail conditions are granted, extended or changed, police control rooms and databases are updated 'in case of future calls' from victims reporting breaches or witness intimidation (CoP, 2018: 13). However, the Police National Computer (PNC), which is used by officers to carry out real-time checks 'does not record bail conditions or initial offence type, only the fact the arrest was made while on bail' (Centre for Public Data, 2023: 5).

In another example, a parliamentary question on the offending rates of defendants on conditional bail waiting trial for rape was rejected because it required a combination of PNC data, court data and a manual search (TheyWorkForYou.com, 2022). Non-performative institutional discourse in this case, is designed to successfully generate a public impression of the myth of bail as protection as an efficient victim-survivor safeguarding mechanism by excluding relevant knowledge.

This persistent disconnection between symbolic declarations of action and the material enforcement of women's safety underscores the extent to which criminal justice knowledge practices operate in contradiction with women's lived realities. What

emerges is a systematic privileging of knowledge aligned with institutional convenience and coherence. As a consequence, the bail as protection myth is detached from the very empirical realities it claims to regulate. The result is a myth of bail in which the promise of protection is performatively reiterated, yet substantively undermined, a tension that women's sector organisations navigate on behalf of victim-survivors.

## 4.6 Conclusion

The literature discussed demonstrates fundamental conflicts between the ideal presentation of bail in criminal justice and government guidance, policy and law and practices of bail use from pre-charge through to post-conviction. The resolution of bail's contradictions evolves as myth stories are enacted through prevailing, hierarchical and contextual beliefs and motivations (Pohlhaus, 2012;2017; Fricker, 2007).

Patchworks of myth variations literally and symbolically communicate across justice and governmental institutions as well as women's organisations, to victim-survivors, perpetrators and the public, in dynamic relationship according to subjects' position. The success of bail to maintain its myth of protection appears to hinge in significant part on institutional, legal and policy boundaries. Myth concepts move across these without reference to previous failures, knowledge or victim-survivor experience.

The performative effects of non-performative discourse on bail as protection create 'commitment carriers' (Ahmed, 2012: 130) whose conflicted attachment as both outsiders and knowers, mask controversial issues. Bail as a complete and overlapping system from pre-charge, through post-charge to post-conviction, is disconnected in criminal justice and government policy and guidance and rarely mentioned in women's sector discourse. In practice, this allows the production of knowledge on women's safety needs to repeatedly fail as victim-survivor discourse circulates below the accepted epistemic threshold of 'data', in criminal justice spaces.

The legal and policy construction of bail as a mechanism of interpretation (Justice Committee, 2023; CoP, 2018; CWJ, 2019) leaves attachments to the myth of bail as protection as a hegemonic and self-referential process of meaning production. Furthermore, the cumulative effects of 'tracking' (Fricker, 2007; Marcus, 1995) women's

protection through institutional bail discourse reconfigures its meaning intention, making the needs of women victim-survivors irrelevant.

Selective institutional silence and absences on bail throughout the criminal justice system are a powerful method of protecting the myth. By preserving the ignorance of victim-survivors and suppressing their knowledge, value-laden assumptions based on the myth of bail as protection circulate as facts that speak for themselves.

The next section of the research analyses interviews with a wide range of participants (see Chapter 3 for more information) to further interrogate the consequences of the myth of bail as protection on women who were subjected to rape.

## **5: Believing in Bail: The Hidden Costs of Protection Myths for Women in the Justice System**

### **5.1 Key terms**

In making my argument through the findings chapters, various constituent elements have unfolded that allow the myth of bail as protection to persist. Some elements apply to one group of interviewees rather than across victim-survivors, professionals and criminal justice actors, which explains why not all the terms below appear in each chapter. The key terms for all three analysis chapters are outlined in this section, as well as the relationships between them where appropriate.

#### **5.1.1 Productive or reliable ignorance and pernicious effects.**

The productive nature of ignorance was a common theme in criminal justice actors' and professionals' interviews, illustrating how: 'ignorance serves as a productive asset, helping individuals and institutions to command resources, deny liability in the aftermath of crises, and to assert expertise in the face of unpredictable outcomes' (McGoey, 2012: 533). Productive ignorance provides a valuable alibi to deflect accountability particularly in connection with reliable ignorance, defined as 'gaps in knowledge that can be reasonably expected' (Dotson, 2011: 238). Discrepancies in the understanding and expectations of bail as protection among victim-survivors entering the criminal justice system can present significant challenges when coupled with opaque or ambiguous decision-making processes within the criminal justice framework (Einhorn and Hogarth, 1985). When productive ignorance 'causes or contributes to a harmful practice' (Dotson, 2011: 239) the findings suggest that effects are pernicious and, although these impacted all participants, the consequences are borne most acutely by victim-survivors.

#### **5.1.2 Commitment carriers**

Commitments to bail as protection are institutional statements that make promises of victim-survivor safety after reporting rape. When statements of commitment do not deliver on their promises, the reasons given can reveal those promises as contingent on behaviours or hierarchies that were previously concealed. Consequently, the success or

failure of commitments can be unpredictable, and this can place those making them in a difficult position. Those who carry commitments of bail as protection on behalf of other individuals or institutions (Ahmed, 2012) can find themselves in the awkward position of having to explain gaps between what was promised and what has been delivered.

### 5.1.3 Rationalisation and justification

Professionals who have the role of supporting women as they go through the criminal justice process, make sense of criminal justice action or inaction in an attempt to make future bail outcomes more predictable. To help victim-survivors restore coherence to their experience, professionals reinstate the credibility of formal criminal justice agencies' decision-making on bail use.

Professionals may justify deficiencies in bail as a method of sustaining victim-survivors' optimism in a demanding system. Justifying inadequate criminal justice responses to bail also serves to release tension in encounters between professionals and victim-survivors by focusing on future possibilities for protection.

As such, justifications may not be rational or may uphold the status quo. For instance, the institutional reliance on two accepted bail conditions, rather than explore what conditions are truly effective for victim-survivors.

### 5.1.4 Ambiguity and uncertainty

Both ambiguity and uncertainty involve a lack of clarity with regard to the way criminal justice actors enact bail to protect women who have reported rape. Bail use is fundamentally ambiguous in that there are multiple possible explanations for its success or failure depending on who is speaking, in what spaces and contexts. Ambiguity of bail use resists clarification through better quality information and is inherent over multiple and repeated sequences, events and encounters between victim-survivors, criminal justice actors and professionals.

One of the effects of ambiguity with regard to bail use is to leave others in a state of uncertainty. Outside criminal justice, victim-survivors and professionals are uncertain what actions will be taken, what the outcome of those will be and how to make sense of the predictable inconsistency of bail as a protective measure.

## 5.2 Introduction

The purpose of this study is to demonstrate the operation of the myth of bail as protection, exploring its survival despite contradictory experiences of female victim-survivors and institutional practices. Following the methodology set out in Chapter 3, this chapter and the two following, present the findings of qualitative interviews with women victim-survivors of rape, criminal justice actors and other professionals. Each of the three chapters highlights key findings, Chapter 5 identifies how and where the myth of bail as protection operates between victim-survivors and criminal justice actors and agencies. The Chapter 6 addresses the consequences of the myth for women who report rape, and Chapter 7 discusses how the myth persists across professional domains outside criminal justice.

In this chapter, qualitative data from interviews with women victim-survivors alongside those of police officers, prosecutors, a family law solicitor, a court reporter and a justice reform campaigner revealed three central themes of ignorance, commitment and boundaries.

Firstly, ignorance functions to preserve criminal justice practices as effective by managing what is accepted as knowledge, by whom and in what spaces. To survive, the myth is in part dependent on types of ignorance which reinforce beliefs, avoid or tolerate uncomfortable knowledge and sustain boundaries (Dotson, 2011; McGoey, 2012; Mays, 2019). In supporting the myth of bail as protection, ignorance excuses criminal justice actors' tolerance of its pernicious effects on victim-survivors.

Secondly, criminal justice actors' statements of commitment to protection, sometimes as an act of care, reassure victim-survivors of bail's power, while keeping women and their knowledge distanced from decision-making. Rituals of commitment can conceal inconsistent criminal justice responses and shield victim-survivors from bail's ineffectiveness. The findings demonstrate women entered the criminal justice system with existing beliefs about bail's effectiveness generated by cultural and media portrayals. A position that motivated belief in criminal justice statements of their safety.

Lastly, boundaries of space show how criminal justice actors' elevated position allows them to dynamically adapt what information counts, in what spaces and what aspects

of bail to foreground. These shifting boundaries illustrate selective and partial knowledge production, providing an alibi for bail's inconsistent use.

### 5.3 Productive, reliable ignorance and pernicious effects

The dynamics of institutional ignorance focus on women's knowledge and understanding of criminal justice responsibilities when they enter the system. As such, a key function of the myth of bail is enabling or constraining knowledge and ignorance to preserve the meaning of bail as effective victim-survivor protection.

Productive ignorance is an epistemic adaptation designed to manage situations where information received contradicts or does not conform to established systems, practices or beliefs. This type of ignorance is productive in relation to criminal justice actors' justification of multiple possible responses that accommodate and therefore perpetuate bail's inadequacies (Mays, 2019). The productive ignorance of criminal justice actors is in contingent relationship with the 'reliable ignorance' (Dotson, 2011: 238) of victim-survivors who enter the justice system with predictable knowledge gaps. Although criminal justice actors may sustain women's ignorance on bail for benevolent reasons, the power differential between productive and reliable ignorance has the potential to be extremely harmful to victim-survivors' trust, as well as their safety interests.

#### 5.3.1 Productive ignorance as institutionally self-serving.

Women victim-survivors interviewed highlighted the link between public understanding and routine police practices of bail. Sinead, for instance, said: *"I kind of assumed that he wasn't allowed to contact me or come near me"*. Indeed, her assumption was confirmed by a DS from Hampshire, when he said:

*"there's always these two standard [bail conditions] aren't there, that they're not to contact directly or indirectly victim X by any means, including social media, so on and so on, or you're not to attend 63 Manchester Road or whatever it is"*.

The normative power of women's safety needs being covered by two standard bail conditions of no direct or indirect contact and not to attend a victim-survivor's location remains unmoved by evidence they may not suit women's individual circumstances. For example, in eight of the ten women participant's cases, the bail conditions were

identical, in spite of fundamental distinctions in the forms of sexual or domestic abuse they had been subjected to. Charges in addition to rape, such as coercive controlling behaviour, grievous bodily harm, attempted murder or previous investigations and in some cases, convictions for sex or drug offences, had no impact on the application of the “standard” conditions. Neither did the fact that the women themselves had very different needs; one woman had a physical disability, two had learning disabilities and one was in hospital with an extremely premature baby as a result of the rape, where the father was also the perpetrator.

For example, Karen’s rape case included a charge against the perpetrator of coercive and controlling behaviour. However, the police and courts took no account in the bail conditions of how they might protect a woman from a domestic abuser and rapist who has previously used manipulation and intimidation. On the contrary, ignorance was productive of officers characterising his coercive control as constituting a lower risk which was reflected in the bail conditions:

*“they were quite nonchalant... he's never beat you up before, so he's not going to do it now. Even though he never physically beat me, he would always remind me that he could do that if he wanted to. It was very much a threat there, should I not be following his orders”* (Karen).

Productive ignorance of the demand for case-specific bail conditions is sustained through fixed practices and beliefs networked across police authorities, the CPS, prosecutors, magistrates and judges. The King’s Counsel illustrates below the routine nature of those decisions:

*“if it is a rape between people who know each other, and the defendant hasn't used violence over and above the rape itself, accepting, of course that rape is an offence of violence, then the starting point would be, is there an address he can go to which is away from where the complainant lives? And can he have a condition not to contact her? If so, bail”* (King’s Counsel).

The quote above indicates that for prosecutors and the judiciary, the standard two bail conditions are collectively accepted as covering the majority of women’s protection needs in all cases of rape. Decisions on bail that are both established and fast are

appealing to criminal justice actors, who will not be accountable for any potential harm that may befall a victim-survivor as a consequence. A 'one size fits all' attitude to bail conditions privileges criminal justice actors 'sense of value and recognition' (Berlant, 2011: 87) in having done 'something', albeit of symbolic value. As Daisy notes "*bail isn't nothing*", but it may still be very different from the protection a victim-survivor envisaged.

The police officers interviewed recognised that systemic failures constituted an 'active practice of unknowing' (Dotson, 2011: 243) information relevant to victim-survivor safety which negatively impacted women's lives and experiences of the criminal justice system. The preservation of ignorance defends itself against knowledge framed as inappropriate or lacking. For instance, this retired Chief Superintendent (location withheld, see table at section 3.5.1.1) recognised that the impact of bail conditions or breaches on victim-survivors is a missing component in court bail hearings, not officially recognised as information relevant to decision-making:

*"I do wonder whether there should be an impact statement at that point [bail hearings]. I don't think there is an impact statement saying that if this person is bailed, this is how I'm going to feel"* (Retired Chief Supt).

Allowing a victim impact statement into bail or remand hearings is crossing a boundary which potentially transforms what are systemically categorised as unsubstantiated women's fears into 'proper' knowledge. This officer comments on its particular relevance where there are charges of coercive and controlling behaviour, but physical violence might play little or no part:

*"if you're talking about offences like controlling coercive behaviour, actually [the victim impact statement] is really good evidence because part of your points to prove is the fact that these behaviours have had a serious effect on someone's day to day life and their daily routines... [it] could probably provide you with greater sway for argument for bail conditions or a remand application than just their evidential statement... I think they can be really powerful"* (DS, Hampshire).

Furthermore, when relevant legislation is significantly reformed or new legislation brought in, such as criminalising coercive and controlling behaviour (Serious Crime Act, 2015: Section 76), bail conditions are not correspondingly reviewed or updated. Criminal

justice agencies, whose purpose is to enact the law, remain productively ignorant of its relevance to victim-survivor protection through bail conditions, while the myth of bail as protection persists. Nevertheless, the collective criminal justice imaginaries of the effectiveness of bail do have a valuable affective function, as a justice campaigner argues:

*“Everybody wants to give victims reassurance. They're desperate to. And if they can give it through saying, ‘There's these restrictive orders’ or ‘These bail conditions’, then that makes them and everybody else feel better”* (Justice Reform Campaigner).

The separation of standard practices of criminal justice decision-making and the consequences of those decisions is a means of powerful actors remaining productively ignorant of who benefits from them and who is adversely affected.

The only space where the regularity with which reported bail breaches provoke little or no response from the police or criminal courts is accepted as reality, is family court. The Family Law Solicitor argues there is a contradiction where government agencies insist that civil protection orders (CPOs) are unnecessary without evidence of bail's failure but concede their necessity once bail's deficiencies are proven. Perpetrator reprisals against a victim-survivor of rape are therefore an implicit condition of family court judges allowing the implementation of a CPO while ineffective bail conditions are active. The productive ignorance inherent to this practice is explained by the Family Law Solicitor:

*“the Government and legal aid agencies, they're like, well, if you've got bail conditions, why do you need an injunction as well, because you've got your protection there?”*

*But... bail isn't particularly effective and so the only times that we can get legal aid is if we can say, well, actually we've got bail conditions, but they're not effective because they've been breached, and the police have done nothing about it or the courts have done anything about it.”* (Family Law Solicitor).

While productive ignorance is self-serving for institutions, insisting bail is consistently effective obstructs women from accessing CPOs to which they are legally entitled. At the

same time, the inadequacy of bail is routinely confirmed in the family court when maintaining ignorance that bail as protection is a myth no longer supports legitimacy and authority. This is the only space where bail is formally recognised as ineffective.

The findings illustrate how the myth of bail as protection functions on behalf of criminal and family justice actors as a 'floating signifier' (Lévi-Strauss, 1968). A dynamic process of judicial interpretations of bail are suppressed or allowed with the pernicious effects on victim-survivors corroding their faith in reporting bail breaches when, as the Family Law Solicitor says: "*nothing makes any difference*". Bail's operation in practice becomes symbolic of its inadequacy; as a paper trail of failures leading to victim-survivors' hopeful attachment to protection elsewhere:

*"where there's continual breaches and the police aren't actually taking it any further [women] just give up with the police, because you just don't get anyone round and nothing makes any difference. It's reported to one person and then they're on their off shift and it goes to someone else, and it gets passed around and nothing happens and no one's effective. Women don't seem to get much sympathy... so it's just a complete loss of faith"* (Family Law Solicitor).

This section has shown that ignorance is not simply a lack of knowledge but a productive form of criminal justice agencies' power, fixing practices that erase the complexity of individual women's protection needs. The following section moves on to discuss how maintaining women's reliable ignorance relates to the success of criminal justice actors' productive ignorance.

### 5.3.2 Dependence of productive ignorance on women's reliable ignorance

Productive ignorance interacts with, and can depend, on women's reliable ignorance of the system, positioning women in a 'surreal' (Ahmed, 2021: 44) and dangerous space: 'between what is supposed to happen and what does happen' (ibid). For instance, the success of a prosecutor challenging or opposing perpetrator bail and conditions is dependent on them presenting all the relevant evidence to the court. Evidence is sourced from the police, as King's Counsel explains: "*you are reliant entirely on the officer in the case giving you information about background and history*".

What is known to criminal justice actors but not to victim-survivors, is that all relevant information is “*highly unlikely*” (King’s Counsel) to be presented to the court by the prosecutor:

*“You will have an immediate package, which will contain what the officer gives you. It is highly unlikely to be full or complete because he won't have had the time to... to do that”* (King’s Counsel).

The potentially ‘devastating effect of the “disappearing” of knowledge’ (Dotson, 2011: 236) in bail hearings is both acknowledged and accepted as part and parcel of insider group membership. Therefore, the privilege integral to a prosecutor’s role at bail or remand hearings is by virtue of their superior position, not their superior knowledge. For example, the King’s Counsel argues below, it is up to women to know they should disclose a current or previous CPO against the perpetrator. If women do not, the information will remain concealed from the police, CPS and prosecutor unless a breach of the order resulted in a criminal conviction:

*“You wouldn't get any [information on] civil orders unless they had been made known to the police by the complainant. So, unless the complainant has taken the initiative and said, “I've taken a civil order out against him in the process of a divorce”, or “I've taken an injunction” or, “there is a civil restraining order”, then we wouldn't know about it unless it's breached”* (King’s Counsel).

Indeed, when bail is discussed in court, productive and reliable ignorance are further secured through the absence of victim-survivors at hearings. Where the audience for bail or remand hearings includes victim-survivors, the myth of bail as protection is vulnerable. Although victim-survivors are powerless in a court context, as outsiders with expert knowledge of their case, they may recognise everyday judicial practices as actively harmful to their safety. Therefore, one of the benefits of discouraging women from attending hearings is avoiding any discomfiting exposure, as the King’s Counsel illustrates:

*“Victims are most certainly not encouraged to come [to bail hearings]. I don't recollect a victim ever coming to a bail hearing. I don't even know if they are informed of the date, or if they can attend, because of course at that stage the*

*advocate has literally just been given the case, and it will very much depend on the information provided by the police” (King’s Counsel).*

The King’s Counsel quote above reveals an understanding that if victim-survivors attend bail hearings, a prosecutor’s knowledge may disappoint the expectations of victim-survivors on the basis of *“having literally just been given the case”* (King’s Counsel). The prospect of barristers having their credibility, knowledge or expertise called into question as a consequence of systemic practices of ignorance is not a welcome proposition. Established traditions of excluding victim-survivors therefore function to preserve the elevated value of criminal justice experts, their powers and how they will use them. The following retired Chief Superintendent, for instance, describes an assumption that women will not attend bail hearings as a matter of policy:

*“[Victims] are not told you can't come, but I don't think we proactively tell them. We'll tell them there's a bail hearing, we won't say, do you want to come necessarily... that's not policy” (Retired Chief Supt).*

Thus, keeping women outside bail and remand hearings ensures their reliable ignorance and perpetuates the harmful practices of criminal justice experts who they have been encouraged to put their faith in. Women are positioned by criminal justice agencies as sources of information, rather than ‘knowers’ with regard to their understanding of bail. This allows criminal justice actors to shift the boundaries of what passes for the effective operation of bail, to compensate for its systemic weaknesses while maintaining its legitimacy.

Furthermore, justifying statements of commitment versus knowledge of inadequacies, depends on criminal justice actors’ productive ignorance. The Barrister below, describes the predictability of bail’s failure to protect victim-survivors from violent men:

*“[The complainant has] the courage to go and tell the police about it... how much more angry are they [perpetrator] going to be with the person that they have already decided has ruined their life by not being subservient? How much more likely are they [perpetrator] to have a campaign against them [victim]?”*

*It's no surprise that there are, albeit small, but reasonably high figures for serious injury and death in abusive relationship cases where defendants were allowed out on bail and promptly go around and kill [victims]" (Barrister).*

Criminal justice actors use their knowledge of bail legislation and professional practices to claim an inability to protect women from male violence. Harmful practices recognised as normal also work to neutralise any responsibility to improve or change those practices. When asked why such dangerous men were not remanded, the Barrister explained:

*"If he is presented in court as a person of no previous convictions, in fact very good character, helps out in the community, helps old ladies across the road... what's the court supposed to do?" (Barrister).*

Here, the court's decision to release dangerous men on bail with possibly fatal consequences is presented as an 'ethically non-culpable' (Fricker, 2007: 23) position based on the relevant facts.

Criminal justice commitments to the myth of bail as protection includes those institutions accepting "*reasonably high figures*" of women's serious injury or death. The productive ignorance of these outcomes sustains criminal justice commitments to the myth of bail as protection, despite the knowledge that some perpetrators will continue their violence and abuse regardless.

Partial knowledge-sharing with victim-survivors is organised according to what behaviours criminal justice actors wish to encourage. Zoe waited six months after the perpetrator's arrest to find out what bail conditions had been granted, only eventually obtaining the information from the police with support from Women's Aid. Even once she knew the bail conditions, she was not told she needed to have them in writing to report breaches or told why that was necessary. She also indicates in this quote that she was not given an explanation of what constituted a breach:

*"he would constantly turn up at the school, so in my mind, the school is a 30 mile an hour zone from my house, that to me meant he couldn't be there. So, I would phone the police and they'd say, have I got a copy of the bail conditions? No, I don't*

*have them, you should have them. I didn't realise that I would have to have them."*

(Zoe).

Zoe is positioned by criminal justice actors as a non-participant (Hookway, 2010). That having transmitted her knowledge of the offence to them as dominant knowers, she is irrelevant. Zoe is kept ignorant of what constitutes a breach of bail and information on how to appropriately report. Her struggle to be recognised as having a legitimate claim to knowledge of what the bail conditions were, indicates the victim-survivor protections bail suggests are non-performatives. Indeed, when Zoe reported numerous post-charge bail breaches to the police, their response was to *"have a word"* (Zoe) with the perpetrator rather than take him through a remand hearing. Police officers, having failed to remain productively ignorant of the perpetrator's bail breaches, construct conditions making her reports of breaches inappropriate for formal action. However, to retain the signification of bail as functional protection, Zoe describes how officers deliberately gave an impression of action in the future which did not materialise:

*"They [the police] kept telling me that he could be charged with further offences for breach of bail, but nothing ever happened. Not once did he ever get prosecuted or charged or anything in relation to the bail [breaches]"* (Zoe).

One of the mechanisms through which the myth of bail persists is by sharing knowledge piecemeal, emphasising information based on motivating positive attachments in victim-survivors, and positioning negative effects as trivial, mundane, or deferred to an indeterminate future. The demarcation places official consequences for bail breaches to times and spaces distanced from the women themselves. For instance, two of the women were told that instead of formal action now, the bail breach would be brought up at trial. As Sinead explains, this was not the case: *"him breaking bail conditions... the court might have... that might have been brought up [at the trial]. But it wasn't"*.

Ignorance works alongside power relations to include victim-survivors in enough knowledge to rationalise a lack of action on bail breaches in the present, while sustaining its ongoing legitimacy. Even bail breaches that do make it into court are evaluated without a victim-survivor context, using incomplete knowledge against an undefined hierarchy of seriousness which very effectively makes continuing male violence judicially

irrelevant. The following quote from a Barrister illustrates the legal logic that transforms a bail breach into a worthless detail:

*“sometimes [the magistrate/district judge will] say, well, we’ll worry about this breach after the trial. So, if he’s convicted, then there’s not much point, and if he’s acquitted, again, there’s not much point”* (Barrister).

The findings demonstrate that institutional bail discourse deferring consequences for breaches is the epitome of: ‘justice deferred is justice denied’. Once criminal justice discourse moves knowledge of a breach across a temporal boundary into an indeterminate future, any action against the perpetrator becomes institutionally ‘pointless’.

Where criminal justice actors do wish to be honest about bail’s deficiencies with victim-survivors, sharing information that contradicts cultural beliefs held by the public on bail as protection is challenging. For example, when asked how bail’s inadequacies were explained to women, DS Surrey replied: *“With great difficulty. We just have to be honest and it’s not what they want to hear”*.

Previous research shows that most people have little direct experience of the criminal justice system (Glascock, 2023), as such, their perceptions of criminal justice processes and policies are influenced by media representations (Dowler & Zawilski, 2007). Despite the importance of the news and media to public perceptions of policing, there is very little recent research (Hanway and Hambly, 2023). However what has emerged from research is the overlapping relationship in the mind of the public between ‘trust’, ‘confidence’ and ‘safety’ with regard to criminal justice legitimacy (ibid). Therefore, although there is no research to evidence the myth of bail as protection as a ubiquitous cultural story taken up by the public, for the majority of the women victim-survivors interviewed their understanding was based on a “collective story about bail protecting victims from TV programmes” (Molly). This was repeated by seven of the ten victim-survivor participants, with one of the remaining three having already had experience of bail in another case and another having knowledge of bail use from her professional career. Officers with experience of victim-survivor expectations tread a thin line with regard to how far their commitments go. For instance, officers know there are currently only a limited number

of systemically acceptable bail conditions and must navigate victim-survivor requests that fall outside these restrictions while minimising conflict or loss of faith in bail. DS Nottinghamshire describes the tension of that situation:

*“You’re between a rock and a hard place. If I said that’s [bail condition] unsuitable, I put myself in an argument with the victim, so I have to be really careful how I couch the conversation”* (DS Nottinghamshire).

The criminal justice demarcation of what counts as relevant information critical to the safety of a woman subjected to rape, also functions to erase acts of male violence. For example, any previous breaches of pre-charge, post-charge or post-conviction bail conditions are not accessible to prosecutors even if they are recorded, because, as the King’s Counsel explains, breaches are not a criminal offence:

*“It’s not actually something that goes on your criminal record, that you have breached conditions of bail in the past. You would hope it would be recorded, but someone would perhaps have to look at your previous file... at all the computer systems and not everything is adequately recorded.*

*If it was... a criminal offence to breach your bail conditions, then it would be obvious to any person prosecuting a case when they look at your previous convictions”* (King’s Counsel).

An accepted institutionalised sequence of productive ignorance that includes the exclusion of victim-survivors, use of limited bail conditions, incomplete prosecution information and limited access to CPO or previous bail breach data, thereby supports the production of bail as a performative myth of protection. The consequences of this norm are vividly articulated by a Court Reporter when he says:

*“I don’t think I’ve ever heard mention of the victim’s feelings during bail hearings... The prosecutor doesn’t act as an advocate on behalf of the victim, they take a pretty neutral stance unless there’s concerns that the person is going to reoffend or try to intimidate witnesses, so I don’t think there’s any voice saying how the complainant may react to bail”* (Court Reporter).

