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**A REPORT BY BARONESS VIVIEN STERN CBE
OF AN INDEPENDENT REVIEW INTO HOW
RAPE COMPLAINTS ARE HANDLED BY PUBLIC
AUTHORITIES IN ENGLAND AND WALES**

THE

STERN

REVIEW

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FOREWORD BY BARONESS STERN

I was privileged to be invited by the Government Equalities Office and the Home Office to carry out this independent review into the treatment of rape complaints by public authorities. For over forty years I have been involved in work to improve the way society responds to crime and criminals. During that time I have often voiced concern that we have failed to understand what a caring society should be doing to respond to those who have been harmed by crime. This review has allowed me to study at first hand how one particular group of victims, the victims of rape, are treated, and to recommend how we can do better.

It has been an extraordinary experience. In the course of collecting evidence I have met many people with an important story to tell. Sadly I have met some whose treatment by the authorities was appalling. Examples of such shockingly poor treatment are described in this report. John Worboys and Kirk Reid were men who managed to rape and assault many women before they were stopped, because the police in London did not take the victims seriously enough when they came to report what had happened to them and rape was not a sufficiently high priority for some of the police at the time. These cases must have done great damage to the confidence of victims in reporting what has happened to them and many lessons needed to be learnt.

But I have also come across a wide range of deeply dedicated men and women whose work has helped to bring a traumatised person through a most terrible experience. Across England and Wales there are examples to be found of the very best practice that can be envisaged in dealing with rape victims. Many in the police and the prosecution service are working hard to change the way they deal with this most difficult of crimes, and I have been impressed by their commitment and the quality of what many of them are doing.

I am grateful to the Victims' Champion Sara Payne for the discussions we had and the valuable insights to be found in her two reports, *Redefining Justice* and *Rape: the victim experience review*. She has given us a very sound basis for the work we have done. I am also grateful to Sir George Alberti for our discussions about the crucial role of the NHS in caring for rape victims. I welcome the recommendations he makes in the report of The Health Aspects of Violence Against

Women and Children Taskforce. Rape is not just a matter for the criminal justice system. Far from it. The health implications are substantial and the role of the NHS needs to be developed along the lines suggested in Sir George's report.

The way rape is understood and dealt with has changed considerably in recent years. The Sexual Offences Act 2003 brought in a new definition of rape. In all of the 43 police forces in England and Wales there are specially trained officers to deal with rape complaints. About a third of forces have special rape units. The Crown Prosecution Service has appointed specialist rape prosecutors. Only judges trained in sexual offences can hear rape cases. A new and very successful post of victims advisor has been created to offer support in some places to those who report rape.

My report looks broadly at these changes and assesses how far, when they are implemented everywhere, they will lead to a better response by society to rape victims. I hope my report will encourage those who have embarked on the path of change to do more, and convince others that this is an important priority. This report should make clear what anyone who has decided to report a rape, whether a man or a woman, can expect from a public authority.

I know that many of those who suffer rape do not report it to the authorities. I hope my review will encourage more victims to report to the police what has happened to them and to stay with the process, even though it may seem at the time to be long and painful. I also hope it will empower those responding to victims to give a better service and to be more effective in what they do. And I hope too that politicians will agree that ensuring the money is there for such a service is an important priority, even in a time of severe financial restraints.

Rape takes place within a wider social context. Many of its victims are very vulnerable. My review will have taken us forward if it prompts a little more thinking about the messages society is sending out to young people: messages about sexual relationships and about our responsibility to protect others from sexual exploitation.

The remit of the review was to look at the response of public authorities to those making complaints of rape. We have not therefore looked at any possible changes in the law in any detail. Nor have we considered the issue of child sexual abuse. This is a topic in its own right. We have done what we could in the time available to show what needs to be done. Our recommendations are not numerous, although the

ones we make are important. Rather than prescribe in detail, we have been more concerned to suggest what is the right approach for public authorities to take, individually and also as part of a wider response of the community to this particularly invasive and traumatic crime.

There are many people to thank: those who met me, wrote to me or submitted evidence – over three hundred altogether – and those who gave me very personal and extremely distressing accounts of what had happened to them and have somehow dealt with the damage inflicted on them to tell their story with a view to helping others. I hope the short time we have had for this review has enabled us to do some justice to the views we have received.

In particular I must thank the staff seconded to the review from the Government Equalities Office, namely Kuljit Dhillon, Head of the Secretariat, Daisy Sands and Francesca Broadbent, without whose dedication and hard work this report could not have been written. They are not responsible for the views I express or for what is omitted from this report.

I would also like to thank my assistant, Helen Fair, for her considerable and unfailing support.

A handwritten signature in black ink, appearing to read 'Vivien Stern', with a large, stylized flourish above the name.

Baroness Vivien Stern, CBE

TERMS OF REFERENCE

The Stern Review terms of reference are:

- to examine the response of the public authorities to rape complaints and examine how more victims can be encouraged to report;
- to explore ways in which the attrition rate in criminal cases can be reduced, and how to fairly increase the conviction rate;
- to identify how to increase victim and witness satisfaction, and confidence in the criminal justice system in addressing rape;
- to explore public and professional attitudes to rape and how they impact on outcomes;
- to utilise findings and information available from other relevant work, particularly the work on victims' experience being led by Sara Payne and the Department of Health Taskforce led by Professor Sir George Alberti, avoiding unnecessary duplication; and
- to make recommendations, with particular reference to improving the implementation of current policies and procedures.

Throughout this review references to footnotes are numbered in black and references to endnotes are numbered in orange.

EXECUTIVE SUMMARY

Rape is a serious and deeply damaging crime. It is unique in the way it strikes at the bodily integrity and self-respect of the victim, in the demands it makes on those public authorities required to respond to it and in the controversy it generates. We were told by a lawyer, 'Rape is unique as it is an inherently lawful activity made illegal because of lack of consent.' Women, men, children, and people of all ages and all social groups can become rape victims.

Our terms of reference required us to look at the response of public authorities to rape complaints. We were asked to consider how the response could be improved so that more victims might report what had happened to them; more cases would end with prosecution and conviction; and victims would receive better treatment. We were not looking at child sexual abuse, which is a topic in its own right. Nor were we looking at possible changes in the law.

In the five months available to us to prepare our report we met over 200 individuals personally, including victims, representatives from victims' organisations, judges, police officers, prosecutors, doctors and others. Many other people also wrote to us or responded to our survey. They provided us with a picture of some outstandingly good treatment alongside appalling failure. We met many dedicated men and women working to help an often traumatised person through a most terrible experience. We listened to many from Rape Crisis Centres and other voluntary organisations, whose dedicated work over a number of years to raise awareness of sexual violence has led to many of the improvements that we have described in this report. We learned how vulnerable many of the victims of rape are. We heard what is important to victims of rape.

We have aimed in this report to avoid jargon and technicalities in the hope that it will be widely read outside the groups who will read it because their jobs require them to. The debates about rape will continue, and the more well informed they are the better.

Our main conclusions

The policies are right

In dealing with rape complaints a substantial amount of change has been introduced in recent years by the public authorities that carry responsibilities in this area. Attitudes, policies and practices have changed, fundamentally and for the better. In England and Wales we now have a system with specialisation in dealing with rape at the police, prosecution and judicial levels. We have measures in the courtroom to minimise the trauma of the trial for the complainant. We have a programme to provide state-of-the-art medical centres in every police force area, where victims of rape can be examined and assisted. The extensive research about rape makes a number of suggestions for ways to increase the number of rapes that are reported to the authorities and ensure more successful prosecutions. These suggestions have informed the new policies. Detailed guidance on an effective response to rape complaints has been issued to the police and the Crown Prosecution Service (CPS). Official figures show that between 2006/7 and 2008/9 the number of people convicted rose from 1,778 to 2,021.

Implementation is patchy and must be improved

These policies are the right ones and we have only a few changes to recommend. In some areas the policies are applied consistently and with commitment by all involved. The policies are not the problem. The failures are in the implementation. Our report gives examples of very bad practice. Much publicity surrounded the cases of John Worboys and Kirk Reid, two persons now convicted of rape, who were left to continue their attacks because of failures by the Metropolitan Police Service. A number of shocking cases from other police force areas came to our attention. Problems persist with the CPS. There are still prosecutors who do not make the effort to communicate properly with victims. In some areas cases are still not being dealt with by specialist prosecutors. Whilst treatment of victims has improved considerably, we heard of areas where victims' organisations struggle to have their concerns heard.

We believe that all public authorities should implement the policies that have been developed and we make recommendations to that effect. They should do so in a way that is appropriate for their area and the number of cases they are likely to have to deal with. We would not expect exactly the same organisational arrangements to be applied everywhere, but the approach should be consistent.

Positive obligations to victims must be recognised

The Victims' Champion Sara Payne, in her report *Redefining Justice: Addressing the individual needs of victims and witnesses*, said: 'We need to reconsider our definition of "justice" so it is not just for punishing a perpetrator and preventing further crimes.' We are grateful for this insight, which has formed the basis of our approach to the treatment of victims of rape. We need to look at rape victims as people who have been harmed, whom society has a positive responsibility to help and to protect, aside from the operations of criminal law. Whether the rape is reported or not, whether the case goes forward or not, whether there is a conviction or not, victims still have a right to services that will help them to recover and rebuild their lives. Victims and those who work with them told us that the criminal process is important, but getting support and being believed is as important. Processes should be in place that are about 'honouring the experience'. Victims need to know that the police and prosecution did their best, and victims need to be respected.

This is the approach that has underpinned our recommendations. We have recommended that the Sexual Assault Referral Centres, the victim-centred medical centres open to all who have suffered sexual assault, be put onto a firm basis as part of mainstream provision and expanded further in the future. We have also recommended that every victim who so wishes should be supported by an Independent Sexual Violence Advisor. These advisors are currently available in some places under a pilot scheme. They help the victim to make sense of the police and prosecution processes. They help the police by keeping in touch with a victim throughout the investigation, and they help the prosecution by supporting the victim through the psychologically gruelling process of preparing to give evidence. They provide a link between the criminal case that is under way and the range of social agencies whose help may be needed. These advisors represent a cost-effective investment that can bring substantial improvements to the way rape victims are treated. We would see this recommendation as central to improving the treatment of rape complainants by public authorities.

The conviction rate has taken over the debate

Conviction rates for rape are the subject of considerable political and media attention. Much is said about the conviction rate for rape being six per cent in England and Wales. The six per cent figure is widely quoted. We found in carrying out this review that it was known and used by almost everyone in the field. Some have found it helpful as a campaigning tool in arguing for an improvement in the way rape cases are dealt with. Others found it misleading and deeply unhelpful in building confidence in victims and increasing the number of cases

reported to the police that could possibly go forward to a prosecution. Many expressed concern at the widespread use of this figure without analysis or explanation.

The way this conviction rate figure is calculated is unusual. Conviction rates are not published or even measured in this way for any other crime so it is very difficult to make a comparison. The term 'conviction rate' usually describes the percentage of all the cases brought to court that end with the defendant being convicted. When dealing with rape the term has come to be used in a different way, and describes the percentage of all the cases recorded by the police as a rape that end up with someone being convicted of rape.

We have looked closely at the information about convictions for rape and it is clear to us that the figure for convictions of people of all ages charged with rape¹ (as the term is normally used in relation to crime) is 58 per cent. The confusion arises from mixing up the conviction rate with the process of attrition. 'Attrition' is the process by which a number of the cases of rape initially reported do not proceed, perhaps because the complainant decides not to take the case any further, there is not enough evidence to prosecute, or the case is taken to court and the suspect is acquitted. The attrition rate figure has been the cause of considerable concern, and attempts to reduce it are behind many of the reforms that have been introduced in recent years. Our terms of reference also ask us to look at ways in which it can be further reduced and we have made recommendations to that effect, taking into account the many difficulties that stand in the way of successfully prosecuting cases of rape.

However, it is clear to us that the way the six per cent conviction rate figure has been able to dominate the public discourse on rape, without explanation, analysis and context, has been to the detriment of public understanding and other important outcomes for victims. Since this is an area of such public interest and debate, and many organisations have an interest in this information and what it means, we feel the presentation of the statistics could be looked at again and we so recommend.

What should our priorities be?

When the policies described in this report are adopted everywhere, more rape cases will be able to proceed to court and more will end with a conviction. It is likely that at the same time the number of people

¹ These convictions are for rape or another related offence.

having the confidence to report will grow. However, it is clear that even when good practice is embedded everywhere, not every case will lead to a prosecution.

Policy-makers and those who allocate scarce resources in hard times therefore face some difficult choices. How much should be invested in the effort to prosecute more and more cases, bearing in mind the need for the evidence to be sound? How much weight should be placed on resourcing targeted and intelligence-led policing to ensure that the most serious perpetrators are identified and charged? Counselling for rape victims is in short supply and waiting lists are long. What priority in allocating resources should be given to the voluntary sector services that help victims recover and get on with their lives? How do we weigh the importance of work in local areas to look at rape strategically, at where it happens, who is most at risk, and what can be done to protect and prevent? If changing the public's attitudes to rape is such an important factor, how much are we going to allocate to the education of young people and society more generally about rape?

We conclude that it is time to take a broader approach to measuring success in dealing with rape. The conviction rate, however measured, has taken over the debate to the detriment of other important outcomes for victims. We do not say that prosecuting and convicting in rape cases is in any way unimportant. Far from it. It is important, and necessary. But in dealing with rape there is a range of priorities that needs to be balanced. Support and care for victims should be a higher priority. The obligations the State has to those who have suffered a violent crime, and a crime that strikes at the whole concept of human dignity and bodily integrity, are much wider than working for the conviction of a perpetrator.

The report

What we have learnt about rape

Rape can occur in a range of circumstances. Those usually referred to as 'stranger rapes', the sort of incidents most often reported on by the newspapers, where the victim and the perpetrator do not know each other, are a small proportion of rape cases. Most rapes are carried out by someone the victim knows. Much rape occurs in families. As a rape victim told us, 'with so much of rape within marriage, you don't say anything... It is not seen as rape.' Vulnerable and powerless people are often the victims of men who identify them as easy targets and take advantage of their need for attention and affection. In many cases 'rape

victims come from a whole history of abuse of one kind or another.' Having been a victim of rape in childhood makes it more likely that the person will be a victim again. Rape happens across cultures, and in some shame and social pressures will prevent it being disclosed. A number of rape cases are what are called 'historic'. The victim has decided to report the case to the police perhaps many years after it happened.

Around eight per cent of recorded rape cases are rape of a man. Men find it very difficult to talk about what has happened to them because of the common view that a man should be able to fight off an attacker. Male victims 'find it less easy to identify as victims and ask for help'.

As with most crime, only a small proportion of rape is reported to the authorities. Probably about 11 per cent of those who have been raped tell the police about it. In England and Wales in 2008/9, 12,129 rapes of women and 964 rapes of men were recorded by the police.

Rape is controversial

Strong opinions are held and often voiced about rape. Some of the evidence that reached the review made this clear. This should be no surprise since rape is about sex, violence, power, intimate relationships between men and women or between men and men, society's attitudes to what is acceptable behaviour and where blame and responsibility lie for non-consensual sex acts. Many people feel that the way rape is discussed and dealt with reflects unacceptable attitudes towards women.

There is a view that women are in some way to blame for being raped if they go out wearing revealing clothes and have too much to drink. Some complain of the tendency to lecture women on what they should and should not do rather than making it clear to men that sex without consent is rape.

False notions about rape are widespread. The general public will often assume that rape is a rare and very violent act, usually committed by a stranger on a woman walking home in the dark, that victims of rape would fight back and there should be injuries to prove that the victim was really being raped. A rape victim should be in a state of extreme distress when reporting the rape and anyone who had really been raped would tell someone about it straight away. Such attitudes can affect the way rape cases are dealt with by police, prosecutors, judges and juries. Understanding of male rape is very limited. It is assumed that it only occurs within the gay community or in prison.

It was suggested to us that women often make false allegations of rape. Beliefs that many allegations are false are said to affect the way rape complaints are dealt with by police, prosecutors and juries. The research that is available on false allegations gives a wide range of figures for how many there are, although those we spoke to in the system felt that there were very few. Nevertheless, the effect on those who are falsely accused can be severe. The public holds very strong views about sex offenders, and those who have been under suspicion of rape are likely to suffer considerably from the allegation having been made, even when they have been cleared and the allegation has been established as false. The penalties for making false allegations and persisting with them through the legal process can be commensurately severe. The complainant making false allegations can be given a substantial prison sentence.

Since the subject of false allegations comes up so often in discussions about rape, and the information about the prevalence of false allegations is so scanty, we have recommended that research be undertaken to establish their frequency.

Is the law understood?

The Sexual Offences Act 2003 brought in a new definition of rape. It says that rape occurs when someone 'intentionally penetrates the vagina, anus or mouth of another person with his penis'; that other person does not consent to the penetration; and the perpetrator 'does not reasonably believe that the other person consents'.

It is important that the 2003 law is understood. It says that one person having sex with another when that person has not agreed to it is rape. The law does not say force has to be used for it to be defined as rape. Violence is not part of the definition. The absence of consent is the defining factor. And the absence of consent can be to one form of penetration although there has been agreement to another. For example, if there is consent to vaginal intercourse, it does not follow that there is consent to anal intercourse. If anal intercourse without consent follows vaginal intercourse with consent, the law says that is rape. And the court will not be satisfied if the perpetrator thought that there was consent but that belief was unreasonable.

All these legal changes have been in a similar direction, to move from the underlying presumption that victims are likely to be lying or were somehow negligent in letting the rape happen towards a standpoint that sex without consent is rape and all other factors about a person

making a complaint of rape are irrelevant to that central fact. In the law of England and Wales there is now no question that sexual intercourse without consent, where there is no reasonable belief in consent, is the crime of rape, whether the people involved know each other or not, have had a previous relationship with each other or not, or are married to each other.

The police are in the front line

The way the police work with rape complainants is crucial to the outcome and to the way the victim feels the system has responded. The improvement of the way the police deal with rape complaints has been a long road, and there is still some way to go for a number of police forces. There is a long history of disbelief, disrespect, blaming the victim, not seeing rape as a serious violation, and therefore deciding not to record it as a crime. Much work has been done to improve the police response and we saw examples of the very best practice. Since 2002 many police forces have trained a number of officers as rape specialists. A specialist is responsible for caring for the victim, keeping in touch as the case progresses and helping with problems. Special efforts have been made to improve the way the police respond at the point when a rape is reported. The time of first reporting is crucial to the outcome of the case because that is when vital evidence can be collected, before victims have had a wash, changed clothes, gone to the toilet even. Also it is when victims will form an impression of the way they are likely to be treated as the process continues, whether they are going to be believed, and whether the investigative procedures are going to be so insensitive and intrusive that they decide they would rather not pursue the complaint.

The medical examination is a vitally important part of the evidence-gathering process. Forensic physicians have to take the appropriate samples, assess any injuries, reassure and provide care to the victim and sometimes give an opinion on the evidence that the victim presents. The police have a range of arrangements for getting access to forensic physicians. We heard of problems with the quality of the physicians involved, delay in finding one and difficulty in obtaining the services of female physicians (who are preferred by both male and female victims). We join with others in recommending that the NHS should take over responsibility for this service.

The police have to prepare the case so that the prosecution can decide whether it can go to court and they have considerable guidance on how to do this. Since 2003 victims of rape have been able to give their

evidence via a video-recorded interview; this recording constitutes the evidence that is presented to the court. The use of video recording was universally welcomed, but we found substantial problems with the effectiveness of this procedure and we recommend it be reviewed.

In addition to the training of officers as rape specialists, around a third of police forces have set up specialist rape teams. These bring a combination of high-level investigation, good victim care, better intelligence-gathering and a focus on vulnerable people. We commend this approach.

The police also have a wider role. They must play a leading part in public protection by protecting all – and particularly vulnerable victims, who are likely to be victims more than once – from further harm. They need to work with other agencies to reduce the level of sexual violence overall in their communities. We recommend a local arrangement that recognises that a criminal case will represent but one part of the support needed for a victim of rape.

Taking the case to court

The court process can be controversial. It is often said that the court case can be 'like being raped all over again'. It is suggested that juries do not convict in rape cases because they hold stereotyped views of rape and how victims should behave. The role of the prosecutor prosecuting for the State and in the public interest is not understood or can be resented by complainants who feel the defendant is better placed because he has a barrister to represent his interests. Success for the prosecution is difficult to measure. Is it the number of cases prosecuted, or the number of convictions? Do the performance measures push prosecutors to prosecute the cases where the evidence is strongest and avoid the riskier cases, where the defendant might be acquitted?

The CPS has made many changes in an effort to secure more convictions in rape cases, with specialist rape prosecutors in all 42 CPS areas. The policies are the right ones, but there is still much to be done to turn the policies into reality everywhere. Conflicting targets for the police and the CPS were blamed for bad performance. The police targets require the police to charge a certain number of suspects, whilst the CPS's 'unsuccessful outcomes' target influences CPS decision-makers to take forward to trial only cases with the strongest evidence.

Problems with the conduct of the trial were identified. Cases were not properly prepared. Prosecution lawyers were often not ready for what might be disclosed about the complainant, and did not deal with it well when the defence laid out such material. If a named lawyer had the responsibility of running and preparing each case with a named case worker working under his or her direction, problems with disclosure could be reduced.

Concerns were also expressed about what are called special measures. Rape complainants can apply for special measures such as screens which prevent them from being seen by the defendant, giving evidence via a video link from another room, or giving evidence in private by clearing the public gallery. The complainant can ask the police for these measures, but the CPS has to apply to the court for them to be allowed and the judge makes the final decision. It was suggested that these were sometimes detrimental to the case. 'Juries prefer theatre to film,' was one view.

Considerable comment has been made about juries and their beliefs. It is suggested that jurors may, as members of the public, be ill informed about rape and may assume that all rape victims fight back, have injuries, report the crime straight away and are obviously deeply distressed, although none of these assumptions is accurate. Following a welcome judgment by the Court of Appeal, judges are now able to explain to the jury in general terms the effects of rape on complainants.

The data on convictions by juries in rape cases do not suggest that juries are particularly unlikely to convict rape defendants. Analysis of all 4,310 jury verdicts for rape from October 2006 to March 2008 across all courts in England and Wales finds that rape does not have one of the lowest jury conviction rates. With an overall jury conviction rate of 55 per cent, juries actually convict more often than they acquit in rape cases. Other serious offences such as attempted murder have lower jury conviction rates than rape.

Wider issues for victims

Victims often feel that the court system is unfair because they do not have their own lawyer to represent their interests. We looked at arrangements in Ireland and France, where victims can be represented by a lawyer for parts of the proceedings, and we believe these developments should be explored further.

One form of redress for victims is compensation, and nearly 2,000 rape victims received compensation in 2008/9. The average award

was £15,582. We raised some questions about the operation of the Criminal Injuries Compensation Scheme. We were concerned about reductions made in error to some payments because the victims had been drinking, reductions that are made if the applicant has an unspent criminal conviction, and reductions that can be made if the rape was not reported straight away to the police or any other appropriate person or body. We recommend changes in all these areas.

Vulnerable victims

A pervading theme throughout the evidence was the vulnerability of many of those reporting rape. Their vulnerability means they have less capacity to consent. Many of those who are particularly vulnerable will not be one-off victims, but will experience rape and sexual assault on multiple occasions. Such 'repeat victims' may have mental health problems or learning disabilities which make them vulnerable to being taken advantage of. Others may come from a 'whole history of abuse', where they have become locked into a pattern of abusive relationships that becomes their norm. Much rape occurs within violent relationships and domestic violence puts people at risk. Being young may also put people at risk. Young people from difficult backgrounds with poor supervision can be particularly vulnerable to rape and exploitation. Those in care homes or those who have recently left care may be particularly susceptible. Young women involved in gang culture are also at a significantly increased risk of rape, which is used as a method of initiation and of retaliation and intimidation.

Alcohol was frequently raised by the police as a complicating factor. Excessive drinking leads to vulnerability. Memories are clouded by drunkenness so the case is difficult to investigate and to take through the courts. We are concerned that the harm excessive drinking can cause in increasing the prevalence of rape should be addressed.

Recommendations

The treatment of rape victims has undoubtedly improved and many working in those public authorities responsible for responding to rape complaints have made substantial changes. We have recommended that the Government and those authorities should take further some of the excellent developments already under way.

We have made some detailed recommendations to the police and prosecution services, which are designed to make implementation of the existing policies more effective.

We have made some important recommendations about information and statistics. A wider understanding of the reality of rape is a necessary backdrop to the improvement of the treatment of rape victims.

Finally, we hope that the public interest in this subject will remain high. We have therefore recommended that the Government reports annually to Parliament on progress.

Chapter One

- We recommend that the National Statistician and the Home Office should aim to ensure that the publication of crime statistics is always accompanied by enough explanation to ensure that their meaning can be widely understood.
- We recommend that the basic elements of the Sexual Offences Act 2003 are given more publicity, and information in simple language is made available to young people and those who work with young people who are able to disseminate it widely.
- In view of the controversy surrounding false allegations, the strong feelings the subject arouses and the part the controversy plays in the response to rape complainants, we recommend that the Ministry of Justice commissions and publishes an independent research report to study the frequency of false allegations of rape compared with other offences and the nature of such allegations.
- We recommend that the Home Office and the Ministry of Justice should work with the National Statistician in order to find a way of presenting criminal justice data that enables comparisons to be made of the outcomes for various offences, and makes clear what conclusions can and cannot be drawn from those data.
- We recommend that when education and awareness-raising campaigns and programmes on rape and sexual assault are developed, careful consideration be given to their design so that they spread understanding of the current law on rape; do not in any way perpetuate false understandings of how rape victims respond; and take full advantage of the diverse range of new media outlets so that they are as imaginative, targeted and effective as possible.

Chapter Two

- We support wholeheartedly the recommendation that the funding and commissioning of forensic medical services should be transferred from the police to the NHS. We also endorse the view of the taskforce led by Sir George Alberti that forensic physicians should be employed by the NHS, have better access to high-quality training, be an integrated part of the new NHS clinical governance framework and commissioned in sufficient numbers to meet the needs of victims of rape. We would further recommend that there should be more appropriate accreditation for forensic physicians to ensure every victim of rape should have the choice of a male or female forensic physician to undertake the examination.
- We welcome the specific commitment by the Government to have one Sexual Assault Referral Centre in every police force area by 2011 and recommend that since some police force areas are very large, the need for additional centres should be considered once the initial phase of development is complete.
- We acknowledge that the existing funding arrangements for Sexual Assault Referral Centres vary across the country, and we would not wish to be prescriptive about how they are set up and run. However, it is clear to us that there is a greater chance of success when there is a strong partnership between the NHS, the police and elements of local government, and equal commitment in the setting up and operation of a Sexual Assault Referral Centre. We recommend this commitment should be shared equally by the police, the NHS and local government.
- It is clear that video-recorded 'achieving best evidence' interviews is an issue of considerable concern which is posing problems for the smooth running of trials. It is causing distress to some victims, and the costs are not inconsiderable. We encountered very strong views that currently this is a big hindrance to effective trials and action needs to be taken. We recommend that this issue be looked at again by the Association of Chief Police Officers, the Crown Prosecution Service, Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate. We understand the National Policing Improvement Agency has a small internal research programme looking at the issue of achieving best evidence in rape investigations, and we recommend that this plays a part in finding a solution that preserves the benefits for the victim but is more effective in the courtroom.

- The work that the Association of Chief Police Officers has been doing in partnership with the Crown Prosecution Service and National Policing Improvement Agency is designed to improve the approach taken by all forces in responding to and investigating rape complaints. We have therefore based our recommendations on the assumption that all forces aspire to provide a high-quality service to everyone who reports a rape. The *Guidance on Investigating and Prosecuting Rape* seems to us to reflect the very best that a police service can achieve, and we would make no suggestions for improvements to it. We recommend that the Association of Chief Police Officers should continue the work of seeing the guidance implemented in every police force.
- We were very impressed with the specialist police units. It may be that the combination of high-level investigation, victim care and a focus on vulnerable people provided for by specialist units is the best way forward. We therefore recommend that the Association of Chief Police Officers works with the National Policing Improvement Agency to assess the benefits of this specialisation in terms of its cost effectiveness, the number of victims reporting, the level of victim satisfaction and the opportunities it provides for a more strategic approach to protecting the vulnerable.
- We recognise that there are a number of existing local arrangements in place, such as Local Criminal Justice Boards and Community Safety Partnerships. We do not wish to be prescriptive about the types of local arrangements needed, but are of the view that local arrangements should aim to bring together health, the voluntary sector, local authority safeguarding services, the police, the Crown Prosecution Service and Her Majesty's Courts Service to focus on rape. We therefore recommend that a suitable arrangement should be put in place, bringing together representatives from these organisations, to create an effective governance structure for the handling of rape complaints and to enable issues to be brought to a multi-agency forum where action can be taken.
- We understand the National Policing Improvement Agency provides key computer technologies to assist forces with tracking intelligence on sex offenders and their offences. We further understand that the mechanics of capturing this intelligence on a national basis do exist. We therefore recommend that the National Policing Improvement Agency take steps to ensure that all police forces are aware of these ways of capturing intelligence.

- We recommend, for the 2010 thematic inspection to be carried out by Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, a different approach to the one adopted for previous thematic inspections. Specifically we recommend that forces are assessed against the following:
- Those reporting are treated well, i.e. victim satisfaction.
- Local arrangements are in place so that the many people who report, where reporting is part of a pattern of abuse in their lives, are linked in to other agencies.
- Good practice in the collection of intelligence material is in place.

Chapter Three

- We recommend that the booklet *CPS Policy for Prosecuting Cases of Rape* should be widely available to all victims and witnesses. It should be available to all victim and witness units, Independent Sexual Violence Advisors, Sexual Assault Referral Centres, Rape Crisis Centres and should be given as a matter of routine at the appropriate moment to all rape complainants who have decided to report the rape to the police. The Crown Prosecution Service should ensure the booklet is kept under review and regularly updated.
- We learnt that joint police/prosecution performance measures are currently being considered by the cross-government Rape Monitoring Group. We welcome this development and recommend that this work is completed with all speed in order to remove what are seen to be barriers to effective joint working between the Crown Prosecution Service and police.
- We accept that in very busy court centres there are great difficulties in ensuring individual ownership of cases. Nevertheless it is desirable and we recommend that the Crown Prosecution Service takes steps to ensure its stated policy of individual ownership of cases is applied so that cases are managed and progressed effectively.
- We also recommend that the Association of Chief Police Officers, the Crown Prosecution Service and the Local Government Association initiate discussions to resolve difficulties about disclosure of local authority third-party material, with a view to ensuring all local authorities adopt the protocol between the Crown Prosecution Service, police and local authorities on the exchange of information.

Chapter Four

- We recommend that Independent Sexual Violence Advisors be seen as an intrinsic part of the way rape complainants are dealt with, as the service that enables the rest to operate effectively and a crucial part of the way in which the State fulfils its obligations to victims of violence. Funding should be available in all areas where the demand makes a post viable. The service provided spans a number of different local responsibilities across the criminal justice agencies, the local authority and the health service. Therefore the most suitable body to oversee the arrangements seems to us to be whatever arrangement local areas develop in line with our recommendation made in Chapter Two for local machinery to ensure a strategic approach to victims of rape.
- We recommend that the Criminal Injuries Compensation Authority policy that applicants 'who suffer a sexual assault while under the influence of drugs or alcohol will be eligible for a full award' is made clearer in the guidance available to the public and to those supporting victims of rape.
- We appreciate the requirement to exercise care in disbursing public money and the complexity of assessing each individual's entitlement. We recommend that the eligibility requirement in respect of character, as evidenced by unspent criminal convictions, be reconsidered in terms of its appropriateness for rape victims, with a view to providing clear guidance to case officers that unless there are exceptional circumstances, it should not apply to rape victims.
- We recommend that the appropriate victims' organisations be consulted and detailed guidance be provided for case officers explaining why the requirement of immediate reporting to the police should normally be waived for rape victims.

Chapter Five

- In order to assess the extent to which all police forces and the Crown Prosecution Service are implementing the 2009 *Guidance on Investigating and Prosecuting Rape*, we recommend the Government reports annually to Parliament on progress made.

INTRODUCTION

'It's rape, they have invaded your privacy, invaded your private being.'¹ Our work on this review has left us in no doubt that rape is a serious and deeply damaging crime. It is also a unique crime, unique in the way it strikes at the bodily integrity and self-respect of the victim, unique in the demands it makes on those who are required to investigate it and unique in the controversy it generates.

Rape is indeed a subject that provokes strong opinions. Misconceptions about rape are widespread. What is rape? Is rape the word to describe a violent attack by a stranger in a dark alleyway or is rape any act of sexual intercourse where there is no consent? Can a wife be raped by her husband? How common is it for women to make allegations of rape that are false and what effect do these allegations have on those accused? Do men who have been raped ever report it? Do the police usually assume that women who report rape are lying? Do juries have stereotyped views about rape victims and so fail to convict the guilty? These and many other questions come up time and again in discussions about rape and how it is dealt with.

The first objective of this report is to provide information and try to make many matters clearer than they are now. It aims to answer these questions with the best knowledge available, to clarify confusions and put the record straight. There is a widespread opinion that very few of those who appear in court are convicted, that 'rapists get away with it', and that it is not worth it for a victim to stick with the process and see the case taken to court because the outcome will be humiliation in the witness box and an acquittal for the defendant. We set out in this report what we know about the statistics on the outcome of a rape allegation and how they can be interpreted and misinterpreted.

Secondly, we describe what is best practice in responding to a rape victim,² and what can be legitimately expected. Our remit is to look at how public authorities respond to complaints of rape and this we have tried to do. We have asked if the system we have at the moment is working as it should. Does it serve well the many people, some very vulnerable, who will have suffered as victims of rape? Are male rape victims a neglected minority? To report rape to the authorities is to expose oneself to investigations of very intimate and personal matters. It is said that going through a court case 'is like being raped all over again'. How well do police, prosecutors, health professionals and voluntary organisations respond to those who come to report this most difficult of crimes? Have we got the right policies in place? Is there a problem with the policies or are the many failures that undoubtedly still occur failures of implementation?

Our visits to many parts of England and Wales and our wide-ranging discussions have enabled us to establish the treatment that everybody, man or woman, should expect if they wish to report that a rape has occurred. We set out in this report what can legitimately be expected from the range of organisations that a rape victim will encounter. These include the police, the prosecution service, the staff who work in the courts. But we are also talking about the health service, the numerous and vital voluntary organisations and charities that provide much-needed support and the local government structures whose help will be needed to ensure protection and the future safety of some victims.

We review the responses of the police, the prosecution service and those who care for victims. However, we would not have done justice to the evidence we have heard and received if we did not consider briefly some wider questions.

It was suggested to us that changes in the criminal law have been taken almost as far as they can go in regulating this most complex area of human behaviour. Furthermore, whilst all those who spoke to us who worked in the criminal justice system felt that the number of cases which were taken to court and ended in a conviction could be increased, no one argued that the increase could be substantial.

² Finding the right terms in this area is difficult. Quite rightly, the language of the legal process requires that a person complaining of rape is a complainant or an 'alleged victim' until the case has been proved. The accused person is innocent until proved guilty and is therefore properly described as a 'suspect' or, if the case goes to court, a 'defendant'. This report has wider concerns than the operation of the legal process. We have therefore chosen to describe those who report that they have been raped as 'victims' except when we are discussing specifically legal matters. However, 'victim' is not always the ideal term to describe the situation of someone who has been raped, maybe many years ago, and some of the literature uses the word 'survivor'.

However, whatever the criminal justice outcome, there is still a victim, a person who has been harmed and may need protection and considerable help in recovering from the trauma. The way society meets its obligations to those who have been harmed in this way is a measure of the depth of our sympathy for them.

Many people told us that we should be doing more to prevent rape, for example through publicity, education and policies on safer alcohol consumption. We have not been able to cover this in any depth but we agree that this is where more progress could be made.

We set out in our recommendations what is to be done if everyone who suffers a rape is to be treated in the way each of us would wish or expect to be treated if it happened to us, or to a member of our own family. A good service costs money. Money is scarce and priorities are many. But a good service saves money in the longer term, by preventing many years of ill-health and instability in those who have been victims.

In constructing this report we have followed the pathway a complainant would take, from the initial reporting of a rape to the court case. We begin with a discussion about the crime of rape itself and the controversies it has given rise to. We then deal with the response of the police in Chapter Two and the process of going to court in Chapter Three. Many victims of rape do not report what has happened to them, and in Chapter Four we consider the services that should be provided to all those who have been raped, whether or not they go to the police and report it. We have not looked into the legal framework that surrounds the way victims should be treated by the State, but we have been able to commission a summary of the legal requirements from an expert, and this appears at the end of the report in Annex A.

Our conclusions and recommendations in Chapter Five suggest what the priorities for action might be for those responsible, both in central and local government and other bodies.

We were not starting with a clean slate. The work already done on the way rape cases are dealt with as they go through the legal process is very large. The literature on the effects of rape on its victims is also substantial. Our bibliography and the literature review carried out for us shows that.² We have not tried, nor have we had the time, to cover the ground already covered by all this work. We have learnt from it and it has informed what we have set down here and the changes we have recommended. We are grateful to the writers of all the earlier reports and we hope our report takes the debate a little further forward.

But we would stress this is a review, not another research report. In the end we have formed opinions, as this is what we were asked to do.

As we move into a time of fiscal restraint and reduced public expenditure we have to say something about the sustainability of our recommendations and what the priorities are. Obviously, even in times of austerity, rape must be investigated and prosecuted, and victims cared for. There cannot be impunity for perpetrators of such a serious violent crime. If this is to be done with due regard for economy then we need priorities. What we have learnt from the review suggests to us that care for victims and protection of those who are vulnerable to rape should be a higher priority than it is now. Prosecuting zealously and effectively the cases where the evidence is strong, and collecting better police intelligence on cases where evidence is not so strong but where patterns showing the activities of a sexual predator might emerge (with proper privacy safeguards for suspects), is also a top priority.

We hope this report will command wide political support. The treatment of rape victims is not a party political matter, and even in a time of scarce resources there must be a recognition of the need to prevent rape, care for victims, protect the vulnerable and work to reduce the long-lasting harm to individuals and families.

A note on methodology

This review began at the end of September 2009 and concluded in March 2010. In the six months available to carry out this review, we were able to carry out nine regional visits across England and Wales and meet and listen to over 200 people. The people we met included police officers, prosecutors, judges, lawyers, Independent Sexual Violence Advisors, staff from Sexual Assault Referral Centres, academics, those who provide counselling and support to victims of rape, court service staff, local authority representatives, victims of rape themselves and members of the public.³

We were able to build on the excellent work of the Women's National Commission. They facilitated focus group discussions with victims of rape and those who use the services of the agencies that support victims of rape and sexual assault for both the Victim Experience Review and the Department of Health Taskforce. We are most grateful to them.

³ See Annex B

In addition to meeting a large number of people to discuss the issues, as part of this review we carried out an online call for evidence to which 69 people responded. Over the course of the last six months the review has also received over 100 written submissions and correspondence from a variety of people interested in this issue.

The findings from the regional visits, meetings and written evidence submitted to the review have been used to inform and support the findings of this report. Throughout the report we have made reference to what we had been told during our visits and meetings. These meetings were held on the understanding that comments would not be attributable to named individuals in most cases, except where appropriate. We have therefore anonymised most, if not all, of the comments made.

In order to ensure that the report is accessible to the general reader we have kept statistics out of the main body of the text as far as possible. In the references (Annex B) we have included some statistical material to support the text. Those with experience in researching this field will know that the data are immensely difficult to interpret. We found that different research studies could produce a wide range of figures for, for example, the number of false allegations of rape made, or the proportion of rapes which are by strangers. This reflects the difficulty concerning facts about rape. Many things about it are very difficult to know for certain. For those who are keen to find out more, the bibliography (Annex B), and the literature review – which will be available at www.equalities.gov.uk – should be helpful.

Chapter One

Rape – misunderstandings, myths and reality

'They [juries]... don't understand how it feels to be raped. They don't understand that the person raping is trying to abuse the person and that they are rage-full and consumed with hate when they are raping. It is not a loving or lustful thing. They don't understand that rape is like being murdered but still being alive.'

A rape victim who gave evidence to the review.

Our starting point

We were asked to examine the response of the public authorities to rape complaints. It became very clear to us in the early stages of our work that we could not start there. Rape is so controversial, so surrounded with opinions, beliefs and misunderstandings, that we begin by looking at the crime of rape, the myths about it, the framework within which the law operates and the changes that have been introduced in recent years. We consider the way it is discussed and how success in dealing with rape is assessed.

Rape is a terrible crime

Rape is a terrible crime that happens too often. It can happen to women, men, children, people of all ages and all social groups. It is a unique violation that often leaves its victims with deep traumas that last for many years, sometimes forever. The people we met in the course of the review described to us the many circumstances in which rape can occur. There are those usually referred to as 'stranger rapes', the sort of incidents most often reported by the newspapers. These are a small proportion of rape cases.¹ There are 'acquaintance rapes', although the acquaintance may have been quite short.² The victim may know not much more than, as one senior police officer described it to us, 'His name was Bob and I met him at a party/in a bar.'

Much rape occurs in families, where children and young people are the victims.³ Most rapes are carried out by someone the victim knows.⁴ As a rape victim told us, 'with so much of rape within marriage, you don't say anything... It is not seen as rape, and that is a really hard area to tackle: to understand that it is rape and you can do something about it.'

Vulnerable⁴ and powerless people are often the victims of men⁵ who identify them as easy targets and take advantage of their need for attention and affection.

Lady Justice Hallett began her judgment in a case in the Court of Appeal with these words: 'This case is yet another sad example of what can happen when young people roam the streets of our cities vulnerable through drink and/or drugs. A 16-year-old girl came to London to celebrate the New Year. She got drunk, she became separated from her friends and she ended up with strangers. She had sex with one of them. [She said she did not consent.] The defendant is accused of being that person. He is now in the charge of a jury on a single count of raping her, contrary to Section 1(1) of the Sexual Offences Act 2003.' The defendant was convicted.⁵

We heard from those working with victims that in many cases 'rape victims come from a whole history of abuse of one kind or another'. We learnt that having been a victim of rape in childhood makes it more likely that the person will be a victim again.⁶ Rape happens across cultures and in some, shame and social pressures will prevent it being disclosed.

A number of rape cases are what are called 'historic'.⁶ The victim has decided to report the case to the police at a later date, perhaps many years after it happened. We heard that sometimes the trigger to making the report is that the victim has her first child, remembers what happened to her as a child and decides she should deal with the past. Sometimes the trigger is getting some news of the perpetrator, perhaps that he has moved in with a woman who has young children.

⁴ See Chapter Four for more detail on vulnerable victims.

⁵ 99 per cent of those convicted of rape are men (CPS *Violence against Women crime report 2008–2009*, p.40) When women are charged it is usually with aiding and abetting rape. In this report we have used 'he' throughout to describe those who commit rape.

⁶ Historic rape is a term used in policing 'where the time elapsed since the incident is such that the potential for recovery of forensic evidence from the victim or scene has reduced to a point where normal recovery methods are unlikely to produce results' and may encompass delays in reporting from a few weeks to many years. (http://dpa.police.uk/pdf/P02-2009Investigation_of_Rape_Sexual_OffencesV1_0.pdf)

Around eight per cent of all recorded rape cases is a rape of a man.⁷ An organisation that works with male rape victims talked of the particular effects on men who find it very difficult to talk about what has happened to them because of the common view that a man should be able to fight off an attacker.⁸ We heard from organisations that work with male victims that men who have been raped 'find it less easy to identify as victims and ask for help'.

The Metropolitan Police Service has a leaflet on its website for male rape victims which sets out the problems that men reporting rape can face.⁹ We welcome this initiative, which should give more men the confidence to report what has happened to them to the police.

Male victims of sexual assault – information on a hidden crime

The hidden crime	Is it different for a man?
<p>Since 1994 the law has recognised the rape of men as a criminal offence.</p> <p>There is much myth around the sexual assault of men, which leads to many misunderstandings about the crime and the victims it affects. This has consequences in the way that men see themselves as victims of sexual crimes, and stops them from talking about what has happened to them and getting help.</p>	<p>Men experience similar feelings to women, such as shame, self-blame and guilt. They may have extra issues to deal with, due to society's belief that men should be able to protect themselves.</p>

Myths	Facts
Male rape doesn't happen.	Stereotypically, men are seen as being responsible for sexual crimes and not the victims. Reported figures show that men are also victims.
Male rape is a gay crime.	Research shows that the majority of sexual assaults against men are committed by heterosexual males.
A man who is sexually assaulted by another man must be, or appear to be, gay.	Rape is not about sexual attraction but power, domination and control.
Men are less affected by sexual assault than women and so do not need help and support.	Rape and sexual assault are traumatic for men <i>and</i> women and may have lasting after-effects. Men may find it difficult to talk about their experience for fear of being ridiculed and not believed.

The effects of rape

We heard from a wide range of experts,⁷ including those who work with rape victims, about the effects rape can have on some people and we return to this throughout our report. They talked about relationship problems, nightmares and flashbacks, depression, and turning to drugs and alcohol. Victims can lose their self-confidence and no longer function well in the world of work.¹⁰ Some rape victims will blame themselves for what has happened to them. Some will feel shame. We heard, 'Victims often feel it was their fault in some way and society is quick to feed into this assumption.'¹¹ For some from minority communities rape was very difficult to talk or even think about. We heard from an organisation that works with women from many different cultural backgrounds that 'humiliation and fear of reprisal prevent women from disclosing'. They said that it was highly unlikely that such women would ever make it to court. 'If you have experienced this you can't even talk about it to your mother; how are you going to stand up in court and talk about it?' We also heard that a Sexual Assault Referral Centre worker from London has reported a steady

⁷ See Annex B for a list of contributors the review.

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increase in the number of south Asian women using their confidential services.¹²

How widespread is rape?

As with many harmful acts that happen in private, it is impossible to know for certain how frequently rape occurs. As with most crime, only a small proportion of rape is reported to the authorities. The British Crime Survey is a study carried out each year based on interviews with 46,000 people over 16 years of age. Over 23,000 people were asked questions on intimate violence. The results from this survey suggest that 11 per cent of those who have been raped tell the police about it.¹³ The official crime statistics show that in England and Wales in 2008/9, 12,129 rapes of women and 964 rapes of men were recorded by the police.¹⁴

The most recent data, the British Crime Survey from 2008/9, show that the lifetime prevalence for rape and attempted rape in those over 16 was nearly one in 24 women (4.2 per cent) and one in 200 men (0.5 per cent).¹⁵

The number of rapes recorded by the police has risen considerably in recent years. Figures from the Metropolitan Police area for 2009/10 show that recorded rapes increased by 29 per cent in a year.¹⁶ For England and Wales as a whole the number of recorded rapes rose from 2,855¹⁷ in 1988 to 7,636¹⁸ in 1998 and 13,093¹⁹ in 2008.

What do these figures mean? In December 2009 the UK Statistics Authority, an independent body which scrutinises official statistics, produced an interim report, *Overcoming barriers to trust in crime statistics*.²⁰ They said, 'Most commentators would agree that measuring crime and reporting on the statistics are inherently difficult.'

In preparing our report we frequently came up against this problem. In the case of rape, comparing statistics over time is complicated by the change in the law on sexual offences in 2004, which redefined rape so more offences are included than before, and by the changes in the way police record crimes, which was introduced in 2002.⁸ It is important to

⁸ The National Crime Recording Standard (NCRS) was adopted by all police forces in England and Wales in April 2002 (some had adopted the Standard earlier) in an effort to improve the consistency of police recording and to better reflect the demands made on the police by victims of crime. In most cases, this necessitated a move to a more victim-focused approach to crime recording based on the victim's perception of a crime taking place, rather than an evidential approach based on the police obtaining evidence of a crime occurring. The result has, in many cases, been an increase in recorded crime in 2002/03 over and above that attributable to a real increase in crime.

understand that increased reporting of incidents does not necessarily mean that more rapes are being committed. Based on what we know about crime statistics, it is safe to say that the increase in reporting is much more likely to mean that victims are more willing to tell the police what has happened to them. This in itself is good news. It could be a sign that public understanding is greater and that those reporting rape expect the system to be more approachable and sympathetic to them.

We are aware of the high reputation that attaches to the statistics produced by the Home Office and the Ministry of Justice, and we in no way wish to suggest that the statistics themselves are flawed. We are concerned, however, about their use, and we would like to see greater public understanding of their meaning. We note that the UK Statistics Authority recommends in its interim report, *Overcoming barriers to trust in crime statistics*, that the National Statistician should publish a regular commentary on trends and patterns in crime. We welcome this development. **We recommend that the National Statistician and the Home Office should aim to ensure that the publication of crime statistics is always accompanied by enough explanation to ensure that their meaning can be widely understood.**

Misunderstandings and myths

Rape is more controversial than most other crimes. Strong opinions are held and often voiced about it. Some of the evidence that reached the review made this clear. This should be no surprise since rape is about sex, violence, power, intimate relationships between men and women or between men and men, society's attitudes to what is acceptable behaviour and where blame and responsibility lie for non-consensual sex acts. Many people feel that the way rape is discussed and dealt with reflects unacceptable attitudes in society towards women.²¹

The work for our review has exposed us to a range of these attitudes. It has been suggested to us that women often make false allegations of rape. There is a view that women are in some way to blame for being raped if they go out wearing revealing clothes and have too much to drink.⁹ They are 'asking for it'. Others have said that when women report rape to the police they feel they are seen as liars because women are known to 'cry rape'. Some complain of the tendency to lecture women on what they should and should not do rather than making it clear to men that sex without consent is rape.

⁹ See Box 5 on Page 51

These views may be held by both the general public and professionals. A victim told us, 'I think that social attitudes, stereotypes and rape myths have a huge impact and influence the ways in which public authorities respond to rape complaints. All public authorities are staffed by people, many of whom believe in rape myths; these views will influence their judgement and actions regardless of whether they are meant to be impartial and put their own beliefs aside. It is impossible, in reality, to completely put aside one's personal point of view.'

The court process also produces strong views. It is suggested that jurors are full of prejudices about rape and so juries do not convict people charged with rape who are manifestly guilty.²² Many people maintain that the conviction rate for those charged with rape is too low. Perpetrators are 'getting away with it'. Others feel the law goes too far in defining rape and that juries are expressing common sense when they do not convict, for example, in a case of a woman who has got into bed with a man but then not given consent to sex, or a particular form of sex.²³ Others look at rape from a legal perspective. They point out that rape can be a crime that takes place in private with scant supporting evidence, that the case has to be proved 'beyond reasonable doubt' and that the maximum sentence for rape is life imprisonment. When these factors are taken into account, it is suggested that the conviction rate for cases that come before the courts is at a reasonable level. Those taking the legal perspective would argue that it is a basic tenet of our law that an accused person is innocent until proved guilty. In these circumstances, if the conviction rate were much higher than it is now it would suggest that the requirement to prove a case 'beyond reasonable doubt' was being weakened. A senior politician told us, 'The problem is getting out the message that the conviction rate is high once a case is accepted by the Crown Prosecution Service.'

Box 1**A case of rape**

The appellant and the complainant had known each other for approximately five years, and had lived together for a significant proportion of that time. However, their relationship had deteriorated over time. According to the complainant, the appellant had become increasingly aggressive, particularly towards the end of 2005, when under the influence of alcohol. This may have been due in part to the fact that he was having financial problems. The complainant alleged that in the period up to 31 October 2005, he had forced her to have sexual intercourse, once in their bed and once on a sofa. On an occasion thereafter between October and December 2005, when picking her up from work, he had effectively abducted her and driven her off to a secluded place where he raped her in the car.

The final incident occurred on 13 January 2006 when, according to the complainant, she was dragged upstairs, had her clothes forcefully removed and was then raped vaginally, orally and anally. He then, according to her, inserted a deodorant can into her vagina. The incident only stopped when the complainant's son returned home. The appellant then left the home and went off to the public house to drink. When he came back, there was an incident which resulted in the police being called. At that stage the complainant made no allegations of any sexual assault on her. The first time that she did so was on 15 January 2006 when a police constable came to take her statement about what had happened on the evening of 13 January.

On the 8 June 2007 the appellant was convicted of six counts of rape and one count of sexual assault by penetration.²⁴

It was suggested by many whom we met that false notions about rape are held by the public and by those who work in the system. The general public will often assume that rape is a rare and very violent act, usually committed by a stranger on a woman walking home in the dark. Victims of rape should fight back, it is said. There should be injuries to prove that the victim was really being raped. A rape victim should be in a state of extreme distress when reporting the rape, and anyone who had really been raped would tell someone about it straight away. It was put to us that such attitudes affect the way rape cases are dealt with by police, prosecutors, judges and juries. Some told us that

that understanding of male rape was very limited. It was assumed that it only occurred within the gay community or in prison.