Furthermore, opportunities to rectify ignorance are obstructed by the lack of time allocated to preparing for a bail hearing by police officers and prosecution barristers. As this Barrister explains, the bail process is designed in a way that creates time pressures on criminal justice actors acting for the prosecution:

*“listing bails can be done within 24 hours, once the application has been made, and very often by the time the message gets to the CPS... if you send it to a generic CPS box, it will not be seen. So you've got to know who the lawyer is, you've got to know who your caseworker is, and they've then got to be able to track down the OIC [officer in charge of the investigation] and very often officers will say to me, well, I didn't even know this was on”.*

In consequence, by the time a bail decision on conditions, remand or breaches, gets into court, the information it is based on has been emptied of the experiences of or impact on women victim-survivors. If one of the objectives of bail is the effective protection of victim-survivors, then magistrates exercise that power in ignorance of that victim-survivor and her circumstances, as this officer notes:

*“Magistrates will see the offence, but they only hear the story of the offender”*  
(Retired Chief Supt).

Preserving the myth of bail as protection obliges certain aspects of reliable ignorance are securely maintained, for example, that bail is: *“not linked to how serious the allegation is, it's really linked to the behaviour of the defendant in the case”* (Court Reporter). This explains how a perpetrator convicted of rape is still eligible for bail, post-conviction, despite the gravity of the offence or the likelihood of a lengthy sentence. Any connection between the rape or serious sexual offence/s for which a perpetrator is convicted, and his right to bail before sentencing, is severed: *“[post-conviction] bail is not an indicator that a person will not be going into custody”* (King's Counsel).

The decision to bail post-conviction is made by a judge based solely on a convicted rapist's behaviour during the investigation and prosecution. As this retired Chief Superintendent points out, it's as if the rape for which he has just been convicted is irrelevant:

*“He's now been convicted of rape, therefore, he's shown good character. Yes, but the good character was after he raped somebody”* (Retired Chief Supt).

After a guilty verdict, the perpetrator's right to bail can eclipse his conviction as a rapist. A knowledge boundary parses the possibility of bail as a rational option related to the value and position assigned to the judge, by allowing a rape conviction to be temporarily designated irrelevant. The logic rights itself if the perpetrator is ever again reported for rape, at which point he is legally eligible for bail only under exceptional circumstances. Under these conditions, the King's Counsel indicates how conditional bail in conjunction with delays in the justice system work in favour of the perpetrator:

*“sometimes by the time someone has been convicted of rape, it's three or four years since the offence itself and in those circumstances, judges may well say, “You can have bail until your sentence because you have behaved impeccably in the last four years””* (King's Counsel).

The ability of the myth of bail to detach a rape conviction from victim-survivor and public protection between conviction and sentencing, depends on knowledge boundaries constructed across and within criminal justice agencies. Concerns a perpetrator who, now convicted, has arguably less to lose and more reason to feel aggrieved at the woman who reported him, do not cross the judicial knowledge boundary. Neither does the possibility that a perpetrator, having complied with bail before conviction, when it was advantageous to him, may not be disposed to, post-conviction. A retired Chief Superintendent makes the point: *“Up to that point, they thought they might get away with it. Now that they've had a conviction, who's to say they don't disappear”* (Retired Chief Supt).

Criminal justice agencies' ignorance is productive of what counts as knowledge, when and in what spaces, with far-reaching power effects. Practices even extend to temporarily unknowing a rape conviction to justify applying bail before sentencing.

The exclusion of victim-survivors and their positioning as passive information sources rather than knowledgeable agents, is critical to maintaining the coherence of bail as a protective mechanism. In doing so, the criminal justice system constructs a framework

in which partial or absent information appears to be a natural aspect of the bail process. The way discourse reinforces this construction is explored in the following section.

### 5.3.3 Producing ignorance through discourse

Productive ignorance maintains a system that appears coherent to criminal justice agencies and actors as a means of facilitating women's protection, and discourse adapts to justify the system and responses according to context. For instance, in a police authority with limited resources, this officer describes devoting the time to effectively present the danger of a perpetrator in court as a "*luxury*" (DS Hampshire). He also points to how the police case summary, which many prosecutors rely on for relevant information, fails to provide "*any kind of proper understanding*" of the case:

*"We [his unit] have the luxury of perhaps a bit more time to focus on those highest risk jobs, to really sell the case and sell the risks and make sure that the prosecutor, for example, is actually aware of certain bits of information, because often they're not. They will probably pick up this remand case on the day, perhaps having had no previous knowledge of them whatsoever, might have nothing more than the case summary available to them without any kind of proper understanding" (DS Hampshire).*

The lack of time to understand the case maintains a pattern of decision-making based on partial knowledge. Inevitably, as this officer points out, it benefits a suspected rapist whose defence has had time to be fully informed and is focused on keeping him out of custody:

*"A defence solicitor or legal representation is obviously a very different position. They can very theatrically present their case, and what the alternatives are, and a magistrate or judge has to make a decision on the spot" (DS Hampshire).*

Criminal justice actors' knowledge of systemic failures produces practices to construct the myth of bail, in and out of court, to appeal not only to women claiming protection, but also to a judicial audience for whom it legitimates the value of their function. Productive ignorance of decisions based on incomplete information and their consequences, defends the illusion of bail's stability as well as validating the courts' exercise of judicial

power. For instance, the Court Reporter comments, when issues on bail such as appeals or breaches, proceed through various hearings, relevant information does not travel with the case:

*“if you go from the Magistrates Court to the Crown Court and then you go from one Crown Court judge to another Crown Court judge, as cases often do, by the time that you get to the third or fourth judge, you know much more about the case than they do, because they're just going on what they've been told at the hearing that they're at and they don't know the full history”* (Court Reporter)

The systemic production of ignorance is also a useful method of avoiding any pernicious effects of bail decisions on victim-survivors. Post-charge, the police manage information in two potentially conflicting directions, indexed to very different power relations of the victim-survivor and the judiciary. The retired Chief Superintendent describing how, instead of a victim-survivor's report of a bail breach resulting in a response, officers anticipate the corroborating evidence demanded through the criminal justice system to evaluate their follow-up actions. Such demands, he continues, reflect a cultural criminal justice presumption that women lie:

*“The word of the victim is good enough [to evidence a bail breach]. You know, if you ring 999, I've just seen X outside my house, knocking on my door, then your word is good enough, X is going to get lifted [arrested].*

*So X gets arrested but there's no CCTV and there's no other evidence, therefore, X is not going to get prosecuted for breaching bail. And the frustration is the over-reliance on CCTV evidence. There are parts of the world where there is no CCTV, does that mean there are no convictions of crime? And so, I think it talks to the culture more widely around the criminal justice system, where straight away the question, is there CCTV evidence? Is there a ring doorbell footage? Is there automatic number plate recognition putting X's car on [the victim-survivor's] street? The reliance on technology is wrong because there's almost a presumption that [the victim-survivor] is lying”* (Retired Chief Supt).

Bail as protection discourse in court are rites spoken by a judge, but ignorance prevents the judiciary acknowledging the purely symbolic nature of the words. When Juliana

requested information from the Crown Prosecutor regarding the court hearing where the perpetrator had been granted post-charge conditional bail, the reply she received quoted the judges' comments on the criminal justice response to breaches:

*"If there is even the slightest indication you have breached any of these conditions, you will find yourself in custody and will remain there until the trial.' That's the exact quote" (Juliana).*

Legal rites ceremonially performed in court imply ongoing proactive action as a routine characteristic of bail as protection myth. Importantly, there is no distinction made between a major or minor breach, on the contrary, *"the slightest indication"* is stated to result in remand. However, the observations of an experienced court reporter indicate action on this commitment is *"often"* withheld:

*"Crown Court judges will warn people... "Now, we are aware that there's this rumour that you can have one or two breaches and nothing will happen, but we're telling you for certain that that's not the case". But actually, I think that rumour has some truth in it because you do often see people who breach bail conditions, very many times and they are not necessarily sent to custody straight away" (Court Reporter).*

When the perpetrator in Juliana's case was brought in front of a magistrate for breaching bail by absconding from his bail address, he was re-bailed with the same conditions back to an address already known to be inappropriate (see 'Victim Labour', Chapter 6). Her realisation that the original judge's words were non-performative viscerally erupts as a jarring injustice:

*"I was shocked. First of all, 'If there is even the slightest indication you have breached any of these conditions, you will find yourself in custody...' This is more than a slight indication! There's no continuity from what one judge says to the other judge that gets the case, so it's all over the place. They don't care!" (Juliana).*

Identifying productive ignorance reveals perpetrator reprisals are an accepted paradox of the myth of bail as protection. For instance, as DS Nottinghamshire points out, bail

'works' by allowing perpetrators to be free to reoffend, over and above the original allegation of rape:

*"we can't remand them, but then they go and offend and hopefully we lock them up... that's the process... that's not bail being a toothless tiger, that's bail doing what it was set out to do".*

Therefore, for post-charge bail to deliver on protection commitments recited by judges, court rituals compel the persistent labour of a woman, who must survive multiple breaches, choose not to withdraw from the criminal case and continuously report. DS Surrey confirms:

*"Sometimes it takes two or three breaches before the court says, no, enough is enough and remands them in custody".*

Also required is officers' persistence in taking perpetrators to court for breaches. Police officers with finite time and resources may make a judgement on how a post-charge breach is likely to be received by the judiciary, an example of pernicious effects that can be harmful to victim-survivors, as Zoe found:

*"There were six occasions that he had broken [post-charge bail conditions] and on each time the police simply said, right, well, we'll go and have a word with him"*  
(Zoe).

Therefore, when women report bail breaches that lack independent corroborating evidence, police responses anticipate failure. The Family Law Solicitor observes how officers can legitimise inaction by choosing not to seek information, which is in practice a choice to remain ignorant:

*"I think the police... some of them are quite quick to say, there isn't enough evidence [of a bail breach], without actually going around to speak to people and actually properly investigating it and putting the time in to properly investigate it"*  
(Family Law Solicitor).

The consequences of productive ignorance for women who have reported rape is an involuntary and coercive responsabilisation for their own safety. The King's Counsel

explains, the court can decide to remand, if not, the perpetrator is released by the court with the same bail conditions as before:

*“It's not a criminal offence to breach your police [pre-charge] bail. In fact, it's not a criminal offence to breach your conditions of bail at all [post-charge or post-conviction]. It's only an offence if you fail to surrender. Breaching your conditions of bail, only means that the court can determine whether to give you bail [again] or to remand you in custody” (King's Counsel).*

In summary, this section has shown bail as protection is a matter of interpretation, where the apparently rational take-up of knowledge and ignorance preserves the value of the myth and the power relations that uphold it. This discourse operates to justify decisions critical to the safety of women being deferred, withheld, taken without the relevant information or victim-survivor participation. Bail processes work in sequence to silence or obstruct breaches reaching the undefined threshold of a formal report and recording those that do in such an inaccessible way that a perpetrator's danger is not reliably represented or managed. Ultimately, the distributed nature of ignorance that spans the police, CPS, barristers, magistrates and judges absolves any one institution from responsibility for its pernicious effects.

Navigating ignorance around the effectiveness of bail produced tensions in criminal justice actors whose reactions fluctuated from care and compassion to frustration and resignation. The influence and impact of criminal justice and victim-survivors' commitments to bail as protection are discussed in the following section.

## 5.4 Commitment Carriers

Criminal justice actors perpetuate the myth of bail as protection on behalf of institutions, through their statements of commitment. The interviews revealed that commitments to bail as protection carried by both victim-survivors and criminal justice actors have a number of varying motivations, describing promised or implied actions as if they exist and are effective.

Commitment carrying takes on three key forms. First, women victim-survivor participants with no previous first-hand experience of the criminal justice system have an optimistic attachment to the ability of bail to protect them, which seven out of ten

suggested was generated through media portrayals. This, in conjunction with police officers' discourses of bail as protection as an act of care, leaves women reporting rape believing their safety is a "*minimum expectation*" (Molly).

Second, criminal justice actors selectively share, dismiss or avoid information on bail, and their motivations depend on individual interpretations of their moral or legal obligations (England, 2024) to bail as protection. Third, inconsistent action on criminal justice commitments functions to steadily transfer disciplining effects onto women during lengthy investigations and prosecutions. As women adapt to a system where, as the King's Counsel starkly puts it, they "*begin to realize that they don't come first*", their faith in bail as protection corrodes.

The next section situates women's belief in the myth of bail as protection when they enter the criminal justice system, potentially for the first time in their lives.

#### 5.4.1 Women as commitment carriers

The women interviewed came into the criminal justice process with varying understandings of the purpose of bail, ranging from keeping defendants in custody until the trial (Beaver), to believing conditional bail was a mandatory minimum constraint for suspected rapists. For example, Molly said "*I didn't know they could have NOT bailed him*", while Juliana paid for a legal advisor during the prosecution phase who explained bail to her. However, the majority of the women participants had a broad understanding of bail as victim-survivor protection from "*watching police dramas or reading news stories*" (Molly), meaning the perpetrator would not: "*be able to come near me*" (Sinead; Karen; Zoe).

The understanding of all ten women interviewed was that reporting a bail breach would result in serious consequences for the perpetrator. Their expectations were that he would be immediately remanded or rearrested and/or the police would repeat his conditions with the authority with which they had originally been applied. For example, Zoe explains the way in which she understood bail to work:

*“Bail is like a promise to do something, like it's a promise to stay away, it's a promise to be good, and then if you break that promise, you're kept on remand until you go to trial” (Zoe).*

Therefore, conceptions of bail as protection form part of a readily available story presented to the public through television programmes and news media, repeated over time in everyday spaces (Brooks-Hay, 2019). This means police explanations of bail's ability to protect, confirm women's existing attachments to bail as grounded in truth.

Even when women were not told what bail conditions had been applied, they still interpreted the word 'bail' as symbolic of victim-survivor protection: *“I kind of assumed that he wasn't allowed to contact me or come near me or anything” (Sinead).*

The perpetrator in Patsy's case was initially remanded as a flight risk but bailed on appeal: *“when he got bail, I just thought... what's changed? Why?” (Patsy).* She described how officers encouraged her to frame her immediate fears and disappointment as a normal, accepted part of the process and focus instead on a positive, 'sustaining' (Berlant, 2011: 2) attachment to the desired future outcome:

*“The police were very confident, they didn't seem to think it affected or changed the strength of the case or anything, just that... he has the opportunity to appeal, he's done that” (Patsy).*

Overall, the women's responses showed that when criminal justice actors reinforced bail as protection, it generated trust in and compliance to commitments of a victim-survivor-focused system. The next section moves on to explore how and why criminal justice actors carry commitments to bail.

#### 5.4.2 Criminal justice actors' commitment carrying as an act of care

Police officers working in rape and serious sexual offences or domestic abuse units can be portrayed as a homogenous group that *“don't care”*, as nine of the ten women interviewed described them, the tenth referring to a systemic: *“culture of not caring” (Vicky).* However, as the *“public face” (DS Hampshire)* of criminal justice, the police sit in a liminal space between women and the criminal justice agencies whose reputations they uphold. The boundary conditions between them operate at an affective level with

officers seeking to convey relevance to women's individual circumstances while masking gaps in the ability of bail conditions to adequately safeguard.

The discourse of bail as primarily victim-survivor protection was communicated by some police officers very early in the process. For example, when Molly reported rape, the officers asked her opinion on whether the perpetrator was likely to be physically violent before they arrested him, with conditional bail presented as the solution: *"Do you think you should have bail, is he going to hurt you?" [My protection] was what I understood from what they were saying*" (Molly). The perpetrator in Vicky's case was granted unconditional bail but the officer in charge of the case (OIC) strongly communicated his commitment to her safety, telling her *"Don't worry, we've got you. If you need to call the police and you need someone to explain, call me. If you see something weird, call me. If you're scared, call me"* (Vicky). He followed up his commitment by calling her every week.

Officer discourses of victim protection operate as rituals designed to buffer victim-survivors from the institutional ineffectiveness of bail. When officers were asked the purpose of bail, it was clear they were committed to communicating it as victim-survivor protection:

*"I would hope that a victim believes that bail is there to support them. It's there because the OIC will say, especially in a sexual offence case, 'We've had to bail X and he's got conditions not to contact you'"* (DS Nottinghamshire).

Generating feelings of safety in victim-survivors through bail use was believed by this officer to be of crucial benefit to successful evidence-gathering:

*"we would get our video recorded interview with the victim and we want them to feel safe and secure when they're doing that. Having those bail conditions in place hopefully helps them with that"* (DS Surrey).

Therefore, victim-survivors are intended to understand there is an authoritative commitment to their protection through bail. In turn, this generates a positive attachment to their experience of the officer and institution, improving victim-survivors' ability to give the best evidence possible and their belief in their immediate and ongoing

safety. As DS Surrey says, conditional bail represents protection of some sort, rather than nothing: *“Most women just want to feel safe, they just want to feel that SOMETHING is being done to stop this person from being able to come near them again”*.

However, behind the hope perpetrators will comply with their bail conditions, DS Surrey demonstrates an anxious concern based on his knowledge of bail as purely symbolic:

*“We always try to explain what [pre-charge bail] is, and I’ll be honest, I find it quite difficult sometimes because it’s a pretty toothless tiger in terms of, if it’s breached, what power do we have anyway?”*

DS Surrey illustrates how a genuine desire to safeguard women can only be carried out through empty threats:

*“We’re almost being a little bit dishonest in as much as we say to the suspect when we’re bailing them out, ‘If you breach these [pre-charge] bail conditions you’ll be brought back here and you could end up in front of a magistrate’ and this, that and the other and it’s not true! It’s never going to happen, so we’re relying on them almost being frightened into complying with what we’re trying to get done and actually, that feels a bit disingenuous to our victims”*.

What the officer above illustrates is that his statement is the only genuine commitment he can give to a woman by the application of bail conditions, mediated by a victim-survivors’ position as unknowing. ‘The importance of positive, hopeful emotion management in legitimising and effecting co-operation’ (England, 2024: 1) from victim-survivors offers an optimistic story of perpetrator compliance to bail conditions that supports the myth of bail as protection. As the King’s Counsel admits, such commitments from criminal justice actors are given to women: *“more in hope than expectation”*.

Maintaining commitments to bail as protection creates tension for officers as their assurances of, for instance, serious consequences for a breach, are often empty promises. For instance, a candid admission below by a police officer that in his opinion, neither bail nor CPOs offer effective victim-survivor protections:

‘Researcher: *“Would you say that what you have [bail and CPOs] is a good reflection of what you need in terms of victim protection?”*

DS: *“No, not really, if I’m honest”* (DS Hampshire).

In these circumstances, women’s reports of bail breaches can take on negative attachments due to officer’s experiences of unsuccessful outcomes, as a retired Chief Superintendent explains:

*“Real anger. I’ve seen it. I’ve felt it. Real anger. When someone who is stone cold absolutely going to get remanded by the judge, gets released, officers get really frustrated. It does just slightly chip away [their] confidence in the criminal justice system because, when people talk about confidence and satisfaction... What is the police’s confidence and satisfaction in the criminal justice system, the other partners?”* (Retired Chief Supt).

Affect ‘sticks’ (Ahmed, 2006) to bail in the context of officers’ past experiences, present workload and anticipated progress. It is perhaps unsurprising then, that officers can be reluctant to communicate poor outcomes to women on bail and remand decisions made by the judiciary:

*“Officers are reluctant because they feel that they are letting the victim down through no fault of their own. So, no-one’s wanting to go and speak to somebody when they know that they’re going to be upset and feel let down”* (Retired Chief Supt).

Bail as a sign of anticipated frustration or anger, can influence officers to evaluate the status of a breach as ‘good’ or ‘bad’, that is, one worth pursuing or not. Therefore, officer’s commitments to bail as protection work in dialogue with affect to modify their actions to each reported breach based on their previous experience. As such, breaches may be upheld or sidelined depending on their likelihood of success and corresponding priority. The nature of this decision-making also permits officers to defend their actions as congruent with their commitments to bail. Thus, officers as ‘knowers’ within institutions make conditional judgements on whether to expend finite resources responding to a bail breach; locating, arresting and producing the defendant for court.

The police officer below describes the negative impacts on colleagues who detain defendants for bail breaches, only for them to be repeatedly released by the courts:

*“I can see the frustrations from officers... you remand them and then they go to court the next day and then they get released again and again and again”* (DS Hampshire).

Collective identities within policing culture prize loyalty manifested as shared values, beliefs and assumptions (Westmarland and Rowe, 2018) which influence officer’s behaviour (ibid) with regard to bail use. The benefit of criminal justice actors’ shared knowledge and practices with regard to bail sustains a culture of solidarity. These dynamics produced by collective criminal justice actors’ beliefs sit behind the constructions of bail commitments visible to victim-survivors, as unseen and unspoken logics.

The next section discusses how criminal justice agencies construct boundaries using bail as protection to characterise differences between private or public spaces and those of criminal justice expert or witness.

## 5.5 Boundaries of space

This section explores how boundaries are constructed by criminal justice practices, distinguishing the safety of private or public spaces for women which serve traditional gendered power relations. Furthermore, the significance between pre-charge and post-charge bail are identified by criminal justice actors as distinct spaces that give women less or more robust protection respectively, a qualitative distinction rarely obvious to victim-survivors.

### 5.5.1 Private or public space

The application of bail conditions in cases of rape have clear implications for the status of victim-survivors in certain spaces. The use of two standard bail conditions of no direct or indirect contact and not to attend a victim-survivor’s location, define private spaces, such as women’s homes, as authorised places of state protection.

Public spaces, however, are different; there victim-survivors must remain on their guard and manage their fears through practices intended to improve their chances of safety.

Ahmed (2014) explains how fear proscribes and remakes boundaries which shrink significantly to avoid the object of that fear, produced by what is authorised as a place of safety, such as a victim-survivor's home, and what is not:

'Safety here becomes a question of [women] not inhabiting public space or, more accurately of not moving through that space alone. So the question of what is fearsome as well as who should be afraid is bound up with the politics of mobility, whereby the mobility of some [men's] bodies involves or even requires the restriction of the mobility of [women]' (70).

The consequence of such limited bail conditions for women is a restriction of spaces or 'territories' (Ahmed, 2014:70) to which they could 'claim' (ibid). As Karen said: "*it feels like I had to change my way of my life rather than him*".

Victim-survivor practices to 'surrender or negotiate spaces to avoid the offender' (Antonsdóttir, 2019: 719) are compelled by bail conditions which forcefully communicated significant constraints to all of the women; marking boundaries and power relations. Ultimately, this reinforced the perpetrator's rights to freedom of movement, belonging and agency rather than their own, as the following examples demonstrate.

Karen moved to a job outside her chosen industry sector to avoid the possibility of meeting the perpetrator, Kylie "*went out less, I made myself a recluse*". Patsy had to insist on female only disability carers and managed the bail address bringing the perpetrator closer to her through an 'affective bargain' (Berlant, 2011: 209), transferring the disciplining effects of bail to her: "*It's ok that he's nearby, I'm not leaving the house anyway*" (Patsy). Zoe stopped going out: "*for the last seven months or so [of him being on post-charge bail], I just didn't really leave the house*". Juliana became unable to work and was too scared to go out for the two years before trial: "*these bail conditions are not for him, they're for me! every single condition that was imposed on him, limited me, not him!*". Sinead moved house while the perpetrator was on post-charge bail, to an area she knew the perpetrator disliked: "*so it feels relatively safe here*". The perpetrator in Vicky's case was also placed in a bail address closer to her home but absconded: "*he could have come and got me! It was a fear, yeah. I wouldn't go anywhere without my dog*" (Vicky).

However, criminal justice practices which damaged women's ability to move freely at work and in their community as a direct result of the inadequacy of bail conditions, leave no trace in official discourse. The bail as protection myth directs significant attention to how bail conditions affect perpetrators' freedom, however, there is little interest by criminal justice agencies in how these conditions affect victim-survivors' lives.

In addition to women's adaptations of movement in public spaces, the women interviewed felt strongly more should have been done to protect others during the time perpetrators were granted pre and post-charge bail. Daisy argued bail still allowed the perpetrator, a suspected child rapist, unrestricted access to women and children: *"For me it [post-charge bail] was like, have a good time for the next 10 months, we'll see you then. I know he's got a granddaughter that visits, there's children in his neighbourhood. He told me he went to a women-only yoga centre"*.

These fundamental and continuous adjustments that shrink women's freedoms are a form of invisible labour, similar in many respects to the concept of 'safety work' (Kelly, 2012) where women make sacrifices to improve their opportunity for safety. However, in the context of bail, the man or men are known to the woman, he has already subjected her to sexual violence and is under police investigation or CPS prosecution as a direct result of her reporting him. Unsurprisingly, then, women felt they had made themselves a target:

*"I don't know what type of person he is, how he's going to react. Is he vengeful? I don't know!"* (Patsy).

One aspect of safety work that could explain the comforting criminal justice discourse that *"relatively few people breach their bail deliberately"* (Barrister), is that the freedom women sacrifice during the perpetrator's bail period materially reduces the opportunity for perpetrator reprisals (Vera-Grey and Kelly, 2020). The protection that bail actually delivers is in part an institutionally unacknowledged function of the way bail conditions discipline women's movement. For instance, Sinead describes how the perpetrator in her case made serious threats to burn down her house but made sure she knew she should be afraid of everyone, not just him:

*“having said I felt a bit safer [with perpetrator on bail], I also felt a bit more scared because it was moving things on to a much more serious place. He’d said this thing, “It won’t be ME that burns your house down, it’ll be somebody else.” So... he was quite clever in saying that, it meant that I didn’t just have to be scared of him”* (Sinead).

Women’s restrictions during the years-long bail period remain invisible in law, policy and research, but the implications through bail as protection discourse confer valuable attributes on criminal justice institutions which they claim and publicly promote as a routine characterisation of bail’s effectiveness.

The following section discusses how criminal justice discourse highlights the power of post-charge conditional bail to protect, despite this capacity being at odds with institutional priorities.

### 5.5.2 Pre-charge and post-charge bail spaces

Criminal justice actors’ commitments to bail as protection are reinforced post-charge where bail breaches may result in remand, which DS Surrey reflects: *“has to be a better system than what we’ve got with pre-charge bail where... there is no punishment for it”*.

However, at the point of charge, victim-survivors transform into complainants who, as merely witnesses to their case, are held at a distance from court actors. The Barrister describes the fundamental belief, that prosecutors who engage with a witness risk accusations of failing to observe core professional values:

*“there’s a very long-standing, deeply held professional thing about if you’re prosecuting, you really don’t engage with your witnesses because you can be accused of coaching”* (Barrister).

Once the court has applied bail conditions to a perpetrator and that information has been communicated to victim-survivors, the King’s Counsel explains, there will be very little attention paid to the case: *“you are just in the system, you won’t be a priority because there are people in custody [on remand] who have to take priority”* (King’s Counsel). Post-charge, decisions to review the appropriateness of bail conditions at any time before trial, a long enough time for women’s circumstances to change considerably, sits

outside either police or court obligations. DS Hampshire describes how a case that has been charged and awaiting trial is no longer under police investigation and any communication with a victim-survivor will be sporadic:

*“The offence is no longer under investigation... it's a case waiting to go to court or it's adjourned and adjourned and adjourned so in that circumstance, contact [with the police] could be very hit and miss unless we were made aware of... a change in [victim] circumstances or the bail condition causing an issue then that would almost have to be more proactive on the part of the victim”* (DS Hampshire).

Once across the post-charge boundary, attention to bail conditions is transformed by criminal justice priorities. The case is no longer a ‘live’ investigation, so police officers inevitably turn their attention to new cases that need investigation. A retired Chief Superintendent describes the operational demand that officers are responding to: *“what crimes have come into the officer's inbox in the interim? You are not that officers’ only crime”* (Retired Chief Supt). Simultaneously, as the Barrister below describes, post-charge, CPS and judicial policy only recognises responsibility to a perpetrator in assessing bail breaches or reducing perpetrator constraints:

*‘Researcher: “Would those [post-charge bail] conditions be reviewed from the perspective of her safeguarding?”*

*Barrister: “Well, only if there was a breach, really. There's no real method of routinely... unless the CPS chooses to have a look at them and, more likely, the bail conditions would be sought to be reduced if it's going to go on for that length of time. So, there really isn't a kind of formal review process in that sense”* (Barrister).