It was also suggested to us that there is a tendency for the general public to classify rapes into two types. There are the 'real rapes', which are the rapes by a stranger with a weapon who uses threats.²⁵ Then there are the incidents between people who know each other and have been drinking when 'things get out of control'. These are seen as somehow 'lesser rapes'. Later in this report we consider how far the work of public authorities is influenced by this range of attitudes.

The law and rape – what does the law say?

Rape is defined in the law of England and Wales. The law on rape was revised in 2003 after a long consultation process and the new Sexual Offences Act came into force on 1 May 2004.

The Sexual Offences Act 2003²⁶ (the Act) says that rape occurs when someone 'intentionally penetrates the vagina, anus or mouth of another person with his penis',¹⁰ that the other person does not consent to the penetration, and the perpetrator 'does not reasonably believe that the other person consents'. A new element of the offence of rape was the expansion to include oral penetration, and another major change in the Act was the way consent to sex was defined. How do we decide whether or not there was 'free agreement' to sex taking place? Before the new law was enacted the proposals on consent were a topic of considerable argument and debate. In the House of Commons the then Home Secretary, David Blunkett, said, 'The definition of consent has been a difficult and problematic issue.'²⁷ In giving judgment on a rape case that hinged on whether or not the defendant reasonably believed that the victim was consenting to sex, the Court of Appeal said in 2007, 'Arguments about consent abound just because consent to sexual intercourse extends from passionate enthusiasm to reluctant or bored acquiescence, and its absence includes quiet submission or surrender as well as determined physical resistance against an attacker which might expose the victim to injury, and sometimes death.'²⁸

¹⁰ The Act Part 1 Section 2 defines a separate offence of assault by penetration when someone 'intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else'.

The 2003 Act makes some matters very clear and it is important they should be widely understood. It says that one person having sex with another when that person has not agreed to it is rape. The law does not say force has to be used for it to be defined as rape. Violence is not part of the definition. The absence of consent is the defining factor. And the absence of consent can be to one form of penetration although there has been agreement to another. For example, if there is consent to vaginal intercourse, it does not follow that there is consent to anal intercourse. If anal intercourse without consent follows vaginal intercourse with consent, the law says that is rape; and the court will not be satisfied if the perpetrator thought that there was consent but it was unreasonable for him to think that. The Act says: 'Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.'²⁹

The inclusion of 'reasonable belief' is considered by some to be one of the most significant changes brought in by the 2003 legislation, where an honest but *unreasonable* belief in consent can no longer result in the accused's acquittal.

All these legal changes have been in a similar direction, to move from the underlying presumption that victims are likely to be lying and were somehow negligent in letting the rape happen towards a standpoint that sex without consent is rape and all other factors about a person making a complaint of rape are irrelevant to that central fact. In the law of England and Wales there is now no question that sexual intercourse without consent, where there is no reasonable belief in consent, is the crime of rape, whether the people involved know each other or not, have had a previous relationship with each other or not, or are married to each other or not.

Box 2 shows the legal changes that have taken place regarding rape and how the courts deal with it.

Box 2

- 1956 Sexual Offences Act 1956 defines rape as 'unlawful sexual intercourse with a woman'
- 1976 Sexual Offences (Amendment) Act 1976:
- amends definition of rape to 'unlawful sexual intercourse with a woman without her consent'
 - introduces anonymity for rape complainants
 - introduces anonymity for those accused of rape, but this was subsequently repealed
- 1991 Following the case of *R v R* in the House of Lords, rape within marriage becomes illegal
- 1994 Criminal Justice and Public Order Act 1994:
- places illegality of rape within marriage into statute
 - amends definition of rape to cover vaginal or anal intercourse against a man or a woman, thus acknowledging that men can also be raped
- 1999 Youth Justice and Criminal Evidence Act 1999 restricts the discretion of trial judges to introduce evidence of a complainant's sexual history or to allow questioning concerning it
- 2004 Sexual Offences Act 2003 comes into force which defines rape as penile penetration of the vagina, anus or mouth of another person without their consent; honest but unreasonable belief in consent is now rape

How far there can be consent to sex when one or both the people involved are very drunk has been a controversial matter, and the Court of Appeal made some comments on it in a case called *R v Bree* in 2007.³⁰ When the person complaining of rape is 'unconscious as a result of her voluntary consumption of alcohol, the starting point is to presume that she is not consenting to intercourse'. That, says the Court of Appeal, is 'plain good sense'. The Court also said that if, through alcohol (or any other reason), the person has temporarily lost her capacity to choose whether to have intercourse, she is not consenting. If, on the other hand, despite having drunk a lot of alcohol, the person is still capable of saying yes or no and agrees to sex, then it is not rape. Whether or not the victim has voluntarily drunk too much does not lead to the conclusion that he or she voluntarily agreed to have sex.

These matters are complicated and difficult to understand for those who are not trained in the law. Information about the current law on sexual offences needs to be widely disseminated and promoted. We have been very impressed by the publication *From Report to Court*,³¹ produced by the group Rights of Women and supported by the Home Office, which sets out exactly what someone reporting a rape and going through the system will need to know.

The Sexual Offences Act 2003 constituted a radical overhaul of the law, based on a modern set of attitudes about equality in sexual relationships. Much still remains to be done to present that thinking to the public.

We recommend that the basic elements of the Sexual Offences Act 2003 are given more publicity and information in simple language is made available to young people and those who work with young people who are able to disseminate it widely.

False allegations

The law also deals with those who make false allegations. Making a false allegation of a crime is unlawful; it is perverting the course of justice. False allegations are often raised in discussions about rape and strong views are held. Some suggest that false allegations are particularly common when rape is the issue. The image of the rejected woman seeking revenge by making a false accusation is to be found far back in history and literature.

Certainly, cases of women being convicted of trying to pervert the course of justice by alleging rape are well reported in the media. 'They devalue the other cases and tabloids love it,' said one police officer.

Box 3**Prison 'inevitable' for false rape claims
(30 October 2009)³²**

The Court of Appeal said that false allegations damage conviction rates of genuine rapes and are 'terrifying' for innocent victims.

The judges spoke out as they dismissed an appeal by a former nurse who was jailed for two years after falsely accusing a man she met online.

Mr Justice Henriques read out the words of the Lord Chief Justice, Lord Judge, made in a previous ruling relating to a false rape claim. Lord Judge, pointing out that such an allegation involved more than the individual victim, said: 'Every false allegation of rape increases the plight of those women who have been victims of this dreadful crime'.

'It makes the offence harder to prove and, rightly concerned to avoid the conviction of an innocent man, a jury may find itself unable to be sufficiently sure to return a guilty verdict.'

He said it was an offence which not only causes great problems for the victim, but also damages the administration of justice in general in 'this extremely sensitive area'.

How common are false allegations? It is not possible to establish an exact figure and the research that is available gives a wide range of suggested percentages. Some research suggests that a figure of eight to ten per cent of reported rapes could well be false reports.³³ However, those we spoke to in the system felt that there were very few. A Crown Prosecution Service (CPS) lawyer told us, 'They are extremely rare. I have been prosecuting for 20 years, and have prosecuted for a false allegation once.' The judges we talked to said these cases occur very infrequently. An experienced police officer had come across two such cases in 15 years.

Whether there are more false allegations of rape than of other offences is not known. But we do know that the effect on those who are falsely accused can be severe. The public holds very strong views about sex offenders. Those who have been under suspicion, maybe for months, perhaps remanded in custody awaiting trial, are likely to suffer considerably from the allegation having been made. Even when they have been cleared and the allegation has been established as false, they may still face suspicion from those they know. The penalties for making false allegations and persisting with them through the legal process can be commensurately severe. A complainant making false allegations can be given a substantial prison sentence.

We heard concerns about the severity of response to some false allegations. We were told that not all false allegations were malicious. Some were 'a cry for help'. It was important to ensure that the label 'false allegation' was not attached to all reports that may turn out to be unfounded or unproven, whatever the circumstances of the person reporting.

The question of false allegations comes up time and again in any meeting or discussion about rape, with some arguing that the number is large and others insisting that the prevalence is grossly exaggerated. Faster progress could be made in improving the treatment of rape complainants if more solid evidence was in the public domain.

In view of the controversy surrounding false allegations, the strong feelings the subject arouses and the part the controversy plays in the response to rape complainants, we recommend that the Ministry of Justice commissions and publishes an independent research report to study the frequency of false allegations of rape compared with other offences, and the nature of such allegations.

Linked to the matter of false allegations is the question often raised of allowing defendants in rape cases to retain their anonymity unless they are convicted, a proposal supported by the Home Affairs Select Committee in 2003.³⁴ The current law protects complainants by granting them anonymity throughout the legal process. Their names cannot be published from the time of the allegation for the rest of their lives. It is often argued that this anonymity should be extended to defendants unless and until they are convicted. It was put to us by some we talked to that even when defendants are acquitted, 'If you throw mud it sticks.' A legal practitioner told us, 'It would be a serious advance if we did provide anonymity for both parties.' It was argued that the newspapers give a great deal of coverage of the opening of a

trial with full details of the defendant, but by the time the trial ends, if the defendant is acquitted it has ceased to be newsworthy and the acquittal is not reported. On the other hand it is suggested that the acquittal gives 'public vindication'³⁵ and that should be sufficient, and defendants in other cases do not have anonymity. We make no recommendation on anonymity for defendants but note that it is often raised and the concerns will undoubtedly continue. A full examination of the issues would be helpful to the debate.

What do the statistics tell us about conviction rates?

Conviction rates for rape are the subject of much political and media attention. Our terms of reference ask us to explore ways to fairly increase the conviction rate.¹¹ So, is the conviction rate too low? Are cases dropped too soon when they should be brought to court? Are many guilty people walking away from court with an acquittal? On the other hand, perhaps innocent people are being convicted wrongly because the process is now too weighted in favour of the prosecution? How should the conviction rate be measured? Is the conviction rate the only measure of whether rape complainants are being treated justly? What is the best way to protect members of society from such sexual violence? These are complex questions.

Much is said about the conviction rate for rape being six per cent in England and Wales, and many who gave evidence to us expressed concern at the widespread use of this figure without analysis or explanation. A senior legal figure said, 'Stop using this unhelpful six per cent.' An academic told us, 'Whole system solutions are needed, not a focus on conviction rates... We must overcome the view that there is no point in pursuing a complaint. That is all that is seen in the headlines.' We were told, 'In a recent case, a victim said in her testimony that "I didn't want to report this to the police because I knew only five per cent of cases are convicted". The police persuaded her with other statistics but it is a matter of concern that this was the first figure in her mind.'

The six per cent figure is widely quoted by the media and politicians.³⁶ We found in carrying out this review that it was known and used by everyone in the field. Some found it helpful as a campaigning tool in arguing for an improvement in the way rape cases are dealt with. Others found it misleading and deeply unhelpful in building confidence in victims and raising the number of cases reported to the police that could possibly go forward to a prosecution.

¹¹ The conviction rate is defined as the proportion of defendants proceeded against who were found guilty. Ministry of Justice Criminal Statistics England and Wales, 2008. Statistics Bulletin 2010 p.58.

The way the conviction rate figure for rape is calculated is unusual. Conviction rates are not published or even measured in this way for any other crime so it is very difficult to make a comparison. The use of the term 'conviction rate' is in itself unusual. 'Conviction rate' usually describes the percentage of all the cases brought to court that end with the defendant being convicted. When dealing with rape the term has come to be used in a different way and describes the percentage of all the cases recorded by the police as a rape that end up with someone being convicted of rape. The figure arrived at is usually around six per cent. Some studies show that a further six per cent are convicted of another offence, usually a less serious sexual offence, but still convicted, so the conviction rate by this method of analysis is 12 per cent.³⁷

In the course of this review we have looked closely at the information about convictions for rape and we deal with this matter in more detail in Chapter Three. It is clear to us that the figure of convictions for people of all ages charged with rape is 58 per cent, as the term is normally used in relation to crime.³⁸ That figure, which covers all rape cases and includes those whose cases come before a jury and those who plead guilty, is properly arrived at. It is also clear that in jury trials when juries deliberate and reach a verdict the conviction rate for rape of a female 16 or older is 47 per cent (that is excluding all those who plead guilty), a higher percentage than for some other serious and violent crimes.³⁹

So what is the significance of the often-quoted six per cent figure? The six per cent figure refers to what is commonly called 'attrition'. When discussing rape, the figure means that out of every 100 offences that are recorded by the police as a crime, six of them will lead to a suspect being convicted of rape. [Around another six per cent of them will be convicted of a related offence.]

The attrition figure has been the cause of considerable concern, and attempts to reduce attrition are behind many of the reforms that have been introduced in recent years. To be able to make sense of such a figure it is necessary to understand the path that is travelled before the 100 reports of rape become six rape convictions or 12 criminal convictions altogether. For many reasons a proportion of these 100 offences that are initially reported to the police will not proceed through the system to the courtroom. Some do not proceed because the police decide when they have further information that a rape did not take place. For example, a third party may have reported a rape but when the police contact the alleged complainant there is a denial that there was a rape. It may have taken place and it may not, but it is

denied. More often a case will not proceed because the person making the complaint decides to go no further with it. This decision may be for a range of reasons.⁴⁰ Some complainants feel so ashamed they cannot bear to continue talking to the police. As one rape complainant said, describing her experience of reporting a rape, 'These are things we don't talk about, language you don't use, certainly not with a stranger – talking about my vagina, my body – I could barely find words for what they wanted, needed, me to tell them about.'⁴¹

Complainants may decide not to continue with the process because they decide that going through the legal system is not worthwhile, would take a very long time and would be too much of an emotional drain. It would be better just to 'get on with life'. People who have made a complaint sometimes leave the area and the police cannot find them. A complaint can be proved to be false and would then have to be retracted. The complaint could be about an incident that happened many years ago and collecting the evidence is no longer possible so the police would not be able to proceed.

There are other reasons too. Perhaps the police did not treat the complainant well, were sceptical, unfriendly, kept the complainant waiting for hours or were discouraging.

The six per cent figure emerges from putting together a large number of studies of different years. There is no current information giving a breakdown of the reasons why a complaint does not proceed that we were able to find, based on practice after the introduction of the Sexual Offences Act 2003 and after the changes in the way crimes are recorded by the police. A Home Office study carried out in 2003/4 in eight police forces⁴² showed a pattern that is more or less repeated in other studies.⁴³ Of every 100 cases reported, about 15 were eventually not recorded as crimes, were retracted or were withdrawn very quickly by the complainant. Of the remaining 85, about 20 were subsequently withdrawn by the victim, 23 were not proceeded with because the evidence was felt to be not strong enough and about 14 were not proceeded with for other reasons. In about 26 cases a suspect was charged with the offence of rape. That figure was reduced to 19 at the time the decision was made to go ahead with a prosecution. A number of the prosecutions were unsuccessful because the complainant decided not to continue or did not attend, the evidence of the victim did not support the case, or there was a conflict of evidence or an essential legal element missing. Some cases were withdrawn because of fears of

the effect on the complainant's mental health. Finally of those taken to court around 12 were found guilty of rape or a related offence.¹²

It is widely agreed that rape presents unique difficulties for those investigating, charging and prosecuting, difficulties not present when dealing with other crimes. As one contributor to the review put it, 'Rape is unique as it is an inherently lawful activity made illegal because of lack of consent.' When prosecuting a robbery, for instance, the police need to identify the person who is believed to have done it. If they identify a suspect and have the required evidence the case will be relatively straightforward. Rape cases are rather different. In many of them the suspect is known from the outset and often does not deny that sex took place. The issue for the criminal justice system is whether the sex was with or without consent. This presents more of a challenge in investigating and constructing a case that can go to court than do many other offences. We look at these problems in more detail in Chapters Two and Three.

It is clear to us that the way the six per cent conviction rate figure has been able to dominate the public discourse on rape, without explanation, analysis and context, is extremely unhelpful. There is anecdotal evidence that it may well have discouraged some victims from reporting. We hope that the information contained in our review will put into the public domain a much better informed understanding of the outcomes in rape cases and the work being done to improve those outcomes, and that this will encourage more victims to come forward and report what has happened to them.

Since this is an area of such public interest and debate and many organisations have an interest in this information and what it means, we feel the presentation of the statistics could be looked at again. The UK Statistics Authority has suggested that trust in criminal statistics would be greater if 'the way crime statistics are used and quoted inside and outside of government' were improved.⁴⁵ They say that 'there is little evident linkage between statistics from the Home Office on crime and from the Ministry of Justice on the criminal justice statistics. Publication of separate volumes makes it hard to find an answer to simple questions (albeit deceptively simple in some cases) about the

¹² Comparing information from different countries is difficult because of differences in the way crimes are described and measured, and must always be done with caution. However, a comprehensive review in 2009 of all the reliable studies on rape and attrition from five countries with similar legal systems to our own shows that the figure of 12 cases ending with a conviction is not untypical. The study gives a figure for the United States and also for Canada of 14 per cent, while the figure for Australia is 11.5 per cent.⁴⁴

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proportion of crimes that are brought to justice or the form of sanction that is applied.⁴⁶ We agree and stress how important it is that we should be able to answer some of these simple and not so simple questions.

We recommend that the Home Office and the Ministry of Justice should work with the National Statistician in order to find a way of presenting criminal justice data that enables comparisons to be made of the outcomes for various offences and makes clear what conclusions can and cannot be drawn from those data.

What else matters to victims?

Many victims and organisations who work with victims told us what they wanted from the system. To see the person who had harmed them convicted of a crime was, for many, a very worthwhile outcome. But almost all of those we spoke to told us they wanted more than that. They wanted to be treated well throughout the process, to be listened to, to be believed, to be kept informed. 'It is probably more a need for complaints to be taken seriously than a punishment result,' we were told. 'A conviction is less important than the treatment of the victim overall. Survivors of rape say that if they are treated with respect and dignity they "can cope with an acquittal".' Victims wanted to know that their experience had been understood and its effects acknowledged. They expected that the professionals who dealt with them would also be knowledgeable and informed. They wanted some recognition of what had happened to them, and if the case was unable to proceed because of problems with the evidence, they wanted to know that the fact they had reported it would be helpful in some way, maybe to other victims. A conviction did not loom as large for many of them as these other matters of proper treatment.

It is clear that this is not what happens to all complainants at the moment. As we were carrying out our review, debate continued about the cases of John Worboys and Kirk Reid, two persons now convicted of rape. John Worboys, the driver of a London black cab, offered a spiked drink to victims to celebrate a fictitious lottery win. He was convicted of 19 charges, including one count of rape and four of sexual assault. Kirk Reid, a chef and children's football coach, attacked women near their homes in London, and was convicted of two rapes, 15 indecent assaults, six sexual assaults and three assaults by penetration, involving 25 victims.

The story, however, is not one of the successful prosecutions of two rapists. 'Worboys was first identified as a suspect following an allegation of sexual assault in July 2007. He was arrested but not charged with any offence, and went on to attack a further seven women before he was charged in February 2008.'⁴⁷ Similarly Reid began his attacks in 2001, but action was not taken against him until 2008.

Both cases were dealt with by the Metropolitan Police Service and both were subsequently the subject of inquiries by the Independent Police Complaints Commission (IPCC). We await the publication of the Reid inquiry, but the report into the Worboys case has highlighted much bad practice.⁴⁸ On the occasion of the initial complaint against Worboys, there was a fundamental failure to adequately investigate the account given by the victim. The initial interviewing officers did not question Worboys' account of events and decided not to search his home or cab, despite the possibility of corroboration with the victim's account.

'CCTV from the nightclub that the woman had been in before the assault was ready for collection at the beginning of August, but the officer did not collect it until 10 September. Forensic samples were obtained from the complainant and Worboys on 27 July, but were not submitted to the Forensic Science Service until 29 August. No enquiries were made to interview the woman's friends and inconsistencies in Worboys' account were noted on several occasions but never followed up.'⁴⁹

The report quotes an entry from the case crime report, made by the detective constable in charge of the case: 'The victim cannot remember anything past getting in the cab, it would seem unlikely that a cab driver would have alcohol in his vehicle let alone drug substances.'⁵⁰

We spoke to one of Worboys' victims. She felt the police failings covered far more than investigative shortcomings. She told us that she had a seven-hour wait between calling the police and officers attending, during which time she could not go to the toilet. There was a further three-hour wait before attending a Sexual Assault Referral Centre with police officers from the specialist Metropolitan Police Sapphire team. The response team, when it did arrive, consisted of two male officers. She felt there was a general air of disbelief. For example, the officers repeatedly questioned her as to whether she was certain the attacker was a black cab driver, despite the availability of CCTV footage. 'I was the criminal, being interrogated,' she said. Later, when she read in the media about the arrest of Worboys in 2008, she 'was devastated' that no one had informed her of this or followed it up with her.

Allegations have also been made in respect of the Kirk Reid case. He is known to have started his attacks in 2001, was identified as a potential suspect in 2004, and yet did not have action taken against him until 2008.⁵¹ The IPCC is similarly investigating these allegations.⁵² It appears that complaints were not properly investigated, public tip-offs were ignored, the police failed to act on reasonable suspicions when they came into contact with Reid, and it is alleged that again DNA and forensic evidence were not appropriately gathered and used.⁵³

Box 4

'We are really in a lot of trouble over this. Some heads are on the block. Some women were not treated well by police, some were told to "F*** off, black cab drivers don't do that sort of thing". Others were not taken seriously because they were drunk.' A senior Metropolitan Police officer talking to *The Times*⁵⁴

The Metropolitan Police Service now has what is claimed to be the largest specialist rape unit in the world, the Sapphire Unit. The Sapphire Unit is a team of approximately 400 specially trained officers forming a new intelligence cell.⁵⁵ Each London borough has a dedicated Sapphire team to investigate reports of rape, and to do so in a way that works closely with partner agencies and supports the victim.⁵⁶ The Sapphire teams cover critical incidents across the whole of London.

Some other forces have had similar performance problems. In November 2009 Cambridgeshire police paid £3,500 in an out-of-court settlement to a woman with mental illness whose complaint of rape had been left on a police officer's desk and forgotten until the complainant rang to find out how the case was progressing.⁵⁷

In 2005 the IPCC found a series of failures by South Wales Police in the way they dealt with an allegation of rape and sexual assault on Geoffrey Cole. Mr Cole reported to the police that he was the victim of a serious sexual assault and rape while walking his dogs near his home. The IPCC upheld his complaints about the failure of the police to preserve the 'scene of the attack and the articles left at that scene... so as to maximise the potential evidence obtainable from them', and concluded that 'the person responsible for that decision failed in their duty'.⁵⁸

Where are we now?

Much has been done in the past decade to improve the way rape complainants are dealt with. In 2002 a joint report into the investigation and prosecution of rape, based on an analysis of the work in nine police forces, was published by Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate.⁵⁹ The recommendations of this report were almost all accepted by the Government and set out in a Rape Action Plan.⁶⁰ Since then a concerted effort has been made by the authorities involved to improve what had been in some parts of the country a totally inadequate service of responding to rape complaints.

These changes have affected the whole process. Complainants whose cases go to court are able to give their evidence behind a screen or through a video link to reduce the trauma the trial can cause.¹³ The Government has a programme of establishing centres (Sexual Assault Referral Centres) in locations such as hospitals rather than in police stations, where victims can undergo a forensic medical examination and receive medical care, psychological counselling, legal advice and other support, all in one place from professionally trained staff. There are now 30 of these and 15 more in the pipeline. Judges commented to us on the better quality of medical evidence in areas where Sexual Assault Referral Centres have opened.

The Government has also provided funding for people to act as advisors and supporters to complainants as their case goes through the system. There are at the time of writing 43 of these Independent Sexual Violence Advisors, and we say more about these in Chapter Four. Rape Crisis Centres, a voluntary movement founded in the 1970s to help victims and campaign for better treatment for women who had suffered rape, have been supported.

The changes listed above constitute a major programme of work and those involved have dedicated considerable time and energy to begin putting right what was clearly a wrong in society's response to victims of rape. It was suggested to us by a senior official in the criminal justice system, 'What is needed now is for people responsible for implementation to put the policies into place... there is a plethora of national policies on victims and witnesses but we need to get down to the local level and influence the front line.' We strongly agree. We have

¹³ The police will discuss the special measures available with the complainant. The CPS is responsible for submitting the special measures application to the judge, who has final decision on whether to allow special measures applied for or not.

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been very impressed by the range of changes that have been made as a result of the commitment by people throughout the system to provide caring and effective services to those reporting they have been raped. However, there can be no doubt much more needs to be done to ensure this good practice is found everywhere. We discuss how this can be done in subsequent chapters.

The debate about rape – getting the messages across

Rape is often discussed within a framework of broader questions about the state of sexual relationships in society, relations between men and women, responsibility and blame. Who is to blame when someone is raped is a key question, with a range of opinions on a spectrum from 'obviously the rapist is to blame' to 'often women are to blame because they flaunt themselves, or take risks, or drink too much'. In between will be those who think women are sometimes to blame if they get into bed with someone who subsequently rapes them.¹⁴

A number of polls, conducted by various bodies, give a flavour of the range of views and the balance of public opinion. They tend to show that the majority of people have a view of who is to blame for rape that is in line with the definition of rape found in the law, and this is good news. However, the polls also show us that a substantial minority hold women partially responsible for the crime.

¹⁴ There is little evidence of public opinions on men who are raped.

Box 5

- 26–29 per cent (male and female) feel that a woman is at least partially responsible for her own rape if she had been drunk or was behaving in a flirtatious manner (2005)⁶¹
- 17 per cent think a woman is partially responsible for her own rape if she was walking alone in a dangerous or deserted area (2005)⁶²
- 21 per cent of people feel that a person should take responsibility for being raped if they act flirtatiously (2010)⁶³
- 64 per cent of people feel that a person should take responsibility for being raped if they drink to excess/blackout (2010)⁶⁴
- 39 per cent of 18–24-year-olds think a person should accept responsibility for being raped if they go back to the assailant's house for a drink (2010)⁶⁵

A number of public awareness-raising campaigns have been undertaken in recent years, by both the voluntary sector and the police, to explain the basis of the current law and the view of rape that underpins it. Some of these campaigns, such as the Rape Crisis Scotland Campaign 'This is not an invitation to rape me',⁶⁶ which is supported by the Scottish Government, are designed to encourage discussion and challenge attitudes and received considerable praise from a number of those that we spoke to.

Campaign poster from 'This is not an invitation to rape me'



**Lothian and Borders Police 'Rape Awareness' campaign,
December 2009–January 2010**



No matter how much she's drunk...
No matter what she's wearing...
No matter if you've already kissed...

... sex without consent is rape.

If there's any question over whether a woman has drunk too much to give consent, assume she hasn't given it.

Lothian and Borders Police investigate every single report of rape. Responsibility for rape will always lie with the rapist.



edinburgh women's rape
and sexual abuse centre
support, advice and advocacy for women and girls



We heard criticisms of other campaigns that attempt to reduce rape by providing safety and awareness messages to women that place the responsibility for being raped solely on women and that reinforce – and thereby strengthen – inaccurate views of how victims respond to being raped. For example, a poster campaign currently being run by Transport for London's Cabwise campaign warns of the dangers of taking unlicensed minicabs by depicting a screaming and distressed woman trapped in a cab.⁶⁷ While well intentioned, this campaign reinforces the idea that in these circumstances a woman would scream and cry desperately for help. This is contrary to what we know a victim's

response to such an incident is likely to be, which is to submit to the attack in an attempt to minimise the likelihood of violence.

It was stressed by many who spoke to us that public awareness campaigns that tell women to keep themselves safe should be matched with an equal, if not greater, effort to educate men about rape myths and their responsibility to ensure consent. In particular, it was remarked that men need to be targeted with these messages in the context of the night-time economy of bars and clubs.

A number of those we spoke to who work with male victims of rape raised the issue of how there is still very much a public perception that rape only really happens to women. Few campaigns address the issue of male rape. We found some of the literature provided to us by organisations that work with male victims very useful in raising the issues about male rape.

What do you think he should get for his part in a vicious and brutal rape?

Our Support.

Tom was raped and sexually abused by his uncle from ages 5 to 10. He has never told anyone about it because he thinks he will not be believed. Now he has someone to tell.

mankind
support for men
who have been sexually abused

01273 510 447

tellsomeone@mankindcounselling.org.uk

Rape and sexual abuse is a crime we normally associate with women, however 11% of the UK male population have suffered childhood sexual abuse and 3.4% have been a victim of adult sexual assault and/or rape. That equates to over 2.5 million men.

Many of those we spoke to stressed the vital importance of teaching children and young adults about rape and sexual assault. We were told that these discussions should be situated in the context of considering respectful relationships, meaningful consent and the role of alcohol.

Box 6

Programmes for young people

The Sexual Assault Referral Centre (SARC) in Whitechapel (the Haven) has developed a sexual violence prevention training programme for young people in secondary schools in London. The programme uses laminated cards with key facts about rape and sexual assault and a 'dispelling myths' booklet which explores the legal definitions of rape and sexual assault and the common myths, and gives safety tips.

The training programme aims to:

- increase the awareness of sexual assault and rape and the law;
- inform young people of services available to them;
- empower young people to consider the society that they live in and how rape and sexual assault affect society; and
- increase their knowledge about the portrayal of rape and sexual assault in the media and how this can influence and perpetuate myths about rape.

Box 7

Using 'new media' in rape prevention and awareness campaigns – an example of good practice:

Hampshire Constabulary's 'Don't Cross the Line' campaign features an interactive role-playing game called Seal the Deal,⁶⁸ which aims to educate 16 to 24-year-old men about what is classed as rape.

We recommend that when education and awareness-raising campaigns and programmes on rape and sexual assault are developed, careful consideration be given to their design so that they spread understanding of the current law on rape; do not in any way perpetuate false understandings of how rape victims respond; and take full advantage of the diverse range of new media outlets so that they are as imaginative, targeted and effective as possible.

Conclusions

As this chapter has shown, rape is indeed a unique crime surrounded by many complexities. Views about it are deeply held and reflect a wider set of attitudes about relationships between men and women, about sexuality and about sexual autonomy. For no other offence is there a view about a conviction rate that is so regularly and widely quoted. For no other offence is there so much controversy about the level of false allegations. We hope this chapter has established some of the reality, as far as it is known, about rape and will lead to a better understanding of rape as it is and the problems rape victims face. More understanding is certainly needed, and much better information, as we have recommended.

Chapter Two

The role of the police

'Society doesn't recognise rape as an offence when it happens between two people who know each other, and this stereotypical myth about rape within relationships also affects the way in which police on the front line respond to rape victims... The issue here is that the majority of rapes reported to the police happen when the victim knows her attacker.'

A police officer

The police on the front line

We now move to a more detailed consideration of the work of the police and the supporting forensic medical services in dealing with complaints of rape. We must start by saying that in undertaking this review we saw much good practice. We were given all the information we asked for, were welcomed and spoken to very frankly by police officers across England and Wales and Her Majesty's Inspectorate of Constabulary (HMIC), who gave us considerable assistance, as did those carrying out the Rape Support Programme of the Association of Chief Police Officers (ACPO), funded by the Home Office.

The police are the public authority who see all the men and women who decide to report a rape, including those who later withdraw their complaints. Police call handlers will take the 999 calls. The police officers on duty at the time of a report will often see victims at their most distressed, and traumatised. They will need to call upon a range of skills: basic human sympathy, understanding, tact and patience, as well as investigative expertise.

Many police officers recognise the complexity of the task and take it very seriously. That is how it should be if the police are to fulfil the positive obligations to victims of serious harm which international and domestic law requires (see Annex A).

We have referred in Chapter One to some examples at the extreme end of bad practice (see pages 46–48), and no doubt there are more that could be quoted. Amongst the evidence we received about the way the police responded to complaints were a number of criticisms. It was suggested that the police can be influenced by ill-informed attitudes. There is 'a lack of knowledge – a lot of police officers think there is

higher amount of false allegations than is actually the case,' 'still a bit of a culture within the police of the idea that there are "real rapes" and those where women make it up.' An organisation that works with male victims told us that, 'Very few men will access the police to report a rape, they don't want to feel less of a man, don't want to be regarded as gay. They feel that it is something that "doesn't happen" and this attitude can be reflected by the police as the issue hasn't been tackled in the public domain.'

There were suggestions that police officers were not yet understanding enough in responding to victims who come to report: 'The police do not listen enough to victims when carrying out investigations'; 'Rape victims talk negatively about the experience they have had with the police and the Crown Prosecution Service (CPS). The process needs to be explained to the victim from the beginning.'

The police themselves had some negative comments about their own way of working. 'The system grinds victims down', a police officer said. Another commented, 'To a degree, the police are responding to a target-driven environment, which results in the effective cherry-picking of complainants. There is better police perception of good cases or "runners" (there used to be a perception of stranger "real rape") and they are outcome focused. There is a heavy focus on what to pass to the CPS, or what to class as "undetected".' This reflects comments made to us about the way in which performance on rape is monitored and measured, which in turn has an effect on the investigative mindset of an officer who may think 'if a case isn't likely to result in a charge and conviction, I won't record it as a crime'.

In spite of the many reports, the ACPO development programme and some highly publicised failures, we heard of some police forces that were not implementing any changes. We were told, 'there is a serious issue with inconsistencies in the approach police forces take to dealing with rape complaints. There are inconsistencies in the approach, resources, skills available and attitudes.' One police force told us that before its reorganisation in 2009 to create a Serious Sexual Offences Team of dedicated specialists, 'there was not just a postcode lottery but a street code lottery'. Rape cases were fighting to get priority over burglary and theft. Contact with the complainant was limited to the initial interview and the forensic examination; there was no capacity to approach rape strategically in that community and offer support and protection to victims.

We also heard praise for the police and what they are trying to do. 'There has been an improvement since the training that includes victims' experiences of rape and rape reporting', said one victims' organisation. 'Police attitudes have improved towards people with learning difficulties', said a health organisation. An organisation that helps both male and female victims said, 'There are officers who go beyond the call of duty, who personally call us to give referrals'. 'The police are excellent. They have recognised the problem and are attacking the problem; they want to do something about it', said a male victims' organisation. A rape victim said of her experience, 'they listened well, they treated me as though there was no question of whether I was being honest or not, they stayed in touch right through the process. Without the support of the police who handled the case I may not have been able to cope and probably wouldn't have been able to give evidence in court.' A survey conducted in late 2009 found that 60 per cent of women who reported being raped said the police were respectful.¹

Improving the police response – work in progress

The improvement in the way the police deal with rape complaints has been a long road, and there is still some way to go for a number of police forces. There is a long history of disbelief, disrespect, blaming the victim, or not seeing rape as a serious violation, and therefore deciding not to record it as a crime.

Those who have been working in the system for a long time probably remember a fly-on-the-wall film of the daily life of the Thames Valley Police made in 1982 by the distinguished film-maker Roger Graef. One scene in the film showed three male police officers responding to a woman who came to report that she had been raped by more than one man. The officers began the interview by asking the woman how many times she had had sex, how many men she had slept with ('can you count them on one hand?'), when she last had sex, whether she was menstruating properly, and whether or not she was pregnant. The officers went on to ask the woman to explain further what happened to her. The woman was then asked why she didn't scream and shout either before or after the event. Eventually, the woman agreed to withdraw her complaint. Once the officers left the room, the woman was heard saying to the sound technician recording the audio for the film, 'you can see what people mean when they say it's easier to not say anything than go through this.'

Police were trained in those days to assume that 60 per cent of all rape claims were false, and to interview women aggressively so as to prepare them for the grilling they could expect in court.² The uproar that followed the screening of the film proved a catalyst for the slow process of change that is still going on today and is far from complete.

Along with the changes taking place more widely in attitudes to rape in society, and the changes in the law, so the police have had to transform their approach. In the past seven years much has been done to improve the way rape complaints are dealt with by the police. These changes arise from recommendations by HMIC and Her Majesty's Crown Prosecution Service Inspectorate in the report of 2002.³ The recommendations were accepted by the Government in the Rape Action Plan (2002).⁴ The action plan required the police to make changes in the way they dealt with reports of rape so that the treatment of victims improved and more of the cases taken to court were successful. Four priorities for the improvement of police practice in dealing with reports of rape were highlighted in the plan. These were: the arrangements for the initial investigation, the provision of medical services, the training of officers, and the importance of a named person the victim could rely on for information and support.

The further review by the two inspectorates in 2006⁵ noted considerable improvements, but commented that there was still much more to be done. The way some forces were recording crimes and deciding that some reports should not be recorded as crimes was not compliant with Home Office rules and needed to change. The use and management of specially trained officers needed to be improved. Those police officers receiving reports of rapes needed more guidance. The way the initial statement was taken needed to be improved. There should be a bigger role for the forensic physician in preparing the case.

ACPO has had a Rape Support Programme funded by the Home Office since 2005. The programme involves active engagement with all 43 forces in England and Wales in the development and dissemination of good practice. Since April 2009 the team, together with CPS colleagues, has visited every force in England and Wales and provided a report to each Chief Constable and Chief Prosecutor, with advice on any areas for development. The Rape Support Programme team has been able to offer training to police forces from an expert on the effects of rape trauma on victims.¹⁵ All forces have an ACPO lead with

¹⁵ We were able to meet this expert, and we benefited greatly from the information she gave us.

strategic responsibility for this area of work, and each force also has an identified 'rape champion'. In 2009 a comprehensive document setting out guidance on investigating and prosecuting rape was issued jointly by ACPO, the CPS and the National Policing Improvement Agency (NPIA).¹⁶ These reforms to police practice aimed to improve much that was wrong and had been wrong for many years.

The new approach is based on working to understand the victim's situation and respond to it, within a framework of carrying out the requirements of crime investigation and detection. The objectives are to treat the victim well, do an investigation of high quality, and to work with the CPS to prepare a case that can go to court. This is a highly demanding task for the police, and, however well done, it will be an ordeal for the victim. We go on to look in detail at what this means for the work of individual police officers and for the organisation of police work. First we consider the demands the police have to meet.

Reporting a rape to the police – the crucial first stage

Many rapes are never reported (see Chapter One, page 32). There are a number of reasons for this. Reporting the crime will probably be a distressing experience for the victim – more distressing than reporting most other crimes. Going to the police to report a burglary or a robbery is not usually embarrassing or shaming. It does not normally require a detailed discussion of very intimate and personal issues. Reporting a rape, on the other hand, is intimate and for most people, as we heard from those who work with victims, feels humiliating. Very private matters have to be discussed with strangers. Medical tests that are intrusive even in normal circumstances where there is no crime and no emotional distress will have to be undertaken. Underwear and personal clothing will have to be given to professionals for examination. People will be taking an in-depth look at one's private life, and matters may come up that one could be ashamed of. For forensic reasons information will have to be revealed on all sexual activity in the seven days before the assault took place. Although victims in rape cases keep their identities secret there could be a fear that the information might become known to family. They suspect their friends may find out. When

¹⁶ The National Police Improvement Agency was established in 2007, to improve public safety, with improvement strategies delivered with key policing stakeholders such as the Home Office, the Association of Chief Police Officers and the Association of Police Authorities. Areas of capability that they seek to improve include: leadership; professionalism and skills; effective processes; efficient delivery; information management; improved delivery of national (as opposed to area specific) services; and the UK's role in global security. More information can be found at www.npia.police.uk.

they report a rape, victims may not understand exactly what is involved in 'taking the legal route', and may find this does not provide the answer to what has happened to them. Some victims reporting rape within a relationship may fear that social services will become involved and their children may be taken away. So the decision to report a rape and get involved with what may be a very unfamiliar world of the police and the law is not easily made.

But for those who do decide to report what has happened to them, the police are usually where they go. It is of course possible to speak to someone else. Some people turn to Rape Crisis Centres for help. Sexual Assault Referral Centres (SARCs) will see anyone who asks to be seen in confidence whether they intend to report the rape to the police or not. Forensic medical examinations can be carried out there for evidence of sexual activity and any injuries. Provision is made for emergency contraception. Tests for sexually transmitted infections can be carried out and follow-up care can be arranged. The evidence from the medical examinations can be frozen and kept, so if victims who do not want to report at the time change their minds later, the evidence of an assault is still there and can be used at a later date.

For those who have decided to report and want action in the criminal justice system, the police are the front line. The police will usually be dealing with the immediate aftermath, often seeing victims soon after the rape has happened, coping with the distress and the confused feelings that victims have. As we heard from organisations that work with victims, the way the police respond at this very early stage can be crucial to the outcome of the case. It is crucial for two reasons. First, if the incident has happened recently, it is the time when vital evidence can be collected – before victims have had a wash, changed clothes, gone to the toilet even. Second, it is the time when victims will form an impression of the way they are likely to be treated as the process continues: whether they are going to be believed, whether the investigative procedures are going to be so insensitive and intrusive that they decide they would rather go home and seek some other form of help or just cope on their own.

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To help the police to respond appropriately to a complaint of rape, ACPO and the NPIA issued the *Briefing Note on Initial Contact in Rape Cases*, extracts of which are set out in the box below. This guidance sets a high standard for the initial contact with the complainant. If it is followed whenever a report is made, it seems to us that the treatment of a complainant would be appropriate and respectful.

Box 8

Extracts from *Briefing Note on Initial Contact in Rape Cases*

Your role

It is your responsibility [as a call taker or member of front desk staff] to take steps to ensure the immediate safety of the victim, provide reassurance, respond to medical needs and protect any evidence...

Taking an initial account and confirming information

When taking an initial account... check exactly what is being said and clarify when details are difficult to understand... In-depth questioning of a victim is not appropriate during the initial contact stage.

[The leaflet also provides a list of information to be gathered from the victim or caller.]

Preserving forensic evidence

Sometimes victims of rape will give very little detailed information about the offence(s). In these circumstances you should inform them that the first response officer will take details of the nature of the offence and will advise them of action to preserve evidence.

[There is a list of actions to take to preserve the evidence depending on the nature of the complaint.]

Any given advice should balance the victim's wishes with the need to preserve potential evidential opportunities.

Deploying specially trained officers and real-time supervision

... ensure that [specially trained officers] are deployed as soon as possible. If [specially trained officers] are not available... [a specially trained officer] should be available to provide real-time advice to the first response officer... record all information that you receive and any advice given...

The challenges for the police

Dealing effectively with reports of rape from the very beginning presents the police with a number of operational challenges. They need to provide a 24-hour service of highly competent officers, and ensure these are available even in a large police area with a lot of dispersed sites. Good practice requires that the police can ensure that the complainant is dealt with by a female officer if requested. It is made clear in guidance that police officers should always assume victims are telling the truth unless they learn otherwise, from the victims themselves or from other facts that emerge as the investigation proceeds.⁶

Forensic medical examinations should be carried out as soon as possible – not just to allow for the best possible evidence to be obtained, but also to ensure the wellbeing of the victim. Police may find this need to move quickly towards the forensic procedures conflicts with other demands. They need to deal with a distressed human being with sensitivity and with respect for the mental state of the complainant. They should not harass and press victims to say things before they are ready. At the same time they are conscious that the forensic clock is ticking and the investigation will need the best evidence they can get.

The police also routinely deal with victims who only decide to report the rape some time after it has taken place. A number of reasons account for this delayed reporting decision. It may be that the perpetrator has been making threats and the victim waits until the danger has passed. It may be a concern for the safety of the children. Whatever the reason, reporting a rape some time after it happened is a common feature of rape allegations.⁷ We know that in the Metropolitan Police Service in 2005, one-third of the reported rapes happened more than a month before they were reported.⁸

It is critical that the victim's first encounter with officialdom is sympathetic and professional. Because this encounter is so important, it has been a focus of substantial changes in police practice. Efforts have been made to ensure that the person reporting a rape is dealt with by a police officer with special training, whatever time of the day or night the rape is reported. Since 2002 many police forces have trained a number of officers as specialists. The titles vary. There is the specially trained officer (STO), the sexual offences liaison officer (SOLO), the sexual offences investigative trained officer (SOIT) and other variations.

To have one of these specially trained officers available in all parts of the force for 24 hours a day is often not logistically possible. Many forces

have dealt with this by training officers as 'first-responders', to give them a basic understanding of what to expect in rape cases. Anyone reporting a rape to the police should be seen by a police officer trained to at least this level. These officers have to get the basic facts of the case and take advantage of what is sometimes called 'the golden hour', the time when the forensic evidence is still available.

When a trained officer is not available, some police forces use 'early evidence kits', which allow some of the less intimate forensic work to be done by the officers responding to the report. For example, urine samples can be taken which can then be checked for the presence of drugs that might have incapacitated the complainant; the level of alcohol in the blood can be checked and mouth swabs can be taken. The early evidence kits are used by officers prior to the full medical examination, which is carried out by a forensic physician.

The forensic medical examination

The medical examination is a vitally important part of the evidence-gathering process: it can in some cases assist in putting together a case that can go through the system and in ensuring good care for victims. The police have a range of arrangements for getting access to forensic physicians. In some areas there is now a Sexual Assault Referral Centre to which the victims go with a trained police officer. In others, where there is no such centre, the police may call on local GPs who work part time as forensic physicians. Victims who report may be examined in the police station.

The forensic physicians play an important role. They have to take the appropriate samples, assess any injuries, reassure and provide care to the victim and sometimes give an opinion on the evidence that the victim presents. They have to be able to present evidence in court, explain the clinical interpretations that have been made of the evidence, and be cross-examined. This requires a high level of skill.

We heard of problems with the quality of the physicians used, delays in finding one, the difficulty in obtaining the services of female physicians (who are preferred by both male and female victims)⁹ and the employment of many overseas doctors with poor language skills. 'Often the doctors called are not specialists trained in sexual offences, lack empathy and produce poor-quality reports/statements. Additionally, they lack training in courtroom skills and evidence giving,' said a prosecutor. We heard that in some areas there are currently only male examiners on call for sexual offences work (while in London the

Sexual Assault Referral Centres employ only female examiners). We heard in the south-west of a situation in one area where 'vulnerable people are being asked to go through an experience they should never go through. The majority of forensic physicians are men; victims are waiting for long and ill-defined periods of time for examination; doctors don't turn up, and demonstrate quite inappropriate behaviour at times, with poor clinical practice'. In another area, most of the examiners are male GPs with experience as what used to be called 'police surgeons'. The only female physician from that area told us: 'It is appalling that they have no experience then suddenly end up examining a rape victim.' It was suggested to us that 'the conviction rate would improve a little if forensic medical examinations were being done by qualified professionals.'

The joint police/prosecution inspection of 2006¹⁰ also found an unsatisfactory situation. 'There was little consistency found in the way in which forensic physicians were employed, and there is a growing trend to outsource these services to private enterprises. Again, the 2002 inspection concerns were highlighted, together with issues relating to the availability of forensic physicians (particularly those with paediatric experience), delays in examinations, varying levels of expertise and wide disparities in levels of service offered to victims.'

It is clear that the provision of forensic medical examination services remains variable across the country, with local areas employing forensic physicians under different arrangements and contracts. The inspection report,¹¹ recommended that the management of forensic physicians is best placed with local health services; both the health service and the police should take responsibility for monitoring the performance of forensic physicians. Subsequently, Lord Bradley, in his 2009 review of people with mental health problems or learning disabilities in the criminal justice system,¹² recommended that the NHS and the police 'explore the feasibility of transferring commissioning and budgetary responsibility for healthcare services in police custody suites to the NHS at the earliest opportunity'.¹³

The Government's strategy on tackling violence against women and girls has taken this further, with a commitment to fast-track examination of the feasibility of transferring sexual offences forensic examination work to the NHS.¹⁴ This is now being considered by the cross-government Improving Health, Supporting Justice programme. **We support wholeheartedly the recommendation that the funding and commissioning of forensic medical services should be transferred from the police to the NHS.**

We also endorse the view of the taskforce led by Sir George Alberti that forensic physicians should be employed by the NHS, have better access to high-quality training, be an integrated part of the new NHS clinical governance framework, and commissioned in sufficient numbers to meet the needs of victims of rape.¹⁵

We would further recommend that there should be more appropriate accreditation for forensic physicians to ensure we have the quality of forensic physicians needed for all victims.

We also recommend that every victim of rape should have the choice of a male or female forensic physician to undertake the medical examination.

Sexual Assault Referral Centres

Currently there are 30 Sexual Assault Referral Centres (SARCs) with a further 15 planned. The introduction of SARCs has been described as ‘the largest expansion of statutory services for victims of rape in contemporary history’.¹⁶ SARCs provide a range of immediate, short and longer-term support options to victims of rape.¹⁷ They give medical treatment and care, allow the collection of forensic medical evidence by specially trained medical staff, and also provide victims with the option to be referred to support services. Some SARCs also have clinics with a speciality trained police officer in attendance. These clinics are set up specifically for self-referrals, so that individuals who are considering reporting a rape can talk to a specialist police officer anonymously before deciding what to do.

We echo the report of the Fawcett Society’s Commission on Women in the Criminal Justice System which recognised the network of SARCs as an important step in the right direction,¹⁷ and we welcome the Government’s commitment to extending and developing SARCs.¹⁸ **We welcome the specific commitment by the Government to have one Sexual Assault Referral Centre in every police force area by 2011 and recommend that since some police force areas are very large, the need for additional centres should be considered once the initial phase of development is complete.**

It is clear from the evidence we received, the conclusions of the taskforce led by Sir George Alberti and other work, that the

¹⁷ A SARC may form part of a local Sexual Assault Referral Service for children and young people.

development of SARCs is a groundbreaking development that has transformed the experience of victims reporting rape and has enabled the police to provide a much more effective service. SARCs offer more than good medical care. They offer a sympathetic ear and support, regardless of what happens to the case in the legal system.

There is existing guidance available regarding the minimum standards when developing a SARC.¹⁹ We feel it is important for future SARCs to be set up in a way which promotes cross-agency working in responding to rape victims – a theme which recurs throughout this report.

We acknowledge that the existing funding arrangements for Sexual Assault Referral Centres vary across the country, and we would not wish to be prescriptive about how they are set up and run. However, it is clear to us that there is a greater chance of success when there is a strong partnership between the NHS, the police and elements of local government, and equal commitment in the setting up and operation of a Sexual Assault Referral Centre. We recommend this commitment should be shared equally by the police, the NHS and local government.

Working towards a prosecution

The next stage for the police in dealing with a complaint is to prepare the evidence to build a case that can be prosecuted in court. The Director of Public Prosecutions told us: ‘In nearly all cases – and specifically rape – early, efficient investigation and early engagement with the CPS pays huge dividends when the case goes to court.’ When dealing with a rape complaint the police are faced with quite different problems from the ones they face in dealing with other criminal acts. Usually in a rape case they are not trying to find the person that did it. The complainant usually knows who the attacker was. They are trying to find evidence that the act was non-consensual to back up the account given by the person making the complaint. As the Court of Appeal stated, when considering a rape case ‘The problems do not arise from the legal principles. They lie with infinite circumstances of human behaviour, usually taking place in private without independent evidence, and the consequent difficulties of proving this very serious offence.’²⁰

This part of the investigation is likely to raise anxiety in any victim. If there is not ‘enough’ evidence to challenge the defence of the accused, how do the police proceed without making victims feel they are suspected of lying and no one believes their story? One respondent

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to our call for evidence said about this, 'In the majority of rape cases there are no witnesses and forensic evidence is negligible. We are therefore left with the credibility of the victim and the truthfulness of their account as the primary investigative tool.' So the police have to walk a tightrope. If they tell victims exactly how much they will be cross-examined to find flaws in their story, are the victims likely to withdraw? If the police do not tell them what it will be like in court, will they feel deceived when they find out?

There is a considerable amount of guidance for police officers on how to effectively investigate and prosecute rape cases. The investigative skills of the police, together with the expertise of specialist rape prosecutors, should result in a thorough investigation, allowing for a sharing of advice and guidance throughout the investigative process.

Getting the evidence

In 2003 the Government introduced 'achieving best evidence' (ABE) interviews, which allowed victims and witnesses of serious crime to give evidence via a video-recorded interview. In these interviews, victims describe what has happened to them and this is recorded. These recordings then constitute the evidence that is presented to the court. The Government's reason for proceeding in this way was to increase the number of victims and witnesses who were prepared to give evidence by making the process of recording the evidence less formal and more comfortable than it would be if they had to sit in a police station having a written statement taken. The intention was also to try to reduce the stress of giving evidence to help vulnerable and intimidated witnesses to give the best evidence they can. The video-recorded interviews were considered to be the most appropriate method for police officers to take a full account of the victim's complaint and follow up with specific lines of questioning to help the investigation. These changes were very welcome and we support them in principle.