Although the boundary between pre-charge and post-charge bail constructed by criminal justice actors conceptualises post-charge bail as providing more robust victim-survivor protection, discourse on its superiority to protect fails to situate it in the victim-survivor context. Once the boundary has been crossed, the speed with which the case will go to trial, any victim-survivor-focused review of bail conditions and police priorities conflict with the discourse of effectiveness, and therefore the needs of victim-survivors.

## 5.6 Conclusion

In conclusion, this section has shown the complex dynamics operating to preserve the myth of bail as protection. Central to the findings is the concept of ignorance, where systemic gaps in knowledge are not mere oversights but are productively ignored as defence mechanisms for maintaining institutional power and deflecting responsibility. This ignorance allows criminal justice actors to flexibly interpret bail as protection while preserving the illusion of its effectiveness, and thereby, their own elite power. In part, the success of the myth of bail as protection is due to processes of ignorance and knowledge construction being concealed in criminal justice hierarchies and spaces that block any sense of their own limitations.

The myth of bail as protection thrives on productive ignorance, perpetuated by institutional commitments that offer reassurance which, when called upon, are grounded in inconsistently defined notions of evidence, seriousness and women's safety needs. The majority of women victim-survivors interviewed commented on an attachment to bail as a mechanism of protection which they suggested was constructed by media portrayals and reinforced by institutional commitments. However, criminal justice rituals distance victim-survivors from meaningful participation in decision-making on bail, the outcomes of which can undermine their trust and compound their trauma. Positioned as sources of information but not legitimate knowers, victim-survivors are objectively central but subjectively marginal to the criminal justice process, while their protection is conditional on them keeping faith in the myth despite its failures. Women victim-survivor's reliable ignorance, produced through silence, partial information and discouragement from participation, becomes essential to upholding the myth of bail as protection. Women's knowledge is decontextualised, re-evaluated or absent, while ignorance is productive of institutionally maintaining the coherence of bail as protection, while delegating the labour to achieve this back to victim-survivors.

The pernicious effects of the bail as protection myth are therefore not accidental but reflect a tolerance to women's harm that is embedded into existing power structures.

While the ineffectiveness of bail is widely understood by criminal justice agencies and actors, statements of bail as protection circulate as 'institutional talk' (Ahmed, 2012: 130). Spatial boundaries created by bail conditions reinforce gendered power relations

to restrict women victim-survivor's mobility and freedom in an institutionally unacknowledged form of labour. Criminal justice ignorance unfolds in repeated sequences and spaces, while absolving any one institution from responsibility for inconsistent responses, outcomes, inadequacies and delimited conditions. What aspects of bail are fixed by ignorance and what are fluid is determined by those in power justifying, rationalising or excusing poor decision-making. Buffering knowledge that bail as protection is a myth while genuinely wanting to do the best for women, produces tensions for criminal justice actors whose reactions fluctuate from care and compassion to frustration and resignation.

The next chapter moves on to discuss how criminal justice ignorance and flexible knowledge boundaries are productive of presumptions and stereotypes by privileged actors, which advantage perpetrators of rape and responsabilise victim-survivors. Findings show how the bail as protection myth functions by attaching onerous responsibilities to victim-survivors. Women's entitlement to protection through bail conditions is scrutinised by criminal justice actors against a stereotype of 'ideal' victimhood (Christie, 1986) which dictates their credibility and that of their allegation. The chapter continues to focus on the dialectic between women's interviews and those of criminal justice actors to identify the consequences of the myth of bail as protection on victim-survivors.

## **6: Bail Conditions and the Burden on Victim-Survivors: How the Myth of Protection Shifts Responsibility**

### **6.1 Introduction**

The previous chapter discussed findings showing how the productive ignorance of criminal justice actors depends on the reliable ignorance of women. Criminal justice statements of commitment are welcomed by women, who enter the justice system with faith in bail's power to protect. Although there may be varying motivations for sustaining women's ignorance, the effects can damage women's trust and threaten their safety.

Ignorance as a form of criminal justice agencies' power, permits bail breaches to be dismissed by police officers in anticipation of judicial demands for independent corroboration. The consequences degrade women's credibility, reduces their safety and in turn, their freedom of movement, particularly in public spaces where they might encounter the perpetrator.

Where collective criminal justice knowledge of bail's inadequacies threatens the myth and actors' legitimacy, boundaries based on status and knowledge dynamically and inconsistently distribute responsibilities for concerns to other spaces and actors.

This chapter moves on to illustrate the many damaging consequences of the myth of bail as protection on women who report rape. The findings discuss the ways in which criminal justice practices convey or coerce women's responsabilisation while the abuser is on conditional bail, disciplining women's behaviour and freedom without acknowledgement.

Also explored are the ways in which women have their motivations constantly evaluated against their credibility, and that of their allegation, through perpetrator bail conditions. Criminal justice practices of bail resist formal action by making their responses conditional, for instance on women performing victimhood in stereotypical ways or women gathering evidence of breaches in spite of personal danger. Where women do not perform victimhood correctly, my interview data reveals their victim status, and therefore their protection, was withdrawn and they were made responsible for the perpetrator's

bail breaches. Women's reduced credibility and identity can then be used to discredit their allegations of rape and weaken the case against a perpetrator.

The findings show women's demythologisation of bail as protection can isolate them from the support of family and friends, as women's experiences of bail's failures contradict publicly held beliefs. As commitments by criminal justice actors conflict with bail's failures, the labour of protection is increasingly delegated back to victim-survivors. Inevitably, women's faith starts to corrode.

## 6.2 Responsibilisation

Responsibilisation work privatises responsibility so: 'risks are managed by individuals, with a focus on their agency, rather than the structural and institutional constraints that limit the possibilities for safety and freedom' (Coy and Kelly, 2019: 153). In the context of bail use, it functions to attach responsibility to women's choices and behaviour as a seemingly natural aspect of their role as a victim (McLeod, 2015).

The chapter focuses on how responsibilisation works through evaluating women's credibility as a victim, and the associated behaviours required of her in that role. The power effects of how women's behaviour and therefore her allegations of rape are decontextualised and abstracted through bail use are the topic of the following section.

### 6.2.1 Credibility: Deficit and Excess

The power effects of the bail myth are in part facilitated by the privileging or prejudicing of individuals or groups who accordingly receive more or less credibility. Such judgements can unfairly disadvantage the knowledge of those evaluated in deficit, while conferring undue respect to knowledge from members of a privileged group.

For instance, one of the structural boundaries constituted to exclude women from attending bail and remand hearings is an understanding applied by the judiciary to a woman's motivation, and associated credibility, in exercising her absolute right to be there (MoJ, 2024). As the King's Counsel states below, the status of knowledge is conferred on what is in fact, a judicial interpretation:

*"victims of domestic violence will regularly turn up in the magistrate's court because they want their abusive partner back, and they think that the court will be*

*more likely to do that if they are there, demonstrating their support. So, again, it's a perpetuation of, of the same myth [that excludes victim-survivors from attending their trial]. If you are physically present, it may be perceived that you are therefore supportive of the defendant and that simply needs someone to indicate in advance, the complainant is present because she is fearful and wishes to see what is going to happen, not the complainant is present, full stop” (King’s Counsel).*

The official response to a victim-survivor attending a hearing is not neutral, and her reasons for exercising her rights must be “*indicated in advance*” (King’s Counsel) to avoid damaging judicial assumptions about her presence and consequently, her allegation. Thus, victim-survivors do not possess 'the right to have rights' (Arendt, 1973) without being subjected to a credibility deficit. It is a woman’s responsibility to proactively overcome this deficit with the prosecution who hold the requisite credibility to explain the reason for a victim-survivor’s presence.

As the findings in Chapter 5 demonstrated, maintaining the boundary excluding victim-survivors from hearings permits the symbolic value of bail to remain intact. The occasions where victim-survivors do attend a bail or remand hearing, their motivation may be more complex than either free choice or supporting the perpetrator. Instead, as Molly points out below, it may form part of a self-protection strategy to distance themselves from blame and subsequent reprisals for constraints applied to the perpetrator:

*“She’s not responsible. It’s not her saying that [he should be remanded] and it gives her a different location, as far as he’s concerned” (Molly).*

Women may therefore attend court hearings in an appearance of support to deflect the perpetrator’s anger at having his control reduced, away from her, and back to criminal justice agencies. Victim-survivors made responsible for their own safety may even confirm to the court they are attending in support of the perpetrator to strengthen their repositioning away from blame. This suggests victim-survivors attending bail or remand hearings may do so in order to resist further abuse, but in a way criminal justice actors are unable or unwilling to understand and recognise.

Criminal justice actors' assumptions and associated discrediting of women victim-survivor's reasoning can be reciprocated by their lack of trust in the system. This is particularly the case where her actions are evaluated without reference to her reality.

### 6.2.2 The role of evidence

Police officers liaise between victim-survivors and other criminal justice actors and agencies and are both the public face and the gatekeepers of criminal justice (Murphy-Oikonen et al, 2024). As such, they assess whether and how to follow up any breach of bail. The findings in Chapter 5 revealed that, if officers' experiences of pursuing bail breaches lead them to anticipate unsuccessful or ineffective outcomes, they can adapt their responses to justify avoiding, blocking or resisting taking action. This weights the already uneven distribution of responsibility for their safety further towards women victim-survivors themselves. A Family Law Solicitor comments on the unpredictability of officers' responses to reports of bail breaches:

*“You get really different reactions depending on which police officer is dealing with it [a breach of bail conditions], there isn't any consistency at all. You can never know what they're going to do with [the breach] because every case is dealt with completely differently” (Family Law Solicitor).*

The power of bail is therefore moderated by officers' understanding of its (in)effectiveness, validating numerous completely different responses to bail breaches. When consequences for breaching bail conditions are unreliable, the power effects can degrade victim-survivor's credibility, even in the face of a perpetrator deliberately admitting the breach. For example, Molly describes the calculated confession of the perpetrator to breaching bail, which strongly suggests he knew the criminal justice response would advantage his case by detrimentally affecting her credibility:

*“If I rang him and he accepted those calls, if we met up... anything like that... it was MY breach and that's essentially what happened when he told the police. They came to speak to me... Did I want to go ahead with the case...? Was I still a credible witness? If you want people to believe you, [adhering to conditions is] your job” (Molly).*

The King's Counsel describes how easily a perpetrator could manipulate criminal justice notions of woman's responsibilities for bail conditions to damage her credibility and as a result, the allegation against him:

*"If you are going along and somebody's saying, "Well, yes, I did let him in the first time. I did make him a cup of tea. We did chat for a couple of hours, then he left. I didn't really want him here, but I didn't say anything. It's more tricky, not impossible, but much, much more tricky" (King's Counsel).*

Bail conditions therefore provide a method for authorities to consistently make a woman victim-survivor's right to protection contingent on her acting in ways that demonstrate sufficient credibility. Justifying inaction on reports of bail breaches is also achieved by making a victim-survivor solely responsible for obtaining proof beyond reasonable doubt, as a condition of officers acting on the report. Whether deliberate or unintentional, in an adversarial justice system, this has consequences that negatively prejudice a victim-survivor's credibility while privileging that of the perpetrator.

During the time the perpetrator in Juliana's case was on post-charge conditional bail for rape, he breached his conditions multiple times. Juliana received a text from the perpetrator's "drug dealer" (Juliana) asking her to contact him and the security light at the address the perpetrator believed she was living was smashed, with tissues left in the garden, twisted in a manner specific to him, so "you will know that I was here" (Juliana). She reported each breach of bail conditions to the police, who told her: "we don't have any way to prove it was him, the CCTV camera didn't get the angle" (Juliana). What tracks Juliana's reports is a prejudicial understanding by the police that her testimony alone is not credible enough to warrant action on the breaches. Arguably, it also demonstrates the negative effects on victim-survivors of officer's attitudes to conditional bail as a gesture of concern rather than an effective protection measure.

The perpetrator appeared online connected to an address other than his designated bail address, and within the area covered by the bail conditions, where Juliana lived. He also appeared on numerous websites; offering hypnotherapy from his home, offering to host couch surfers (cheap accommodation for short periods) and Tinder (online dating). When Juliana reported this to the police, she was told she was "stalking" (Juliana) him,

that the sites were based in the US, “*outside their jurisdiction*” (Juliana), and that it was up to her to complain to the organisations directly “*if I wanted to*” (Juliana).

As Chapter 5 identified, remaining productively ignorant is a useful institutional defence mechanism to deflect responsibility, in this case, for action to investigate Juliana’s concerns. As Juliana’s persistent reporting of breaches began to threaten officer’s ignorance with evidence, the hostility of their defence increased by attacking the credibility of her status as a victim-survivor. Action on bail breaches is successfully blocked once officers attribute accusations of criminal wrongdoing to Juliana’s reports. The transformation of a woman who reports bail breaches from victim to criminal is intended not only to justify inaction, but to signify to Juliana that further reports, far from being pursued to the detriment of the perpetrator, could instead be used to discipline her.

Where incontrovertible evidence of a bail breach is supplied by women, the nature of the action taken can symbolise a privileging of the perpetrator’s credibility, which sends a significant message to victim-survivors of their degraded position. In response to Juliana reporting and evidencing a contact from the perpetrator’s mobile number to her through WhatsApp, a messaging application: “*the OIC [officer in charge of the investigation], instead of arresting him, called his solicitor and asked him to block me*” (Juliana).

Juliana performed every role required of her by the bail as protection myth, yet the perpetrator’s breaches were not treated as such. Instead, police responses treated men’s violence as an informal conversation not a formal report. The effect is felt as a ‘testimonial injustice’ (Fricker, 2007: 145), where what Juliana knows is categorised as outside the criminal justice frame of credible knowledge and therefore any associated responsibility for her protection.

The duty of criminal justice agencies to intervene is based on individual actors’ interpretations which can be a very effective mechanism to stop breaches from ever being officially recognised. For instance, Sinead saw the perpetrator sitting outside her house in his car which was a breach of his bail conditions. She explained how her paralysing fear of him meant she didn’t take a photo as evidence he was there, and so her report was dismissed:

*“I froze... I didn’t know what to do... I was really scared. I actually didn’t do anything until he left and then once he left, I phoned 101, but because I didn’t get a registration number and I didn’t get a photo, I didn’t have proof, so they [the police] didn’t do anything.*

*I said [to the police officer], “Are you telling me I could have gone downstairs and got my camera out and taken a photo, that could have put me at risk.” I was a bit sarcastic, I said, “Are you trying to say I shouldn’t have frozen, I should have made sure I got a photo and only then something would have been done?”” (Sinead).*

If not reporting every bail breach disadvantages a woman’s credibility, reporting does not necessarily confer virtue. Sinead must demonstrate her fear correctly, but she is also responsible for obtaining corroborating evidence, which may put her in danger or be interpreted as her not being frightened enough. The withdrawal of power enacted through bail conditions communicates a hierarchy of ‘good’ and ‘bad’ bail breaches attached to victim-survivor’s duties to report the right issues, in the right way and with the right evidence.

In Juliana’s case, the perpetrator was not allowed within the area she lived or to contact her directly or indirectly, the two standard bail conditions outlined in Chapter 5. She explains how she found what constituted a bail breach hard to understand in the specific context of the perpetrator’s actions and her associated feelings of intimidation:

*“The circumstances of him breaching bail are still not clear to me. The day he came out of jail, he put on his Facebook page a message he would know I would see. He wanted to test the water to see if I was regretting what I did... if there was any chance he could persuade me to change my mind. I said, ok, this is not a breach of bail, but it is in the sense of, I know what he’s trying to do.” (Juliana).*

Given the ritualistic importance criminal justice agencies place on women reporting every suspected bail breach, a shared understanding of how to successfully perform the reporting ritual should be equally as important. The King’s Counsel explains even the way in which women victim-survivors report breaches can be used as evidence to cast doubt on their allegation of rape and simultaneously fail to elicit protective action. Nevertheless, she notes, women are not always made aware of the implications:

*“not every complainant is aware of their rights when someone has bail with conditions as to the consequences of a breach of that... Because if, when they [the defendant] breach that order, 999 is called, and the next time 999 is called... that makes the position of a prosecutor appearing at court so much stronger to be able to say, well, he went there, the complainant called 999, he disappeared before the police arrived, and then the following morning he was there again. It's plain he will not comply with any conditions of bail. We need to remand this person in custody.*

*Where things slip sometimes in the net is if the complainant rings 101, because it's not something that's caused her immediate safety issues, it's just something that's upset the complainant. Those calls are recorded, but it may not necessarily always reach the officer who has conduct of the case.*

*If you report it like someone who might have, you know, put a dent in your car, it can take quite a while to filter through to where it needs to go. And also, because of the passive manner in which it's been done, sometimes it can demonstrate that actually, it's not really something that's particularly bothered you... She didn't dial 999...” (King’s Counsel).*

Unspoken conditions of the bail myth demand women victim-survivors voluntarily demonstrate stereotypically gendered levels of alarm to avoid systematic discreditation, if not, criminal justice agencies waive their responsibility to protect. Women victim-survivors must recognisably demonstrate active, not passive, responses to breaches, thereby earning the right to protection. If they fail to perform fear in the correct way, they risk diminishing, erasing or even assuming the perpetrator’s responsibility for the bail breach.

Crucially, the victim-survivor’s requirement to respond to the proximity of the perpetrator with a call to the emergency services only applies in spaces designated by criminal justice agencies. In all other places, she must accept his presence without complaint, as Karen found out:

*“the question that I kept asking [the police] was that if we were both to attend the same [work] event, is he breaching his bail conditions? And the answer was “No”, because they said that it would just be chance that we would both be there.*

*Really, under the eyes of the law, he could be in the same room as me and it wouldn't be breaking his bail condition because it would be deemed as a public event that we were both attending, whilst full well knowing that he would only be attending that to see if I was there” (Karen).*

While credibility deficits prejudice women’s allegations of rape, victim-survivors are also kept in a position of partial, distorted or absent understanding of bail that further undermines them.

Molly was led to believe that each time she reported the perpetrator breaching his conditions she risked being responsible for his immediate imprisonment. However, she was not aware that any decision not to report would so effectively be held against her, rather than him: *“In my head, if he breached bail, he would basically be put in prison until the trial which is probably why I didn’t report him for some of it” (Molly).* However, the implications of her credibility deficit and correspondingly, his credibility excess, as a consequence of him breaking his bail conditions was not lost on the perpetrator. Molly explains how he very effectively used his knowledge of her being held responsible for his bail breaches at his trial:

*“if they’d then, at that point [the first breach] remanded him and gone, ‘he’s breached his conditions, we’re going to remand him’ that would have meant he wouldn’t have been able to manipulate me into sleeping with him AGAIN and the police didn’t know until it went to court” (Molly).*

He was found not guilty, in part because Molly, not the person with the bail conditions, was held responsible for his multiple breaches of bail. He continued to rape more women until, in 2023, he was eventually convicted.

The findings demonstrate credibility deficits attached to women victim-survivor’s reports of bail breaches are systemic, the injustice attributed by the police, for instance, operates in anticipation of the same damaging stereotypes instrumentalised at court. In consequence, the myth functions as a sequence of rationalisations where evidence of a perpetrator’s bail breach positions her rape as potentially unbelievable. What is signified to institutions by a breach of bail, and to victim-survivors by the criminal justice

response, creates a relational understanding of responsibilities based on distributions of credibility.

Assessments of victim-survivors' credibility are repeatedly used to evaluate their allegation of rape by the authorities (Larcombe, 2002) through the 'ideal' victim's response to a conditional bail breach. A key power effect of the bail as protection myth is that women must conform to stereotypical behaviours as a method of distinguishing them as 'real' and therefore, deserving victims. It is this requirement that women display exemplary victim conduct that is explored in the following section.

### 6.2.3 Conforming to the 'ideal' victim identity

The 'ideal' rape victim is a well-established stereotype of a woman who is passive, dependent and blameless (Christie, 1986). Despite decades of feminist research and campaigning (Kelly et al, 1996; Walklate, 2007; Masser et al, 2010), the status and benefits of being understood as a victim by criminal justice agencies is still a contested space (Spalek, 2006).

In the context of bail, institutional discourse on the application of bail conditions emphasises they are constraints exclusively applied to a suspect or defendant (CoP, 2018; CPS, 2024). Nevertheless, DS Hampshire explains that women victim-survivors are routinely held responsible by police officers for perpetrators breaching their bail conditions:

*“How many times do we hear a report... neighbour reports disturbance to the flat above them, we turn up, it's the perpetrator's flat. The victim's there, but says, “No, I came at my own volition” and police decide, we're not going to do anything about that then. We remove her from the address and take her somewhere safe, and we don't do anything about breach of bail because we look at it and say, well, she's instigated that.*

*Well, hang on a second. I think our responsibility is wider than that”* (DS Hampshire).

As discussed in Chapter 5, there may be multiple reasons for officers' behaviour, ranging from compassion to resignation and frustration. However, when no action is taken in

spite of an evidenced bail breach, it signifies a pivotal blurring of the identity boundary between a victim and a perpetrator. If a woman does not perform victimhood correctly in the eyes of the state, the state can legitimately abdicate its responsibility to protect her. The Family Law Solicitor describes below how abused women “allowing” violent perpetrators into their house constitutes a “risk”, but not from him to her safety. It is she who poses a risk to the perpetrator, because she is responsible for him breaching his bail conditions:

*“Sometimes [women] are allowing the perpetrator back into the house to see the children even though that's putting him at risk of breaching the bail conditions. As soon as she starts doing that, the police are just not going to bother if he breaches the bail conditions because they're like, you invited him in”* (Family Law Solicitor).

His presence in the house, in contravention of his bail conditions, functions to morally evaluate her as unworthy of protection. By letting him in, whatever the circumstances, she loses her status as a victim, emptying any institutional obligation to pursue his presence as a bail breach. Actions that do not conform to the ‘ideal’ victim mark her not only as undeserving of scarce police resources, but a threat to the validity of her own case. The consequence of her failure to adhere to expected victim behaviours erases her position; under these conditions, it is the victim-survivor who is held responsible and the perpetrator who is protected by bail conditions.

Juliana had reported numerous bail breaches to the police, none of which were treated as legitimate reports. She describes how her knowledge of his breaches was reduced by the police to a patronising and dismissive concern for her mental health:

*“You should let us do our job, Juliana! You should go to the GP and get medication to deal with your anxiety! You're safe to leave your house! You're overreacting!”* (Juliana).

This discourse justifies inaction by interpreting the reports of victim-survivors as the product of an overactive imagination based on their perceived weakness or vulnerability, rather than their knowledge of the perpetrator. The ideal victim in this case, disbelieves their own suspicions that bail is being breached as a misinterpretation stemming from their exaggerated fears. In contrast to the active role required of victim-survivors when

responding to perpetrator bail breaches, Juliana is encouraged to passively accept the legitimacy of police decisions. When she demanded the police check the perpetrator was at his court designated bail address, the police found he had absconded four months previously.

After a week of the police searching for him in vain, it was Juliana who identified the address where he was eventually found: *“I was the crazy person? I was the one telling you he was breaching bail and nobody cared! They didn’t even go to his address to check! And now you want my help?”* (Juliana).

Juliana’s lack of credibility when reporting bail breaches, followed by her vindication and essential knowledge of the perpetrator’s likely location reveals how institutional interpretations are reflected in the status of victim-survivors. This provides criminal justice actors with opportunities to leverage the advantageous power effects of ‘epistemic exclusion’ (Dotson, 2014: 115), with the validity of Juliana’s knowledge limited only to what and when the police deem it is appropriate. Therefore, criminal justice actors can suppress knowledge through accepted patterns of professional practice that rely on asymmetric power relations to position her claims as outside the ‘ideal’. At the same time, Juliana’s knowledge is used but unacknowledged by criminal justice actors, positioning a ‘genuine’ victim as a compliant information source to the investigation. The lack of empathy in the officer’s behaviour, coupled with a cynicism that is understood by the police to be an integral characteristic of their profession (Caplan, 2003) reproduces practices that can be damaging and dangerous. Consequently, police responses to Juliana’s reports of bail breaches deny responsibility for taking action and discipline her behaviour as an unruly, rather than ideal, victim.

Juliana describes how her challenge to police inaction over bail breaches not only demonstrated criminal justice bias but emboldened the perpetrator in her case:

*“He was given all the benefit of the doubt, and he was a risk, to many people, to the public and nobody cared! So... people were... in shock! Just like me, I was like, how is this possible? It just gives you no confidence that... a) it gives victims no confidence and b) it gives perpetrators a lot of confidence that nothing’s going to happen.”*

Despite the importance of women's responses to bail conditions and breaches being pivotal to criminal justice actors' recognition of their victim status, the question of whether the bail conditions were adequate was rarely addressed. For example, the failure of criminal justice agencies to consider what bail conditions protect women in relationships characterised by coercion, offers opportunities for abusive men to manipulate agencies' responsabilisation of women victim-survivors.

When Molly was six months pregnant with her and her partner's second child, he raped her so violently, she gave birth three months prematurely. She comments on the disconnect in her protection needs between the police, who assumed she was in danger of physical violence, and the perpetrator's control of her, such that she did not even recognise his manipulation:

*"when I reported him, I didn't think he was a danger to me, I didn't think he was a risk in that sense. My whole framework was, he'd done this thing that had caused [her baby] to be born premature, so the person he'd hurt was [her baby]."*

*The police thought that the risk he posed to me was that he would threaten me or that he would be violent to keep himself out of prison or to prevent the case going ahead. But actually, he used something much more effective than that, he used the hope that he... would become a good person. Which is also why he could manipulate me so easily because I didn't see myself as the injured party" (Molly).*

The police and the judiciary granted the perpetrator standard bail conditions post-charge; do not contact directly or indirectly and do not attend her address, despite him having a previous conviction for a sexual offence and being on the sex offender's register.

The expectation symbolised by the bail conditions was that by reporting his rape, the 'responsible mother' had also made the 'right' choice to end the relationship, whether temporarily, for the duration of the rape case, or permanently. Institutional failures to recognise and address contextual factors that limit women victim-survivor's capability to comply with these expectations can result in them being positioned as voluntarily continuing to put themselves at risk. Such: 'discourse supports a crime incident-based framing of domestic violence, rather than the pattern of daily domination and micromanagement: what Stark (2007) terms coercive control' (Coy and Kelly, 2019: 153).

The complicated reality of Molly's relationship and her present circumstances was in no way taken into account and put her in immediate conflict with the 'ideal' victim identity, particularly through the 'no contact' bail condition:

*"I had a very sick baby, [and] a toddler, and had been married to him for 4 years and the reality was, the likelihood of there being no contact between us over that time was really unlikely given that his child might have died any minute, somebody would have to tell him"* (Molly).

As soon as the perpetrator was released on post-charge bail, he breached his 'no contact' condition in such a way that he controlled whether Molly could report him to the police. The threats demonstrated he fully understood what advantages the contingent nature of her victim status gave him:

*"he got released from the police and within minutes had rung me and then he started threatening... "If you don't drop this, I'm going to tell the police that stuff you've done... because the stuff he'd manipulated me into during the relationship was illegal..."*

*You're not going to tell the police "He's threatened me" because what he's threatened to do is tell them the thing that I can't talk about! So... in the end I thought... I'm just going to have to... to manage it, really"* (Molly).