However, there seem to be a number of problems in practice. The techniques used for interviewing victims and witnesses were a cause of concern to the inspectors in their 2006 review,²¹ and we also heard a wide range of criticisms of the way this is done. One person we spoke to told us, 'The ABE interview introduced structure to interviews, but it has become so rigid it is almost counter-productive'. We also heard that some of the video-recordings are amateurish: badly filmed, with interruptions like alarms going off or the victim trying to tell a story while moving rapidly round the room. A prosecutor told us, 'In the case of adult complainants there are also issues as to the method of

interview for an ABE interview. Officers who are trained to interview children use the same technique when dealing with adults. There is certainly room for improvement in that area.' These video-recorded interviews can be interminably long because investigating police officers have, it is said, been advised to let victims say as much as possible at their own pace. We heard from a judge that in one particular case, 'the ABE interview DVD was 5 hours and 38 minutes long. This is an affront to the notion of best evidence. The police must respect the best interests of the complainant by keeping the statement/DVD of evidence as short as necessarily practicable.' Another judge told us 'the interviewing technique was so poor that all it achieved was to emphasise discrepancies in the witnesses' accounts, giving defence counsel a field day. We were also told, 'In the case of adult witnesses, it is surely essential for a written statement to be made based upon the relevant issues dealt with in the video interview.' We heard of one area where there is a local rule that all video interviews are to be edited down to no more than 45 minutes unless there are good reasons for a longer interview.

Box 9

Improving ABE interviews – Pilot

In Manchester, with appropriately selected victims and while preserving the principles of 'achieving best evidence', an approach is being piloted to encourage the police to be more strategic and thorough in the planning and preparation of the investigative interview of the victim. This is to ensure that it is more evidentially relevant, appropriate and fitting for judicial process.

This pilot approach is being undertaken in the Trafford and Stockport policing areas. It is hoped that such an approach, when appropriate, will enhance the quality, relevancy, and efficacy of witness testimonies, reducing the opportunity for 'active defence' attacks on witness credibility.

We recognise efforts are being made to improve the approach to how 'ABE' interviews are carried out. But it is clear that this is an issue of considerable concern, which is posing problems for the smooth running of trials. It is causing distress to some victims, and the costs are not inconsiderable. We encountered very strong views that currently this is a big hindrance to effective trials and action needs to be taken. We recommend that this issue be looked at again by the Association of Chief Police Officers, the Crown Prosecution Service, Her Majesty's

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Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate. We understand that the National Policing Improvement Agency has a small internal research programme looking at the issue of achieving best evidence in rape investigations, and we recommend that this plays a part in finding a solution that preserves the benefits for the victim but is more effective in the courtroom.

Working with the victim

Much of the impetus towards reforming the police response to rape complaints centres on building a relationship with the complainant and maintaining confidence to reduce the high rate of withdrawal from the process. A range of measures has therefore been developed to keep the victim informed, involved in what is going on and introduced to the stages of the legal process. The police will keep in touch. If the services of an Independent Sexual Violence Advisor are available then the police will find the job much easier. An Independent Sexual Violence Advisor works with the police and prosecution and stays alongside the victim throughout the case and beyond. We discuss this role more in Chapter Four. The police will need to consult about bail for the suspect if a remand in custody is under consideration, report on progress with the prosecution, and handle the prosecution decision (if it is) not to go ahead with the case.¹⁸

Whether the case is eventually going to court or not, the guidance makes it clear that the police need to consider the victim at every stage. They will need to think about how the victim is kept informed of the progress of the investigation. They will need to think about the safety of the victim and any children. Once the rape has been reported and a suspect arrested the facts will be publicly known and the suspect or some of his associates may threaten the victim or family members of the victim to pressurise them to withdraw the case. Protecting the victim and if necessary finding alternative accommodation is an important part of the police role. The responsibility of the specially trained officer is to ensure victims of rape receive the appropriate care to meet their needs. Victim care is an integral part of the specially trained officer's role,¹⁹ which includes:

¹⁸ *The Code of Practice for Victims of Crime* places certain requirements on the police, namely to notify victims when there is to be no investigation into the reported crime; ensure that victims can access information about local support services; notify victims of the progress of the case; and in cases of serious crime, notify victims if no person is charged.

¹⁹ Specially trained officers also have other responsibilities, including supervising the first response; arranging the forensic medical examination; briefing the forensic physician; and conducting the victim interview.

- ensuring the immediate physical, mental and welfare needs of the victim are met;
- taking the victim to a Sexual Assault Referral Centre (or similar facility) and staying with the victim throughout the forensic medical examination and medical aftercare;
- providing information to the victim by referral to other support agencies in the community;
- explaining the criminal justice process to the victim in a way that makes sure the information is presented positively and carefully;
- updating the victim about the progress of the investigation;
- co-ordinating pre-trial support and assessing any emerging support needs relating to a pending court hearing in conjunction with Witness Care Units and Independent Sexual Violence Advisors where available; and
- helping with claims to the Criminal Injuries Compensation Authority.²²

How are the police responding to these challenges?

It should be clear that dealing with a rape complainant to the standards described above is a formidable challenge for police officers and those who manage them. These high standards are to be met at a time of resource constraints and considerable pressure from the public for a good service. How are police forces responding to these demands?

We did not carry out an audit of all the police forces in England and Wales. This was not our remit. We met a large number of police officers, people who worked with the police or supported victims and some who themselves had experience of reporting rape to the police. We learnt about the changes that are being introduced and heard a range of views about them.

The formation of specialist teams

A new way of working with rape complainants is developing alongside and informed by developments in dealing with domestic violence and child protection. That is the formation of specialist teams. Specialist teams have been set up in about one-third of police forces, and we were able to visit three of these. We were told by these teams that the way of working they have developed is a great improvement on earlier ways of working. Victims were more satisfied, and more local strategic and preventative work with other agencies was possible.

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One unit we visited was the recently established Serious Sexual Offences Team in Gwent, which started work in April 2009. The unit has 25 staff members, all of whom have volunteered to work there. Those who set up the team explained the hurdles that have to be crossed when such a reorganisation is to take place. All divisional commanders in the force have to accept that rape is an important priority in the face of all the other performance targets they have. They have to understand that they are going to lose some staff to the new unit. They have to accept the argument that there are enough serious sexual assault cases to justify a specialist unit, that current performance is not good enough and having a dedicated unit is the best way of improving the service.

In Gwent we heard that having a dedicated unit had brought many advantages in the short time it had been in operation. More victims were reporting. The number of those reporting rape had gone up by around 50 per cent since the unit came into operation, and the unit felt this could be attributed to an increase in victim confidence in a service which is multi agency and provides a victim-centred approach. Victims were getting a more professional and quicker response. All the information about rapes in the area is being collated and analysed, so that a strategic approach can be implemented based on risk.

We found the specialist units we visited to be extremely impressive. The officers working in them were dedicated to this type of work and highly enthusiastic about what they were achieving. It is a way of working with much to commend it. It builds on the commitment of individuals. It enables rape and other sexual offences to be seen strategically, with investigation and prosecution part of a larger approach that sees the police working closely with other local agencies to ensure there is prevention of sexual violence and protection (particularly of those who are especially vulnerable) in the local area.

We went out to look at good practice and saw a great deal. We did not go out looking for bad practice, but we heard and read about some. We read *Guidance on Investigating and Prosecuting Rape* and a wide range of local documents setting out the policies of local forces in dealing with rape complaints. It is not possible for us to say how many police forces are implementing fully or in part the good practice we have seen. The work ACPO has been doing in partnership with the CPS and the NPIA is designed to improve the approach taken by all forces in responding to and investigating rape complaints.

We have therefore based our recommendations on the assumption that all forces aspire to provide a high-quality service to everyone who reports a rape. *The Guidance on Investigating and Prosecuting Rape* seems to us to reflect the very best that a police service can achieve, and we would make no suggestions for improvements to it. We recommend that the Association of Chief Police Officers should continue the work of seeing it implemented in every police force.

The questions we consider in the rest of this chapter are organisational – how best to work and organise the resources available so as to achieve these standards. As we have said, we were very impressed with the specialist units. It would be quite inappropriate for us to be prescriptive about operational policy matters. Local forces are in the end responsible for how they deploy their resources. However, it may be that the combination of high-level investigation, victim care and a focus on vulnerable people provided for by specialist units is the best way forward. **We therefore recommend that the Association of Chief Police Officers works with the National Policing Improvement Agency to assess the benefits of this specialisation in terms of its cost effectiveness, the number of victims reporting, the level of victim satisfaction and the opportunities it provides for a more strategic approach to protecting the vulnerable.**

The police cannot work alone

The police are critical to improved services to victims of rape. Victims have a right to expect the best service from the police, regardless of where they live. So best practice needs to happen everywhere. But providing such a high-quality service is very demanding on resources. A highly placed police source told us that ‘police everywhere don’t behave as you would want them to so there are of course areas where the conviction rate could increase, but to do it properly costs money as people are in need – there are high levels of neediness and these people/cases are incredibly resource intensive... if this is a priority then something else on the list of things to do will have to be replaced.’

The police are also bound by performance measures. ‘Bosses will still ask detectives why they are spending their time assisting people with housing issues, sign-posting them to counselling, etc when this work is not linked to performance indicators’, said one police officer. Another said, ‘If the police were assessed on the “difference they had made to the individual’ they would come out much better.”

7/3

We heard, 'Vulnerable people's capacity to consent to sex is a massive issue – this issue needs to be picked up on by the police,' and, 'Police teams need to work in the same offices as health, the CPS, specialist social workers, housing, etc – need multi-agency teams.'

Responding to victims reporting rape and investigating their cases is not all the police have to deal with. Unlike the prosecutors, the police have a wider role. They do not just have to concentrate on individual cases and whether or not they can collect the evidence necessary to secure a conviction in a courtroom. They must play a leading part in public protection by protecting all – and particularly the vulnerable victims, who are likely to be victims more than once – from further harm, and they need to work with other agencies to reduce the level of sexual violence overall in their communities.

The police documents and manuals that we have studied which set out the requirements for a 'good' rape investigation and the victim care that goes with it show that the demands are high. The initial investigation is very time consuming and detailed. To keep the victim informed and involved is essential. There may be a range of social and welfare needs that come to light as the case progresses that should not be ignored. A police officer needs to be available whenever the victim wants information or reassurance. It is clear that the police do not have the resources to handle these cases alone, and they need to work closely with others to ensure help and support for victims.

We heard from the police forces we visited that liaison groups and committees had been set up which brought the police together with a range of other bodies which have responsibility for providing a response to or support for victims of rape, including the local health service, the CPS, the local authority and representatives from the voluntary sector. The advantages of this collaborative, cross-agency working were many. The following case study illustrates the benefits of a partnership approach.

Box 10

A woman with three children, who had reported sustained domestic abuse in the past, refused to support a prosecution. The prospect of leaving her home and being re-housed in a refuge, coupled with pressure from her partner, ensured that there had been no convictions against him in the past. On the last occasion physical abuse was reported, the victim had been dragged from her bed and battered with a bat while one of her children lay sleeping in the next room. On that occasion, the victim disclosed that she had been raped by her partner.

The multi-agency group as a whole helped in many ways with housing and victim support. Eventually after being charged with witness intimidation against his ex-partner the suspect pleaded guilty to the full facts of rape and assault as alleged by the victim, and was sentenced in June 2009.

The prosecution was successful because of the assistance made available to the sexual offences team through the multi-agency partnership. The partnership comprised the CPS, police detectives and case builders, Victim Support volunteers, representatives from the Sexual Assault Referral Centre and two local authority representatives, one leading on alcohol and drug services and the other on housing services. This way of working ensures that the police, along with other interested parties, deal with every aspect of victims' lives which affect their ability to sustain a prosecution.²⁰

In our view such partnership working is essential if the responsible authorities within a local area are to take a strategic approach to protecting people, preventing such offences from occurring and providing a service which meets the needs of rape victims in the short, medium and long term. We learnt that the challenge for most partnerships of this kind is to ensure the right participants are around the table and involved in (and therefore have ownership of) the decisions that are made. It is essential in our view for such partnerships to involve at least the police, the CPS, the local authority, someone from the local health body (i.e. the primary care trust) and a representative from the local SARC and/or a representative from a local voluntary sector organisation providing services to victims of rape.

²⁰ Example from Blackpool Community Safety Partnership (CSP), sourced from the Local Government Information Unit.

We believe such a way of working demonstrates an understanding that a criminal case will represent but one part of the support needed for a victim of rape, and provides for that at a strategic level. Such an approach will assist agencies to focus on the importance of patterns in a local area and look at the relationship between rape and the night-time economy of pubs and clubs and the targeting of particular groups of vulnerable people. This is an area of work which calls for a wider strategy in the area which considers the resources available, and balances the focus on achieving a criminal justice outcome and protection where this is an issue with the other outcomes that are important to a victim of rape.

We recognise that there are a number of existing local arrangements in place, such as Local Criminal Justice Boards and Community Safety Partnerships. We do not wish to be prescriptive about the types of local arrangements needed, but are of the view that local arrangements should aim to bring together health, the voluntary sector, local authority safeguarding services, the police, the Crown Prosecution Service and Her Majesty's Courts Service to focus on rape. We therefore recommend a suitable arrangement should be put in place, bringing together representatives from these organisations, to create an effective governance structure for the handling of rape complaints and to enable issues to be brought to a multi-agency forum where action can be taken.

Measurement and intelligence-gathering

But what if a victim decides, for whatever reason, to shy away from a prosecution? What more can the police do? Clearly, there would be a strong argument for keeping whatever evidence the report of rape gives the police for intelligence purposes. If similar cases are reported to that force or another, it may be possible to identify a sexual predator or perpetrator. The police can also keep the door open should the victim have a change of mind. At the very least, knowing how and why rape occurs and is reported is valuable information that can teach the public and professionals alike what kind of rape comes to the attention of the police. This preventative approach, which would support the work of a multi-agency partnership as described above, was supported by many of the people we heard from. 'Other prevention work – i.e. a mapping exercise of where rapes are starting or where predatory males are targeting – building this information into the IT system enables more analysis around locations and can target prevention strategies accordingly.'

The case of John Worboys is a classic example of how information was not used intelligently. The Independent Police Complaints Commission (IPCC) report into the handling of the Worboys case found that 'patterns of behaviour may well have become apparent sooner had police shared their intelligence'. The IPCC report recommended that, in appropriate cases where there is a high risk to the community, police should consider sharing information with local agencies, in order to promote public safety and prevent and detect offences.²³

We understand that the National Policing Improvement Agency provides key computer technologies to assist forces with tracking intelligence on sex offenders and their offences. We further understand that the mechanics of capturing this intelligence on a national basis do exist. We therefore recommend that the National Policing Improvement Agency takes steps to ensure that all police forces are aware of these ways of capturing intelligence.

Measuring performance

There have already been two very useful reports on assessing police performance in respect of responding to and investigating complaints of rape which looked in detail at a sample of cases.²⁴ **We recommend, for the 2010 thematic inspection to be carried out by Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, a different approach to the one adopted for previous thematic inspections. Specifically we recommend that forces are assessed against the following:**

- Those reporting are treated well, i.e. victim satisfaction.
- Local arrangements are in place so that the many people who report, where reporting is part of a pattern of abuse in their lives, are linked in to other agencies.
- Good practice in the collection of intelligence material is in place.

Conclusions

The way the police work with rape complainants is crucial to the outcome and to the way the victim feels the system has responded. The police really are at the front line. The changes some forces have made are an indication of what can be done and how high quality the response to a rape victim can be. What we saw in the police forces we visited with specialist teams was another development, an understanding of the need for a more strategic response that goes beyond each individual victim to look at patterns, locations, and particularly vulnerable groups.

It was put to us by a senior police officer that 'the way forward was for all agencies to work together towards a common action plan with common goals'. At the very least, police should be able to account for what happens to the allegations reported to them. They should know whether these reports of rape show that some people are more vulnerable. They should be able to use this information locally to work together with other agencies and to promote better public awareness of rape and better prevention.

Chapter Three

Taking the case to court

'Decisions about which cases to prosecute need to be sound. This is an important responsibility for the State. It must have in place sound processes guaranteeing fair investigations and sound charging decisions. This is an integral part of justice.'

Sir Ken Macdonald QC¹

The court is where justice is done

Much attention in the discussion of rape cases focuses on what happens in court. Rape is normally tried in the Crown Court²¹ and always by a specially trained judge. If accused persons plead guilty then they come to court for sentencing. If they deny the charge then the case will be heard before a jury. The trial in rape cases is a controversial area because of the position of the complainant and the ordeal that the trial process can represent; 'being raped all over again' is the description often heard.²² In this chapter we report on what victims and those who support them have told us of their experience of going through the court process. We also look at what happens in court, the changes that have been introduced over the years to make the experience less gruelling for complainants, the information on how many cases are tried where the defendant is convicted, and the role of the judge and the jury. We were greatly assisted in our work by Her Majesty's Crown Prosecution Service Inspectorate, Crown Prosecution Service (CPS) staff, many prosecutors in the field and a number of judges, and we are grateful to them.

²¹ An offence of rape can be tried in the Youth Court, if not specifically found to be a grave crime that should be tried in the Crown Court.

²² Annex A sets out the requirements for a rape trial as derived from international law.

The role of the Crown Prosecution Service

The CPS is the body responsible for prosecuting cases in court.²³ In our legal system it prosecutes on behalf of the State and in the public interest. The prosecutor is not the lawyer for the complainant, facing up to the lawyer who represents the defendant. The prosecutor has to take a balanced view of the case and disclose its difficulties as well as its strengths. The prosecutor is taking the case on behalf of the State against the defendant and the complainant is the main witness for the prosecution. The prosecutor may even decide to proceed with a case when the complainant withdraws the complaint.²⁴

Our review is looking at the way rape complainants are dealt with by public authorities, including the CPS. The prosecution has a very important role and what they do is vital to the outcome of a case. So what should we be expecting from the CPS? Is it doing the right thing for complainants if all its cases end in a conviction? Or is it doing well when the number of cases that go forward to court increases because it is listening to the public debate about rape and taking cases that are more difficult to prove?

Tim Godwin from the Association of Chief Police Officers described this dilemma in relation to a different offence, burglary, in his evidence to the House of Commons Justice Committee: 'An example of [conflicting performance regimes between the Police and the CPS] would be lawyer A with 100 burglary files who charges all of them and gets 60 convictions and lawyer B with the same number of burglary files who charges 10 and gets 10 convictions. For the Police Service lawyer A is the better lawyer; for the CPS lawyer B is the better one because at that point it is based on conviction rates.'²

Our experience suggests that some rape complainants would also take the police view and prefer lawyer A.

²³ The CPS makes decisions in accordance with the Code for Crown Prosecutors which sets out the criteria on which decisions to prosecute are based. The first stage is consideration of the evidence. The CPS must be satisfied that there is enough evidence to provide 'a realistic prospect of conviction' and whether or not the evidence is reliable. If the case does not pass the evidential stage it must not go ahead. If the case does pass the evidential stage, then Crown Prosecutors must proceed to the second stage and decide if the case is in the public interest.

²⁴ In our visit to a Crown Court in January 2010 we were able to observe such a case.

Would the CPS be acting in the public interest if it pursued more cases where the evidence is weak in order to give the complainant 'a day in court', as some who gave evidence suggested to us they should do? If it did, then it is argued that the CPS would not be complying with the Code for Crown Prosecutors³ which puts the evidential test first and requires the public interest to be considered thereafter.

Is it part of the CPS's good performance that complainants should feel they were respected and that someone did the best for them even though the jury does not convict the defendant? If the number of convictions is too narrow a criterion for prosecution success, then what is the measure to be? These are difficult questions for public policy, especially in a time of scarce resources, and we come to some conclusions about them later in this chapter.

The role of the prosecutor as acting on behalf of the State is a difficult one for complainants. Many victims and those who work with them told us how difficult they found it and the published research has this as a constant theme.⁴ Rape complainants talk about 'my barrister' and find it hard to understand why they do not have more contact with 'their barrister' before the trial. Clearly it can seem very unfair that the accused person has a defence lawyer whose role is to fight for the defendant using all the advocates' skills to comment on and undermine the prosecution's account in order to raise, in the mind of the jury, doubt about the defendant's guilt, while the prosecution barrister does not have that role in respect to the complainant.

In some countries rape complainants can in certain circumstances, and for some parts of the proceedings, have their own lawyer, and we look at this in more detail in Chapter Four, pages 97–98.

Complainants' views of their involvement with the CPS

We heard some positive and some negative views of the CPS from complainants.

'I still do not understand why they declined to prosecute,' said one. 'This service needs to become more open and less defensive in decision-making.' 'Basically, you're just there for their own purposes. They don't have any interest in you as a victim.' More positively, one response from an organisation that helps victims, was: 'In our area they seem to be really interested in making changes and working with us to best support survivors.'

The points raised by those who submitted evidence were mainly about communication. 'Better communication with the victim, such as special measures meetings, special measures progress, a pre-trial meeting with the advocate' was one suggestion. 'The CPS should write to complainants and offer a meeting where charges are dropped. This letter should happen in ALL allegations of rape, including where the case is proceeded with.'

We also received a suggestion that there should be a special measures meeting between the complainant and the CPS reviewing lawyer to discuss the measures for court rather than doing this through the Sexual Offences Investigation Trained Officer (the police officer dealing with the case). This would have the benefit of 'putting further communications to and from the CPS via the police in context'. 'Several meetings cannot be accommodated as it might allow defence allegations of coaching the witness. However, one meeting would have the added benefit of allowing complainants to feel they are not disadvantaged compared to defendants who have the opportunity to forge a relationship with their individual barristers.'

A CPS lawyer who wrote to us agreed. 'For my part, I offer all the complainants I deal with the opportunity to meet with me prior to trial and can provide examples of occasions where this has proved invaluable to the quality of a complainant's evidence and to their confidence in the criminal justice system.'

The strong view that communication is very important to complainants going through the process is one that we share. Whose responsibility it is and how it can be done in a way that is consonant with the legal process is a matter we address further in Chapter Four.

In this connection we particularly commend the booklet produced by the CPS, *CPS Policy for Prosecuting Cases of Rape*,⁵ which explains the way the CPS deals with rape cases. It gives advice on what the CPS does, how rape cases are prosecuted, and what complainants can expect from the CPS. The booklet is designed for use by those who support victims of rape, either professionally or personally. The booklet also provides useful information for complainants and witnesses and is very accessible in its language and presentation to those not trained in the law. It sets out clearly what can be expected from the CPS, namely early consultation between the specialist prosecutor and the police, the offer of a pre-trial interview between the complainant or witness and the prosecutor, and informing complainants in writing if there is

insufficient evidence to bring a prosecution or if the case has been dropped and why. It gives complainants and those who support victims a solid basis for expectations of a level of treatment which CPS staff will have to try to satisfy.

We recommend the booklet *CPS Policy for Prosecuting Cases of Rape* should be widely available to all victims and witnesses. It should be available to all victim and witness units, Independent Sexual Violence Advisors, Sexual Assault Referral Centres and Rape Crisis Centres, and should be given as a matter of routine at the appropriate moment to all rape complainants who have decided to report the rape to the police. The Crown Prosecution Service should ensure the booklet is kept under review and regularly updated.

Changes in prosecution policy regarding rape cases

The way the CPS deals with rape cases has changed considerably in recent years as a response to the report of the 2002 inspection by Her Majesty's Inspectorate of Constabulary. That report found failings in the work of the CPS in dealing with rape cases, specifically that:

- rape cases were not always allocated to specialist prosecutors, and prosecutors did not always take advantage of opportunities to learn from unsuccessful cases;
- cases were not always analysed effectively, leading to incorrect charges sometimes being laid;
- the efficiency and quality of service to the complainant varied considerably between areas where there were enough caseworkers assigned and there was continuity of prosecutor and those where there were not;
- there was inconsistency in the information provided to victims about the progress of the case, and the practice of counsel and caseworkers making personal contact with victims at court was variable; and
- the national guidance for prosecutors was in need of updating and expansion.⁶

The report made a total of 18 recommendations and three suggestions to improve:

- the investigation of rape cases by the police;
- the guidance and training for both police and prosecutors;
- the quality of advice, decision-making, case preparation and presentation at court by prosecutors; and
- the treatment of victims and witnesses in cases involving allegations of rape.

Measures are now in place that aim to implement these recommendations. In 2008 the CPS and the police signed up to a joint national protocol⁷ that sets out best practice and policies in the investigation and prosecution of rape cases. There are now specialist rape prosecutors in each of the 42 CPS areas. The rape specialists have compulsory training that emphasises building the strongest possible cases and focusing on victims. Outside experts are brought in to talk about the nature and extent of the forensic medical examination and the effects of rape, including rape trauma syndrome. If a rape prosecutor receives a rape report and decides that the case is not strong enough to proceed, a second opinion must be sought from a second rape specialist.

In addition, every CPS area has a nominated specialist rape prosecutor to act as a rape co-ordinator. The role of the rape co-ordinator is to monitor rape cases within the area, share good practice with other area rape co-ordinators, liaise with other parts of the criminal justice system and the voluntary sector, and be a source of expertise.

The rape co-ordinators are now also responsible for or liaise closely with the CPS domestic violence co-ordinators. This liaison is crucial because in many rape cases the defendant is the partner or a family member of the complainant.

In the course of the review we met several specialist rape prosecutors and were impressed by their commitment and drive to improve the approach taken by the CPS when prosecuting rape cases. One of them told us, 'As prosecutors we look for evidence that can build the case. It's not always easy because it's an offence that occurs in private so we look for supporting rather than direct evidence.' Another commented on the 'importance of the CPS being involved at an earlier stage in order to improve the evidence base and case building', and another highlighted that 'official belief can help victims'.

The CPS policy for prosecuting cases of rape requires the specialist prosecutor to talk to the police as soon as possible about a case to ensure that all possible avenues of evidence are explored and that the correct charge is identified. Ideally the same specialist prosecutor should be responsible for the case from beginning to end and should work closely with the police throughout.

The figures in the box below show there has been some progress. The proportion of convictions in rape cases is higher. In a larger proportion of the cases coming from the police a suspect was charged.

Box 11

Data from the work of the CPS in rape cases for the three years March 2006 to March 2009

- Between March 2006 and March 2009 over 10,200 defendants were prosecuted for rape; 3,264 in 2006/07; 3,503 in 2007/08 and 3,495 in 2008/09.
- Convictions rose from 55 per cent in 2006/07 to 58 per cent in 2007/08 and remained at the same level in 2008/09.²⁶
- 99 per cent of defendants were men in 2006/07, 2007/08 and 2008/09.
- 88 per cent of victims were women in 2008/09, 1 per cent more than in 2007/08.
- The proportion of rape cases in which the CPS took a decision to charge increased from 30 per cent in 2006/07 to 39 per cent in 2008/09.
- Unsuccessful prosecutions remained unchanged at 42 per cent in 2007/08 and 2008/09.
- Guilty pleas remained at 35 per cent in 2007/08 and 2008/09.
- Prosecutions dropped by the CPS, including discontinuances* and those in which no evidence was offered, fell slightly from 24 per cent to less than 23 per cent in the period March 2006 to March 2009.⁸

* A discontinuance is formal notice by the prosecutor that there is insufficient evidence at this stage to proceed on a charge. It is possible to prosecute if further evidence comes to light.

²⁵ Where a defendant has been charged with an offence of rape but convicted of another (including a less serious offence) CPS data counts that conviction as a conviction of someone charged with rape.

Through our call for evidence we heard little criticism of the policies the CPS was adopting. However, we did hear that there was still much to be done to turn the policies into reality everywhere. We heard that 'CPS rape leads are given the title of experts but are given no extra resources or time – they have no more resources than doing everyday court cases, making it impossible to keep up with demand. The time needed for a rape case is much higher than a case of burglary, for example (especially when you consider the cases which involve complainants with mental health issues).'

It seems likely that this and other evidence we received suggesting that the changes have not yet been translated into practice on the ground may be correct, as in June 2009 the Director of Public Prosecutions felt the need to write to all Chief Crown Prosecutors emphasising the importance of taking a decisive lead in improving CPS performance in rape cases.⁹ He also announced the introduction of specialist training for all Chief Crown Prosecutors on prosecuting rape, including a session on myths and stereotypes and the psychological effects of sexual trauma on victims. Subsequent reports published by the Chief Inspector of the CPS on performance in London suggested that there was still more to be done.

The Chief Inspector of the CPS said of Lewisham that 'in 2008/09 the borough handled 35 rape cases. Non-specialists are dealing with cases (against CPS policy guidance) albeit with the opportunity to consult colleagues.'¹⁰ In Tower Hamlets, he said, 'We examined five cases of rape. In three of them a rape specialist had dealt with the case throughout its life but in two, continuity of prosecutor was not maintained. There was evidence to show that the decision to drop a charge had been endorsed by a second specialist in only two of four relevant cases.'¹¹

In 2008 the Director of Public Prosecutions signed a revised Code of Practice, permitting prosecutors to interview witnesses for the purpose of assisting a prosecutor to assess the reliability of a witness's evidence or to understand complex evidence, and to explain the criminal justice process and procedures to the complainant or witness.

These interviews are known as 'pre-trial interviews'.¹² Presumably these are not often used, as in his letter of June 2009 the Director of Public Prosecutions told prosecutors that when they are reviewing cases they should actively consider holding a pre-trial witness interview and record reasons for their decisions.

It was suggested to us by some that the CPS had become nervous about deciding not to take a rape case, and would prefer to take it and see it collapse for lack of evidence rather than turn it down. We heard that on occasion the CPS seems to prosecute rape cases where the evidence is so flawed that the prosecution is doomed from the outset.

This, it was said, was doing the complainant no favours and in the end made the ordeal worse. It was put to us that the CPS is under great pressure from politicians and pressure groups. However, others suggested to us that it was worth making a greater effort to muster the evidence in difficult cases as some of them would succeed and complainants would have 'their day in court'.

Some of the police officers we met were quite vocal in expressing their disappointment with CPS decision-making. A number of police officers blamed targets. The police were working towards one set of targets, they claimed, which required them to charge a certain number of suspects, while the CPS's 'unsuccessful outcomes' target influenced CPS decision-makers to take forward to trial only cases with the strongest evidence. This conflict of targets was very unhelpful, we heard.

We agree that measuring the performance of the prosecution is difficult. Targets and key performance indicators often distort performance and put a priority on what can be measured easily, even when it is not the most important outcome.

We agree that the current performance measures applied to the police and the CPS are likely to result in unintended consequences. We are not in any case convinced that centralised performance measures are efficient.

We learnt that joint police/prosecution performance measures are currently being considered by the cross-government Rape Monitoring Group. **We welcome this development and recommend this work is completed with all speed in order to remove what are seen to be barriers to effective joint working between the Crown Prosecution Service and police.**

The trial

We also heard some criticism of the CPS from judges. They felt that cases are sometimes not properly prepared. It was suggested that the CPS lawyers are often not ready for what might be disclosed about the complainant and do not deal with it well when the defence lays out such material. A large number of those we spoke to raised concerns about information that is not disclosed to the defence lawyers. When they find out about it during the trial, and quite properly use it in their cross-examination, both the prosecution and the complainant are not prepared to deal with it.

An example we were given was of an allegation by a 19-year-old that her father raped her when she was 17. She made the allegations two years later. She had gone into care and showed signs of being very damaged. She herself had assaulted staff at the home and had made complaints of sexual assault before. The CPS discontinued the case because the complainant's care documents would reveal this history which would, in their view, make her an unreliable witness.

We were told that it was the CPS's responsibility to have foreseen this and sought a solution, since the Attorney General's guidelines on disclosure were perfectly clear and applied to social services files, medical evidence and records, school records and previous allegations by the complainant.

Concern was expressed by a range of people we met that evidence is disclosed and used by the defence in a trial, for example CCTV or mobile phone evidence, that contradicts what is in the complainant's interview and the complainant is quite unprepared for this. The result can be that the complainant is discredited.

A judge told us: 'If there were always a proper investigation and evaluation by the police and the CPS of all the evidence uncovered in the initial stages of the investigation (not just the parts which support the prosecution case), I am confident the conviction rate would be improved in two ways. First, if the investigation reveals a serious flaw in the prosecution case the decision should be made that the prosecution should not proceed. Second, if the investigation reveals a sensible answer to or explanation for the apparently damaging evidence, the chances of obtaining a conviction will be greatly improved.'

The CPS has been aware of the problems about disclosure for some time and of varying levels of performance in different CPS areas. In December 2009, the Inspectorate published a report on disclosure practice which concluded: 'There is some headway still to be made before the CPS handling of disclosure of unused material achieves a consistent and acceptable level of performance. Inspectors consider that there has been a trend of improvement but that progress is slow.'¹³

We welcome the review. It is encouraging that the CPS is aware of these problems.

It was suggested to us, and we agree, that these problems could be minimised if the CPS were to aim at proper ownership of cases. If a named lawyer had the responsibility of running and preparing each case with a named caseworker working under his or her direction, problems with disclosure could be reduced. The CPS should nominate the trial counsel at an early stage and have targets for responding to correspondence. The defence statement should be given early consideration and a clear response should be sent stating what disclosure will and will not be made.¹⁴ This would help to resolve some of the difficulties that cause problems in the courtroom and erode the confidence of complainants in the process they are going through.

We accept that in very busy court centres there are great difficulties in ensuring individual ownership of cases. Nevertheless it is desirable and we recommend that the Crown Prosecution Service takes steps to ensure that its stated policy of individual ownership of cases is applied so that cases are managed and progressed effectively.

We also recommend that the Association of Chief Police Officers, the Crown Prosecution Service and the Local Government Association initiate discussions to resolve difficulties about disclosure of local authority third-party material, with a view to ensuring all local authorities adopt the protocol between the Crown Prosecution Service, police and local authorities on the exchange of information.

The evidence from the complainant

Many judges raised concerns with us about the nature and quality of the video interviews that the police conduct with the complainant when the rape is first reported.

We discussed this in more detail in Chapter Two. Whilst the concept of achieving best evidence by conducting a video-recorded interview was warmly supported by the judges we spoke to, there were doubts about practice and the need to use the recording method so widely. In the trial the recording is played to the court (and the complainant) rather than the testimony being given by the complainant in response to questions by the prosecution. A transcript is also available.

It was suggested that cases might be prosecuted more successfully if some complainants could give their evidence live with the protection of screens. Many judges believe that live evidence has more impact on juries. **Our recommendation with regard to the use of video interviews as evidence in chief is set out in Chapter Two, pages 69–70.**

Protecting the complainant in court

We received a wealth of evidence on what are called special measures. Special measures assist vulnerable witnesses or those likely to be intimidated by giving evidence in court by making the court experience easier. Rape complainants are automatically presumed to be eligible for special measures unless they inform the court they that they do not want to be eligible.¹⁵ The measures can be screens which prevent the complainant from being seen by the defendant, giving evidence via a video link from another room, or giving evidence in private by clearing the public gallery.

The complainant can ask the police for these measures, but the CPS has to apply to the court for them to be allowed and the judge makes the final decision.

The use of special measures was heavily criticised by many with considerable experience of jury trials. They were regarded as often being detrimental to the complainant's case. 'Juries prefer theatre to film,' said one legal expert. It was felt that complainants are often not given a full explanation of the implications of the decisions they are making on special measures. But complainants may feel they need some kind of support or protection in order to proceed.

The jury decides

In a contested case it is the jury that will decide whether or not the defendant is guilty. We received a considerable amount of comment on juries and their beliefs. Research into the thinking of juries is not permitted, but nevertheless much has been written about what jurors might have in their minds and research that simulates a jury at work has been done.¹⁶ It is suggested that jurors may come to hear a rape case knowing very little about rape and its effects, and believing some or all of the myths we discussed in Chapter One. They will hear the defence trying to pick holes in the evidence given by the prosecution. They may assume that all rape victims fight back, have injuries, report the crime straight away and are obviously deeply distressed, although none of these assumptions is accurate.

A specialist rape prosecutor told us, 'You can forgive juries for finding it hard to convict given the burden of proof and when the defence works so hard to discredit the victim's case. There is a lot of general misunderstanding about trauma.'

It was suggested to us that the generation gap may affect the way juries see the case before them. For example, a complainant may text the accused and it is difficult for a jury to understand how this is compatible with making an accusation of rape against that person. A prosecutor told us, 'Some of the things we are asking juries to believe take place in our society is a bit of a shock.' The perception of women who get drunk is very negative, we heard.

However, we were also able to look at the data on convictions by juries in rape cases. These do not suggest that juries are particularly unlikely to convict rape defendants. The information on jury conviction rates, based on all 4,310 jury verdicts for rape from October 2006 to March 2008 across all courts in England and Wales, finds that rape does not have one of the lowest jury conviction rates. It has been suggested to us that female victims of rape are often disadvantaged by the stereotypical views held by members of the jury. However, the research found that juries convict 54 per cent of the time when cases involve female complainants. In addition, where the female complainant is aged between 13 and 15, the conviction rate increases to 62 per cent. With an overall jury conviction rate of 55 per cent, the research finds that juries actually convict more often than they acquit in rape cases, and that other serious offences such as attempted murder have lower jury conviction rates than rape.¹⁷ The table overleaf sets out the jury conviction rates for rape and other specific sexual offences.

*Jury conviction rates for sexual offences in the period
1 October 2006 – 31 March 2008²⁶*

Specific sexual offences (by gender and age of complainant)		Total number of jury verdicts	Jury conviction rate
Rape (of a female)	16 or older	2,136	47%
	under 16	1,674	62%
	under 13	224	58%
Rape (of a male)	16 or older	86	77%
	under 16	111	51%
	under 13	81	75%
Sexual assault (of a female)	over 13	1,667	46%
	over 13 with penetration	556	43%
	under 13	1,020	59%
	under 13 with penetration	220	70%
Sexual activity (with a female)	under 16 with penetration	690	56%
	under 16 no penetration	289	48%
Indecent assault (on a female)	16 or older	376	62%
	under 16	1,419	66%
	under 14	2,920	65%
Indecent assault (on a male)	16 or older	49	76%
	under 16	314	69%
	under 14	442	62%
Total		14,274	

The role of the judge

The judge has to ensure that the trial is fair and must help the jury to understand the proceedings so as to reach a verdict. It is a feature of the system in England and Wales that only judges who have what is called colloquially a 'sex ticket' are permitted to hear rape cases. Latest figures show that of the 686 circuit judges of England and Wales, 496 have a 'sex ticket' with another 200 or so part-time judges also authorised to hear these cases.

²⁶ The figures in the table represent all jury verdicts for these offences in all Crown Courts in England and Wales in the period stated as contained in CREST (the Crown Court Electronic Support System). The figures were provided to us by the author of the Ministry of Justice report *Are Juries Fair?* (2010) and represent a further breakdown of the jury conviction rates in sexual offences cases contained in the original report.

To get a 'sex ticket', judges must attend a three-day course which covers topics such as rape trauma, medical and forensic science, and legal and procedural issues, including the competence of child witnesses. Another element of the seminar is the opportunity for judges to discuss case studies that raise topical issues relating to procedure, evidence and sentencing. The expectation is that judges will continue to attend such seminars every three years, and it is for the presiding judges to monitor that.

How far judges can become involved in giving explanations to the jury about rape and how victims respond to rape has been a subject of much discussion over a long period of time. In a landmark case in the Court of Appeal (*R v JD*¹⁸), three Appeal Court judges ruled that 'the fact that the trauma of rape can cause feelings of shame and guilt which might inhibit a woman from making a complaint about rape is sufficiently well known to justify a comment to that effect'. The judges went on to say that a formula given by His Honour Judge Peter Rook QC in a training lecture to judges provides 'an example in very general terms of an appropriate form of directions which should be tailored to the facts of the case.' That formula suggests the judge may say something along these lines to the jury:

Experience shows that people react differently to the trauma of a serious sexual assault. There is no one classic response... You may think that some people may complain immediately to the first person they see, whilst others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean it is a false complaint. That is a matter for you.

This decision was welcomed by the judges we spoke to in the course of this review. A judge told us, 'There is a danger that judges will stray into giving evidence but this is the fine line we must walk if we feel it is necessary, as it is in some cases.' As we have explained in Chapter One, the question of rape myths is a salient one. There are strong feelings among many people that these myths have undue weight as a case goes through the criminal justice process. We warmly welcome this move towards providing an appropriate form of direction to the jury as developed by His Honour Judge Rook and the Judicial Studies Board.

Conclusions

We reach the same conclusion about the way the CPS responds to complaints of rape as we did about the police. We have not made a specific recommendation to the effect that the CPS should aim to meet the standards it sets for itself in dealing with rape complaints because we assume that is already what they are trying to do. We do say, however, that the policies the CPS has devised seem to us to reflect the best that can be devised. The work of seeing them implemented needs to be continued energetically.

There is a strong view, which was put to us by some commentators, that many more cases should be prosecuted and that the CPS decision-making is flawed. We are not convinced by this argument. Our view is that taking cases where the evidence base is clearly identified as weak by well-trained and dedicated professionals is not a good use of public resources. It is also not in accordance with the Code for Prosecutors, which requires a realistic prospect of conviction.¹⁹ We respect the idea that some rape complainants regard 'a day in court' as a worthwhile outcome, but we are not able to recommend such a policy. Scarce prosecution resources should be focused on prosecuting well the cases where the evidence base is strong but needs considerable and dedicated case-building.

The debate about conviction rates and whether they are at an acceptable level has played a large part in discussions about how rape is dealt with. The data we include in this report show that conviction rates are at least comparable with other offences where the jury has to establish a state of mind rather than a fact. The question with rape is not whether sexual intercourse took place and if the defendant was a participant. That is rarely what is being argued. The question is whether the complainant consented to sexual intercourse and the defendant reasonably thought he or she did.

In such cases the jury has a difficult task and it is not easy to see how the conviction rate could reach a much higher level within the criminal justice system as it currently operates.

For those cases where prosecution is not proceeded with, there are still important outcomes to be obtained by the CPS. Measures of success should be about the level of respect with which the complainant was treated and the access to services that will protect the complainant. We have commended the CPS publication *CPS Policy for Prosecuting Rape Cases* as a useful framework for measuring performance in terms of seeking high standards of communication, explaining to the complainant what is happening and taking into consideration how difficult matters should be communicated to vulnerable people who have suffered a serious harm.

The role of the prosecution raises a number of questions about caring for victims. Going to court is an ordeal for anyone, however confident they may feel and however small their role in the proceedings. For a complainant in a rape case the appearance in court will often be the culmination of many months of anxiety and fear, a reminder of a terrible event, and bring the trauma of being in the same room or the same building as the defendant. In addition, the complainant faces not knowing what the defence will argue and how well the prosecutor will understand and present the case. This does not lead us to argue for changes in the burden of proof or in the jury system. It leads us to the conclusion that the way victims are treated can be improved. We turn to this matter in the next chapter.

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Chapter Four

Beyond criminal justice – wider policy challenges

'We need to reconsider our definition of "justice" so it is not just for punishing a perpetrator and preventing further crimes.'

Sara Payne, *Redefining Justice*.¹

People not process

Many aspects of the criminal justice process are difficult for rape victims, as Chapters Two and Three show. Reporting the crime requires the victim to go through processes that are necessary but nevertheless distressing and humiliating, at a time when being comforted and supported would be more welcome.

The preparation of the case and court process is necessarily focused on the strength of the case, the likely defence that will be mounted and how to deal with it. Decisions will have to be made that are about presenting a successful case. How far they promote the welfare of the victim is not the main consideration.² The use of special measures such as giving evidence via a video link is an example. The victim may well want all the special measures that are available. The prosecutor may feel that for the success of the case it would be much better for the jury to be able to see the victim in court. Even with outstandingly good victim care there will be much that to the victim will seem irrelevant, painful, or even incomprehensible.

In this chapter we turn to look at rape victims in the wider context, as people who have been harmed and whom society has a responsibility to help and to protect, aside from the operations of the criminal law. As Sara Payne, the Victims' Champion, said in her report *Redefining Justice*, 'victims need to be considered in terms of the total impact of the crime committed against them and their individual needs arising from this impact. This is in contrast to the current system that tailors services to victims in terms of the type of offence committed against them and how to successfully apprehend the offender'.³ The Justice Select Committee, in its report on the Crown Prosecution Service (CPS) said, 'Victims want to be treated as people, which often does not happen in a criminal justice system that is driven by process'.⁴

We are concerned here not only with those who report rape but all those who suffer it whether they report or not, as well as those who are at risk of repeat victimisation. We are concerned about those situations which increase the risk of rape occurring. So in this chapter we look at victims' experiences and the support and services they need, at compensation, and at protecting those who are particularly vulnerable.

The victims' lawyer?

We noted in Chapter Three the misunderstandings victims can have about the criminal justice process and their disappointment about their relationship with the prosecutor, who seems not to be representing them as the defence lawyer represents the defendant. This can seem very unfair. Giving evidence to the Justice Select Committee of the House of Commons, Gillian Guy, Chief Executive of Victim Support, described victims and witnesses asking the Victim Support service: 'When am I going to meet my barrister? Why have I not got the same access to my barrister as the defendant has?' and, 'Why do I have to deal with so many different agencies, whereas the defendant only has one advocate that they have to channel their process through?'⁵

This point was also made to us by many organisations we spoke to, and was raised by Sara Payne in her report on the views of rape victims. She said, 'Victims frequently expressed anger that their place in the criminal justice system is effectively as a witness in their own case. Many were disappointed that the prosecution represents the Crown, rather than the victim, in contrast to the defendant who has his own legal representation.'⁶ We can see the force of these arguments.

We therefore looked at some other jurisdictions where victims have their own lawyer, to see what we could learn. In Ireland, the Sex Offenders Act 2001⁷ introduced a limited form of separate legal representation for complainants in rape cases where, in circumstances where the accused wishes to refer to evidence about the prior sexual history of the complainant (which under Irish law may only be referred to at trial with the leave of the judge), the complainant has an entitlement to separate legal representation for that application process and his or her counsel will have a right of audience before the court.⁸

We do not have a great deal of information on how this is working. However, some recent research shows that separate legal representation was used in one in five sexual offence cases before the Central Criminal Court in 2007 and 2008. It also shows that even when the application to hear evidence of previous sexual history is granted, the special legal representative still has a role in assisting the court to limit the scope of cross-examination.⁹

In France the justice system operates on quite different principles from the common law system of England and Wales, so comparisons are not easily made. However, it is worth noting that in France victims can have their own lawyer at the point where two decisions are made – the penal decision as to verdict and the civil decision as to compensation. Victims are entitled to be represented by their own lawyer for both of these decisions.¹⁰ Means-tested legal aid is provided to all victims.

Box 12

[In France] ‘In all criminal trials, there are two decisions to be made; the penal decision as to verdict and the civil decision as to compensation. The victim in all crimes is entitled to become a *partie civile*, and to be represented by a lawyer before the criminal court, in order to seek compensation from the court. This right has been in place in France since 1789, and the representation is state-funded on a means-tested basis. Even if the victim has to pay for her own lawyer, she may seek reimbursement from the defendant if he is convicted’¹¹

When we looked at the role of these lawyers for the victims, it seemed to us that the contribution they made to the victim’s experience was an important one. In France they can call witnesses on behalf of the victim and address the court as to the amount of compensation payable to the victim. In Ireland, although the representation is limited, it represents an important recognition that there are times during the trial process where victims must be allowed to participate in the trial as more than witnesses – in order to protect their own rights and interests. These ideas are worthy of consideration and we are glad we were able to include these details in this report. We hope they will stay on the agenda.

Discussing legal changes was outside the scope of our review. However, it has been a matter of regret for us that we have not been able to consider whether there is scope for action by rape victims within the civil justice system or to look at any other ways in which some redress for or recognition of the harm done can be signalled. As we have made clear in Chapter One, it seems likely that there will always be a large number of these cases that will not go through the criminal justice process. The figures from other countries with similar legal systems to our own bear this out.¹² We hope that discussion on these matters will continue, and that the victims' organisations which have been such advocates for reform over the years will feel that it is still worthwhile keeping the debate on the agenda.

The processes in France and Ireland highlight definite benefits that can come to victims from additional support during the legal process, and it is understandable that some would wish to see these ideas considered here. However, it is important to note that at least some of the benefits they bring are being or could be met by our system in other ways. The aspect of the French system where the lawyer can ask for compensation is met in our system by the Criminal Injuries Compensation Authority (the Authority). We discuss the Authority later in this chapter, and make recommendations for improvements to its method of operating.

The support for the victim during the trial given by both the Irish and the French systems, whilst not directly comparable, could be met to a certain extent by much wider availability of an Independent Sexual Violence Advisor, which we also discuss in more detail and make recommendations for later in this chapter.

Support for victims

So what can victims expect from the public authorities involved in their cases? How do we meet the positive obligations we have to treat well, those who have suffered this most invasive of crimes? A range of new measures and initiatives has been developed in recent years, as shown in the box below.

Box 13

Victim Support was set up in 1974 and is the independent charity for victims and witnesses of crime in England and Wales. It contacts over 1.5 million people every year after a crime to offer free and confidential advice.

Witness Care Units were established across England and Wales in 2004 in order to provide victims and prosecution witnesses with a single point of contact for giving support.

A range of measures has been introduced by the CPS to improve its service for victims. These include:

The **Direct Communication with Victims** initiative, operational within the CPS since 2001, sets out how the CPS will communicate directly with victims, in particular where a charge has been dropped, or reduced or increased in gravity.

The **Victim Personal Statement** scheme (**VPS**) which was introduced in England and Wales in October 2001 is intended to give victims an opportunity to describe the wider effects of the crime upon them.

The **Prosecutors' Pledge**, launched in 2005, sets out the support that victims can expect from the CPS. This includes the CPS taking into account the impact on victims or their families when making a charging decision, promoting and encouraging two-way communication between victims and the prosecutor at court; and protecting victims from unwarranted or irrelevant attacks on their character in court.

The **Victim Focus Scheme**, announced in 2007, ensures that prosecutors will offer to meet bereaved families (including relatives and partners) in homicide cases, after charge.

A new **National Victims' Service** was announced in January 2010.

We were able to visit the Witness service in a busy urban Crown Court. We found it to be a very welcoming suite of rooms run by Victim Support, staffed mainly by volunteers, where victims and witnesses due

to appear in court that day are able to wait, get refreshments, watch TV and get support from the trained volunteers.

We welcome these initiatives, which have changed substantially the way victims are dealt with in the criminal justice process. However, those who do not report the offence against them, or whose case is not proceeded with, are less well served.

The effects of the crime may call for a range of social, health and welfare measures. Many told us that it is the failure of a range of agencies to see victims of rape as their responsibility that causes concern. Health and social services agencies tend to assume that if it is a criminal matter, it is not for them.

'Honouring the experience'

Many victims put it to us that, for them, a criminal justice outcome was but one part of the process. 'By having an obsession with the attrition and conviction rates we are putting the criminal justice system at the centre, not the victim,' said a service provider for sexual violence victims. 'Don't expect the justice system to solve the hurt,' said one contributor. Another said: 'success for us is a safe person. Success for the police is a successful prosecution.' 'One of the most important things for a victim is feeling they have been believed, that they have been treated with care and that people have tried', we were told. The Fawcett Society said to us in their evidence that 'the conviction rate is not necessarily an effective measure of the support, safety and justice that women experience.'

Some saw the prosecution process as a therapeutic intervention, regardless of outcome. Someone who works with victims told us that the point of going to court is not necessarily to get a conviction but 'to be believed, to have spoken out and to have broken the silence'. Another said: 'For some people it's vital because it validates and reverses their dependency and breaks the power [of the assailant].' We heard that going to court, regardless of the outcome, 'proves to the victim that they have recovered enough of themselves to face the court and go through the process'. In her report Sara Payne notes that 'where a victim has reported, a conviction matters'. One reason that it matters is that 'the trial is considered an assessment of whether the victim is a liar or not'.¹³

Many said to us that the criminal process is important but as important was getting support and being believed. Processes should be in place

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that are 'about saying we care', or as another witness put it, 'honouring the experience'. 'One of the most important things is to be believed, whether they got a conviction or not. They need to know that people tried and they need to be respected,' was one comment.

One way of treating people with respect is to explain to them fully what is happening, what is going to happen, making it clear that there are choices to be made and asking victims what they would like to do. If the prosecution decides the case cannot go to court, then a full discussion should take place to explain why. Telling them how useful the information they have given will be in assembling intelligence that can be used to protect others is another way of showing respect, and acknowledging that complainants are concerned not just about themselves but also for the common good. As we were told, this enables victims to be treated 'as citizens and part of a bigger system that promotes wider protection for everyone'. It is clear from research that one of the motivating factors in persuading people to report a rape, in spite of the ordeal that will be, is to protect others from suffering a similar trauma.¹⁴

Independent Sexual Violence Advisors

How can all of these important obligations to treat victims with respect be met by public authorities in a way that is sustainable at a time of straitened public finances? Clearly the role of the health services is crucial, and we support very much the recommendations made by Sir George Alberti that the health service should improve its response when responding to victims of rape and sexual abuse by raising the awareness of NHS staff, providing accessible information about the services available, and working with other agencies to ensure appropriate services are available.¹⁵

We are fortunate in this country that since the 1970s we have had Rape Crisis Centres which have provided support and counselling. These were originally for women only, but some now also help men. Their dedicated work over many years to raise awareness of sexual violence against women has led to many of the improvements that we have described in this report. They provide a safe place where victims can go to be supported, listened to and get counselling. Some Rape Crisis Centres run helplines. Others provide victims with information about services they might need to access, such as social housing. They also constitute a 'voice' in a local area, speaking up for the victims of rape, being critical when necessary and working with public authorities to ensure their approach is up to the mark.