The perpetrator continued to make threats, but Molly refused to withdraw her allegation. As a result, he used her responsabilisation by criminal justice agencies for his bail conditions to damage her credibility and weaken the case against him:

*"he contacted me, manipulated me into meeting up with him, then manipulated me into sleeping with him. He then told the police... He's coming to [the police] and saying, 'I've breached bail' and instead of treating it as a breach of bail, they treated it as 'Is she actually willing to go ahead with the case? Do we have a strong case still?'"*

*No police officer involved recognised what that meant in terms of the level of danger he posed. He's much more dangerous than someone who'd turn up and smash things or set fire to the house because... actually to manipulate someone like that,*

*after you've like... destroyed their life and, like, caused their child to be born prematurely... like, that indicates a really serious level of danger!"* (Molly).

Beyond the boundary of the ideal victim, any protection conferred by bail is withdrawn from women. For standard conditions of bail to offer any hope of protection, Molly must be responsible for consistently and actively rejecting the father of her two children to remain credible as a victim-survivor of rape. If her behaviour falls short, she is to blame for his bail breaches which will not be followed up as such through court, meaning he can be presented to the judiciary as a defendant who has "*behaved impeccably*" (King's Counsel) throughout.

The benefits to perpetrators of criminal justice agencies responsabilising victim-survivors for bail breaches are two-fold; firstly, perpetrators can breach conditions multiple times without it being legible to agencies as such. On the contrary, a defendant without recorded bail breaches is presented as having 'good character' which may result in bail conditions being reviewed to his advantage and benefit his defence at trial. As this retired Chief Superintendent notes:

*"The longer we have somebody on bail [without a recorded breach], the more it points to good character on behalf of the suspect".*

When harms inflicted on women result in a discrediting of her account to the benefit of a perpetrator's good character, women receive the message that criminal justice actors are both indifferent to their safety and averse to making the perpetrator accountable.

Secondly, women's responsabilisation for making what criminal justice views as the 'correct' choice, to raise the alarm in all circumstances of bail breaches, ignores whether she has: 'the material and emotional resources to act' (Coy and Kelly, 2019: 140). Letting him into her house, even against her will, is interpreted by agencies to her detriment. Not only is it unlikely to be followed up as a breach of bail, but it also has such a serious impact on her credibility and that of her allegation, it may result in the case being dropped at the pre or post-charge stage and will certainly be used against her if the case proceeds to trial. However, as is well-evidenced, leaving is the most dangerous time for women subjected to abuse (Epstein and Goodman, 2019; Monckton Smith, 2020). The irrelevance of this fact in considerations of bail produces a structural barrier to

knowledge while leaving the myth of bail as protection intact. When criminal justice agencies use characteristics of the 'ideal' victim to discount ongoing harm through bail breaches, the transference of credibility from victim-survivor to perpetrator is experienced by women as an institutional echo of the original abuse (Herman, 2005; Epstein and Goodman, 2019).

Drawing predominantly from Juliana and Molly's interviews in this section is not an indication that the issues raised were not part of other victim-survivor participants' experiences. All ten women victim-survivors spoke of how the actions of criminal justice actors with regard to bail made them feel discredited and devalued. Nevertheless, I have chosen to highlight accounts where the role of 'ideal' victim related to bail use throughout the criminal justice process to illustrate the negative impacts of the myth of bail as protection as it travels between agencies.

The credibility and victim status of women victim-survivors are pivotal to whether criminal justice actors evaluate their claims for protection as legitimate (Epstein and Goodman, 2019). The judgements made on victim-survivor's behaviour in relation to a perpetrator's bail conditions has so far avoided any scrutiny despite the potential impacts on women who report rape and benefits for perpetrators.

#### 6.2.4 Institutional silence

Current CPS (Justice.gov.uk, 2025) figures state a perpetrator of rape may be on pre-charge conditional bail for 326 days, it will take 136 days for the CPS to authorise a charge and another 379 days to get to court. A total of two years, three and half months. During this time, criminal justice actors can shift responsibility to victim-survivors using silence, abdicating their role to fully inform women who report of the information it is in their interests to know.

For instance, the significance criminal justice agencies place on the women victim-survivors reporting every bail breach is not necessarily shared with them, an absence of information that can lead to a rape case being compromised. This quote from a King's Counsel illustrates that some perpetrators take full advantage of how the myth of bail as protection allows victim-survivors' fears to be dismissed thereby supporting his continued abuse:

*“if you consider a domestic setting, a defendant may well go round 10 times during the course of his period of bail. Complainant may or may not contact the police about that because they may well think, well, it's all right, he hasn't hit me today, or, well, it's all right, he hasn't done something to me today... I'll leave this. Then 10 times go by, and he kicks the door in, at which time he says, well, yes, I have breached my bail, but she's let me in nine times before and we've been getting on fine. The reason she's fallen out with me today is I've told her our relationship's over, or I've told her that I can't pay the maintenance anymore”* (King's Counsel).

Fear, in the criminal justice interpretation, is valid only when it is conceptualised in terms of distance (Ahmed, 2014), as standard bail conditions of no contact or no attendance at a location are intended to symbolise. The combination of fear and proximity as the gendered practices of women resisting the escalation of abuse and managing the threat of violence (Pain, 2014) is rationalised by the perpetrator and accepted by the criminal justice system as *“getting on fine”* (quote above). His admission to criminal justice agencies of multiple breaches of his bail conditions no longer counts because the consequences of her not conforming to ‘ideal’ behaviour means she is no longer recognisable to the authorities as a victim.

This allows the perpetrator, supported by the criminal justice system, to discredit a victim-survivors allegation of rape without ever having acknowledged their collusion. The King's Counsel acknowledges below that institutional silence has adverse consequences for victim-survivors, then raises a boundary to defend the legitimacy of her professional practice, distributing responsibility for bail deficiencies into other spaces:

*“it's a question of a complainant, understanding the consequences of failing to report a breach of bail. And of course, it does put the onus on the complainant who doesn't understand that that's their responsibility, or the consequences of not reporting it.*

*And that again, is unfair, but it is... it's an issue for the police to determine”* (King's Counsel).

An alternative framing of women victim-survivor's 'failure' to report every breach is as part of a continuum of resistance where reporting to the police is understood to be a dangerous, direct and oppositional challenge to a perpetrator's abuse (Katz, 2004). Bail conditions may suggest a reworking of the power relations between women and the abuser in her favour, however, if he does not abide by them, her harm management strategies may include letting him into the house or not reporting each breach, but continuing to support the prosecution (Katz, 2004; Pain, 2014).

Nonetheless, institutions demand women victim-survivors repeat the openly defiant act of reporting the perpetrator over years-long investigations and prosecutions whatever the personal cost, or risk invalidating their original allegation. The King's Counsel here makes it clear that during the bail period a victim-survivor's behaviour with regard to bail conditions and breaches must conform, or else undermine their case:

*"It [post-charge bail] becomes ineffective if there is an ongoing relationship. It becomes ineffective if breaches are not advised of. Some complainants do continue a relationship with the person they accuse for a variety of reasons. Those reasons undermine a complainant"* (King's Counsel).

Women subjected to rape are thus involuntarily and unknowingly positioned by criminal justice actors as having accepted responsibilities attached to the 'ideal' victim identity once a perpetrator has bail conditions. However, there may be practical reasons to explain their actions since eight of the ten victim-survivors interviewed were not explicitly told the bail conditions but got a 'sense' that the perpetrator would be prohibited from contacting or seeing them. Daisy eventually managed to find out the bail conditions from a journalist, but reveals how this made her feel her importance to the rape case was devalued by the police:

*"I'm sure they just see me as this uppity black woman from (home town) telling [the police] what to do... but I wasn't told about any of his bail conditions"* (Daisy).

Daisy's requests for information from the police were responded to in a way that communicated she was getting above herself in making a claim on knowledge to which they felt she was not entitled. Even when bail conditions were eventually shared with the women victim-survivors interviewed, what constituted a breach and how to report it were

not necessarily explained. As Zoe describes, silence that kept her ignorant allowed the perpetrator to continue his abuse without restraint:

*“It was about six months before we found out that the [post-charge bail] conditions were that he wasn't allowed within the 30 mile per hour zone of the town I lived in. Which sort of confused me because I didn't really know what that meant? They said that he isn't allowed to contact me, and I've asked them, well, does that mean by phone, does that mean face to face? Does that mean letters? because he's constantly ringing, he's constantly sending emails, he's constantly posting stuff through the letterbox.”* (Zoe).

In a similar way to Karen in Chapter 5 (section 5.3.1), criminal justice actors also communicated to Molly that bail only applied to physical violence, not in cases of coercion or manipulative control. Therefore, while the perpetrator in Molly's case was on bail, she reasoned it was: *“his responsibility not to do illegal or dangerous things but it was my responsibility if [he used] any kind of manipulation”* (Molly).

Institutional silence allows for bail's signification to be endowed with multiple interpretations including the quiet withdrawal of victim-survivor protection. Criminal justice actors' productive ignorance of women's safety needs after reporting rape, along with the influence of differing forms of perpetrator abuse and relationship context results in unrealistic demands on women victim-survivors's behaviour in response to conditional bail.

In the absence of relevant information, the women victim-survivors interviewed were burdened with the labour to bridge what they understood as gaps in their safety. The next section explores the impact on victim-survivors of attempts to secure their safety through bail and the laborious task of challenging the myth of bail as protection when promises of their safety are disappointed.

### 6.2.5 Victim-survivor labour

With criminal justice agencies abdicating their responsibilities to fully inform victim-survivors of relevant information, some were forced to take on forms of labour that left them not only feeling unsafe but devalued, ignored, frustrated and angry. Kylie describes

how she felt as months passed without being told whether the perpetrator had been arrested or had bail conditions:

*“It’s made me feel suicidal because there’s so much pressure of not knowing”*  
(Kylie).

Women’s responses to what they saw as inadequate bail conditions burdened them in complex and embodied ways that impacted every aspect of their lives, as Karen illustrates:

*“I tried to commit suicide a few times and I completely kind of withdrew from any kind of networking or social events. I still don’t go to the area where he works, I avoid that whole part of [city], and I have panic attacks when I go near the areas where he would go to, where he works and I was put on a performance review at work, even though they knew I was going through this...”*

Karen requested that in addition to the ‘no contact’ bail condition, the perpetrator also be prohibited from coming into her borough, an additional bail condition the police agreed to, but forgot to apply.

Juliana was informed of the bail conditions after continuously chasing her Sexual Offences Investigation Trained (SOIT) police contact:

*“I remember asking my SOIT officer, can you please update me because I know today’s the bail hearing. She said, “Of course! I won’t forget”. She actually turned her phone off and went on vacation for two weeks without even updating me on what had happened”* (Juliana).

Therefore, an institutionally designated and core role of a victim-survivor in the criminal justice system is waiting anxiously outside the threshold of decision-making (CJJI, 2023). Women’s hopes during this time were deeply invested in their expectations of criminal justice protection.

Kylie described waiting for information as feeling: *“like I’m carrying it, really heavy on my body”*. Karen also carried the weight of responsibility for obtaining updates: *“It would be me saying [to the police], what’s happening now? I know bail is going to come to an end. What are you doing about it?”* The perpetrator in Juliana’s case requested a change to his

curfew times: *“Every day I was like, have they decided? Have they decided? Have they decided?”*

The power dynamic of being kept waiting for arrest and bail decisions indicated to the women victim-survivors that they were unimportant to criminal justice actors, and that their expectations of protection from criminal justice agencies may have been misplaced.

The majority of the women victim-survivors interviewed reflected on feeling deceived by their trust in the criminal justice system to protect them, describing their faith as *“naïve”* (Vicky; Sinead; Patsy; Karen) and that they had felt *“fobbed off”* (Daisy; Kylie). While outside the criminal justice system, the victim-survivors interviewed recognised bail as a symbol of their protection, once inside the boundary, their disappointment and feelings of loss were in the order of humiliation:

*“I was really naive. I thought that the police would really be there to protect you as the victim of the crime, whether I could call them and they would come or around him not being near me in any way”* (Karen).

*“You know when you feel that you’re fobbed off? Well... that’s how I felt”.* (Kylie).

Eventually the victim-survivor’s realisation resulted in a complete loss of faith in institutional statements of their safety, which Beaver explains in terms of an emotional assault:

*“I feel a psychic threat, a psychic attack because I know he’s aware of me, thinking about me... so there is a constant link to him, and I feel that I wouldn’t do if I could trust the police to monitor him in the community”* (Beaver).

Being excluded from relevant information on bail and conditions leads to women victim-survivors taking on safety work (Kelly, 2012) that is expensive, stressful and time-consuming. For instance, the Family Law Solicitor explains that women paying to independently apply for CPOs, did so in part due to their powerless frustration at not being told when the perpetrator is likely to be released or with what bail conditions. Her only explanation for this situation is that victim-survivors are simply not a priority:

*“Quite often, when people are arrested, they’re taken in and then they’re released on bail conditions and the victim doesn’t even know that they’ve been released, and definitely doesn’t know there’s any bail conditions. I presume it’s because it’s not a priority for them [the police], but I hear it all the time. “What bail conditions do you have?” “Oh, I don’t know!”*

*So, they’re not given this in writing. What should happen after every hearing, someone should send an email to them saying the case was up in court this morning, this is what’s happened, this is the next stage” (Family Law Solicitor).*

None of the women victim-survivors interviewed were asked by the police how bail conditions could support their safeguarding needs, but one woman was asked more generally what she “*wanted*” (Kylie) from reporting and another, whether she thought the perpetrator: “*was a danger to her*” (Molly). One of the eight was not told that bail conditions were for her protection. This was possibly because when the perpetrator appealed his remand, the bail address agreed by criminal justice actors placed him significantly closer to where she lived than his home address. Patsy explains below how bail was communicated to her as solely suspect management:

*“I thought that bail was more for the police’s and the CPS’s benefit to be honest, because they’d said he was remanded due to being a flight risk, I just got the impression this was so they can keep track of him. To be perfectly honest, I would have preferred him to have had to stay in [hometown] rather than closer by” (Patsy).*

Expectations generated in the victim-survivors by bail discourse slowly began to corrode as the exchange of information dried up and reported breaches were not acted on. The work of institutional discourse at this stage communicates a deficit of recognition, priority and action as an empirical reality of bail (Wetherell, 2012). This not only permits criminal justice insiders to rationalise victim-survivor’s expectations as ‘naïve’ or ignorant but signals that victim-survivors, themselves, must proactively take responsibility for what has not been addressed. For example, Sinead saw the perpetrator outside her house but because she didn’t have any corroborating evidence, the police declined to follow up the bail breach. The meaning Sinead took from the lack of action was that her safety was her responsibility:

*“once I saw him outside, every night, I’d lock the gate and put a bin next to it and wood... I’d kind of be barricading myself in” (Sinead).*

Recognising what the absence of communication meant did not dilute the women victim-survivor’s belief in the myth of bail as protection. Instead, it indicated the police did not have full control of the situation and that the women should take personal responsibility to avoid the perpetrator, as far as possible. As the women victim-survivor’s expectations were increasingly lowered, the more responsabilised they became (Hinds and Grabosky, 2010).

For example, in Karen’s case, she had been told the perpetrator would be charged and a post-charge condition of no contact applied, so she requested, and the police and CPS had agreed, an additional condition that he would not be allowed in her borough. Knowing he would be imminently arrested made her more fearful of reprisals, therefore in the absence of updates from the police, Karen was forced to take matters into her own hands:

*“between [the police] saying they were going to arrest him and release him [on post-charge conditional bail], they didn’t talk to me for like a month. That was the point where I was the most scared. I tried to desperately get in contact with anyone to tell me what was going on and no one would respond.*

*So, I went to a local policing event about women and girls’ safety in [borough]. There was the head of [borough police authority] and the [borough] mayor banging on about how amazing everything is for women and girls, and it was like full of journalists and local leaders.*

*Then at the end they were like, any questions? I was like, I’ve got a question, a month ago you said you’d arrest my rapist, and you haven’t spoken to me for over a month. Can you tell me what the crack is? Never have I been whisked out of a room more quickly, and he was arrested the next day. What a surprise.” (Karen).*

In this case, the discourse of ‘keeping victims informed’ was substituted by partial information that left Karen more fearful than before, while ensuring the police met their obligations under the Victim’s Code (MoJ, 2024). Institutional silence prevents

knowledge transferring to victim-survivors, and in this case, silence transferred the labour of raising the priority of the case to Karen, at a high personal cost.

Karen was subsequently told the reason for the delay:

*“They were apparently having arguments [between police authorities] over who was going to arrest [the perpetrator] because he was just on the border of [location] and another county.”*

Keeping a victim-survivor in a state of heightened fear because of an internal disagreement over who should arrest the perpetrator forcefully communicates institutional priorities. Karen’s confidence was significantly reduced, exerting pressure on her to take responsibility for her own safety. When, eventually, she got a call from the police to say the perpetrator had been released with bail conditions, their indifference to her safety was confirmed: *“they forgot to add on the condition, the only one that I wanted, that he wasn't physically allowed to go near me. They forgot about it”* (Karen).

Karen felt angry at being responsabilised by the police against her will. When she put in a complaint, the official response was to shrug it off: *“they [the police] just played it down. They said, ‘Oh, yeah, we forgot, but you flagged it, we added it on’. You shouldn't fucking forget my safety! Why am I constantly fighting for myself?”* (Karen).

Karen can hear how her complaint at the transferring of responsibility for her safety back to her is heard by the police as a ‘tiresome’ (Ahmed, 2021: 2) distraction: ‘this is not important, you are not important, what is important is elsewhere’ (ibid). The reaction of the police to the complaint demonstrates a lack of care as an institutional norm, indicating Karen is at least as responsible as they are for managing her safety.

DS Hampshire explains how officers taking responsibility or responsabilising victim-survivors is a matter of individual ethical practices, a range of which are accommodated by police culture:

*“Some officers really take responsibility, you know, big personal responsibility for doing what they should be doing and providing the right service. But, yeah, it breaks down doesn't it into those who see it, I suppose as a vocation or what have you,*

*those that do the job because that's what they get paid to do, and those who don't even achieve that” (DS Hampshire).*

For Karen, even obtaining two standard bail conditions demanded that she attend a police event and stand in open defiance of the authorities to publicly ‘out’ herself as a victim-survivor of rape; bravery which humiliated the police into delivering on their promised action. Additionally, the police normalised making her responsible for mitigating any ongoing risk from the perpetrator and for reminding them to apply a vital bail condition. Karen was disoriented, scared and angry at finding herself ‘in a gap between an appearance and [her] experience’ (Ahmed, 2021: 41) of what the police understood to be their professional responsibilities and her own.

Victim-survivors’ labour is also focused on demythologising bail, to understand and resist the myth of bail as protection communicated by criminal justice discourse. For example, public beliefs of bail’s effectiveness to protect, the same belief the women victim-survivors themselves held when they first entered the justice system, now operated to isolate them. Zoe describes the depth of her friends and family’s faith in bail as protection from the man who had raped and tried to kill her:

*“in their [friends and family’s] mind, like the police now know about it, the police are going to keep you safe, you can now get on with your life”.*

However, when the perpetrator in Zoe’s case repeatedly breached his bail conditions, there were no consequences: *“I just broke down. What is the point in these conditions if no-one is going to do anything?”* (Zoe). Nonetheless, as the following quote shows, the knowledge she had was unable to be heard by friends and family, such is the power of the myth of bail as protection to overcome contradiction:

*“They're [police] not keeping me safe. They're not! So, I guess there was a disconnect. If you were to talk to them [friends and family], they'd probably say they were with me 100%, that they had my back but no, it was a very lonely experience. Very lonely experience”* (Zoe).

The strength of the bail myth reassigns her challenge as irrational fear, in spite of her voicing multiple experiences of its material failures. In the absence of other protection

options, and where the elite status of criminal justice actors ensures their narratives of bail are epistemically dominant, Zoe's friends and family have a stubborn attachment to bail keeping her safe. This is an important characteristic of the myth's persistence even where there is ample evidence to the contrary.

Women victim-survivor's knowledge puts them at odds with the understanding of bail as effective protection held by friends, family, and promoted by criminal justice discourse, leaving women further isolated. The King's Counsel's comment demonstrates how victim-survivor's fears of reprisals can be minimised against criminal justice actors' attachment to discourse of conditional bail as a deterrent that "often" works:

*"Bail conditions can work very well. Except of course, you will wander around as a person who's made an accusation, worrying whether they'll work or not but, they do often work for a long period of time"* (King's Counsel).

When women's attempts to share first-hand knowledge are muted, distorted and ultimately unacknowledged, it can result in suffering, isolation, and in some cases, crisis, as Juliana illustrates: *"I cannot live! I don't go out, I can't leave my house, I don't have a job, I don't have a life, I don't have anything!"*.

Juliana was the only woman interviewed who attended a hearing. Confronting the police's withholding of information she was fully entitled to have, released feelings of anger and suspicion:

*"The funny thing is the police officer didn't want me to be in that [bail] hearing. He didn't want to give me what magistrates court he was going to appear in, he didn't want me to be there. He said, "I don't know what time the hearing's going to be on the list." I was on time, and he wasn't, and he never got to speak to the prosecutor"* (Juliana).

Juliana's experience is an eye-opening demonstration of how the presence of victim-survivors in bail and remand hearings threatens the validity of the bail as protection myth. When Juliana attended the bail hearing, she witnessed first-hand criminal justice practices of bail and remand that happen in cases of rape and serious sexual offences literally tens of thousands of times a week (Justice.co.uk, 2025). The judicial system of

bail, and by association, remand, was laid bare as wholly inadequate to the task of addressing women victim-survivor's safety and protection. She listened as the judge rebailed the perpetrator to what the police had confirmed was an inappropriate address, unopposed by the prosecution barrister who was completely unaware of the case history or relevant circumstances:

*“he [perpetrator] was bailed to her address; the CPS didn't oppose bail... The barrister that was there, he didn't even read the case, and I was so shocked... I tried to... make him fix it but it was already done, he had already been let out and to her address.*

*I was like, “Why are you [prosecutor] here? You're dealing with everyone's lives and how can you make a decision without reading a case?!” I showed them my face and said, “If anything happens to me, the blood is on your hands”. He was very snobby and said, “If you want, you can make a formal complaint about me” and I said, “Right, I will!”” (Juliana).*

Routine judicial and court practices of non-performance that usually go unobserved can lead to dangerous errors in victim-survivor's protection. The labour of raising safety concerns is also a burden on Juliana who first spoke to the officer in charge of the investigation:

*“You [officer in charge of the investigation] were supposed to talk to the prosecutor, but you weren't on time! First, he gave me an excuse, that he was working late, then he said his car broke down... He said that all the paperwork said her address was an inappropriate address, he should never have been bailed to her address. I don't know, I've never seen the official papers” (Juliana).*

Making a formal complaint about established institutional practices indicates to Juliana that such incidents are occasional errors. Furthermore, it redirects her anger from individuals to institutions who, as revealed in Chapter 5 (section 5.4), are affiliated through a shared acceptance of bail's flaws and contradictions. Juliana's intervention forced the CPS to rectify the prosecutor's dangerous mistake, and the perpetrator was remanded. However, such victim-survivor scrutiny of judicial bail or remand decision-making is vanishingly rare.

Juliana received a letter of apology from the CPS which did not give her faith the systemic issues would change:

*“I got a ‘sorry’ letter from the CPS saying, ‘We hope that we can learn from our mistakes. The bail should have been opposed; we have taken the necessary action with regards to the barrister that was dealing with your case. We’re very sorry this has happened, but we hope that now he [the perpetrator] has been arrested, that has restored your faith in the CPS’. And that’s how I found out he was arrested. Six days after he had been arrested” (Juliana).*

This response reduces institutionally understood failures with regard to bail hearings that systemically put women victim-survivor’s lives at stake down to ‘mistakes’. The ‘disappearing’ (Dotson, 2011) of institutional and male violence, along with Juliana’s labour to force criminal justice agencies to accept responsibility, are reframed as isolated events. The seriousness of the inadequacies she experienced at the hearing are once again concealed from public view.

### 6.3 Conclusion

Bail and conditions are unique as a myth object since they can span the entire criminal justice process from an initial arrest until after conviction. Both the operation and consequences of the bail as protection myth, connecting criminal justice actors and victim-survivors, contained in this and the previous chapter, demonstrate there is no shared consensus of what conditional bail is, or what it does. In the context of institutional responsabilisation, the dynamics of the bail as protection myth focus attention on how women victim-survivor’s identities and subjectivities are positioned, evaluated and disciplined across the criminal justice domain.

The findings show how the consequences of the bail as protection myth decontextualise victim-survivors’ allegations of rape, sabotaging their credibility, degrading the status of their knowledge and their rights, and ultimately advantaging suspected rapists by supporting their ongoing abuse. The power effects of the myth of bail as protection undermine victim-survivors if they do not conform to stereotypically gendered behaviours, and passive compliance with the demands of criminal justice actors. Women victim-survivors may engage in self-protection strategies that are illegible as

such to criminal justice actors, and which are subsequently used as evidence to discredit her and her case. Although women must be scared of the perpetrator in wholly recognisable ways to criminal justice actors, they must not be too scared to obtain evidence to corroborate reported breaches. Victim-survivor labour is extracted in the gap between what should happen and what does happen, communicating an institutional indifference that very effectively transfers victim-survivor responsibility for their safety back to them.

The serious limitations of bail as protection are deflected to other spaces by criminal justice actors who refuse to acknowledge the outcome of responsabilising victim-survivors through bail conditions. Unsurprisingly, women subjected to rape feel a combination of disappointment, fury, suspicion and fear.

The following chapter widens the understanding of how the bail as protection myth moves and operates outside the criminal justice and victim-survivor dialectic. It will explore the findings in terms of how the myth of bail as protection persists across other institutional boundaries and its influence on professional practices.

## **7: Between Knowledge and Ignorance: Professionals, Ambiguity and the Myth of Bail as Protection**

### **7.1 Introduction**

Many institutional domains outside criminal justice have their own understanding of what bail as protection means, so professional spaces become constitutive of victim-survivor subjectivity in relation to bail use. Despite professionals outside criminal justice being separated from the power to make bail decisions, the findings reveal they are significant spaces of victim-survivor meaning-making through the reinscription of the myth of bail as protection.

This chapter follows the myth of bail as protection as it travels from criminal justice domains across to other institutions and support organisations. It draws on interviews with domestic and sexual abuse specialists in health, social care, housing and education, as well as Independent Sexual Violence Advisors (ISVAs), Independent Domestic Violence Advisors (IDVAs) and support workers in specialist women's services. The participants and institutions are referred to as 'professionals' in the chapter, to differentiate between them and criminal justice actors and agencies.

Some of the central terms developed in Chapter 5, such as productive (Mays, 2019) and reliable (Dotson, 2011) ignorance, influence policy in some professional domains by ignoring empirical evidence to justify inaction, with pernicious effects on victim-survivors. Forms of ignorance in this chapter are used to denote ways in which boundaries are preserved, and information is managed on the effectiveness of standard bail practices.

Three main themes emerged from the data that particularly influenced professionals' responses to victim-survivors and their own understanding of bail use: 1) forms of ignorance; 2) carrying bail commitments in affectively tense situations; 3) and the ambiguity of bail.

Firstly, professionals work in the space between criminal justice actors and victim-survivors. Often their roles include women's support and reassurance across a range of victim-survivor reactions to bail as protection, from faith in its effectiveness, to terror at

its failure. Legislation and policies which ignore vital and connected victim-survivor concerns that fall between what institutions consider their responsibility, and that of criminal justice agencies, limit what counts as knowledge within a specific professional boundary. Forms of ignorance across professional and criminal justice domains therefore work in sequence to deflect uncomfortable knowledge and provide excuses to remain ignorant of relevant and available information. The effects of this productive and reliable ignorance are felt by victim-survivors and professionals as pernicious and harmful. This leaves professionals to make sense of inconsistent bail outcomes through processes of justification. The unpredictability of criminal justice actors' bail decisions benefits from such ignorance, because asymmetric power relations assign credibility to a range of inconsistent practices.

Secondly, failures of bail to protect happen as singular or multiple events that weaken women victim survivor's faith and belief. These moments and ongoing residual negative feelings become affective hotspots, which some professionals navigate by sustaining their commitment to the myth of bail as protection, despite their doubts. To compensate for bail's failures, conflicts and contradictions in practices result in professionals adapting their discourse with victim-survivors, which can lead to professionals doubting the value of their work.

Thirdly, ambiguity works to ensure the myth of bail as protection is undefined and undefinable. With bail open to multiple criminal justice interpretations, professionals are forced to work with its uncertainty. Attempts to reduce unpredictability in future bail encounters are made through post-hoc rationalisations of criminal justice decisions.

## 7.2 Ignorance and Pernicious Effects

The findings show how constructions of systemic knowledge or ignorance of bail as protection cross multiple institutional domains, producing damaging consequences for professionals and women. These dynamics have two dimensions: First, knowledge can be deflected from entering institutional domains by an official evaluation that condones ignorance. Second, the outcome for victim-survivors can damage their faith in bail to protect, so professionals reinscribe the myth of bail as protection in a process of justification.

### 7.2.1 Deflecting knowledge

Knowledge can be deflected from entering institutional domains by an official evaluation that sustains productive or reliable ignorance and consequently defends familiar practices. As a result, action that could be taken to protect women victim-survivors is not recognised as a possibility. Institutions that fail to enact bail as protection cannot be held accountable because the processes and duties associated with protective action are opaque (Gunn, 2011).

One example of this revealed in the interviews is how criminal justice agencies' avoidance of data collection on bail use (Home Office, 2021b) protects systemic ignorance against the disclosure of uncomfortable truths that challenge privileged actors' identities. Therefore, an absence of institutional data on bail use in rape and serious sexual abuse cases (or any crime type for that matter) creates an information gap bridged by anecdotal criminal justice discourse naturalising a view of bail as predominantly effective. As the following quote from the Housing Specialist argues, this acts as a concrete barrier to challenging bail's weaknesses:

*"it's something I never stopped to think about, but how are we ever going to evidence [bail's] ineffectiveness if we're not even collecting the data?"* (Housing specialist, North region).

For instance, there is no data on the number of and consequences for women in joint housing tenancy agreements with the perpetrator, where their protection under conditional bail sits in conflict with housing legislation, under which the perpetrator retains a legal right to enter the home. However, criminal justice actors' exclusion of housing legislation from bail decisions absolves them from any requirement to alter their routine practices, while housing law and policy does not recognise the loophole in the absence of data. The Housing Specialists explained how this places them in a situation where protecting the women they support is virtually impossible:

*"because it's a joint tenancy, she can't change the locks. She can do nothing. She fully expected we would have the powers to stop him coming into that property, and we haven't. We knew all weekend he was probably going to go back to that property, because this happened on the Friday. On the Monday, she didn't answer her phone,*

*on the Tuesday we went out and did another visit to find out he'd gone back and stolen her phone” (Housing Specialist, Midlands region).*

Housing Specialists expressed frustration at their exclusion from contributing to bail conditions and pointed out they are only informed of issues through informal relationships with neighbourhood officers:

*“you just wouldn't hear from response officers or the officer dealing with the case. We tend to build really robust relationships with neighbourhood officers, so if they go out to something as a follow up, they would be quite good with linking in with housing providers and saying, ‘Do you know this is an issue for your tenant?’ But it’s very individual” (Housing Specialist, North region).*

Given the two standard bail conditions are both firmly related to a victim-survivor’s domestic environment, the absence of cooperation is a particularly counterintuitive oversight. As one Housing Specialist observes:

*“with health, with education, there's sometimes absolutely no reason for those services to be connecting with or in contact with victims. But for housing there should be across the board” (Housing Specialist, North region).*

Ignorance is produced by the lack of connection between bail conditions, housing legislation and policy. This allows the presumption that since bail symbolises victim-survivor protection, it is unnecessary to change the terms of a joint tenancy agreement if there are allegations or charges of rape because the existence of bail is enough to protect. In this way, the myth of bail as protection deflects empirical knowledge that could have resulted in measures reflecting victim-survivors’ needs. Ignorance here is systemically productive of institutional inaction, abandoning women subjected to rape to the traumatic emotional and material consequences of a perpetrator having the right, and the keys, to enter her home at any time. Women are forced *“to go through the process of getting legal advice”* (Housing Specialist, North region) in an attempt to fill knowledge gaps which housing specialists explained, housing providers are unable to clarify.

The ignorance of housing associations exempts them from assuming the burden of whether bail is effective or conditions adequate. In addition to facilitating institutional inaction, housing legislation in the context of bail transforms the identity of women who do change the locks “to stay safe“ (Housing specialist, North region), from victim to criminal because: “she legally cannot change the locks if he's on the tenancy” (Housing Specialist, Midlands region). Housing policy only concerns itself with enforcing the victim-survivor’s adherence to her tenancy agreement, even if that puts her life at risk or results in her criminalisation. Thus, criminal justice actors fail to connect bail conditions with housing legislation to improve women’s safety and in turn, ignorance and power position the housing association’s lack of curiosity and inaction on behalf of their tenants as legitimate. The primacy of the tenancy as a legal document deflects knowledge of women’s risk and frames criminal justice inaction as neutral, absolved of responsibility for the associated consequences on victim-survivors, and housing professionals who work with them.

Shifting police thresholds regarding what constituted an actionable bail breach also frustrated professionals, with the majority expressing concerns at official interpretations of a “serious” (ISVA, Sussex) breach versus a “nuisance” (ISVA, Sussex). For instance, this ISVA explains the online breach of a ‘no contact’ bail condition was very unlikely to be officially followed up “unless [the perpetrator] specifically says, “This is so and so” in the message, which they obviously aren’t going to do” (ISVA, Devon and Cornwall). Where such contact also failed to be evaluated as a separate crime, it did not attract police attention. ISVAs and IDVAs were then left with the consequences of criminal justice boundaries that deflect knowledge relevant to victim-survivor protection. An ISVA angrily describes how this deflection occurs and its pernicious impact on victim-survivors:

*“Don’t get me started on the breaches of bail by social media! What I’ve seen is perps post [online] threats, ‘Wait till this is all over, I’ll have my justice.’ Victims are absolutely petrified because they know exactly what that means, and everybody knows who they’re talking about, and the police say, ‘Because he hasn’t said her name it’s not harassment...’ But everybody knows who it is. Everybody” (ISVA, Cambridgeshire).*

Professionals know a lack of resources are an impediment to the police following up digital breaches of the 'no contact' bail condition used so widely. Therefore, they concluded that officers deflect inconvenient knowledge, as a tool to remain ignorant of the perpetrator as a likely suspect. Many professionals recognised that this situation produced police practices that normalised a dangerous gap in victim-survivor safety, as this Housing Specialist points out:

*“For them to have seized his phone, downloaded the data... they won't have had the capacity to resource that, and they'll just wait till he does something else... it is almost that expectation that this will ramp up. So, we'll wait till it does something easier for us to get him on and we'll get him then”* (Housing Specialist, North Region).

The long delays in obtaining digital evidence contradict criminal justice discourse legitimating the ubiquitous use of the 'no contact' bail condition. Nevertheless, a ritualistic reproduction of ignorance by criminal justice agencies maintains its use as standard practice despite the drawbacks, as echoed in this quote by a retired Chief Superintendent:

*“it's bail alongside electronic, digital, mobile phones. You put the two together and it's become really difficult if we're still waiting 18 months for [digital data] to come back”.*

In combination, these behaviours lead to criminal justice actors flexibly constructing what can be established as 'proper' knowledge to use as a basis for action, even where there is an obvious suspect, or victim-survivors recognise the perpetrator. In the absence of any other explanation, the failure to accept women's reports of breaches as evidence communicates an asymmetric attribution of police officer's trust in the perpetrator's favour. A Housing Specialist describes her frustration when women's evidence of a bail breach is deflected by police officers, supported by discrediting assumptions of victim-survivor motivations. She points out how the ignorance that defends police inaction also discredits victim-survivors and protects perpetrators from consequences of breaching his bail conditions:

*“She'll say, ‘He rang me off a private number, but as soon as he started speaking, I knew it was his voice’. The number of times I’ve heard officers say, ‘Well, if it was a private number or withheld number how are we gonna prove it was him?’ I've had stand up arguments and said, ‘What has she got to gain out of telling you that he's breached his bail?’ ‘Well, she's got in for him now, and she wants it to go to court quicker. What evidence have you got that he was down the street? Did anybody else see him? Have you got a ring doorbell?’” (Housing Specialist, North Region).*

As this example suggests, modifications to conditions about what constitutes knowledge, evidence and victim-survivor motivation by criminal justice actors can be contextual, immediate and dynamic. In the process of criminal justice actors’ producing and reproducing variations of the myth of bail as protection, victim-survivors can be blamed and perpetrators excused. For example, professionals argued that the current demand for prison places presents a context conducive for magistrates and judges to perpetuate the danger to women victim-survivors through their decisions. As this ISVA grimly comments:

*“I’ve sat in [remand hearings] and the magistrate or judge has come out and said, ‘We’ve got eight places in prison today, that’s all we’ve got.’ They say prison numbers have nothing to do with the [remand] decision, but it has, it’s got everything to do with it” (ISVA, Cambridgeshire).*

Professionals awkwardly positioned between women’s expectations of bail as protection and criminal justice practices, are responsible for reassuring women, despite their own misgivings. A Housing Specialist notes, the benefit for criminal justice agencies of deflecting knowledge of deficiencies is ignorance of the need to invest, develop and embed the most effective practices of protection:

*“the biggest problem is that too often, [bail conditions] are far too narrow, and that's what gives the perpetrators the room to manipulate and negotiate around them. Whereas I think if a victim supported by an IDVA or a specialist to really explore... how can we completely eradicate this person's control of you by bail conditions... and that's quite an extensive piece of work that's very time dependent and it's very labour intensive at the front end, but actually what you're preventing is potentially*

*lots of breaches, if those bail conditions are robust enough to take that control away” (Housing Specialist, North region).*

Criminal justice actors who have the monopoly on deciding what bail conditions to apply, remain blind to any issues with using the same two conditions. This creates an alibi for their ignorance of what conditions actually do protect women subjected to rape, under what circumstances and in what contexts. As noted in Chapter 5, standardised bail conditions that do not mirror the contextual complexity of women victim-survivor’s lives are an expression of productive ignorance which resists acknowledging patterns of failures and well-evidenced perpetrator tactics of manipulation, coercion and control (Walby and Towers, 2017; 2018; Stark, 2007). Thus, the myth of bail as protection is secured behind multiple institutions’ presumptions of its effectiveness that refuse to recognise the systematic nature of proof to the contrary. Each failure of standardised bail conditions is relegated to a one-off event, rationalising a distorted and biased approach to women’s safety and ensuring victim-survivor’s evidence of inadequacies is dismissed. Professionals recognised how this presumption of effectiveness provides cover for inaction, for instance, as this ISVA explains:

*“even if there is a breach in those [post-charge] bail conditions, more often than not it’s not followed up, the Bail Act isn’t actually applied, [and] if the police haven’t followed up on that breach of bail, nobody would know about it” (ISVA, Cambridgeshire).*

Faith in the myth is so robust that even specialists in domestic homicide reviews (DHR) were unsure of whether instances of bail as a point of fatal failure were recorded, potentially further erasing opportunities for scrutiny or learning:

*“I’ve been involved in four or five DHR’s and... it [bail as a point of fatal failure] isn’t something that comes to mind as being mentioned much in the ones I’ve read, so I’m not sure if it’s being recorded” (Housing specialist, North region).*

More information, or even undisputed proof of a bail breach, does not necessarily break through as legitimate evidence. What this means is an understanding of the precise circumstances under which the myth of bail as protection works in practice, is impossible for professionals, or victim-survivors, to establish. The ISVA explains her

bewilderment when incontrovertible evidence of a breach was still not sufficient for the police to take formal protective action:

*“He was saying, ‘Oh yeah, I did do that.’ And there wasn’t... why are we not seeing a breach of bail? He’s not denying it and we know it’s happening. We know there’s bail conditions... to the point where he was being referred to [by the police] as a ‘Nuisance’. I thought this isn’t a nuisance; this is a dangerous individual!”* (ISVA, Sussex).

If the benefits of conditional bail use are unpredictable for victim-survivors, a Housing Specialist and an ISVA noted the advantages produced by ignorance are clearly understood by perpetrators:

*“Perpetrators really understand what the digital space can do for them, and it does a lot for them”* (Housing Specialist, North region).

*“The current use of [conditional bail] is serving the perpetrator very well! There’s just no accountability whatsoever”* (ISVA, Cambridgeshire).

Many professionals commented on how perpetrators routinely *“push around the edges”* (ISVA, Sussex) of bail conditions to continue their manipulation and intimidation of victim-survivors. Patterns of tactics included; filming women at the edge of bail location constraints, loitering outside women’s workplaces and children’s schools; gaining access to maternity wards; tampering with heating settings via Wi-Fi; sending multiple recorded delivery items; threatening behaviour such as leaving ‘presents’ on the doorstep and so on. Professionals attempting to improve women victim-survivor’s safety clearly informed criminal justice actors what their needs were, assuming this would result in more effective bail conditions or responses. These attempts were consistently unsuccessful in effecting change.

For example, perpetrators standing outside children’s schools at pick-up or drop-off time was a tactic of intimidation most commonly mentioned by professionals:

*‘Researcher’: “If the perpetrator did turn up at school and you contacted the police and said, “You need to vary the conditions”?”*

‘Social worker’: *“They probably won't do anything. I've never seen a child's name put on [bail conditions]”* (Child Protection Social Worker, Midlands).

With the unexplained absence of effective bail conditions to protect women that include her children, their remaining safety options can inflict additional damage:

‘Social worker’: *“Then it would be looking to maybe move out of city or something like that.”*

‘Researcher’: *“Moving her?”*

‘Social worker’: *“Yeah, it's always her. The Mum's are the ones who are punished, the impact is always on her.”* (Child Protection Social Worker, Midlands).

Therefore, the myth of bail as protection being predominantly held in two bail conditions that are so closely related to safeguarding the homes of women and children is a demonstrable illusion, if the failure of bail to protect can deprive them of that home.

Deflected knowledge is not only a consequence of institutional norms and practices, but also of individuals proactively deflecting knowledge in order to preserve their ignorance, and thereby their professional competence. A Child Protection Social Worker describes how time and resource pressures are productive of ignorance in order to sidestep moral dilemmas:

*“It's always when you have that opportunity to try and think, how can we actually make things better... but it just doesn't happen. That actually takes a lot of time and effort to achieve, and people don't have that time and effort, you know, it's easier to just write those couple of lines, isn't it”* (Child Protection Social Worker, Midlands).

Ignorance is generated through the deflection of knowledge within specialist professional domains, and between them and the criminal justice system. That ignorance then becomes productive and reliable because uncomfortable knowledge that would challenge it is excluded from the decision-making domain. Nonetheless, for professionals, making sense of constrained practices involves searching for explanations and justifications, which is examined in the following section.

### 7.2.2 Justifying ignorance

As noted in Chapter 5, rituals of bail by criminal justice actors are performed in spaces kept remote from the victim-survivor and professionals. Professionals must therefore find a way to explain the consequences of their actions because the rationale for inconsistent bail judgements is largely hidden from external view. The emphasis among professionals then moves to justifications of those judgements, despite their knowledge of overwhelming evidence against the perpetrator, facilitating the production of ignorance by masking poor decisions by criminal justice actors. A Housing Specialist describes a pattern of mystifying and unpredictable court decision-making, which she justifies through reference to systemic issues:

*“there's really no pattern to [court bail decisions]. So, we as IDVAs can think, “Oh, this guy's got a horrific history of domestic abuse and look how many times he's breached! Surely when they put it to the court, they're gonna remand him.” And they don't. And you think, what is that about? The only thing I can put it down to is what else is going on... nationally or regionally at the time in terms of capacity in prisons or whatever”* (Housing Specialist, North region).

The degree to which professional actors justify the inadequacy of unpredictable criminal justice bail decisions varies, based on their experiences with and proximity to criminal justice actors. For instance, the following IDVA had been based in a magistrates court. She explains how victim-survivor exclusion is justified by magistrates believing that women wanting to attend a court hearing where the perpetrator is present, conflicts with her claim for a ‘no contact’ bail condition. This echoes the judicial credibility judgements of women’s motivations for attending a bail or remand hearing outlined in Chapter 6. The IDVA also highlights how the ritualistic reproduction of ignorance, produced in part by women’s absence from court hearings, leaves women epistemically, judicially and involuntarily positioned at a disadvantage:

*“it wasn't encouraged because... if they were asking for conditions not to contact for fear of the perpetrator and possible witness intimidation, for the magistrates to see the victim in the same room as that person... A lot of the time it felt like they*

*were getting the defence side saying, they've been in contact with the defendant and selling their side of the story but not having the victim's side. (IDVA Oxfordshire).*

Professionals noted that the privileging of court actors' assumptions on what motivated women's actions went unchecked. For instance, the following quote from a Housing Specialist describes how magistrates' lack of appropriate competence, manifest as reliable ignorance, can result in pernicious effects on victim-survivors (Dotson, 2011). The Housing Specialist then offers a justification, suggesting this may explain why police officers exclude victim-survivors from bail hearings:

*"it's a massive, massive element in terms of magistrates judging the actions of victims, and not really understanding that trauma-informed behaviour. I really don't think magistrates have any idea about why victims might make some of the choices that they do. And I think they definitely do judge, and I think that's potentially something that the police are maybe aware of and maybe conscious of... and that's why they discourage [women's attendance] because, I suppose they see that first-hand" (Housing Specialist, North region).*

The ritualistic reproduction of ignorance described in Chapter 5, such as the limitations of police case summaries and prosecution barristers' scant time to prepare, is not visible to professionals. Nonetheless, the advantageous effect for perpetrators is all too clear, as the Housing Specialist explains:

*"[the exclusion of victim-survivors from bail hearings] definitely creates a bias because your victim's completely faceless. You're only presented with the information that the police or CPS want to present you with, nothing else. Whereas when you've got a defendant in front of you, their behaviour, their demeanour, all of that is going to be taken into consideration and have an impact" (Housing specialist, North region).*

The result for some professionals is that they cognitively resist the myth of bail as protection but are institutionally powerless to act in line with the reality they recognise. Reconciling their knowledge through justification is one method of releasing the tension that this disempowerment creates. The result is a retelling of the myth through the development of their own institutional and individual practices of support for victim-

survivors. Part of the emotional support they offer is sustaining victim-survivors' optimism to endure a demanding system, or as this ISVA describes it, providing a bridge between the “*mechanical*” world of criminal justice and the “*human*” world of the victim-survivor:

*“[the criminal justice system] is really old, archaic, quite mechanical system and then you've got a survivor who's been to through something very painful and most human, and how the two worlds don't... some of the ISVA work is about being a bridge between those two very different things”* (ISVA, Sussex).

Criminal justice actors' unpredictable use of bail conditions, extensions and action on breaches can be transformed into rational actions based on different interpretations by professionals, to at least partially justify inconsistencies in decision-making. For instance, women subjected to rape who also had specific characteristics such as a disability or were pregnant, were said by some ISVAs as “*sometimes*” (ISVA, Cambridgeshire) more likely to get bail conditions. As the following ISVA reasons, some vulnerabilities give the police obvious evidence protection is needed:

*“it's easier for the police to identify when somebody's got small children, just had a baby or got disabilities, that it's easier for them to... evidence”*. (ISVA, Cambridgeshire).

Professionals have to continually tread the line between their knowledge, their recognition of ignorance and their advocacy role. As the University Welfare Officer exemplifies here, there is a tension between knowing what the bail conditions are, knowing they will be ineffective and yet still having to deliver support to a student:

*“they'll tell me their bail conditions, and I know that doesn't protect them. I think I've had that conversation with one student, another I haven't and I've just kind of reiterated about any kind of breaches, ‘Make sure you liaise with the police’, but knowing full well that it means nothing”* (University Welfare Officer, Midlands).

Professionals labour to buffer poor criminal justice bail practices by offering women victim-survivors credible justifications. What is included or excluded by professionals is contextual and situated by what is most beneficial or significant for the victim-survivors

they support. This places professionals in a challenging space between their knowledge of the ineffectiveness of bail to protect and victim-survivors who are terrified of reprisals. However, their desire to support victim-survivors can sit in tension with professional obligations to criminal justice discourse, and the need to establish and maintain crucial relationships with both women and criminal justice actors. It is professionals' negotiation of this tension that the next section explores.

### 7.3 Carrying commitment in affective hotspots

Professionals manoeuvre between reassuring women in a way that gives them confidence, without misleading them about bail's effectiveness to protect. The first section examines how ignorance connected to positions of power produces confusion, inconsistency and contradiction, which sit in tension with professional compliance to institutional discourse. It explores how professionals manage when carrying commitments of the myth of bail as protection once it has failed to protect a victim-survivor, in affectively charged spaces. I call these spaces of victim-survivor despair, anger and disappointment, 'affective hotspots'. The second section explores how temporal elements of the myth of bail as protection are adapted by professionals to provide victim-survivors with reassurance that attempts to relieve their suffering in affective hotspots. The final section considers the impact of bail as protection discourse on professional commitment carriers, where its repeated failure threatens their values and undermines their identity.

#### 7.3.1 Affective hotspots

The findings showed that for professionals, upholding a commitment to bail as protection in the face of its repeated failures, requires managing the eruption of surprise, anger, loss and fear from women when reported breaches of bail result in limited or no consequences.

The institutional power of the criminal justice system and popular culture representation of bail cited by women victim-survivor participants in Chapters 5 and 6, produces a narrative of bail as meaningful. A perpetrator said to be 'on conditional bail' carries credibility for the public, including the family and friends of victim-survivors. This grounds their belief, described by the Housing Specialist in the following quote, that having

conditional bail erases the risk of further abuse or reprisals. The Housing Specialist also explains the consequences of bail as protection discourse when it isolates women from the support of family and friends. Instead, victim-survivors have to rely on speaking with those they know are close to the reality of bail's operation:

*“Family and friends think, because you've arrested them, you've given them bail conditions, that's it, the risk has gone... I think that can be quite isolating for victims when they get that response from family and friends. They then feel, I can't talk about my fear of him doing this, doing that and doing the other because they'll start to think that I'm over exaggerating it, I'm imagining things that haven't happened, I'm catastrophising. The IDVAs tell me a lot, that women come and talk to them about those fears because they don't feel able to talk to other people about them, although they might have quite a good network of family and friends, they can't talk about how that bail has left them feeling in terms of the gaps”* (Housing specialist, North region).

Criminal justice requests for commitment to bail as protection are clear when they want to secure follow-up behaviour by victim-survivors and professionals - for instance, the demand by the police and courts that women report every bail breach which may, or may not be followed up. The IDVA below expresses feelings of frustration and anxiety in supporting women victim-survivors to comply with criminal justice demands each bail breach is reported, despite demoralising criminal justice reactions:

*“it has to be a more serious bail breach or there have to be several [breaches]. But, if the victim's reported one bail breach, nothing happens, they report a second bail breach, nothing happens, are they going to report a third bail breach?”* (IDVA, Oxfordshire)

In another challenge to maintaining commitments of bail as protection, an ISVA comments how bail conditions that successfully stop perpetrators from contacting victim-survivors, can be withdrawn on the basis of that very success:

*“It's really difficult when officers are reluctant to renew [bail] because they say, “Oh they haven't contacted them so there's no need for us to put any further restrictions*

*in place.” And that feels a bit like... well that’s because the bail’s working” (ISVA, Devon and Cornwall).*

In some cases, whether perpetrators are complying with the bail conditions or not is treated as irrelevant, because police practice has developed that means “*as a general rule*” (IDVA, Midlands) conditions are not extended.

Patterns of practices used by criminal and family justice agencies to separate obtaining protection from women’s safety needs as a method of gatekeeping resources, leave professionals no choice but to work with bail’s ineffectiveness. As described in Chapter 5, CPOs are used in circumstances where women victim-survivors can prove they have reported numerous bail breaches, and the police and courts have failed to respond. Therefore, professionals recognise CPOs are a possible mechanism to compensate for bail’s inadequacy to protect, and are constantly alert to potential criminal justice decisions that could leave women unprotected. This Housing Specialist illustrates the numerous points across the bail system which might result in conditions, and any protection they confer, being instantly dropped or varied without a professional’s or the victim-survivor’s knowledge:

*“with bail conditions [perpetrators] can appeal them, they can be removed, they can be dropped the first time they go and respond at the police station, they can be extended and it just doesn’t give any sort of clear direction for a victim in terms of how long have they got that protection” (Housing Specialist, North region).*

Although CPOs are designed specifically to protect victim-survivors, criminal and family justice actors combine ignorance and power to obstruct their use and create safety gaps. This obstruction powerfully constructs sites of intense anxiety affecting women victim-survivors and professionals, to which powerful actors appear indifferent (Carline et al, 2024). For example, all professionals confirmed that having a CPO at the same time as conditional bail was prohibited by family court practices, although not prohibited in law. On the contrary, it is encouraged as a routine police practice (CoP, 2018). When bail conditions abruptly end without enough warning to apply for a protection order in family court, the resulting gap in women victim-survivors’s safety is produced entirely by justice agencies maintaining ignorance of the consequences of their actions. The uncertainty

and fear caused to women and professionals by the embedded disconnection between criminal and family justice practices is described by this ISVA as ‘panic’. The anxiety of the ISVA’s knowledge that a woman who has reported rape may be left instantly unprotected by the removal of bail conditions, is coupled with her ignorance of if and when that might happen. In this situation, the ISVA concludes, justice practices transform bail conditions into a ‘hindrance’ to victim-survivor protection:

*“when the police decide the bail conditions are going to come to an end, everything’s a last minute panic, we’ve got to get into court, quick... and sometimes it’s a hindrance having the bail conditions because we can’t apply for the non-mol while the bail conditions are in place because the judge [in family court] says you don’t need both so... you can’t go back until you know the bail conditions are ending”* (ISVA, Cambridgeshire).

Professionals recognised that these counter-intuitive constructions of bail, bail extensions, breaches and links with CPOs, minimise the threat posed by the perpetrator, an outcome that directly contradicts their purpose as victim-survivor’s advocates. As the Housing Specialist says: *“It’s skewed logic, really skewed”* (Housing Specialist, North region). Bail discourses go hand in hand with legitimising or obstructing criminal justice actors’ action on breaches or extensions, by communicating what counts and in what circumstances. Therefore, women’s faith or despair in the myth of bail as protection aligns with a continuum of possible criminal justice action or inaction that strengthens or weakens her belief. The need to keep women victim-survivors in the process of taking their perpetrator to trial means that professionals have to manage these hotspots as they occur by slowing or halting women’s loss of faith.