There is also the Survivors Trust, a national umbrella agency for 130 specialist voluntary organisations which provide counselling, therapeutic and support services for women, men and children who have suffered rape, sexual violence and childhood sexual abuse. The Trust also provides a collective voice for its members and raises awareness about sexual abuse and rape and its effects.

When we come to dealing with the interaction between the victim, the criminal justice system and all the other essential agencies (such as Rape Crisis Centres) which provide help and support, a major contribution can be made by the provision of Independent Sexual Violence Advisors (ISVAs). What exactly are ISVAs?

The Home Office, which has taken the lead in developing the ISVA service, describes the ISVA role as, 'A pro-active service to victims of sexual violence through risk assessment and safety planning; enabling victims to access those statutory and other services they need; and ensuring victims are kept informed and supported as their case progresses through the criminal justice system.'¹⁶ ISVAs follow the development of a similar advocate role for domestic violence, the Independent Domestic Violence Advisor (IDVA). An IDVA is a specialist caseworker who supports domestic violence victims at risk of homicide or serious harm. IDVAs provide short to medium-term support, and work with other agencies to co-ordinate the overall response. The goal of an IDVA is the safety of the victim and the family. All reports suggest IDVAs have been outstandingly successful.¹⁷ It is therefore logical and to be greatly welcomed that the concept has now been extended to provide support to those who have suffered rape. One voluntary organisation which employs an ISVA told us: 'We have continually excellent feedback about this service and are very proud to host it. It is a government initiative that is working incredibly well.'

We found in every part of the country, and from every organisation, unanimous praise for the work done by ISVAs. These men and women support complainants through the process, whether or not the case goes to trial (and indeed their support is particularly welcomed in dealing with the reactions when it is decided that the case is not going to trial), and afterwards. We found ISVAs based in Sexual Assault Referral Centres, Rape Crisis Centres, and local police stations. There is an accredited training programme for them, developed by the Survivors Trust. We met several of them. They carry a caseload at any one time of between 30 and 50 cases, which seemed to us rather high. They can be men or women, and the people they help can be men or women.

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One woman ISVA told us that 10 per cent of her caseload were men. We met one male ISVA who told us that only a small number of women preferred to have a woman to support them rather than him. It was suggested that a male ISVA can be a positive thing for both male and female victims.

We heard from a counselling organisation that the number of rape victims it saw had doubled in one year as a direct result of ISVAs encouraging victims to seek counselling. We heard that ISVAs reassure victims that they have been believed when a case is not taken to court. ISVAs stay with victims throughout the trial, take them home afterwards, and also tell them the verdict when they have said they would like to hear it face to face.

One ISVA told us about a specific incident when she was called in to help: 'Being an ISVA is different from hour to hour: it's not something where you can write a job description on a piece of paper and say "this is what I do". On Monday I had to go into a Sexual Assault Referral Centre and sit with a police officer who was terrified of telling a 16-year-old girl that she had been raped by someone who had HIV. I was there to support the officer, and the young girl, and that's the kind of thing I am asked to do. I was asked to go down there by a senior officer because he knows me and knew I would be the right person to support the officer. I had to take over being mum to this young girl because her mother completely shut down. The police officer was shaking in his boots because he didn't know what to do. Having someone in place that can do their job well is an asset to the police and the CPS. In my area, they appreciate it, so it makes me more passionate and enthusiastic about my job. I am not fighting a battle with statutory agencies, I'm working with them.'

ISVAs represent continuity for complainants as they progress through the criminal justice process. In some cases this is critical to keeping their confidence and ensuring they do not withdraw. One police unit told us that without the long-term care and support provided by ISVAs, maintaining a victim throughout the whole criminal process, which takes between six and twelve months, would be 'incredibly difficult'. Of course, this is also a task the police are not resourced to do.

Those we consulted were also unanimously supportive of the advocacy role that the ISVA provides in representing the victim to the various public bodies he or she must engage with. It was very important that the ISVAs were independent, not part of a criminal justice agency but trusted by them all.

The ISVA can deal with a whole range of matters that no one organisation would be able to do. For example:

- arranging home security checks on properties, seeing to lock changes and incorporating spy holes;
- sorting out housing problems with the local authority or housing association;
- meeting the social care agencies to establish how to provide adults with learning disabilities with appropriate support; and
- liaising with police forces out of the area when the details of a case span more than one police force.

We heard that ISVAs may have a particularly strong role in assisting young victims through the process. In one police area, three out of ten of the cases going through the system were of victims under 18. However, there was no specialist service for them and they were caught at a difficult age where parents want to know what is going on, but the child is classed as competent to make up his or her own mind. The police recognised they needed a different way of working with young people, and a young persons' ISVA is being piloted.

The sustainability of the Independent Sexual Violence Advisor's role

As an example of a reform to a system that is effective, cost-effective and affordable, the establishment of ISVAs is hard to beat. They help the victim to make sense of the system. They help the police by supporting a victim throughout the investigation. They help the prosecution by supporting the victim through the psychologically gruelling process of preparing to give evidence. They provide a link between the criminal case that is under way and the range of social agencies whose help may be needed. Victims find that an ISVA makes an enormous difference to the way they feel about what is happening to them. Yet ISVAs are not securely funded. The money for ISVAs can currently come from start-up grants of £20,000 from the Home Office, but only to those organisations which can demonstrate sustainability of funding after the start-up grant.

One ISVA we met was funded by a grant from the National Lottery, which classes this vital support to the criminal justice system as a 'good cause'.¹⁸ The patchwork nature of the funding of these posts means that in many instances the support services and host organisations are, we heard, 'preoccupied with bidding for funding, not doing actual work.'

We note the Home Office guidance which states that the purpose of its funding was 'to pilot the concept of ISVAs and provide support while arrangements bed in locally. It is essential that sustainable local sources of funding are secured to maintain the ISVA service in the future.'¹⁹

We have heard nothing but support for the work of ISVAs. It is clear to us that it has been a successful pilot. They have had a substantial impact on the experience of the victims they have supported to date. It is equally clear that such a successful pilot should merit continued funding. We are operating in times of financial constraint, but this is an area of funding which, above all other forms of support, should not be constrained to the detriment of victims reporting rape.

We recommend that Independent Sexual Violence Advisors be seen as an intrinsic part of the way rape complainants are dealt with, as the service that enables the rest to operate effectively and a crucial part of the way the State fulfils its obligations to victims of violence. Funding should be available in all areas where the demand makes a post viable. The service provided spans a number of different local responsibilities across the criminal justice agencies, the local authority and the health service. Therefore the most suitable body to oversee the arrangements seems to us to be whatever arrangement local areas develop in line with our recommendation made in Chapter Two for local machinery to ensure a strategic approach to victims.

Other outcomes for rape victims

We have discussed the system in some other countries where rape victims are able to seek compensation for what has happened to them. In her report *Rape: The Victim Experience Review*, Sara Payne noted that a number of rape victims have concerns about the Criminal Injuries Compensation Scheme (the Scheme). They feel it could be made simpler and more transparent. Sara Payne went on to ask that both the soon-to-be-appointed Victims' Commissioner and the Stern Review consider this issue.²⁰ We are glad to have been able to do this and to make recommendations for improvement.

Providing compensation to victims of violent crime is a much-admired part of the arrangements for dealing with crime in the UK, and a very tangible expression of the State's acceptance of its responsibilities to victims of crime. Victims are entitled to apply to the Criminal Injuries Compensation Authority (the Authority) if they have been injured in an act of blameless violence. This includes cases where no one has been convicted of, or even charged with, that crime. Rather, the standard of proof the Authority applies in assessing applications is the civil standard of proof, the 'balance of probabilities', which means that decisions are based on what is more likely to have happened than not. The Authority does not need to have something proved to the criminal standard of 'beyond reasonable doubt'.²¹

We heard of the beneficial role of the compensation scheme. A person who works within a local Crime and Disorder Reduction Partnership (CDRP)²⁷ to help and support very disadvantaged women in street prostitution told us that the partnership is doing 'surprisingly well' with securing compensation for women working in prostitution who have been violently raped. As she told us, 'the police vice liaison officer will not give up on getting them their money' and, although the amount they receive is reduced to reflect their criminal records, 'it is not about the cash amount, but the fact that they deserve the recognition of it. It additionally communicates that they [the authorities] care'.

Victims apply for compensation by completing an application form which is available by phoning the Authority, or can be found on their website.²² In most cases, the Authority contacts the police force which investigated the assault for a report that confirms that the incident took place and was reported to the police. The Authority normally requires a medical report from the victim's GP and/or any specialist involved in the treatment of the injuries, be they mental and/or physical.

²⁷ Crime Disorder Reduction Partnerships are now known as Community Safety Partnerships.

The tariff of injuries in the Scheme, which sets out the level of award for a range of criminal injuries, includes a specific category of 'non-consensual penile penetration of the vagina and/or anus and/or mouth' (including a category for children under the age of 18), which is consistent with the definition of rape in the 2003 Sexual Offences Act.

The Scheme assesses that the compensation to be paid to victims of 'rape' (as defined above) by one attacker is £11,000. This includes children under the age of 18 and adults who 'by reason of mental incapacity are incapable of giving consent'. The amount paid rises to £13,500 where the assault is perpetrated by two or more attackers and to £22,000 where the attack has resulted in 'serious internal bodily injuries'.

The total compensation that victims of rape receive will also depend on whether they are eligible to receive compensation for physical and mental injuries, over and above their eligibility to receive compensation under the tariff of 'non-consensual penile penetration of the vagina and/or anus and/or mouth' where the overall compensation may also include other payments, for example for loss of earnings.

In 2008/09, 1,938 payments were made to victims of rape, up from 1,253 in 2004/05, with an average award of £15,582. A total of £30,197,619 was awarded to victims of rape in 2008/09.

The compensation scheme is an excellent way of meeting the positive obligation to help those who have been harmed by violent crime. However, a number of matters in the application of the compensation scheme to rape victims give us serious cause for concern. The Scheme sets out eligibility requirements for the applicant which include a number on the 'conduct and character' of the victim. These are intended to ensure that the victim of the crime can be said to be 'blameless'. Under these requirements, the 'excessive consumption of alcohol' (by the victim) is taken into consideration. If it is decided that the use of alcohol contributed to the incident, this may result in the Authority 'reducing or refusing the award'.

Publicity was given in 2008 to a number of cases where some women who had been raped had their compensation reduced by 25 per cent because they had been drinking.²³ We have been told by the Authority that it is its policy that the excessive consumption of alcohol does not, on its own, constitute a reason to refuse or reduce awards, and an award should never be reduced or refused simply because the applicant was under the influence of alcohol at the time of the incident.

It has assured us that it took the opportunity, in the light of the cases highlighted in the press, to reiterate the above policy to its staff, and gave training and increased supervision. We welcome this, and note the Authority's policy that applicants 'who suffer a sexual assault while under the influence of drugs or alcohol will be eligible for a full award, if all other eligibility criteria are satisfied'.

We recommend that the Criminal Injuries Compensation Authority policy that applicants 'who suffer a sexual assault while under the influence of drugs or alcohol will be eligible for a full award', is made clearer in the guidance available to the public and to those supporting victims of rape.

Two other compensation scheme eligibility requirements regarding the 'conduct and character' of the victim also gave us some cause for concern with regard to the crime of rape, and although they were not explicitly raised with us during the review, we feel we should raise them here. First, the Scheme requires that compensation is reduced or refused if the applicant has unspent criminal convictions and this is part of the scheme as laid down in the law. We note the judgment of Lord Brodie in the High Court in Edinburgh in February 2010 when sentencing a man to nine years' imprisonment for raping two prostitutes in Glasgow that prostitutes are entitled to the same protection from the law as anyone else.²⁴ We suggest this should apply to all rape victims – whatever their background. We note Victim Support believes that previous criminal convictions should not be a matter for consideration in determining an award: 'The Criminal Injuries Compensation Scheme creates inequality of provision through scrutinising the conduct and character of the victim. Victim Support... strongly oppose exclusions based on a person's character or conduct, whether judged by previous convictions or otherwise.'²⁵ We welcome Victim Support's stance on this. It recently told us that all victims should be treated as victims when they are harmed as a result of crime. Victims' conduct in the violent incident should be considered, but previous convictions are irrelevant.

We appreciate the requirement to exercise care in disbursing public money and the complexity of assessing each individual's entitlement. We recommend that the eligibility requirement in respect of character, as evidenced by unspent criminal convictions, be reconsidered in terms of its appropriateness for rape victims, with a view to providing clear guidance to case officers that unless there are exceptional circumstances it should not apply to rape victims.

Second, the Scheme requires that compensation will also normally be refused if the applicant did not report the incident to the police or to some other appropriate body straight away. The Authority argues that since the Scheme is publicly funded, it is important that applicants have done their public duty by reporting the crime and co-operating with the police, not least to prevent the assailant from carrying out a similar attack in the future. The Authority normally expects this to be done without delay, because the sooner the offence is reported, the greater the likelihood of the attacker being apprehended. It is, however, permitted for the assault to have been reported to any 'other body or person considered by the Authority to be appropriate for the purpose, of the circumstances giving rise to the injury'. We note that each case is considered on its merits, and if there are good reasons for the offence not to have been reported without delay after the incident, the Authority will consider this. Clearly, this requirement is entirely at odds with our understanding of why rape victims may delay in reporting, as set out in Chapter One.

We recommend that the appropriate victims' organisations be consulted and detailed guidance be provided for case officers explaining why the requirement of immediate reporting to the police should normally be waived for rape victims.

'Rape is often part of something else'

As noted in earlier chapters, we heard that many of those reporting rape have particular vulnerabilities that put them at greater risk of experiencing rape in the sense that they have less capacity to consent. For example, Metropolitan Police Service research on rape based on five years of monitoring rape allegations shows that over four out of five victims of rape are either under 18 years old, are raped in circumstances involving drug and/or alcohol use, have mental health problems or are raped in circumstances related to domestic violence.²⁶

Here we consider briefly the connection between rape and a number of wider social issues. As we were told, 'rape is often part of something else'. Prescribing solutions is beyond the scope of our report, but if we did not acknowledge these concerns we would not be doing justice to many of those who spoke and wrote to us both about the links between alcohol and rape and about our failure to protect some very vulnerable people from harm.

We were told that many of those who are particularly vulnerable to experiencing rape will not be one-off victims, but will instead

experience rape and sexual assault on multiple occasions. Such people, referred to by some as 'repeat victims,' may have mental health problems or learning disabilities which make them vulnerable to being taken advantage of. We were told they can become 'locked into predatory circles quite quickly'. Others have experienced abuse from childhood, through teenage-hood to adulthood, where they have become locked into a pattern of abusive relationships which become their 'norm'. The impact on the individual of being a repeat victim is huge, and the related costs to services such as the health, social welfare and criminal justice systems are substantial.²⁷

In the course of the review we sought to establish how far there is a group of men who show a pattern of regularly having non-consensual sex with vulnerable people. We were not able to find any substantial research evidence, but we heard frequently from the police officers and other police experts we talked to that this was the case. It is common, we heard, that men who rape will seek out those whom they deem to be vulnerable and unlikely to be able to perform well as a witness in a court case. A defence barrister told us, 'a significant percentage of defendants come into the category of those that prey on/take advantage of vulnerable people'. We were told by a senior police officer that there are men who cruise around looking for drunken or vulnerable women. For the police, the objective in dealing with this part of their work was to 'identify the most dangerous people'.

Alcohol was discussed in almost every meeting we held. Senior staff at a Sexual Assault Referral Centre in the north of England told us that three-quarters of adults who come to them have been drinking, and staff must wait for them to sober up before seeking informed consent to the forensic examination. The police also told us of the impact of excessive alcohol consumption on those who come to them to report rape. We heard about the vulnerability brought about by excessive drinking, the difficulties of investigating cases when memories were clouded by drunkenness and the problem of taking such cases through the courts. We heard from many who spoke to us that the 'night-time economy was a 'harm-producing arena' and 'very problematic,' both in terms of general safety and in relation to the prevention of sexual assaults. We note that the Royal College of Physicians told the House of Commons Health Committee: 'The "passive effects" of alcohol misuse are catastrophic – rape, sexual assault, domestic and other violence, drunk driving and street disorder – alcohol affects thousands more innocent victims than passive smoking'.²⁸

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We are not able to comment on major policy questions about how to achieve a reduction in excessive drinking, although we have no doubt that such a reduction would be desirable. We would not want to interfere with individuals enjoying themselves perfectly legally in the night-time bar and club economy. But we are concerned that the harm excessive drinking can cause in increasing the prevalence of rape should be addressed.

'Rape is often part of something else.' Often, that 'something else' is domestic violence. Much rape occurs within the domestic violence framework and domestic violence puts people at risk. The complexity of individual circumstances and the potential consequences of an investigation are influential factors when someone suffering domestic violence considers reporting a rape. Women experiencing domestic violence who have been raped may have concerns about the impact of pursuing a rape charge on their family and children. The links therefore need to be made by the services and agencies that have the duty of responding to domestic and sexual violence.

Being young may also put people at risk of being targeted. Our information in Chapter Three on rape cases coming to trial shows that almost half of all rape cases convicted by a jury involve complainants who are under 16: 1,674 girls aged between 13 and 16, and 111 boys. These are disturbing figures. Young people from difficult backgrounds with poor supervision can be particularly vulnerable to rape and exploitation for a number of reasons. They can feel disengaged and marginalised from society and be vulnerable to perpetrators who appear to take a genuine interest in them. Those in care homes or those who have recently left care may be particularly susceptible to this kind of predatory perpetrator. The girls are often seeking love and attention and they can be 'handed around groups of boys or communities as if they are a commodity of some sort', a senior police officer told us. We were told by a specialist police team that while some of these victims come to their attention, there is almost certainly a large number who do not. We were also told by the NSPCC that vulnerable young people from care homes and difficult homes are very much at risk of being targeted for sexual abuse by predators.

There are reports that young women involved in the gang culture are also at a significantly increased risk of rape, which is used as a method of initiation, retaliation and intimidation.²⁹ Sexual violence and exploitation are significant weapons used against females associated with, or involved in, gang violence. 'Rape has become a weapon of choice, and used against sisters, girlfriends and on occasion mothers, as it is the only weapon that cannot be detected during a stop and search. This use of sexual violence takes place against a backdrop where girls have little peer support, where girls and boys are extremely confused about consent and their own motivations for engaging in sex, and where young people have little to no understanding of coercion'.

An organisation which works with male victims of rape told us that men – particularly young men – experience rape when selling sex. Many of these men, some of them as young as 14 and 15, will have been through the care system and 'fallen through the cracks'. They may use heroin and crack cocaine as coping mechanisms instead of talking about the abuse, and they will never want the police involved. Those responsible for protecting the young need to be more aware than they sometimes are of the possibility of rape and sexual exploitation occurring, and need to form links with the police and local agencies to raise the level of protection that can be provided.

Many of the police officers we spoke to talked about the high number of victims with learning disabilities, and of those dependent upon others for their care. People with mild to moderate learning disabilities will often live very isolated lives and sexual encounters may be one way available to them to make friends. This puts those with learning difficulties in a more vulnerable position for grooming. We were told 'they are vulnerable to sexual abuse because they may not be as savvy as others'. It was suggested to us that men are as vulnerable as women to this.

We heard from a number of people, including a Rape Crisis Centre and a specialist service provider, that people with mental health problems as a result of lives of abuse and neglect can be extremely vulnerable to rape and sexual abuse. We were told: 'clients with abusive histories don't know how to protect themselves. They tend not to think they're worth protecting because that's what they've been told. They have internalised a lack of self-care.' We heard that they may use alcohol as a coping mechanism. They may go out and drink excessively, making them even more vulnerable to being preyed upon.

An organisation that works with refugees and asylum seekers told us that women with insecure immigration status who are experiencing rape and abuse in the home may be bound to their husband's visa and, as they have no recourse to public funds, are forced to remain in the abusive situation.

Conclusions

Annex A makes clear that victims are entitled to more from the State than access to the criminal law as a complainant and as a witness. The strong feeling that many victims expressed to us of unfairness in the adversarial criminal justice process is undesirable. We could make no progress in the time available to us in looking at alternative ways of victims using the law to seek redress in some way. We have cited the example of Ireland and France, and we hope others will think about this more deeply and make proposals that could be considered.

We hope also that the Criminal Injuries Compensation Authority, which does such good work, will reflect on its policies and procedures in respect of rape victims.

Vulnerability concerned us very much throughout the review process. Not all rape victims are vulnerable by any means. Rape can take place right across the social and economic spectrum. But the evidence we have gathered suggests that the people least able to protect themselves and assert their right to refuse non-consensual sex are those with less self-confidence and in a position of less power, those who are dependent on others for a range of reasons. It seems a particularly sad reflection on our society that the sexual experiences of so many young girls are experiences of violence and abuse. We hope our report will alert those who work with vulnerable people to the possibilities of rape and exploitation and to the need to do whatever possible to protect those at risk and prevent that outcome.

Chapter Five

Conclusions and recommendations

Conclusions

We hope the preceding chapters have made some things clear. First, in dealing with rape complainants a considerable amount of change has been introduced by all the public authorities that carry these responsibilities. The description in Chapter Two of the way the police responded to a woman reporting a rape 30 years ago,²⁸ in a television film that caused an uproar and started the reform process, shows how much has changed, fundamentally and for the better. Attitudes have changed. Policies and practice have changed. In England and Wales we now have a system with specialisation in dealing with rape at the police, prosecuting and judicial level. In many places those reporting rape to the police are treated respectfully. We have measures in the courtroom to minimise the trauma of the trial. We have everywhere a programme to provide state-of-the-art medical centres where victims of rape can be examined and assisted. In the extensive literature about rape, most of the suggestions made for ways of increasing the number of rapes that are reported to the authorities and undertaking successful prosecutions have been adopted as policy. Official figures show that the number of convictions has increased from 1,778 in 2006/7 to 2,021 in 2008/9.¹

The policies are the right ones and we have few changes to recommend to these. The policies are not the problem. The failures are in the implementation. We received evidence from over 300 people and have read a number of assessments of the way policies are being implemented. In some areas the policies are applied consistently and with commitment by all involved. In others this is not yet the case and that is where progress needs to be made. There are still public authorities where the staff have dismissive attitudes, police forces where the investigations are badly done, prosecutors who do not see the point of building a difficult case, and areas where the help and support for victims are sparse.

²⁸ Chapter Two, page 58.

We believe that all areas should implement the policies that have been developed. They should do so in a way that is appropriate for their area and the number of cases they are likely to have to deal with. We would not expect the same organisational approach to be applied in the Metropolitan Police area, for example, as in a rural area such as Dorset. But we would expect the same concepts and standards to be in place, based on the guidance issued jointly by the Crown Prosecution Service (CPS), the Association of Chief Police Officers and the National Policing Improvement Agency.²

In order to assess the extent to which all police forces and the Crown Prosecution Service are implementing the 2009 *Guidance on Investigating and Prosecuting Rape*, we recommend the Government reports annually to Parliament on progress made.

We have aimed in this report to avoid jargon and technicalities, in the hope that it will be widely read outside the groups who will read it because their job requires them to. The debates about rape will continue, and the more well informed they are the better. We hope that the figure of six per cent as the conviction rate will not be used in future unless it is explained at the same time and put into context. We note in Chapter One the surveys showing that the attitudes of the majority support the direction of the Sexual Offences Act 2003. We make recommendations that more should be done to spread public understanding of the law, the nature of rape in our society and what the outcomes of the criminal justice process are.

We also comment in some detail on aspects of the way the police and the prosecution work and make specific recommendations. There is a widespread view, which we share, that narrow numerical targets distort performance and waste scarce resources. The police and prosecution authorities have been hampered in their performance by these centrally set targets. As resources become even more limited, the police and prosecution authorities need to become freer to use their judgement in deciding how they can do the best for rape victims and ensure the most vulnerable are protected. But they also have a responsibility to be transparent in showing how they have used that judgement and to consult widely with the public and with those who care for rape victims.

We heard from a wide range of experts that many of the victims of rape come from the most vulnerable groups in society. A proportion of these people will not be able to go through the criminal justice system, and it is unlikely to be possible to adapt the system to enable them

to do so. Much more needs to be done to construct effective local machinery based on existing partnerships so as to protect these people and prevent them being raped.

We were asked to consider how more cases could proceed successfully through the criminal justice process. This we have tried to do. We believe that when best practice is implemented everywhere the number of successful criminal justice outcomes will increase. We would welcome that. We are sure that with current policies adopted everywhere, more rape cases would be able to proceed to court and more would end with a conviction. But in our view that number would not be so substantial as to increase dramatically the proportion of cases that proceed down the criminal justice route. It is likely that at the same time the number of people having the confidence to report may grow, and therefore the actual proportion of convictions could fall. Having heard what we have heard, and read most of the current research literature available in English, we believe that even when good practice is embedded everywhere, essential as that is, the criminal justice route will not be open to every complainant.

Policy-makers and those who allocate scarce resources in hard times therefore face some difficult choices. How much should be invested in the effort to prosecute more and more cases successfully, bearing in mind Sir Ken Macdonald's dictum 'Decisions about which cases to prosecute need to be sound'.³ How much weight should be placed on resourcing targeted and intelligence-led policing to ensure that the most serious perpetrators are identified and charged? Counselling for rape victims is in short supply and waiting lists are long. What priority in allocating resources should be given to the voluntary sector services that help victims recover and get on with their lives? How do we weigh the importance of work in local areas to look at rape strategically, at where it happens, who is most at risk, and what can be done to protect and prevent? If changing the public's attitudes to rape is such an important part, how much are we going to allocate to the education of young people and society more generally about rape?