Professionals recognise the impacts for victim-survivors can be far more insidious than just their potential withdrawal from the rape case. For example, the unacknowledged effect of uncertainty can sabotage their physical, mental and economic wellbeing, as this ISVA explains:

*“we’re asking somebody to be re-traumatised every single day. And it’s not just that day when they’re at work, it’ll be the night before when they’re worried about the next day, so you end up getting poorly, you haven’t slept. Now your physical and*

*mental health's going to be affected. You end up losing your employment” (ISVA, Cambridgeshire).*

A key strategy used by professionals positioned in a place of not knowing whether the promises of the myth of bail as protection will materialise or not, is to focus their commitments on future possibilities. The following ISVA explains how, when bail conditions have failed to protect, a conversation with a police officer may offer reassurance of subsequent success to a woman on the verge of withdrawing her allegation:

*“Having that protection or expected protection keeps survivors confident, maybe, but moving forwards, if it is breached and nothing is done, they call me and say they don't want to continue because they're scared. In which case we try to set up a conversation between them and the police officers” (ISVA, Devon and Cornwall).*

When bail as protection discourse moves away from criminal justice actors, it passes into spaces where commitments are unevenly carried amongst a network of individuals and institutions. The 'identity power' (Fricker, 2007: 16) of ISVAs and IDVAs offers a temporary resolution by directing victim-survivor's attention to what is known or action that can be taken elsewhere, while maintaining silence around contradictions (Yanow, 1992). A Housing Specialist describes the impact on victim-survivors when perpetrators breaching their conditions but repeatedly being released by the police or courts. She illustrates how IDVAs explain the non-performative circularity as normal, keeping the focus on consequences in the future:

*“[perpetrators who breach conditions] will get taken in, they'll get questioned, they'll get re-released on bail, they'll get taken in, they'll get questioned, they get re-released on bail, and then women do say to us, “What is the point in reporting? It's not making any difference!” And then as IDVAs you have to do the whole, “Well, it's building that picture, it's showing that disregard.” But that's very hard once you've got a victim who's already switched off” (Housing specialist, North region).*

The quote above demonstrates the labour required by professional commitment carriers who must find a way to adjust their discourse to resignify the myth of bail as protection in a way that also justifies its non-performance. For professionals supporting women

subjected to rape, the circularity of a perpetrator's repeated release after multiple breaches conflicts with their understanding of police responsibilities and the purpose of bail. When women report bail breaches and no action is taken, the resultant 'affective hotspot' is deflected from the criminal justice system into the domain of ISVAs or IDVAs. It is no surprise then, that encountering an affective hotspot can be viewed as outside criminal justice actors' role identities or their capacity. For example, the following Housing Specialist argues that the police reluctance to deal with victim-survivor emotion leaves others with the responsibility:

*"I don't think... and this will sound awful, but I don't think [the police] want to deal with that emotive victim and what their response to that bail hearing might be"*  
(Housing Specialist, North region).

Professional discourse works in affective hotspots to address specific issues, such as justifying police practices of evaluating breaches as "low-level" (see quote below), representing progress towards justice. In taking on this labour, professionals perpetuate the myth of bail as protection by motivating women victim-survivors to repeat the same rituals, knowing they are unlikely to result in any action, let alone perpetrator accountability.

As gaps between victim-survivor's expectations and criminal justice practices are repeated, the non-performative nature of bail discourse becomes clearer. The Housing Specialist expresses how her frustration at the police's refusal to act erodes her commitment to encouraging women's compliance, recognising that inaction has the potential for life-threatening consequences:

*"I often hear, 'We [police officers] ain't got time to deal with it, it's a low-level breach. She needs to keep reporting though, because then if there's a pattern, we'll arrest him. We wait to see if there's that build-up of breaches.' Well, hang on, and I often have to say to police officers, 'What if the end of that pattern's domestic homicide?'"* (Housing Specialist, North region).

The tension in the quote above is caused by a conflict between officer's and the Housing Specialist's understanding of the implications of a bail breach. The Housing Specialist

points out a police value system that flexibly classifies bail breaches from 'low-level' to 'high-level' according to resource constraints, which risks women's lives.

Holding a position between victim-survivors' fears of the perpetrator, expectations of bail as protection and the priorities and practices of criminal justice actors, is described by an IDVA as a significant struggle:

*"The media plays a huge part, people see these things happen on TV and think that's the way it's done. This is one of the biggest struggles... the victim's expectations not being met by the police... whether that's because the expectations are too high or whether the police just don't meet them"* (IDVA, Midlands).

The IDVA above demonstrates the demands of developing discourse that integrates conflicting requirements. Balancing the past and future in professional commitments to the myth of bail as protection in order to support women who have been raped, means professionals have to adjust their discourse. How professional discourse changes to reduce the intensity of victim-survivors' anxieties to a manageable level is the subject of the next section.

### 7.3.2 Silence and adapted discourse

Practices that help to construct and preserve the myth of bail as protection are related across institutional domains, such as the inclusion or deflection of knowledge, what counts as evidence and the use of two standard bail conditions. What is included or excluded by professionals is intended to manage women victim-survivor's fears, legitimise criminal justice action or inaction and, as far as possible, resolve conflicts between women's expectations and the reality of bail as protection. To reduce the harmful effects of bail's failure to protect, the following Housing Specialist comments how obligations of commitment to women she supports, modify her discourse. Not having any commitment obligations to me, as the researcher, meant she could be brutally honest that bail as protection is a myth:

*"I try and advise without telling anybody what to do. Speaking frankly, through all my years of work, if somebody wants to get to you, they're gonna get to you no matter what. No matter what conditions, no matter what you've put in place, they're*

*going to get to you. And I wouldn't tell that to a woman, I'm saying that to you. It is quite bleak, really.*" (Housing specialist, Midlands region).

Professionals adapted the emphasis of their discourse to recommunicate bail as protection by selecting a myth composition that was appealing to women. For instance, the following quote illustrates how the myth of bail as protection is reinstated through a discourse of supporting victim-survivors look beyond their disappointment at its failures. By professionals providing explanations in the present, reinvoking the myth of bail as protection operates to release the affective tension in the hotspot. This, in turn renews victim-survivors' commitment to bail by encouraging a focus on a future where they achieve their goal of obtaining safety and justice, albeit on condition they continue to report every breach:

*"helping [women] to understand that [reporting every bail breach] is about building the best possible opportunity to get the right outcome if and when it does go to court"* (Housing specialist, North region).

The belief women have in bail is constructed as a promise and, although it failed to protect in the past, that does not rule out future protection. The ambiguity of the reasons for previously disappointing criminal justice responses preserves hope in the possibility of protective actions next time she reports a breach. Thus, disappointed expectations of the myth of bail as protection in one instance, or one woman's case, can be reoriented by professionals towards future hope of the promise delivered (Berlant, 2011).

Professionals struggle with the consequences of working in this space of tension, adapting their own views over time. This ISVA explains how bail's non-performance is disempowering, leaving her feeling she has no choice but to 'work with' its failure. She explains how coping with this situation has become integrated into routine practice:

*"We've all just accepted the ineffectiveness of police bail and we're all working with the fact that it just doesn't work"* (ISVA, Cambridgeshire).

Feelings of resignation at the failures of criminal justice bail practices can eventually result in discussions of bail by professionals disappearing entirely. Without an explanation of the police's refusal to apply conditional bail or information rationalising

those decisions, this ISVA explains how silence is used specifically to reduce women victim-survivor's expectations and protect them from associated disappointment:

*"We'll talk to [women] about safety, and it may be that there are bail conditions put on, but they're so few and far between now... we tend to not speak... just to kind of manage expectations... we don't really get into [bail] much anymore"* (ISVA, Sussex).

Silence on bail discourse by specialist sexual and domestic abuse support workers, indicated their understanding that women's reported experiences of violence and rape would have little or no influence on whether conditional bail was applied or not. In this case, silence on bail is an intentional adjustment, designed to focus victim-survivors attention on mechanisms of safety they can control themselves. For example, by using alternative services:

*"they'll have the referrals to the necessary services where somebody goes to the houses and changes the locks and makes a safe room and things like that"* (ISVA, Devon and Cornwall).

ISVAs and IDVAs have strong loyalties and values that connect them with the women they work with and help them navigate the complexities and tensions caused by the failure of conditional bail to protect. The impact on professionals who, in spite of this knowledge, honour, validate and prioritise victim-survivor's needs, is the subject of the next section.

### 7.3.3 Self-doubt

Self-doubt is defined as a subjective 'state of uncertainty with regard to the truth' (Oxford English Dictionary, 2012 cited in Braslow et al, 2012: 471), an instability connected to the self-evaluation of the worth of one's work (Braslow et al, 2012). ISVAs and IDVAs who work in specialist support roles expressed feelings of self-doubt related to how bail's failure to protect conflicted with their values and undermined their role identity. The following quote from an ISVA describes her uncertainty in relation to the broader worth of her work with victim-survivors, where explanations of police responses to bail breaches conflict with her values:

*“you're in those roles where you want to explain [responses to bail breaches]... you can see, but you don't agree... you do sometimes wonder what you're a part of... are we just a sticking plaster? Am I part of a system that's just inadequate and just not serving people?” (ISVA, Sussex).*

The quote demonstrates the negative identity implications of using discourses that are incompatible with her ethics but prop up a failing system, thereby attributing an aspect of those failures to her. In the absence of clear reasons behind inconsistent criminal justice bail responses, and despite the ISVA's self-doubt, the lack of any other available explanatory option propels her back to the myth of bail as protection. Persistent uncertainty of the value of work outcomes results in some professionals disengaging from the institutional domain that triggers their feelings of self-doubt. For example, the social worker in the following quote casts doubt on the validity and worth of her work, expressing her desire to distance herself from a 'stale' environment:

*“It's just the conveyor belt, patch things over, close. The structure surrounding me is very negative, stale and I don't really want to be part of that to be honest” (Child Protection Social Worker).*

Those ISVAs who are new to the job, identify the role with improving the process for women they support. To do this within the constraints of bail's ineffectiveness demands they manage their erupting personal and professional disorientation of *“going through the looking glass”* (ISVA, Sussex):

*“I can see new ISVAs coming in and people are surprised. They're getting into this line of work because they know that things aren't as effective as they need to be... but then, to really see... how rarely there are bail conditions. You think, these are serious, violent crimes, to not have any kind of conditions to keep the survivor safe, is surprising for new ISVAs, but equally for clients going through that... And then to see, if there are conditions in place, those not being reinforced or not being responded to.... there's a second layer of, ‘Oh god, these things are inadequate’” (ISVA, Sussex).*

As these examples show, carrying commitments to bail as protection while the reasons for its inadequacy remain unclear, causes some professionals to question the worth of

their contributions. This self-doubt is particularly the case in roles such as Social Workers, ISVAs and IDVAs who struggle to re-establish coherence to bail as protection as part of advocating for the rights of women and children through the criminal justice system.

The following section examines how the ambiguity around bail use between the criminal justice domain, other professionals and institutions, and victim-survivors works to preserve the myth of bail as protection.

## 7.4 Ambiguity across boundaries

The myth of bail as protection is fundamentally ambiguous, in that its meaning changes depending on who is speaking, in what spaces and contexts, resisting attempts to reduce its effects by offering more information (Best, 2012). This makes it a different, though related, concept to ignorance or knowledge in that ambiguity is not due to lacking or blocking knowledge, but is the result of constantly shifting and multiple interpretations of bail and its conditions. In Chapters 5 and 6 the findings identified a significant degree of unpredictability, contradiction and inconsistency in criminal actors' bail use and responses. Correspondingly, in interviews with professionals, ambiguity and consequent uncertainty, were prominent features. Ambiguity here is produced by the vaguely defined protection claims of bail and conditions, for example the dynamic threshold of a 'good' or 'bad' bail breach or the hidden rationale for inconsistent bail judgements. The constantly shifting boundaries of criminal justice interpretations leave professionals unable to rely on their expectations of outcomes for victim-survivors.

The findings are presented in two sections. Firstly, a discussion of the prevalence of multiple interpretations of bail that proliferate as ambiguity throughout the process. Secondly, an exploration of how bail's shifting boundaries lead to efforts by professionals to reduce uncertainty through post-hoc rationalisation.

### 7.4.1 Prevalence of ambiguity

As the myth of bail as protection flows from criminal justice into other institutions, its unstable operation is interpreted in the context of victim-survivors' and professionals' previous experiences, knowledge and associated feelings. Professionals excluded from decision-making spaces were left with uncertainties, their questions stifled by the power

dynamics between criminal justice agencies as bail experts and their own interpretations (Best, 2012).

For example, professionals commented on a sense of undefined barriers for bail conditions to be granted in cases of rape, detached from the danger posed by the perpetrator. The ambiguity of the situation for this ISVA left her with the nagging feeling that her suspicion something isn't quite right, is 'unfair', and could be explained by knowledge from which she is excluded:

*"It just felt like you have hit certain thresholds or eligibility for bail conditions to be put on. To the point that... I don't know... actually this might be unfair, but like, [the police] not even considering it as an option, but I don't know... that feels like that's potentially unfair, but that's how it comes across from an outsider"* (ISVA, Sussex).

When asked what the threshold to granting bail conditions might be, ISVAs and IDVAs suggested combinations of elements, including previous reports or convictions of the perpetrator, the seriousness of the allegation or crime type, preserving evidence and preventing witness tampering, victim-survivor's visible physical injuries or specific vulnerabilities, police intelligence or the police-completed Domestic Abuse, Stalking, Harassment and Honour-Based Violence risk assessment, more commonly referred to as 'the DASH'.

Professionals' explanations of obstacles to police and courts applying conditional bail, following up breaches or extending bail conditions included; a demoralised police culture, time pressure, officers' attitudes including lack of compassion or sympathy, no prison places, minimising the abuse, victim-blaming, high caseloads and too few officers resulting in, for instance, bail being deferred until charge and "dumped" (ISVA, Cambridgeshire) on magistrate's courts.

This wide range of responses in the interview data are a result of professionals' uncertainty, illustrating a real lack of consistency across their experiences of supporting women. As this Health Specialist noted: *"Sometimes [the police] will be great... Sometimes nothing will happen"* (Health Specialist, Fife). No professional was aware of exactly what police officers consider when making bail decisions and none of the

suggested explanations related to the increased dangers women face after reporting violent men (Epstein and Goodman, 2019; Monckton Smith, 2020).

However, despite the prevalence of ambiguity regarding barriers to granting bail conditions, thresholds for bail, breaches and extensions, all interviewees maintained that victim-survivor safety and protection was the primary purpose of bail and conditions. As a University Disciplinary Team Manager comments, the failure to enact protection on behalf of women victim-survivors cannot be considered intentional when the criteria for applying bail are ambiguous, but she stops short of arguing that bail is therefore ineffective:

*“considering the amount of cases of sexual assault... there's probably not even a handful where bail has been applied. I don't know how [the police] determine when bail conditions apply and when not, and I'd be interested to know”* (University disciplinary manager, Midlands).

Although criminal justice thresholds for applying bail conditions may change, the level of male violence women were subjected to remained the same.

The ambiguity of bail was described by all professionals interviewed across domains including specialist services, social care, health, education and housing in terms of an unsettling multiplicity of criminal justice interpretations. For instance, this ISVA comments that bail operates in as many different ways as there are officers: *“every officer works in a different way”* (ISVA, Devon and Cornwall). The only certainty is, in fact, that bail meaning and application is inconsistent, as the following ISVA says:

*“Doesn't feel super clear as to why they're imposed in some instances and not others. This is something else, I've been surprised when bail conditions are in place versus others that have been higher risk”* (ISVA, Sussex).

In areas where bail conditions were being applied by the police as a matter of course in rape and serious sexual offences cases, professionals were not concerned about thresholds for granting bail: *“I haven't seen any cases where there HAVEN'T been bail conditions applied”* (ISVA, Devon and Cornwall). Nonetheless, how effective those conditions were was said by this ISVA to be an observable consequence of: *“some*

*officers put[ting] more effort into making conditions more than just adequate” (ISVA, Devon and Cornwall). Even when bail is routinely applied, making conditions relevant to a victim-survivor’s circumstances is framed in terms of an effort, over and above what is normally expected.*

When asked whether women victim-survivor’s fears of reprisals had any bearing on what conditions were applied, the ISVAs and IDVAs weren’t confident: *“I think it’s a real mix, I think not always. Again, I don’t know if I’m being unfair, but... I don’t know that I’ve seen as much of that” (ISVA, Cambridgeshire). The unpredictable nature of bail practices, along with the credibility afforded to criminal justice actors, produces a level of uncertainty that effectively blocks challenges by victim-survivor advocates: “I’ve often wondered, why are some [perpetrators] are remanded and others that I think should be remanded are bailed. I don’t know” (IDVA, Midlands).*

The pervasive nature of ambiguity as a key part of the myth of bail as protection resists consistency and, in an effort, to make sense of it to themselves and victim-survivors, professionals attempt to interpret criminal justice practices of bail use. It is this process of post-hoc rationalisation and its implications that are investigated in the following section.

#### 7.4.2 Post-hoc rationalisation

When criminal justice actors’ decisions on conditional bail use are unpredictable, professionals attempted to bridge the knowledge gap after the event using post-hoc rationalisation. Efforts to make sense of criminal justice actors’ responses to bail in the past was a method for professionals to try to anticipate their actions in the future.

The following quote illustrates how the IDVA service has recognised the ambiguity around decisions to extend bail conditions, and rationalises the uncertainty through practices anticipating their sudden withdrawal:

*“I have seen [conditional bail] extended, that does happen... but equally I’ve seen people where, all of a sudden bail conditions aren’t there, and they’re left... I think when women are engaging with services that have an understanding of the process*

*and how things could change, we're able to advise women that it could happen and put preventative stuff in place" (IDVA, Oxfordshire).*

As the IDVA cited above, professionals who attempted to preserve the credibility of formal decision-making structures used explanations and practices intended to help victim-survivors restore coherence to their experience of criminal justice systems and actions. In the following case, for instance, the Health Specialist puts the inadequacy of police responses to reported bail breaches down to a lack of specialist training. Therefore, her attention is focused on finding an officer who is trained to provide an improved response:

*"sometimes [women] will call the police [to report a bail breach] and get a negative response. So it takes us stepping in and coordinating with officers who specialise in domestic abuse, to then improve the police response for this person" (Health Specialist, Fife)*

In another example, women who reported rape were immediately risk assessed by the police, but many of the professionals commented that victim-survivors were more likely to provide better quality information to specialist support services some time after the incident. The inferiority of the information used by police for decision-making on bail was therefore suggested as one rationale for the standardisation of bail conditions applied, despite supplementary information often being available before the arrest and bail of the perpetrator. This rationalisation by the Housing Specialist quoted below, indicates that better quality information would lead to better quality bail conditions, which she suggests as a plausible explanation and possible solution to shortcomings in practice:

*"I see very, very simplistic and basic bail conditions applied... perpetrators are not arrested at the time of the incident, they're arrested later and sometimes much later, so the likelihood of the IDVA service being able to make contact in that window is quite high. So [the police] are relying on their initial statement, their initial DASH, and any of their background checks that they've done on police systems, and that neglects all that other quality information that might be held by other people" (Housing specialist, North region).*

Nevertheless, when additional information was presented to the police, the relevance and effectiveness of bail conditions did not improve. The two standard bail conditions are not intrinsically effective or compatible with all women victim-survivor's lives, rather, they represent the institutionally established options and are immune to better quality knowledge. In the following quote, the Housing Specialist illustrates how evidence of perpetrator intimidation, and subsequent requests to vary bail conditions, were dismissed by the police in an admission of bail's impotence:

*"We had a really horrific case last year where the perpetrator was just so aware of his bail conditions... teetering so close to the edge of it being a breach that the victim was ringing, believing it was a breach. But when [the police] were digging down into it, it wasn't a breach, but she was saying, 'He's doing it to make me feel in fear and again'. The police response to that was, 'Well, we're not varying in your bail conditions, because if we vary them, he'll just do the same again'. But... is that not a concerning factor in itself?"* (Housing Specialist, North region).

Thus, despite professionals rationalising that deeper knowledge would lead to higher quality perpetrator conditions, the ubiquitous use of two standard bail conditions, however limiting, resists counter-evidence from outside the knowledge boundary of the criminal justice system (Dotson, 2014). This preserves the ambiguity of bail in practice, and thereby also the myth of bail as protection, since indisputable evidence of its failure still fails to undermine its persistence.

## 7.5 Conclusion

As illustrated by the findings in the chapter, the work of professionals sits between knowledge and ignorance, ambiguity and uncertainty, where carrying commitments to the myth of bail as protection can threaten their role identity. Professionals' compassion for victim-survivors leads them to construct their commitments to bail as protection through discourse that buffers the frustration and fears of bail's inadequacies.

Ambiguity and ignorance form a part of the myth of bail as protection, not as discreet properties but as characteristics inherent in multiple and repeating sequences of events and encounters between victim-survivors, professionals and criminal justice actors. Despite professionals' knowledge and frustration at bail's many failures, cultural and

professional discourses of its purpose as primarily victim-survivor protection remain emphatic. The accumulation of ambiguous meanings and contradictions pertaining to bail use have thus far prevented any official recognition of patterns proving its deficiency. On the contrary, in 'an unlimited mass of signifiers' (Barthes, 1993: 129), each failure of bail as protection is individually and contextually justified by criminal justice actors, leaving the myth untouched.

Consequently, professionals who work in spaces characterised by ignorance, commitment, ambiguity and uncertainty, cope with tensions that raise questions they cannot answer, leading them to question their own suspicions of the myth of bail as protection. Rather than relieve the tension, professionals are left in the position of constantly trying to decipher the myth (Barthes, 1993: 128) as criminal justice actors shift boundaries and interpretations, making actions in response to bail use impossible to anticipate. Professionals struggle to manage victim-survivor expectations and disappointments, as undefined thresholds and barriers to action are foregrounded, backgrounded or absented by criminal justice actors according to context and convenience.

Affect is the driver of discourse that justifies or rationalises bail decisions based in forms of ignorance and ambiguity (Rubaltelli et al, 2010), to reassure, clarify, avoid, dismiss or legitimise the myth of bail as protection. The function of the myth of bail as protection is to operate in those affective spaces to offer a familiar, simple model of safety that overcomes feelings of confusion.

The next chapter will bring together the implications of the findings covered in the previous three chapters, to give an overarching picture of how the myth of bail as protection is constructed, perpetuated and protected in the context of women who report rape.

## 8: Conclusion

*'This book is an action, a political action where revolution is the goal. It has no other purpose'* (Andrea Dworkin, 'Woman Hating' p7).

The starting point for this research was frustrated curiosity aroused by the contradiction of bail and its complexities being a black box, while also symbolising victim-survivor protection. This has become an increasingly significant question as delays in rape cases going through the criminal justice process mean conditional bail may be the only protection from a violent man on offer to a woman for years. This empirical fact is coupled with a body of work on pre-charge, post-charge and post-conviction bail that is limited to focusing on police or magistrate practices (Hucklesby, 2024; Dhimi, 2004), suspect or defendant concerns (Yule et al, 2022) or is simply non-existent. Post-charge and particularly post-conviction bail use are critically under-researched, as is research on bail as a connected process from report to after the trial. Victim-survivor perspectives of bail are essential to understanding its strengths and weaknesses, and research to improve its effectiveness may also build confidence and so improve the practices of criminal justice actors. Therefore, this research is underpinned by an urgent need to understand how bail use affects victim-survivor's lives, amidst a lack of institutional curiosity about whether women reporting rape are adequately protected during ever-increasing criminal justice delays (RCEW, 2025).

The goal of this conclusion is to highlight the key findings and their implications, emphasising the significance of the thesis to knowledge and its importance for further research. Starting with a summary of the findings and how they answered the research questions, the chapter moves on to discuss the contributions to theory and methodology. The final section offers some thoughts on future research and suggestions for practice.

### 8.1 Research questions and summary of findings

Four connected research questions were asked in Chapter 1:

**Primary research question:** Communicating safety: How do institutional stakeholders mobilise the myth of bail as protection to shape the status, position and safety of women who report rape?

**RQ2:** How does bail-as-protection persist as a myth and what are its component parts?

**RQ3:** What are the elements of continuity and change of the bail myth as it travels across contexts?

**RQ4:** Within the practices and decisions that sustain the bail myth, are there possibilities of resistance for women victim-survivors, and if so, where?

This section summarises the findings from Chapters 4 to 7, attending to how the research questions were answered. To understand the myth of bail as protection from a victim-survivor perspective, the synthesis of myth, discourse and affect theories focused on how boundaries of commitment carrying, knowledge, ambiguity and ignorance were dynamically constructed by criminal justice actors and professionals. Those same boundaries that were adapted to compensate for bail's failures, also fixed elements of the myth by actors in spaces such as courts, where victim-survivor's knowledge was diluted or absent, and criminal justice actors and institutions benefited from productive ignorance. Consequently, the myth of bail as protection did not 'emerge', rather, fragments were dug up with some determination. Each of the findings chapters focused on a different perspective of bail as protection to answer the research questions across grey literature, women victim-survivors, criminal justice actors and professionals.

Connecting affect and discourse revealed how a woman's victim status and rape allegation can be degraded as a consequence of the myth of bail as protection, while its promise of safety encouraged an optimistic attachment that was too vital for women to lose (Wetherell, 2012; 13; Berlant, 2011; Ahmed; 2012). Commitments to the myth of bail as protection by criminal justice actors were motivated by preserving its truth value through relations of power that constructed women's understanding of their safety and upheld the legitimacy of criminal justice agencies. Nevertheless, criminal justice practices made women's protection contingent on a gendered evaluation of their behaviour against a stereotypical victim ideal (Christie, 1986). Practices that made women's victim status conditional on performing victimhood 'correctly', responsabilised them for perpetrators' bail conditions, damaged their credibility and delegated the labour of protection back to women victim-survivors, against their will.

Women who reported rape were positioned by criminal justice agencies as sources of information rather than knowers with regard to their understanding of bail, conditions, reporting breaches and conditional bail extensions. In an adversarial justice system, the reduction in women victim-survivor's credibility also discredited their allegations of rape, advantaging the perpetrator by weakening her case against him. Furthermore, data showed evidence that perpetrators were aware of and deliberately manipulated the benefits of the responsabilisation of victim-survivors by criminal justice actors through the myth of bail as protection. Understandably, when perpetrators breached bail conditions and criminal justice actors disciplined their victims' choices and behaviour, rather than it detrimentally affecting a perpetrator, women victim-survivors demonstrably suffered, which in some cases was used to further damaged their credibility.

On occasion, defending the myth of bail as protection worked against the legitimacy of criminal justice agencies. In these cases, context and convenience allowed institutions to narrate contradictory meanings of bail, which fundamentally altered the position of victim-survivors. First, narrated as a key victim-survivor protection mechanism, the bail myth positioned women's fears of reprisals as irrational, possibly due to poor mental health, while in the second narrative, women's feelings of safety when conditional bail was applied were depicted as naive and irrational (CoP, HMICFRS and IOPC, 2021). Both discursive moves reduced women victim-survivor's credibility as a function of the myth of bail as protection.

Bail use across the criminal justice process was shown to rarely break away from established practices, such as the acceptance of only a limited number of bail conditions, disconnected from victim-survivor's contextual needs. Spaces designated as safe by standard bail conditions of no contact and not to attend a victim-survivors address, recognised women's protection needs through symbolic constructions of traditional gendered norms. These reinforced public and work spaces as the perpetrator's territory, and private spaces as women's, forcing victim-survivors to do safety work (Kelly, 2012) that sabotaged their physical, mental and economic wellbeing. The freedom women victim-survivors sacrificed during the perpetrator's bail period materially reduced the opportunity for reprisals, and the protection bail delivered was in

part, an institutionally unacknowledged function of the extent to which bail conditions disciplined women's own movement.

New laws covering new forms of male violence against women or the well-known dearth of forensic capacity to follow up a perpetrator's online contact, breaching one of the standard bail conditions, made no dent in criminal justice actors enduring belief that basic bail conditions supplied victim-survivors with adequate protection. The power of criminal justice actors to interpret what bail conditions were appropriate and for whom, also had the power to circumvent victim-survivors legally entitled protections, for instance to conditions including their children, allowing criminal justice actors to gatekeep resources and deflect responsibility.

The myth of bail as protection operated through institutional sequences of partial information, silence, productive (Mays, 2019) and reliable ignorance (Dotson, 2011), ambiguity and epistemic objectification (Fricker, 2007; Hookway, 2010). Findings demonstrated how criminal justice practices kept victim-survivor's knowledge outside decision-making spaces, perpetuating the pernicious effects of the myth of bail as protection, while ensuring they were reliably ignorant of whether relevant information had been used to make decisions on their safety. Maintaining victim-survivor's reliable ignorance (Dotson, 2011) was an essential component of criminal justice agencies remaining productively ignorant of the inadequacies of bail, thereby defending the myth of bail as protection from challenge. Information gaps maintained through boundaries of knowledge and space, masked controversial or non-performative practices of bail from victim-survivors, and distanced adverse consequences from privileged criminal justice actors. Evidence showed women victim-survivor's actions, even when claiming their absolute right to attend a bail or remand hearing, had to overcome a credibility deficit based on prejudicial assumptions of their motivations by magistrates and judges. As decisions on bail moved away from the woman who reported rape, sequestered in criminal justice spaces, findings demonstrated how symbolic institutional commitments to the myth of bail as protection undermined her safety needs and knowledge.

With bail conditions, breaches and responses open to multiple, ambiguous criminal justice interpretations, professionals were forced to manage affectively tense hotspots with victim-survivors produced by the precarity of their safety. The ambiguity inherent in

the myth of bail put professionals in a position where the precise circumstances in which bail worked as protection in practice were impossible to establish. Hotspots were marked by victim-survivors' anger at bail's failures, in which some professionals resigned a commitment to the myth of bail as protection as a way of managing women's fears.

Findings illustrated that superficial changes failing to centre women victim-survivor's experiences of bail as a connected process, left the wider, systemic deficiencies of the bail as protection myth undisturbed. Bail rites performed by police officers, magistrates and judges were purely symbolic and the possibility of protection demanded that victim-survivors continuously report, and evidence breaches in spite of any danger to them and a vanishingly low prospect of criminal justice consequences. At points where issues were acknowledged, a deliberate institutional strategy of productive ignorance prevented further investigation, and an attitude of resignation abdicated responsibility for addressing concerns. Institutional disconnections, silences, unevidenced assertions and contradictions between and within government and criminal justice policy and practice permitted criminal justice agencies to discursively marginalise the safety of women subjected to rape, presented as a reasonable assessment of their needs rather than a contested and subjective position. This allowed the degraded value of bail across the collective knowledge of criminal justice agencies to persist, even while commitments to the contrary were communicated to victim-survivors. Ultimately, institutional attachments to the bail as protection myth functioned as a symbol to maintain power relations, accepting life-threatening failures in women's safety as inevitable.

Findings concluded that ambiguity and ignorance formed components of the myth of bail as protection as characteristics inherent in multiple and repeating sequences of events and encounters between victim-survivors, professionals and criminal justice actors. In spite of criminal justice and professionals' knowledge and frustration at bail's many failures, discourses of its purpose as primarily victim-survivor protection remained widespread and emphatic. This may be explained by an absence of alternatives, a desire to reassure victim-survivors, despite misgivings and the hope, not expectation, that perpetrators will respect the conditions applied. However, this research, demonstrates

the hold the myth of bail as protection has in relation to the difficulty women victim-survivors face in their demythologisation attempts.

The myth of bail as protection is therefore held, in part, by non-performative, circular criminal justice commitments in guidance, policy and spoken rituals that symbolise safety but in practice, do not alter power relations in favour of victim-survivors protection, even when it is legal and legitimate to do so. The failure of bail to deliver, results in a discursive adjustment by commitment carriers to resignify its purpose, thus preserving the myth of bail as protection. Criminal justice actors' use flexible boundary conditions to determine a 'good' from a 'bad' breach, or temporal and discursive changes made by professionals encouraging victim-survivors to look beyond present disappointments to future perpetrator consequences, were a regular occurrence. They illustrated how the myth of bail as protection constituted knowledge that was productively deflected from domains outside criminal justice, such as family court, housing and public awareness, obscuring the need to change current practices or improve understanding. In consequence, women who reported rape struggled to obtain the safety and support from both inside and outside the criminal justice domain to which they were legally entitled.

The demythologisation of the myth of bail as protection by victim-survivors presented a considerable challenge, since responsibility for each legally defined aspect of bail was held across various criminal justice and government agencies, none of which held sole responsibility for the whole mechanism. Although the deficiencies of bail were acutely felt by women subjected to rape, each failure of protection was individually and contextually justified by criminal justice actors or professionals, closing down opportunities to resist.

Nevertheless, when victim-survivors attended bail or remand hearings, the myth of bail as protection was vulnerable. Although they were powerless in a court context, as experts in their case, women victim-survivors could recognise and raise official complaints about everyday judicial practices as detrimental to their safety. Scrutiny by victim-survivors at bail and remand hearings may exert pressure on criminal justice actors to improve practice and take accountability in a space where failures were previously concealed. However, demythologising bail as protection discourse from a marginalised position is a heavy burden that coercively extracts labour from victim-survivors with no guarantee of substantive improvement.

The accumulation of ambiguous meanings and productive ignorance pertaining to bail use have thus far successfully hindered any institutional responsibility for tackling known patterns of deficiencies. The portrayal of bail as protection by the criminal justice agencies involved in its use, is in reality a myth contained in a multitude of variable, contradictory fragments and (dis)connections between and within separate institutions. In no single document or agency was bail fully defined or contextualised, in no public media was the meaning of bail distinguished from its simplified myth of victim-survivor protection.

## 8.2 Contribution to scholarship

To date, bail has largely been understood and studied as a perpetrator restriction across separated legal destinations of pre-charge or post-charge bail, with post-conviction bail attracting the least attention (Hucklesby, 2023; Smith, 2021; Trottier, 2022; Yule et al, 2022). Dhimi (2004) focused on magistrate's post-charge conditional bail decision-making, but as with previous studies, gestured to how conditions are connected to pre-charge bail decisions, with victim issues out of scope. The framework for research and discussion regarding bail has therefore been predominantly limited to legal distinctions, spaces and actors and the impact of those on perpetrators.

There has been no consideration of how the myth of bail as protection travels across domains and disciplines or crucially, how it shapes, and in turn is being shaped by victim-survivors as well as actors tasked with its implementation or those supporting women victim-survivors through its consequences. This thesis is the first to address bail as discourse and as myth, showing how practices of ignorance and ambiguity contradict its institutional presentation as a sequential, victim-focused process delivering effective protection.

This is also the first study to research the myth of bail as protection from the perspective of women victim-survivors of rape. The analysis revealed how women's subjectivities, identities and the credibility of their allegations of rape are evaluated against gendered stereotypes and disciplined through the myth of bail as protection. The thesis demonstrates a process of victim-survivor responsabilisation that advantages suspected rapists, potentially across the entire criminal justice process from their initial arrest and conditional bail, until after conviction.

Below I discuss the three key concepts of ignorance, ambiguity and gendered stereotypes, that the research revealed were central to the persistence of the myth of bail as protection.

### 8.2.1 Ignorance

Ignorance studies have usefully illustrated how productive ignorance by groups and individuals affects organisations where silence, avoidance, denial and dismissal can defend and preserve reputation and interests (Rayner, 2012; Christie, 2020). Feminist scholars approached ignorance from the perspective of women as epistemic subjects, exploring how the effects of ignorance related to power, operating to exclude women as participants and knowers (Dotson, 2011; Fricker, 2007; Pohlhaus, 2017).

Unravelling bail as protection from the perspective of women victim-survivors required an exploration of how ignorance travels and operates within and across institutions inside and outside criminal justice, as well as its material impact on women in need of protection. The research demonstrates how productive ignorance is central to the myth of bail as protection, particularly where acknowledging systemic gaps might damage the illusion of bail's effectiveness. For instance, productive ignorance networked across police authorities, the CPS, prosecutors, magistrates and judges, sustains a belief that standardised bail conditions, rather than context-specific protections, are sufficient for the majority of women victim-survivors. Institutional productive ignorance with regard to the myth of bail as protection, is self-referential, suppressing knowledge of the gaps between victim-survivor's experiences and hegemonic criminal justice narratives. The work of discourse in this case, is to circulate value-laden assumptions approved by privileged actors as facts that speak for themselves, making critical scrutiny irrelevant.

Ignorance is also productive in relation to criminal justice actors' justifications of the multiple, unpredictable responses that adapt to and therefore perpetuate bail's inadequacies. The benefit for criminal justice agencies of deflecting knowledge of and accountability for deficiencies is ignorance of the need to invest, develop, embed and monitor the most effective practices of victim-survivor protection. Processes underpinning productive ignorance flourish in criminal justice hierarchies and spaces that preserve both the myth of bail as protection and the status of criminal justice actors

as authoritative knowers. Legitimacy of the purely symbolic and circular non-performativity of bail rites, spoken in court for example, is defended by boundaries of space against knowledge of who benefits and who suffers pernicious effects. Thus, criminal justice actors and agencies use productive ignorance as a strategy of power that avoids uncomfortable truths about bail, including the effects on victim-survivors of reduced freedom, damaged credibility and denial of their claims for protection and justice. Moreover, the resignation of criminal justice actors to bail as protection as a non-performative myth, results in apathy and indifference across agencies in relation to challenging and resolving its many failures. As noted in the introduction, the silence or absence of inquiry into bail from the perspective of any crime victim, but especially victim-survivors of sexual violence and domestic abuse, suggests their position has been deemed unworthy of investigation, definition or data collection.

Productive ignorance operates from more than one perspective. Not only does it insulate the institutional myth of bail as protection from challenge, it also releases tension and sustains victim-survivors optimism to endure a demanding system, through professionals' justification and post-hoc rationalisation of bail's inadequacies. Where professionals are carrying commitments to bail as protection on behalf of other individuals or institutions, it puts them in an awkward position between giving women victim-survivor's confidence without misleading them about bail's effectiveness to protect. Manoeuvring in this space leads to practices of including or deflecting knowledge through silent or adapted discourses that preserve the myth of bail as protection in an effort to reassure victim-survivors. Building on Ahmed's notion of 'commitment carriers' (2012: 130), the myth of bail as protection can therefore be preserved and circulated as an act of care, support and reassurance, as well as indifference and avoidance.

### 8.2.2 Ambiguity

Ambiguity as a component of myth has previously been used to identify how brands appeal to consumers by offering: 'reasons to believe' (Brown et al, 2013: 596). Influencing consumer attachments to particular identities, the argument is put forward that ambiguity is an influential aspect of a brand's mythological status. This is the first study

to explore how ambiguity functions as part of the myth of bail as protection to persuade and resonate with victim-survivors of rape in the face of contradictions and inconsistencies. Myth is a term that is often intuitively taken to mean a false belief, and as such, its meaning can be understood as the opposite of knowledge. A good example being the ‘myths and stereotypes’ prevalent in discourse concerning male violence against women and girls. However, in this investigation of bail as protection, myth is used as an analytical tool to explore discourse that is constantly adjusted, with affect as a complementary method for a nuanced analysis of meaning in a context of ambiguity.

The myth of bail as protection thrives in a context where the legitimacy of how bail is used, conditions, outcomes and responses to breaches are impossible to judge or challenge, due to its ambiguity. The ambiguity inherent in the myth of bail as protection allows its meaning to change depending on who is speaking, in what spaces and contexts, resisting attempts to reduce its effects by offering more information.

Ambiguity allows multiple interpretations of the myth of bail as protection to be selected as plausible by criminal justice actors. Uncertainty for victim-survivors and professionals as an effect of ambiguity, leaves them searching for an explanation, but with limited success, since each similar situation can result in a different outcome. Victim-survivors and professionals therefore, cope with uncertainty as a constant feature of the myth of bail as protection (for example, in the vaguely defined protection claims of bail and conditions, the dynamic evaluation threshold of a ‘good’ or ‘bad’ bail breach or the concealed rationale for inconsistent bail judgements). The constantly shifting boundaries of criminal justice interpretations mean professionals simply do not know what might constitute a reliable expectation of outcomes for victim-survivors. This relational structure sustains both the validity and ambiguity of the myth of bail as protection, and denying its mythic characteristics maintains powerful actors in a position of ethical non-culpability (Fricker, 2007).

As with productive ignorance, ambiguity facilitates power exercised under unequal relations, where criminal justice actors benefit from a deference accorded to their superior credibility. Under conditions of ignorance and ambiguity, Independent Sexual and Domestic Violence Advisors attempt explanations, justifications and post-hoc rationalisations of the myth of bail as protection for victim-survivors, on behalf of criminal

justice actors. Furthermore, ambiguity provides cover for productive ignorance, avoiding uncomfortable questions on the rationale for and validity of inconsistent and seemingly inexplicable decisions by criminal justice actors on bail conditions, breaches and extensions. Silence on bail is used by criminal justice actors and professionals in situations where there is no clear explanation available that does not raise controversy for victim-survivors. Silence by professionals reduced women victim-survivor's expectations of conditional bail being applied for their protection and was often an intentional redirection towards alternative methods of obtaining safety. Institutional silence deflects responsibility back to victim-survivors for their safety, disciplines their behaviour, and prevents the transfer of relevant knowledge.

In summary, layers of ignorance and ambiguity manifest as obstacles, silences and contradictions producing inconsistencies across legislative, criminal justice, family justice and professional domains. At the end of each event or sequence of events in which ignorance and ambiguity play out, is a woman whose subjectivity has been constructed such that criminal justice actors can claim to be oblivious to her compromised safety. Ignorance of these effects is not arbitrary but systemic, producing and insulating the institutional authority of dominant criminal justice actors, and functioning as a defence mechanism for the myth of bail as protection. The affective attachment of privileged groups in the criminal justice system to an image of themselves as informed 'knowers' inhibits their ability to admit and correct serious flaws by self-referentially justifying the limited knowledge available. As a result, the myth of bail as protection continues to be used by those in power as a simple, and uninterrogable signification of victim-survivor safety.

### 8.2.3 Gendered stereotypes

In bail research, silence on the experiences of victim-survivors is an illustration of whose power and rights are recognised, and whose are not. Informed by feminist scholarship centring the positioning and construction of women in society and in criminal justice, this study fills a gap in understanding how bail as protection affects the lives of women who report rape. Exploring bail as protection for the first time, through myth, discourse and affect theories has shown it operates as a gendered technology (Foucault, 1997) that

disciplines and responsabilises victim-survivors to behave as recognisably stereotypical victims, or else relinquish entitlement to protection. Established disciplinary criminal justice discourses function to assess women victim-survivor's self-protection strategies, their attendance at bail hearings, how they report bail breaches, whether they report every breach or whether their actions make them deserving of protection. Evidence shows victim-survivor's actions, even when claiming their absolute right to attend a bail or remand hearing, have to overcome a credibility deficit based on prejudicial assumptions of their motivations by magistrates and judges.

A framework disconnecting the pre-charge, post-charge and post-conviction conditional bail process dilutes criminal justice agencies' responsibilities for failures and obscures patterns of ineffectiveness. Ignorance and ambiguity provide a smokescreen behind which practices of the myth of bail as protection reproduce gendered inequality through stereotypes that detrimentally affect women victim-survivor's subjectivity, position, safety, and ultimately benefit perpetrators. The effects of the myth of bail as protection enforce victim-survivor's responsabilisation as a gendered double bind: she must correctly perform fear, but also obtain corroborating evidence for any bail breach, she must always call 999, never 101 or the officer in charge of her investigation, she must react to his proximity to her as an emergency, but only in spaces designated by bail conditions. Failing to conform to any of these requirements may result in her assuming responsibility for a perpetrator's bail breach, damage her credibility and that of her rape allegation.

As Boyle notes, we need to 'ask the *who benefits* question' (2019: 27, italics in original) and this research demonstrates how the myth of bail as protection silently regulates and constrains women's freedom, conferring valuable attributes on criminal justice institutions which they claim as a routine characterisation of bail's effectiveness. Findings took housing as an example of how institutions outside criminal justice benefit from the myth of bail as protection, where institutional productive ignorance maintains bail as a symbol of effective victim-survivor protection. Housing associations are thereby absolved of any responsibility for government legislation that gives men accused of rape the right, and the keys, to enter his victim's home at any time. As noted in Chapter 1, this was precisely the situation that led to Kay Richardson's violent murder in 2018, and in

whose name the government reformed pre-charge bail in 2022 (Police, Crime, Sentencing and Courts Act).

As discussed in Chapter 7, the understandable fears of victim-survivors that now they have reported, perpetrator's will return home to seek reprisals despite bail conditions, are managed by individuals working for housing associations. These professionals assume the emotional labour of attempting to resolve contradictions between promises of safety and reality as best they can.

Although the myth of bail as protection promises a reworking of power in favour of women's safety from violent men, in reality, it serves to reinforce the gendered oppression of women through traditional divisions of roles and spaces. For the women victim-survivors I interviewed, bail conditions defined in all respects, the boundaries of their freedom.

Professionals provided evidence that perpetrators are well aware of the advantages offered to them by criminal justice actors' productive ignorance and responsabilisation of victim-survivors. Calculated confessions of breaching bail by perpetrators to the police detrimentally effect victim-survivor's credibility, benefit his defence and allow him to continue his manipulation and intimidation, consequence-free.

As decisions on bail move away from the woman who reported rape and into criminal justice spaces, findings demonstrate how institutional commitments to the myth of bail as protection overwrite her safety needs and knowledge. Asymmetric power relations between criminal justice actors and women, position 'genuine' victim-survivors as compliant, rather than informed participants, with any deviations characterised as demanding and emotional interference.

#### 8.2.4 Methodological contribution

Åhäll tells us: 'there is no feminism without affect' (2018: 38). Yet, just as the well-researched limitations of positivism include criticism of the detached researcher, free from contextual bias (Holton 1993), this must surely be the case more generally, for police officers, CPS lawyers, prosecutors, magistrates and so on. A methodology that connects the flow of affect with, for instance, power and knowledge, can be no more

controversial than the widely accepted and influential Foucauldian theory connecting the flow of power with knowledge as diffuse, embodied and enacted (Foucault, 1977; Pedwell and Whitehead, 2012). Denying the significance of affect, or worse, that a turn to affect within research and policy, particularly in legal or criminal disciplines, denotes a turn away from evidence and rationality is a limiting, binary logic. Disconnecting the investigation of knowledge and power from affect is possible, but does not mean they are separate (Ahmed, 2014).

Following the flow of myth, discourse and affect across criminal justice and associated professional domains from the perspective of women victim-survivors, was inspired by Marcus, who encouraged a move from single site research to following ‘the circulation of cultural meanings, objects, and identities’ (1995: 96). Paying attention to connections, subjectivities, fixed and changing elements hinged affect to myth and discourse as they travelled across boundaries and contexts, putting diverse text and interview data in dialogue for the first time. What this offers the research is an ‘exercise in mapping terrain... not holistic representation’ (Marcus, 1995: 99) which, depending on your perspective, is either a research limitation or an advantage.

The link between mythic discourse and affect has been discussed in detail in Chapter 2, as have the limitations of ‘evidence’ in terms of statistical and monitoring data covered in Chapter 3. However, it is precisely because this methodology had to adapt to a lack of data and previous research, that I came to understand the significance of, and relationship between ignorance and ambiguity as key elements of the myth of bail as protection. This contribution to my understanding was unexpected and something other researchers of male violence against women and girls might find useful.

To truly unmask the myth of bail as protection, more and detailed research is required across the process, because the fragmented nature of bail is in part due to its very particular set of components. Making connections within and across the discursive landscape constructs a map showing where and how the myth of bail as protection operates from the perspective of victim-survivors, that hopefully, others will use to explore further.

### 8.3 Research recommendations

The advantage of exploring bail as protection as a myth that flows through discourse and affect across diverse domains, is being able to demonstrate the multiplicity of its interpretations, adaptations and consequences on victim-survivors. Following the discourse offers a method of nuanced understanding that reveals complex regulatory and productive components of myth that construct gendered subjectivities, to the detriment of victim-survivors. The combination of ignorance, ambiguity and gendered structures of female discipline too often stand in for the protection the myth of bail promises.

The opportunity of producing new knowledge on how bail as protection affects women's lives was also one of its challenges, since there was no research to sense-check my thoughts against. My view is this thesis has only scraped the surface. For future researchers, the implications of the myth of bail on women's protection needs to be more widely understood. This includes its effect across connected domains that engage and support women victim-survivors during the years-long criminal justice process. These delays in rape cases make bail as protection an opportune and necessary object for future research investigation.

The research reveals many, connected, issues with bail as protection, some of which I have gathered below into three sections covering key areas for research and practice. The first are the gaps that the women victim-survivors who participated raised during their interviews, the second suggests further research both with a broader and narrower scope.

#### 8.3.1 Victim-survivor participant research focus

The women interviewed had much to say about the inadequacies of the myth of bail as protection in cases involving coercive and controlling behaviour, where perpetrators used manipulation and intimidation rather than physical abuse. The characterisation of such behaviour, reflected in bail conditions as constituting a lower risk, is a dangerous misinterpretation. The link between how bail, conditions and breaches are applied and assessed in the context of different forms of male violence that are not currently

recognised by standardised bail conditions, is an essential missing piece of research and practice that caused the women interviewed much suffering.

Another research area mentioned by victim-survivors and police officer participants was the advantage of the myth of bail as protection to perpetrators' 'good character'. Connections between the myth of bail as protection, the advantages to a perpetrator of long periods without a bail breach being officially recorded, and a perpetrator's opportunity to appeal bail conditions, obtain post-conviction bail or the influence of their subsequent 'good character' on the strength of the case against them, were felt by women as a significant further injustice.

### 8.3.2 Making connections

In making the following suggestions, I would like to emphasise that they are not discrete concerns but connected, influencing the positioning of victim-survivors throughout an adversarial justice system.

Firstly, one question I have repeatedly gone back to, is whether criminal justice actors believe it is possible for conditional bail to effectively protect women who report rape from reprisals, and how the answer to this question affects their use of bail and CPOs. From police officers and barristers to social workers, specialist women's sector workers, housing and health, the consensus from the research participants was the more dangerous the perpetrator, the less conditional bail worked as protection. The greater a woman's need, the less effective that protection is.

If criminal justice responses to victim-survivors of sexual and domestic violence are evidence-led, what has long been established is that women who report to the police are at a heightened risk of reprisals, including murder (Epstein and Goodman, 2019; Monckton Smith, 2020). Investing, developing, embedding and monitoring an effective, evidence-led response to women's protection throughout the criminal justice system is, as one woman told me, the least victim-survivors should expect.

Secondly, and equally puzzling, was the source of the cultural belief in bail as effective protection that the majority of women victim-survivors interviewed stated was their own expectation, and that of their families and friends. The symbolic power of 'on bail' to

deliver a simple model of successful victim-survivor safety is, I claim, a myth, and one that needs to be demythologised. As Rowbotham commented 'you can't begin to find your own power until you have consciously recognised your non-power' (1973: 38), an important part of which is to identify the production, persistence and advantages of the myth of bail as protection in the public sphere. To an extent, every criminal justice actor, professional and victim-survivor is influenced by cultural myths. Exploring how the myth of bail as protection travels into and within the public sphere could offer opportunities and spaces for reworking what is communicated in such a way that women are more knowledgeable going into the criminal process, and their methods of resistance are better understood by criminal justice agencies. This may also reduce or eradicate the isolation from family and friends that women suffer once they realise that bail as protection is a myth.

Thirdly, given the lack of data on bail use across the criminal justice, particularly from the victim-survivor perspective, what would be of use to raise the profile of bail as an object of study, is an understanding of women's experience of the bail system. A larger scale study on whether victim-survivors knew what bail conditions had been applied, how to report breaches, how many they reported, the outcome of those reports and at what stages in the criminal justice process, along with how this impacted their lives, might move women's unacknowledged labour and safety work into view. The most obvious issue being, as this research has demonstrated, it is too often the case that women are not told what bail is, the conditions or informed of the differences between pre and post-charge bail in a way they understand.

Fourthly, mapping the terrain, as I have done, has revealed gaps in the landscape that require further exploration. In particular, I was not able to interview magistrates, district judges, CPS lawyers or criminal trial judges that make decisions on post-charge and post-conviction bail. The travel of the myth of bail as protection within and between these, predominantly concealed, criminal justice spaces is vital to understand from the perspective of victim-survivors. How productive and reliable ignorance, ambiguity and responsibilisation function across sequences and events throughout the entire bail system, is currently completely opaque to women, and indeed to feminist research.

Following on from the broader research recommendations, there are a number of urgent issues that I would like to draw to the attention of feminist researchers and women's organisations.

The limitations in Chapter 3 include a suggestion bail could be very usefully researched from the perspective of homeless and/or prostituted women. Up to 70% of women in these groups are subjected to sexual violence and domestic abuse (Homeless Link, 2022; Manning et al, 2020) but rarely report rape, in part due to their increased danger of reprisals (Homeless Link, 2022; Goodman et al, 2006). Since participants from these and other marginalised groups rarely engage with researchers they do not already know (Struyf et al, 2025), my suggestion is that a trusted insider researcher could provide useful knowledge. Expanding the study intersectionally focusing on, for instance, race, disability or religion might attempt to interrogate specific connections and safety concerns that need to be accommodated through the bail system as a whole.

Also essential is future research to explore the impact of perpetrator bail conditions on women's freedom, safety work and their mental, physical and economic wellbeing. For example, if, as I argue, the myth of bail as protection is ambiguous by design, research might usefully explore the nature of victim-survivor's informed consent when reporting and the ethical perspective of criminal justice actors' subsequent spoken bail rites.

A related, but urgent piece of research, is on appropriate bail conditions, kept updated against women's feedback and new or reformed legislation, which must be followed by regular training across the bail system. Investigating the (dis)connections in current rape and serious sexual abuse offences legislation and bail conditions, with particular attention on offences that involve coercion or manipulation rather than physical abuse, might provide the opportunity for criminal justice actors, in partnership with women's organisations, to offer victim-survivors case-specific protections.

Additionally, although affect theory formed an important aspect of my theoretical framework, it was not a focus of the thesis. Given that criminal justice agencies wish to understand the reasons for victim-survivors' withdrawal from the criminal justice system (HM Govt, 2021a), I am proposing that an exploration of 'affective hotspots' which produce victim-survivor despair, anger and disappointment are mapped across the

entire process. Whether the victim-survivor's interviewed obtained guilty verdicts or not, many of them made more than one complaint. Regularly analysing what complaints have been made, at what points in the system and in reference to which agencies would provide an initial indicator of problem areas. This may also provide insight to related spaces and situations of tension for criminal justice actors and professionals who have to manage commitments to bail as protection despite its many flaws and failings. More broadly, analysing criminal justice practices from the perspective of women victim-survivors of rape captures forms of power and their effects, outside of the formal architecture of the law. Affect theories can acknowledge and demonstrate that criminal justice processes and decisions are not emotionally neutral, revealing how affective attachments or aversions shape practices and interactions beyond rational considerations.

Finally, institutional productive ignorance supporting bail as a symbol of victim-survivor protection allows public organisations who have statutory victim-survivor safeguarding duties (Home Office, 2022) to abdicate their legal responsibilities. Research following the myth of bail as protection into such institutions, from the perspective of victim-survivors would explore its impact on women's positioning and subjectivity. By examining connections, obstructions and gaps in women's safeguarding motivated by the myth of bail as protection, such research may bring us closer to an understanding of how to work together to keep women safe.

This thesis argues that the symbolic representation of bail as protection is a myth made up of components that work in combination to sustain its value, while accepting women's responsabilisation, credibility deficit and compromised safety throughout, as inevitable. My hope is that those reading this research recognise bail as victim-survivor protection as a legitimate object of urgent enquiry. My primary motivation in writing this thesis was to raise awareness of the consequences for women of the myth of bail as protection, to invite conversations, curiosity and questions.

In terms of knowledge production, this thesis is an example of feminist curiosity that pays attention to lines of enquiry motivated by women's testimonies. previously not thought sufficiently important. Having opened the 'black box' of the myth of bail as protection, there are numerous lines of further enquiry that could and should be made, to explicitly

consider the safety needs of victim-survivors if criminal justice commitments to women's safety after they report rape are ever to be more than symbolic.

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## Appendices

### Appendix 1: Protection mechanisms for women before, during and after reporting sexual or domestic violence

	Who can apply?	How much does it cost?	Will this reveal my address or area?	Can be used alongside bail conditions?	Is breaching an offence?	How long does it last?
<b>Bail conditions (pre or post-charge &amp; post-conviction)</b>  <b>*See important note below.</b>	Police and/or court	N/A	POSSIBLY. Generally conditions forbid suspects from your address or area.	N/A	NO. Breaching conditions is not an offence.	Pre-charge/Police bail: initially 3 months but can be extended. Post-charge/Court bail: released until court hearing or trial. Post-conviction bail: released until sentencing.
<b>Bail without conditions</b>	Police and/or court	N/A	NO. There are no constraints on a suspects' movements but they have to 'surrender' to a police station or court at agreed intervals.	N/A	YES. Not turning up to police station or court at agreed intervals is a criminal offence.	Pre-charge/Police bail: initially 3 months but can be extended. Post-charge/Court bail: released until court hearing or trial. Post-conviction bail: released until sentencing.

**\*Survivors going through Family Court proceedings should ask for bail conditions to include any children to ensure refusal to allow a perpetrator who is also an ex-partner, entry to the family home avoids any risk of being used as proof of parental alienation.**

	<b>Who can apply?</b>	<b>How much does it cost?</b>	<b>Will this reveal my address or area?</b>	<b>Can be used alongside bail conditions?</b>	<b>Is breaching an offence?</b>	<b>How long does it last?</b>
<b>Restraining Order (RO)</b>	Court. Can be given on conviction OR acquittal/not guilty verdict where necessary	N/A. Given by a judge on conclusion of criminal proceedings.	POSSIBLY. Generally conditions forbid suspects from your address or area.	NO. Given on conclusion of criminal proceedings	YES. Max 5 years prison.  Worth checking the RO appears on Police National Computer.	Specified or indefinite period
<b>Non-molestation Order (NMO)</b>	Victim	No court fee. Legal Aid possible for legal representation	YES	YES	YES. Criminal offence.  Worth checking the Order appears on Police National Computer.	Usually 6-12 months
<b>Occupation Order (OO)</b>	Victim	No court fee. Legal Aid possible for legal representation	YES	YES	YES. Civil offence (arrest for contempt of court) Worth checking the Order appears on Police National Computer.	Usually 6-12 months

	<b>Who can apply?</b>	<b>How much does it cost?</b>	<b>Will this reveal my address or area?</b>	<b>Can be used alongside bail conditions?</b>	<b>Is breaching an offence?</b>	<b>How long does it last?</b>
<b>Sexual Harm Prevention Order (SHPO)</b>	Police, National Crime Agency or courts. Given on conviction.	N/A. Given by a judge on sentencing.	POSSIBLY. Restrictions range from travel ban, prevention of types of employment to limited internet usage but can be on a specific residence.	YES but probably for separate offences because a SHPO is given on conclusion of criminal proceedings	YES. Criminal offence, up to 5 years in prison	5 years minimum. No maximum.
<b>Sexual Risk Order (SRO)</b>	Police or National Crime Agency	No fee	POSSIBLY. Restrictions range from travel ban, prevention of types of employment to limited internet usage but can be on a specific residence.	YES but probably for separate offences.	YES. Criminal offence, up to 5 years prison.	Minimum 2 years to indefinite
<b>Slavery and Trafficking Prevention Order (STPO)</b>	Police, National Crime Agency, Immigration Officers, Courts. Given on conviction.	N/A. Given by a judge on sentencing.	POSSIBLY. Restrictions range from travel ban, prevention of types of employment to limited internet usage but can be on a specific residence.	NO. Given on conclusion of criminal proceedings	YES. Criminal offence, up to 5 years prison	Minimum 5 years to indefinite

	<b>Who can apply?</b>	<b>How much does it cost?</b>	<b>Will this reveal my address or area?</b>	<b>Can be used alongside bail conditions?</b>	<b>Is breaching an offence?</b>	<b>How long does it last?</b>
<b>Slavery &amp; Trafficking Risk Order (STRO)</b>	Police, National Crime Agency, Immigration Officers	No fee	POSSIBLY. Restrictions range from travel ban, prevention of types of employment to limited internet usage but can be on a specific residence.	Unclear.	YES. Criminal offence, up to 5 years prison.	Minimum 2years. Maximum 5 years.
<b>Stalking Protection Order (SPO)</b>	Police or courts	No fee	YES. Generally forbids suspects entering your address or area.	Unclear	YES. Single breach is a criminal offence. Up to 5 years prison, fine or both	At least 2 years.
<b>FGM Protection Order (FGMPO)</b>	Victim, local authority or any person with court permission (e.g. police, teacher, family member)	No fee. Legal Aid possible for legal representation.	NO. Application form offers option to keep address confidential	YES.	YES. Civil offence (contempt of court). Up to 2 years prison. Criminal offence. Up to 5 years prison.  Worth checking the Order appears on Police National Computer.	Various. Examples under section 'FGM Protection Order' here but can be indefinite <a href="#">Female Genital Mutilation   The Crown Prosecution Service (cps.gov.uk)</a>

	<b>Who can apply?</b>	<b>How much does it cost?</b>	<b>Will this reveal my address or area?</b>	<b>Can be used alongside bail conditions?</b>	<b>Is breaching an offence?</b>	<b>How long does it last?</b>
<b>Forced Marriage Protection Order (FMPO)</b>	Anyone with court permission. Application to Family Court	No fee. Legal Aid possible for legal representation.	NO. Application form offers option to keep address confidential	Unclear	YES. Criminal offence of up to 5 years prison.	Can be indefinite.
<b>Domestic Violence Protection Notice (DVPN)</b>	Police (Supt or above). No arrest or charge required. Can be applied during investigation or after caution/NFA	No fee.	YES	NO. Only bail WITHOUT conditions	NO. Suspect should be arrested & held in custody until Magistrates Court hearing (within 24hrs of arrest).	Immediate, short-term protection of 48 hours within which time, police must apply for a DVPO (below)
<b>Domestic Violence Protection Order (DVPO)</b>	Court (victim not required to attend)	No fee.	YES	NO. Only bail WITHOUT conditions	YES. Civil offence (arrest for contempt of court) or criminal offence £50 fine per day up to £5k or 2 month prison.	Flexible duration (14-28 days), intended for longer term protection.

<b>The protection orders below will be piloted in 2023 in small number of police authorities, as yet undecided.</b>						
	<b>Who can apply?</b>	<b>How much does it cost?</b>	<b>Will this reveal my address or area?</b>	<b>Can be used alongside bail conditions?</b>	<b>Is breaching an offence?</b>	<b>How long does it last?</b>
<b>Domestic Abuse Protection Notice (DVPN)</b>	Police	No fee.	YES	NO.  Only bail WITHOUT conditions	NO.  Breaches should be considered by the court if there is an application for DVPO (below)	Up to 48 hours.
<b>Domestic Abuse Protection Order (DAPO)</b>	Police, criminal, family or civil courts, victim or specified 3 <sup>rd</sup> parties e.g. Local Authority	No fee. Legal Aid possible for legal representation.	YES	NO.  Only bail WITHOUT conditions	YES. Criminal offence with maximum penalty up to 5 years prison, a fine, or both. Breach can also be dealt with as a civil contempt of court	Flexible duration, enabling long-term protection to be provided.  Sanctions & positive requirements can be varied over time where necessary

Source reference

College of Policing (2021). *Protective measures and civil orders*. [online] College of Policing. Available at: <https://www.college.police.uk/guidance/violence-against-women-and-girls-toolkit/protective-measures-and-civil-orders>.

## Appendix 2: Participant information sheets

(based on Learmonth, 2018: Appendix 1)



### **Participant Information - Criminal justice and professionals**

This is a request for professionals who have experience of cases where women have reported rape or serious sexual offences and the suspect has been bailed at any point, to participate in a research project.

#### **Who is doing this research?**

My name is Sarah Learmonth and I am a PhD researcher at London School of Economics (LSE) who has chosen to do this as an independent piece of academic research. I am supervised by a female Professor, Lee Edwards at LSE.

Please read this information sheet carefully to decide whether you wish to take part in an interview with me for the research. Take your time to decide and speak to others if you wish.

#### **Why is this research being carried out?**

I worked at a Rape Crisis Centre for nearly a decade and spoke to many women about their safety fears and feelings of reduced freedom after reporting.

As a result, I decided to carry out this research to find out how expectations of protection from the point of reporting rape influence women to come forward to the police. Part of the research is also to find out how professionals (for instance, police, housing, universities, social care) as well as friends and family support and understand women's safety needs when bail is granted to a suspected rapist.

Ultimately, I would like this research to contribute to improving women's safety after reporting rape and during what can be a long criminal justice process.

#### **Why have I been asked to take part?**

You have been asked to take part because I would like to ask you about your professional experience of bail use in rape cases.

This might include cases where the alleged perpetrator was granted bail at any stage in the case.

**Do I have to take part?**

No. It is up to you if you take part. If you do decide to take part you will be asked to sign a consent form to show that you agree to take part in the research project.

If you agree to take part and then change your mind at any time later you can stop taking part. All you need to do is tell me that you no longer want to take part, you do not have to give me a reason. If you do not wish me to keep any information you have told me, I will make sure it is destroyed.

**What will I have to do?**

If you agree to take part, I would like to interview you face-to-face or over Zoom, whichever is most convenient. The interview will take around one hour of your time and will be arranged at a time and date to suit you.

I will ask your permission to record the interview and the answers you give will be held anonymously and confidentially and then destroyed once the results have been written up.

If you agree to take part and then change your mind at any time later you can stop taking part, all you need to do is tell me. If you do not wish me to keep any information you have told me, I will make sure it is destroyed.

**Will I be named in the research?**

No. Any information you give in an interview that could identify you personally will be removed: this means that what you say is anonymised. No one taking part will be named or identified in any report that I will write. Any identifiable information about you (e.g. name, location, family make-up) including the contact details needed to arrange the interview will only be seen by me.

**What are the possible problems or risks of taking part?**

Whatever you say in the interview is confidential but in the unlikely event that issues of concern are raised by you, we will explore how you would prefer to deal with the situation and if you wish to continue to discuss these issues.

**What will happen to the results of the research project?**

An academic report will be produced for my PhD. A summary of the findings will be passed to all individuals and institutions who took part in the research.

You will not be named or identifiable anywhere in any report.

**Who has reviewed this research?**

This research is reviewed and ethically approved by the Research Ethics Committee at LSE and is supervised by Professor Lee Edwards who is experienced in running small and large research projects tackling violence against women and girls.

**What if there is a problem?**

If you have a problem to do with this research, you can either speak to me, Sarah Learmonth or you can get in touch with the academic supervisor for the research by contacting Professor Lee Edwards: [l.edwards2@lse.ac.uk](mailto:l.edwards2@lse.ac.uk)

**If I want to take part what should I do next?**

If you are interested in taking part in an interview please email me on: [s.j.learmonth@lse.ac.uk](mailto:s.j.learmonth@lse.ac.uk)

If you have any questions or require further information about the research project please contact me on the email above.

## **Participant Information - Women Victim-Survivors**

This is a request for women who have experience of bail decisions in rape or serious sexual offences cases to participate in a research project.

### **Who is doing this research?**

My name is Sarah Learmonth and I am a PhD researcher at London School of Economics (LSE) who has chosen to do this as an independent piece of academic research. I am supervised by a female Professor, Lee Edwards at LSE.

Please read this information sheet carefully to decide whether you wish to take part in an interview with me for the research. Take your time to decide and speak to others if you wish.

### **Why is this research being carried out?**

I worked at a Rape Crisis Centre for nearly a decade and spoke to many women about their safety fears and feelings of reduced freedom after reporting.

As a result, I decided to carry out this research to find out how expectations of protection from the point of reporting rape influence women to come forward to the police. Part of the research is also to find out how professionals (for instance, police, university, social care) as well as friends and family support women's safety needs where bail is applied to a suspected rapist.

Ultimately, I would like this research to contribute to improving women's safety after reporting rape and during what can be a long criminal justice process.

### **Why have I been asked to take part?**

You have been asked to take part because I would like to ask you about your personal experience of bail given to alleged perpetrators of rape and the impact it has on victims.

This might include cases where the alleged perpetrator was granted bail at any stage in the case.

**Do I have to take part?**

No. It is up to you if you take part. If you do decide to take part you will be asked to sign a consent form to show that you agree to take part in the research project.

If you agree to take part and then change your mind at any time later you can stop taking part. All you need to do is tell me that you no longer want to take part, you do not have to give me a reason. If you do not wish me to keep any information you have told me, I will make sure it is destroyed.

**What will I have to do?**

If you agree to take part, I would like to interview you online, over Zoom. The interview will take around one to one and a half hours, at a time and date to suit you.

I will ask your permission to record the interview and the answers you give will be held anonymously and confidentially and then destroyed once the results have been written up.

If you agree to take part and then change your mind at any time later you can stop taking part. All you need to do is tell me that you no longer want to take part. If you do not wish me to keep any information you have told me, I will make sure it is destroyed.

**Will I be named in the research?**

No. Any information you give in an interview that could identify you personally will be removed: this means that what you say is anonymised. No one taking part will be named or identified in any report that I will write. Any identifiable information about you (e.g. name, location, family make-up) including the contact details needed to arrange the interview will only be seen by me.

**What are the possible problems or risks of taking part?**

Whatever you say in the interview is confidential but in the unlikely event that issues of concern are raised by you, we will explore how you would prefer to deal with the situation and if you wish to continue to discuss these issues.

**What will happen to the results of the research project?**

An academic report will be produced for my PhD. A summary of the findings will be passed to all individuals and institutions who took part in the research.

You will not be named or identifiable anywhere in any report.

**Who has reviewed this research?**

This research is reviewed and ethically approved by the Research Ethics Committee at LSE and is supervised by Professor Lee Edwards who is experienced in running small and large research projects tackling violence against women and girls.

**What if there is a problem?**

If you have a problem to do with this research, you can either speak to me, Sarah Learmonth or you can get in touch with the academic supervisor for the research by contacting Professor Lee Edwards: [l.edwards2@lse.ac.uk](mailto:l.edwards2@lse.ac.uk)

**If I want to take part what should I do next?**

If you are interested in taking part in an interview please email me on: [s.j.learmonth@lse.ac.uk](mailto:s.j.learmonth@lse.ac.uk)

If you have any questions or require further information about the research project please contact me on the email above.

### Appendix 3: Interview consent form

(Learmonth, 2018: Appendix 3)

Please add your initials next to the statements you agree with

I have read and understand the participant information sheet explaining the project and have had time to think about the project, ask questions and have had answers to my questions that I am happy with.	
I agree to take part in an interview.	
I give my permission for the interview to be audio-recorded. I understand that the researcher will write up what has been said into a transcript but will not include any identifiable information in the transcript. I also understand that the audio-recording and the transcript will both be destroyed at the end of the project.	
I understand that I have free choice of whether to take part or not. I understand that if I want to stop taking part in this research project at any point in the process I can tell the researcher and leave straight away without giving any reason, and that this will not affect my legal rights or the service that I receive. I can request for any information that I have given up to this point to be destroyed.	
I understand that I have the right to refuse to answer any question or discuss any topic that I do not want to talk about.	
I understand that I will not be identified or made identifiable in any follow up interview, report or publication produced by the researcher.	
I have been informed that if I have any questions or concerns about this project, I can contact [gatekeeper organisation contacts]. Alternatively that if I prefer, I can raise concerns with the academic supervisor for this project by contacting Lee Edwards on: <a href="mailto:l.edwards2@lse.ac.uk">l.edwards2@lse.ac.uk</a> .	
I would like a summary of the report that is written and agree to my contact details being held by the researcher for the purpose of sending me this report only. I understand that these contact details will be kept confidential and will not be shared.	

I agree to participate in this research project.

Participant's signature	
Date	

## Appendix 4: Topic Guides

(Learmonth, 2018: Appendix 2).

### Women victim-survivors

This is a project that is interested in understanding women's experiences when perpetrators are granted bail at any point during the criminal justice process.

I just want to remind you what the research is about and what the limits are to our confidentiality before asking you to sign a consent form. Is that ok?

If we talk about incidents today that you haven't disclosed before which suggest you or anyone else is in danger of serious harm then we will have to discuss how we will manage that and I may have to tell your Support Worker. Other than that, everything you say will be anonymous and treated in confidence. Can I confirm that I have your permission to record the interview?

If at any point you feel uncomfortable, want to stop or don't want to answer a question then let me know, you don't have to explain why.

Do you have any questions for me before we start?

1. Can you tell me a little bit about yourself? What made you decide to take part in this research?
2. What made you decide report to the police? Prompt: did you discuss with anyone else/read or see anything that helped make that decision?
3. What do you understand by someone being 'on bail'?
4. Did you expect any protection when you reported?  
What do you think made you expect this? Where do you think those expectations come from?
5. How was bail used in your case?
6. Were you consulted by the police on what bail conditions you wanted/needed?
  - a. How were you consulted? Prompt: Did they take a Victim Impact Statement? What were the risks you took in reporting? Were you protected specifically from these?
  - b. Why do you think you were not consulted? Any reasons given? What were the risks you took in reporting? Were you protected specifically from these?
7. Did you expect to be protected immediately after reporting your rape?
  - a. What did you envisage that to look like?
  - b. Where did you get that expectation from? Prompt: immediately, effectively. Did 'bail' form part of what you expected?
8. How did you know how bail worked and where do you think this knowledge came from?
  - a. Were you aware or made aware that breaching bail was not an offence?
  - b. What other options for protection were you told about? Prompt: non-molestation or restraining order
9. What was the response of friends and family after you reported, what about after he was bailed? Prompt: was there a delay between your report and his arrest?

10. What was the response from organisations that you were involved with? e.g. education, work, social care etc Prompt: did they use the conditions to protect you? Anything else in terms of their own safeguarding policies?
11. What was the response of the perpetrator and those around him to his bail? How was he treated?
12. How would you say you were treated by the people around you? Prompt: did they respond positively, supportively, negatively?
13. During this time, did him being on bail affect your life in any way?
14. Were there changes in your protection needs over the duration of the investigation? If so, how were they taken into account? Prompt: variation in conditions, non-mol or similar?
15. What message do you think is given when perpetrators are put on bail? Prompt: Friends, family, public, social care, workplace etc.
16. I have come to the end of my questions:
  - a. Is there anything else you would like to say?
  - b. Is there anything you would like to ask me?
17. What name would you like to be called in the research?

Go through support options available where applicable.

## **Criminal justice actors and professionals.**

(Learmonth, 2018: Appendix 2)

Do you have any questions for me before we start?

1. Could you tell me a little about your role and experience, particularly with bail in sexual offences cases?
2. What generally is the expectation from survivors of how they will be protected during the process? In your experience, do they know that bail is a possibility?
  - a. How do they talk about their protection needs/fears?
  - b. Where does the gap between expectation and reality come from do you think?
  - c. What message does bail or released under investigation give survivors?
3. What is the process for you to learn the risks to victims in order to request conditional bail or remand? Who provides that information and how would you know if it was incomplete?
4. What do you think about the recent pre-charge bail reform asking the police to both safeguard victims and check their fears have been addressed?
5. Are RASSO victims invited to court hearings on bail or to the trial itself?
6. How can victims ask for changes to bail conditions during the criminal justice process? E.g. pre-charge to post-charge or post-conviction or bail extensions?
  - a. Do you think they should be allowed the right to appeal?
7. Do you think bail is more likely to be given in some cases than others? (if yes, what cases).
  - a. Would you say some officers are more likely to pursue conditional bail rather than others?
  - b. Is there a formal process to assess & to communicate the outcome to survivors?
  - c. Are there differences in the expectations of protection when the survivor is in a specific group such as disabled, religious considerations, pregnant or just given birth etc?
8. How are bail breaches evidenced and what are the consequences?
  - a. How often are breaches treated as a separate crime of witness intimidation?
  - b. Are civil protection mechanisms used alongside bail?
9. How does the enforcement of bail and conditions affect the survivor? What protection does it offer e.g. message of credibility from those around her or reducing possibility of meeting/seeing perp.
10. What multi-agency involvement is there in safeguarding victims? What information is routinely passed to a survivor's workplace, university, social care,

housing etc? When does this happen? Prompt: on report, on recording of crime, on arrest/bail of suspect?

11. What do the police take into account when deciding on bail and conditions or RUI?
  - a. How relevant is the survivor perspective and experience to the evidence needed for bail decision-making?
  - b. In your experience do survivors feel listened to in the process?
  
12. How do women's friends and family react to the application of conditional bail?
  - a. What message about sexual violence is sent to the perpetrator when bail is granted?
  - b. What message about sexual violence is sent to other professionals when bail is granted?
  
13. What is the purpose of granting bail at any stage from the Police and court's perspective – Magistrate and Crown?
  - a. From a survivor perspective – what do you think survivors think bail is used for? How do they find the process? (e.g. complex/efficient)?
  - b. From a perpetrator perspective
  
14. How similar or different is the reality of bail and the expectation? Where do you think the gap in understanding comes from?
15. How successful do you think bail is at serving the interests and needs of both alleged perpetrators, and of survivors?
  
16. In your experience, does the Victim Impact Statement form part of decision-making on bail and conditions?
  
17. Your thoughts:
  - Is there anything else you would like to say?
  - What name would you like to be called in the research?

## Appendix 5: Overview of women victim-survivors

### **Beaver**

Beaver was abused as a child by her father who was arrested when she was 10 years old and she never saw him again. Later she found out that, not only had he been given a suspended sentence for her rape and sexual abuse, but he had continued to abuse other women and girls, receiving another 10 year sentence years later for some of his crimes. Beaver tried to keep track of him for her own sense of safety but was told she had no rights as a previous victim to information on the progress or outcomes of her father's crimes against other victims.

Beaver has spent her life raising awareness of sexual consent, and campaigns specifically on the need for victim-survivors to have the right to be told when the rapist in their case dies or is back in prison.

### **Molly**

Molly was raped and coercively controlled by her ex-husband and the father of her two children. She may never have recognised his abuse if he had not endangered the life of her unborn second child, raping her so violently she gave birth prematurely. Molly took her case to trial and he was conditionally bailed throughout despite breaching bail multiple times. He was acquitted at court.

She has gone on to become a notable figure in the women's sector, training thousands of other women to recognise and resist male violence, as well as find joy in their lives. She is happily remarried and the rapist is serving a lifetime sentence for his sexual offending against other women.

### **Vicky**

Vicky was a teenager when she met her rapist and was subjected to both physical abuse and manipulation. She managed to get away from him, only to see his abuse of other women presented in the tabloid press as consensual entertainment, so she decided to try and put a stop to his offending and reported him. He was unconditionally bailed but consistently absconded until he was eventually remanded. He made a plea deal, reducing his sentence down to time already served and walked out of the court a free man.

Vicky is now happily married and campaigns for women's rights.

## **Patsy**

Patsy has been diagnosed with autism and has other physical disabilities that mean she has a carer each morning and takes regular medication. Patsy was raped multiple times by a man who was a stranger to her while on a night out in her hometown. She never saw his face nor was she permitted by the CPS to see a photograph of him at any point during or after the investigation. For the majority of the investigation, the perpetrator was conditionally bailed. The CPS ended her case without her knowledge by offering no evidence two months before the trial for reasons Patsy has never had fully explained.

She is a lesbian, a fact the CPS refused to take into consideration with regard to her consent. Patsy is currently single and lives with her two beautiful cats in her own house and has good friends who live locally.

## **Sinead**

Sinead is the mother of two grown up children and met her ex-partner within her social group and after a time, found him difficult and manipulative. She initially reported her rape as a 999 call but was subsequently so scared she withdrew her complaint. Six months later she reported the rape again and the police asked him in for a voluntary interview. As far as Sinead knew, he was then released without constraints for two years until he was charged and conditionally bailed. The case went to court and he was found not guilty.

Sinead now lives in another part of the UK and is an active campaigner for justice reform in rape cases.

## **Juliana**

Juliana was a professional woman with a thriving career when she met her ex-partner who moved in with her three months after they started a relationship. She only realised she was being abused by him after he stole money from her, then threatened to send her father a video of him raping her after he had drugged her. This video was the evidence Juliana sent to the police when she reported shortly afterwards. He was conditionally bailed but absconded and breached his conditions multiple times and was eventually remanded. At trial he was found guilty and given an 18 year sentence.

Juliana has waived her anonymity and appears regularly in the media, advocating for victim-survivor's rights in rape cases.

## **Kylie**

Kylie is a middle-aged woman with learning difficulties, she lives independently and on her own. She reported physical and sexual abuse as a child by her father but the case was dropped and she was sent back home to endure more abuse. Later, Kylie's husband abused both her and her children, and he was convicted.

More recently, someone Kylie called "a friend" introduced her to a man who repeatedly came to her house to sexually abuse her. Kylie eventually moved away but after he continued to visit and abuse her in her new home, she reported rape to the police. Kylie had no idea whether he had been arrested, charged or bailed, with or without conditions. The case was eventually dropped by the police.

Kylie works with a group of women at a local Women's Centre to advocate for the rights of women with disabilities.

## **Daisy**

Daisy was adopted as a young child and felt compelled to understand more about her background and identity. At 18 years old, she read in her social care files that her birth mother had been 13 years old at the time of the pregnancy and her birth father had been in his late twenties. The realisation that she was born from her birth mother's childhood rape was followed by another, Daisy was not legally a victim according to criminal justice, so could not pursue her birth father's rape without her birth mother supporting the prosecution. Daisy's determined campaigning over many years culminated in her birth mother's rapist being given an 11 year sentence, as well as a change in the law that acknowledged children of rape as victims in their own right, known as Daisy's Law.

Daisy campaigns and speaks publicly about the rights of people born from rape through her organisation 'Now Visible' ([NowVisible](#)).

## **Zoe**

Zoe was a successful woman with a good career and a home of her own when she met her ex-husband who turned out to be a coercively controlling and extremely violent man. He raped and humiliated Zoe, assaulting her and their children many times. She reported when he eventually attempted to murder her. He was conditionally bailed throughout the criminal justice process, breaching his conditions multiple times without consequence, in part because Zoe was not told what his bail conditions were. He made a plea deal that did not include rape or attempted murder and is currently in prison but due to be released shortly.

Zoe now works for two women's organisations helping women to overcome some of the same barriers she faced. She is extremely proficient at Krav Maga self-defence.

### **Karen**

Karen was a young professional working in advertising, a job she loved, when she met her ex-partner. He was considerably older and professionally senior to Karen which facilitated a relationship between them characterised by his coercive and controlling behaviour. Some time after leaving him and moving out of advertising to avoid any further contact, Karen watched a television programme describing the signs of abuse and coercive control and recognised her own relationship. She felt at a safe enough distance to report him for rape and coercive and controlling behaviour. He was given conditional bail throughout and found not guilty at trial.

Karen is an award-winning campaigner for the rights of victim-survivors of rape through Open Justice for All ([OPEN JUSTICE FOR ALL](#)) and is happily married.