We conclude that it may be time to take a broader approach to measuring success in dealing with rape. In our view the conviction rate, however measured, has taken over the debate to the detriment of other important outcomes for victims. We do not say that that prosecuting and convicting in rape cases is in any way unimportant. Far from it. It is important, and necessary, and must always be done. Those who have read the details of some of the rape cases we describe in earlier pages⁴

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will no doubt concur with that. But we take seriously what Sara Payne said: 'We need to reconsider our definition of "justice" so it is not just for punishing a perpetrator and preventing further crimes'.⁵

In dealing with rape there is a range of priorities that needs to be balanced. Support and care for victims should be a high priority. The obligations the State has to those who have suffered a violent crime, and a crime that strikes at the whole concept of human dignity and bodily integrity, are much wider than working for the conviction of a perpetrator. Those reporting that they have been raped must be treated well. They should be seen as people who can understand the law and see, when it is explained to them, why prosecuting rape can be difficult. They should be assumed to have a sense of social responsibility and to understand that it is a worthwhile outcome in itself to give information that may prevent someone else being raped. That is why, similarly, we have placed such importance on continuing with the development of the Sexual Assault Referral Centres, where anyone who has been raped can go for confidential medical help, testing and advice. That is why, similarly we have stressed that the posts of Independent Sexual Violence Advisors, who support rape complainants as their cases go through the system and afterwards if need be, should become part of the standard arrangements in all areas where the number of rape complaints justifies it. That is why we have made a recommendation that the police should not have to work on their own to deal with rape complainants.

These things should be done well, and doing all of them well should be part of the judgement as to whether or not the public authorities with these responsibilities are meeting the public's expectations.

Recommendations

The treatment of rape victims has undoubtedly improved and many working in those public authorities responsible for responding to rape complaints have made substantial changes. We have recommended that the Government and those authorities should take further some of the excellent developments already under way.

We have made some detailed recommendations to the police and prosecution services which are designed to make implementation of the existing policies more effective.

We have made some important recommendations about information and statistics. A wider understanding of the reality of rape is a necessary backdrop to the improvement of the treatment of rape victims.

Finally, we hope that the public interest in this subject will remain high. We have therefore recommended that the Government reports annually to Parliament on progress.

Chapter One

- **We recommend that the National Statistician and the Home Office should aim to ensure that the publication of crime statistics is always accompanied by enough explanation to ensure that their meaning can be widely understood.**
- **We recommend that the basic elements of the Sexual Offences Act 2003 are given more publicity, and information in simple language is made available to young people and those who work with young people who are able to disseminate it widely.**
- **In view of the controversy surrounding false allegations, the strong feelings the subject arouses and the part the controversy plays in the response to rape complainants, we recommend that the Ministry of Justice commissions and publishes an independent research report to study the frequency of false allegations of rape compared with other offences and the nature of such allegations.**
- **We recommend that the Home Office and the Ministry of Justice should work with the National Statistician in order to find a way of presenting criminal justice data that enables comparisons to be made of the outcomes for various offences and makes clear what conclusions can and cannot be drawn from those data.**

- We recommend that when education and awareness-raising campaigns and programmes on rape and sexual assault are developed, careful consideration be given to their design so that they spread understanding of the current law on rape; do not in any way perpetuate false understandings of how rape victims respond; and take full advantage of the diverse range of new media outlets so that they are as imaginative, targeted and effective as possible.

Chapter Two

- We support wholeheartedly the recommendation that the funding and commissioning of forensic medical services should be transferred from the police to the NHS. We also endorse the view of the taskforce led by Sir George Alberti that forensic physicians should be employed by the NHS, have better access to high-quality training, be an integrated part of the new NHS clinical governance framework and commissioned in sufficient numbers to meet the needs of victims of rape. We would further recommend that there should be more appropriate accreditation for forensic physicians to ensure every victim of rape should have the choice of a male or female forensic physician to undertake the examination.
- We welcome the specific commitment by the Government to have one Sexual Assault Referral Centre in every police force area by 2011 and recommend that since some police force areas are very large, the need for additional centres should be considered once the initial phase of development is complete.
- We acknowledge that the existing funding arrangements for Sexual Assault Referral Centres vary across the country, and we would not wish to be prescriptive about how they are set up and run. However, it is clear to us that there is a greater chance of success when there is a strong partnership between the NHS, the police and elements of local government, and equal commitment in the setting up and operation of a Sexual Assault Referral Centre. We recommend this commitment should be shared equally by the police, the NHS and local government.

- It is clear that this video-recorded 'achieving best evidence' interviews is an issue of considerable concern which is posing problems for the smooth running of trials. It is causing distress to some victims and the costs are not inconsiderable. We encountered very strong views that currently this is a big hindrance to effective trials and action needs to be taken. We recommend that this issue be looked at again by the Association of Chief Police Officers, the Crown Prosecution Service, Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate. We understand the National Policing Improvement Agency has a small internal research programme looking at the issue of achieving best evidence in rape investigations, and we recommend that this plays a part in finding a solution that preserves the benefits for the victim but is more effective in the courtroom.
- The work that the Association of Chief Police Officers has been doing in partnership with the Crown Prosecution Service and National Policing Improvement Agency is designed to improve the approach taken by all forces in responding to and investigating rape complaints. We have therefore based our recommendations on the assumption that all forces aspire to provide a high-quality service to everyone who reports a rape. The *Guidance on Investigating and Prosecuting Rape* seems to us to reflect the very best that a police service can achieve, and we would make no suggestions for improvements to it. We recommend that the Association of Chief Police Officers should continue the work of seeing the guidance implemented in every police force.
- We were very impressed with the specialist police units, it may be that the combination of high level investigation, victim care and a focus on vulnerable people provided for by specialist units is the best way forward. We therefore recommend that the Association of Chief Police Officers works with the National Policing Improvement Agency to assess the benefits of this specialisation in terms of its cost effectiveness, the number of victims reporting, the level of victim satisfaction and the opportunities it provides for a more strategic approach to protecting the vulnerable.
- We recognise that there are a number of existing local arrangements in place such as Local Criminal Justice Boards and Community Safety Partnerships. We do not wish to be prescriptive about the types of local arrangements needed,

but are of the view that local arrangements should aim to bring together health, the voluntary sector, local authority safeguarding services, the police, the Crown Prosecution Service and Her Majesty's Court Service to focus on rape. We therefore recommend that a suitable arrangement should be put in place, bringing together representatives from these organisations, to create an effective governance structure for the handling of rape complaints and to enable issues to be brought to a multi-agency forum where action can be taken.

- We understand the National Policing Improvement Agency provides key computer technologies to assist forces with tracking intelligence on sex offenders and their offences. We further understand that the mechanics of capturing this intelligence on a national basis do exist. We therefore recommend that the National Policing Improvement Agency takes steps to ensure that all police forces are aware of these ways of capturing intelligence.
- We recommend, for the 2010 thematic inspection to be carried out by Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate, a different approach to the one adopted for previous thematic inspections. Specifically we recommend that forces are assessed against the following:
 - those reporting are treated well, i.e. victim satisfaction;
 - local arrangements are in place so that the many people who report, where reporting is part of a pattern of abuse in their lives, are linked in to other agencies; and
 - good practice in the collection of intelligence material is in place.

Chapter Three

- We recommend the booklet *CPS Policy for Prosecuting Cases of Rape* should be widely available to all victims and witnesses. It should be available to all Victim and Witness Units, Independent Sexual Violence Advisors, Sexual Assault Referral Centres and Rape Crisis Centres, and should be given as a matter of routine at the appropriate moment to all rape complainants who have decided to report the rape to the police. The Crown Prosecution Service should ensure the booklet is kept under review and regularly updated.

- We learnt that joint police/prosecution performance measures are currently being considered by the cross-government Rape Monitoring Group. We welcome this development and recommend this work is completed with all speed in order to remove what are seen to be barriers to effective joint working between the Crown Prosecution Service and police.
- We accept that in very busy court centres there are great difficulties in ensuring individual ownership of cases. Nevertheless it is desirable and we recommend that the Crown Prosecution Service take steps to ensure its stated policy of individual ownership of cases is applied so that cases are managed and progressed effectively.
- We also recommend that the Association of Chief Police Officers, the Crown Prosecution Service and the Local Government Association initiate discussions to resolve difficulties about disclosure of local authority third-party material, with a view to ensuring all local authorities adopt the protocol between the Crown Prosecution Service, the police and local authorities on the exchange of information.

Chapter Four

- We recommend that Independent Sexual Violence Advisors be seen as an intrinsic part of the way rape complainants are dealt with, as the service that enables the rest to operate effectively and a crucial part of the way in which the State fulfils its obligations to victims of violence. Funding should be available in all areas where the demand makes a post viable. The service provided spans a number of different local responsibilities across the criminal justice agencies, the local authority and the health service. Therefore the most suitable body to oversee the arrangements seems to us to be whatever arrangement local areas develop in line with our recommendation made in Chapter Two for local machinery to ensure a strategic approach to victims of rape.
- We recommend that the Criminal Injuries Compensation Authority policy that applicants 'who suffer a sexual assault while under the influence of drugs or alcohol will be eligible for a full award', is made clearer in the guidance available to the public and to those supporting victims of rape.

- We appreciate the requirement to exercise care in disbursing public money and the complexity of assessing each individual's entitlement. We recommend that the eligibility requirement in respect of character, as evidenced by unspent criminal convictions, be reconsidered in terms of its appropriateness for rape victims, with a view to providing clear guidance to case officers that unless there are exceptional circumstances, it should not apply to rape victims.
- We recommend that the appropriate victims' organisations be consulted and detailed guidance be provided for case officers explaining why the requirement of immediate reporting to the police should normally be waived for rape victims.

Chapter Five

- In order to assess the extent to which all police forces and the Crown Prosecution Service are implementing the 2009 *Guidance on Investigating and Prosecuting Rape*, we recommend the Government reports annually to Parliament on progress made.

Annex A

Advice for the Stern Review

The human rights framework relating to the handling, investigation and prosecution of rape complaints

This short brief lays out the human rights standards and binding norms which apply in the handling, investigation and prosecution of rape complaints.¹ It will begin by laying out the rights which apply, and the case law under, the European Convention on Human Rights which are binding on the United Kingdom under domestic law. It will then lay out the norms and standards which apply to the United Kingdom as a matter of international law.

1. *The positive right to an effective investigation and prosecution of rape under the European Convention on Human Rights*

Substantively, rape engages three main Convention rights: Article 3 (prohibition on torture), Article 8 (right to private life), and Article 14 (prohibition on discrimination).² On the procedural side, the investigation and prosecution of rape also engages the right to an effective remedy (Article 13). Article 1 of the Convention is also highly relevant here, as it requires States to 'secure to everyone within their jurisdiction the rights and freedoms' set out in the Convention. This implies, and has been taken by the European Court of Human Rights (ECtHR) to mean, that Convention rights not only limit state action, but also require the State to take action to protect the rights of citizens in respect of the acts of private individuals. As rape is normally perpetrated by private individuals in the United Kingdom, this requirement is crucial to the development of safeguards in respect of the handling, investigation and prosecution of rape complaints. Though not a rape case, *Osman v United Kingdom* emphasises the scope and intensity of state duties in this respect.³ The State is required to legislate 'effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions'.⁴ In addition, states may be obligated in certain well-defined circumstances' to take proactive 'preventive operational measures' to protect individuals whose lives are under threat from the criminal activities of another'.⁵ While this case concerns procedural obligations relating to

the right to life, there have been a number of cases which reinforce *Osman* in the development of procedural obligations in the context of rape.

The case law of the ECtHR has evolved over time, and its development has been influenced by surrounding changes in international law (described in section 2 below), as well as within the domestic law of member states. The first important decision of ECtHR in relation to rape was decided in 1986 (*X and Y v Netherlands*).⁶ This decision began the process of developing positive procedural obligations in relation to the treatment of rape victims arising out of Article 8. The case dealt with the rape of a mentally defective girl of 16 by the son-in-law of the directress of the home for mentally handicapped children where the girl resided. The prosecutor's office decided not to prosecute provided the offender did not repeat the offence. The father of the girl appealed against the prosecutor's decision, but the appeal was dismissed on the grounds that while the girl was incapable of making the complaint herself, no one else was entitled to complain on her behalf. The applicant to the ECtHR argued that the impossibility of bringing criminal proceedings, or of challenging the prosecutorial decision in this case, violated her Article 8 rights. The ECtHR was clear that the applicant's rights to private life under Article 8 covered the physical and moral integrity of the person, which included her sexual life. It also held that Article 8 involved 'positive obligations inherent in an effective respect for private or family life'. As a consequence, the Court took the view that the State had 'obligations which may involve the adoption of measures designed to secure respect for private life in the sphere of the relations of individuals between themselves'.⁷ The Court viewed the availability of civil measures to the applicant to be insufficient in this regard. Applying this test, the Court held that the criminal law mechanisms available to the applicant were in breach of Article 8 as they did not provide the applicant with 'practical and effective protection'.⁸

In the *X and Y* decision, the Court took the view that no separate actions lay in this instance under Article 3 (prohibition of torture), Article 13 (the right to an effective remedy) or Article 14 (prohibition on discrimination). Later cases, however, have expanded the range of rights engaged in this respect. In *Aydin v Turkey* the ECtHR held that rape could constitute torture and violate Article 3 ECHR.⁹ The case dealt with the rape of a young Turkish woman of Kurdish origin by the Turkish security forces. Her medical examination by inexperienced doctors and the ineffective investigation by the Public Prosecutor were held by the ECtHR to constitute a violation of her right to an effective

remedy under Article 13 ECHR. The ECtHR was of the view that in a case where an individual had an arguable claim of having been tortured by a State official, her right to an effective remedy required 'a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure'.

The *Aydin* case dealt with the rape of an individual by a State official. In *MC v Bulgaria*, however, the court took the view that acquaintance rape perpetrated by private individuals could also amount to a violation of Article 3 (as well as Article 8).¹⁰ In this case, the applicant-victim, who was 14 years old at the time of the rape, complained that Bulgarian law did not provide effective protection against rape and sexual abuse, as they only prosecuted cases where there was evidence of active resistance by the victim. The authorities in the initial investigation had placed significant weight on the absence of evidence showing threats of violence on the part of the two perpetrators. Although an additional investigation was called by the District Prosecutor, who obtained expert reports from a psychologist and psychiatrist, he terminated proceedings on the grounds that the use of force or threats of force had not been established beyond a reasonable doubt, and that no resistance or attempts to gain help from others had been established on the part of the victim.

This case is very important in setting standards and developing the positive obligations of States in the investigation and prosecution of rape. It was evident in the Court's reasoning that it was influenced by the emerging consensus both across domestic jurisdictions and within international law and international criminal law.¹¹ The Court argued that these developments demonstrated an 'evolution of societies towards effective equality and respect for each individual's sexual autonomy'.¹² Hence, it declared itself:

'... persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy. In accordance with contemporary standards and trends in that area, the Member States' positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual act, including the absence of physical resistance by the victim.'¹³

Adopting this approach, the Court viewed the investigation by the Bulgarian authorities as deficient. One particularly important factor in the Court's view was the 'investigator's and prosecutor's opinion that since what was alleged to have occurred was a "date rape", in the absence of "direct" proof of rape, such as traces of violence and resistance or calls for help, they could not infer proof of lack of consent and, therefore, of rape from an assessment of all the surrounding circumstances'.¹⁴ Hence, the Court found 'that the failure of the authorities in the applicant's case to investigate sufficiently the surrounding circumstances was the result of them putting undue emphasis on "direct" proof of rape'.¹⁵ The Court criticised the authorities' approach as being too 'restrictive, practically elevating "resistance" to the status of the defining element of the offence'.¹⁶ Hence, the investigators' failure to focus on the possibility of 'non-consent'¹⁷ was seen to reflect a misconception of what constituted the crime of rape. The Court was particularly critical of the authorities for failing to attach special weight to 'the particular vulnerability of young persons and the special psychological factors involved in cases concerning the rape of minors'.¹⁸ It was also critical of the delays in the investigation.¹⁹ As a consequence the Court found that there had been a 'violation of the respondent State's positive obligations under both Articles 3 and 8 of the Convention'. Nevertheless, the Court did not find that a separate issue arose under Article 13 (effective remedy) or Article 14 (prohibition on discrimination).

While the above cases deal with the investigation and prosecution of female rape, the standards developed in *MC* apply equally to male rape. The court in *MC* developed positive obligations arising out of violations of any 'individual's sexual autonomy' and this logically requires that States should have in place laws and standards that protects against male rape, no less than to female rape. Moreover, the ECtHR has dealt with male rape where prisoners or detainees have alleged that they suffered anal penetration among a range of actions by State authorities in armed conflict and in prisons.²⁰ There is little doubt that, where such allegations are grounded, they are taken to constitute torture and inhuman and degrading treatment, and to violate Article 3. The positive obligations relating to the investigation and handling of such Article 3 violations are evidently no less exacting on States than in the case of the female rapes examined in the *Aydin* and *MC* cases.

2. *The duty of due diligence in the investigation and prosecution of sexual violence under international law*

The criminalisation of rape, and the enforcement of criminal laws relating to rape, is the subject of a number of international law provisions. These provisions, while not directly enforceable as a matter of domestic law within the United Kingdom, are important for two reasons. They are binding on the United Kingdom as a matter of international law, and they have evidently influenced the approach of the European Court of Human Rights (ECtHR) to the development of human rights safeguards relating to sexual violence.

International law on rape has also been developed within the framework of the treaties and institutions established to address gender-based violence, which is viewed as a violation of the prohibition on all forms of discrimination against women. Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW²¹) enjoins states to 'take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise' and 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women'. The United Kingdom is a signatory to CEDAW and ratified the treaty in 1986.

The United Nations Committee on the Elimination of Discrimination Against Women, set up under CEDAW to oversee and monitor compliance with the treaty, argues that 'gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men'.²² Further, the specific recommendations of the 19th General Recommendation of the CEDAW committee state that:²³

- States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act (Section 24(a));
- States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention (Section 24(b));

- effective complaints procedures and remedies, including compensation, should be provided (Section 24(i)); and
- States parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling (Section 24(k)).

The 19th General Recommendation of the CEDAW committee was reinforced by the United Nations General Assembly Declaration on the Elimination of Violence against Women (DEVW).²⁴ Article 1 defines 'violence against women' as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'. Article 2 DEVW explicitly includes under 'violence against women': 'rape', 'sexual abuse,' 'sexual abuse of female children in the household' and 'marital rape'. Importantly, Article 4 DEVW enshrines a 'due diligence' standard and enjoins states to 'pursue by all appropriate means and without delay a policy of eliminating violence against women', including exercising 'due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons' (Article 4(c)).

A number of further international law instruments,²⁵ CEDAW committee decisions,²⁶ reports of the CEDAW committee²⁷ and the UN Commission on Human Rights,²⁸ as well as decisions of the Inter-American Commission on Human Rights²⁹ and Inter-American Court,³⁰ reinforce the prohibition on gender-based violence and the due diligence standards enshrined in DEVW. Importantly, the Special Rapporteur on Violence against Women issued a report arguing that there is now a rule of customary international law that 'obliges States to prevent and respond to acts of violence against women with due diligence'.³¹ The report notes that 'under the due diligence obligation, States have a duty to take positive action to prevent and protect women from violence, punish perpetrators of violent acts and compensate victims of violence'.³² The report is critical of the tendency of States to respond 'to violence when it occurs, largely neglecting the obligation to prevent and compensate and the responsibility of non-state actors'.

The international duty of due diligence with respect to the treatment of violence against women is also supported by the Committee of Ministers of the Council of Europe in their Recommendation (2002), which obliges states to penalise all non-consensual acts, including where the victim does not show resistance.³³ The Committee recognises that 'states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims' (Section II). The report urges Member States to 'encourage all relevant institutions dealing with violence against women (police, medical and social professions) to draw up medium- and long-term co-ordinated action plans, which provide activities for the prevention of violence and the protection of victims' (Section IV). It also suggests broader reforms such as education programmes and the direction of research funding to higher education institutions dealing with questions of violence against women (Section VI). Finally, it enjoins States to come up with a national plan of actions for combating violence against women (Section VIII).

Importantly, the Committee makes a number of recommendations regarding the conduct of judicial proceedings. These relate to the ease of access that victims have in the initiation of proceedings, as well as their treatment during the proceedings of the trial. In particular, the Committee argues that Member States should 'take all necessary steps to ensure that at all stages of the proceedings, the victim's physical and psychological state is taken into account and that they may receive medical and psychological care';³⁴ 'envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatising effects of proceedings';³⁵ ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims of violence, taking into due consideration the traumatising effects of proceedings'.³⁶

3. Implications

Convention case law and international law has developed a broad ranging conception of the offence of rape, giving victims rights to effective criminal law protection from a range of acts touching on their personal dignity and sexual autonomy. Authorities have to take a broad approach to the type of sexual or violent acts which may be perpetrated in this context, and the nature of the victim's response to them.

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Drawing on the Committee of Ministers of the Council of Europe Recommendations (2002) and ECtHR jurisprudence,³⁷ Londono has argued that there now exists a three-fold duty on States in the context of rape to:³⁸

- implement effective laws in place to sanction rape and to conduct effective investigations;
- take reasonable measures where they know or ought to know of the risks to individuals of violations of their rights; and
- ensure that the process of giving evidence is not so traumatic for complainants that the act of giving evidence, in itself, reaches the threshold of conduct prohibited by Article 3 ECHR.

These duties represent the very minimum required if States wish to avoid violations of Convention rights. When taken together with the broader due diligence principle under international law, we can see that there is an increasing range of considerations which apply to agents involved in rape proceedings. States are required to adopt a sensitive and flexible approach in their handling of rape victims. These have implications for all agencies involved in the investigation and prosecution of rape complaints, ranging from the police and prosecution as well as local authorities and social workers.

One particular question arises as to how reconcile the State's positive obligations regarding the protection of rape victims against the fair trial rights of defendants in rape proceedings under Article 6 ECHR. On this question, the ECtHR in *SN v Sweden* has accepted that the various component rights of Article 6, in particular the right to direct cross-examination of witnesses in courts, can be limited in the case of vulnerable victim-witnesses.³⁹ In this case, the conviction was based largely on the evidence obtained from the audiotape of an interview with the victim-witness, conducted on the basis of pre-agreed questions where counsel were not present.

The Court was clear that Article 6 did not require in all cases that the accused or his counsel be permitted to put questions directly to witnesses through cross-examination or by other means. The judgment stated: 'The Court has had regard to the special features of criminal proceedings concerning sexual offences. Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question whether or not in such proceedings an accused received a fair

trial, account must be taken of the right to respect for the private life of the perceived victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence. In securing the rights of the defence, the judicial authorities may be required to take measures which counterbalance the handicaps under which the defence labours.⁴⁰

Not all limitations on cross-examination rights will be acceptable, however. In *PS v Germany*,⁴¹ the Court held that ‘where a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Art.6’.⁴² When seeking to reconcile the competing interests of the victim-witness and the defendant, the Court has suggested that ‘only such measures restricting the rights of the defence which are strictly necessary are permissible under Art.6’.⁴³ Moreover, the decision suggests that any limitations on the rights of the defendant must be sufficiently counterbalanced by the procedures followed by the judicial authorities.⁴⁴

The process of reconciling the State’s positive duties in respect of victim-witnesses and the fair trial rights of defendants is therefore multi-faceted, relating to the context of the investigation and trial as a whole, the particular vulnerability of the witness-victim and the countervailing measures adopted by the judicial authorities in protecting the defendant’s fair trial rights.

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Annex A

- 1 In writing this brief, the author has drawn on the following academic articles: Patricia Londono, 'Positive obligations, criminal procedure and rape cases' [2007] *EHRLR* 158; 'Developing human rights principles in cases of gender-based violence: *Opuz v Turkey* in the European Court of Human Rights' [2009] *Human Rights Law Review* 657; Ivana Radacic 'Rape cases in the jurisprudence of the European Court of Human Rights: defining rape and determining the scope of the state's obligations' [2008] *EHRLR*; Clare McGlynn, 'Rape, torture and the European Convention on Human Rights' [2009] *ICLQ*.
- 2 The ECtHR has yet to analyse rape under Article 14, but a recent case of *Opuz v Turkey* (Application No 33401/02, 9 June 2009), concerning domestic violence, suggests that rape may come to be viewed as discriminatory violence against women. The decision, which was heavily influenced by work of the CEDAW committee and the Recommendations of the Committee of Ministers of the Council of Europe (2002) regarding violence against women (see section 2 of this report), accepted that the ineffectiveness of domestic remedies in relation to domestic violence constituted a violation of Article 14 as well as Articles 2 (right to life) and 3 in this context.
- 3 *Osman v United Kingdom* (2000) 29 EHRR 245.
- 4 *Osman v United Kingdom* (2000) 29 EHRR 245, para 115.
- 5 *Osman v United Kingdom* (2000) 29 EHRR 245, para 115.
- 6 Application No 8978/80.
- 7 *X and Y v Netherlands*, Application No 8978/80, paragraph 23.
- 8 *X and Y v Netherlands*, Application No 8978/80, paragraph 30.
- 9 (1998) 25 EHRR 235.
- 10 (2005) 40 EHRR 20.
- 11 Developments in international law are described in section 2 of this brief. In addition, the ECtHR was influenced by developments in international criminal law. In particular, the Court was influenced by the conception of rape developed by the ICTY in *Prosecutor v Furundzija*, (Case No IT-95-17/1-T) and *Prosecutor v. Kunarac, Kovac and Vukovic* (Case No IT-96-23). These cases developed a broad conception of rape, and coercion resulting in rape, which is grounded in the notion of personal dignity and sexual autonomy. The ICTY was clear that rape may be experienced by both women and men, and that the prohibition on rape 'embraces all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim's dignity'.
- 12 (2005) 40 EHRR 20, para 165.
- 13 (2005) 40 EHRR 20, para 166.
- 14 (2005) 40 EHRR 20, para 179.
- 15 (2005) 40 EHRR 20, para 182.
- 16 (2005) 40 EHRR 20, para 182.
- 17 (2005) 40 EHRR 20, para 181.
- 18 (2005) 40 EHRR 20, para 183.

- ¹⁹ (2005) 40 EHRR 20, para 184.
- ²⁰ *Özkan v Turkey* (Application No 21689/93); *Selmouni v France* (Application No 25803/94).
- ²¹ The Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the United Nations General Assembly in 1979, and came into force on 3 September 1981.
- ²² General Recommendation 19 of 29 January, 1992 (points 1 and 6).
- ²³ General Recommendation 19 of 29 January, 1992 (point 24 (a), (b), (i) and (k)).
- ²⁴ General Assembly Resolution 48/104 of 20 December, 1993.
- ²⁵ Beijing Declaration and Platform for Action' Fourth World Conference on Women (Beijing, 4–15 September 1995, UN Doc A/CONF 177/20 (1995) and A/CONF 177/20/Add1 (1995); Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (adopted 9 June 1994 entered into force 5 March 1995) [1994] ILM 1534; Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) CA/LEG/66.6.
- ²⁶ See decisions *AT v Hungary* (26 January 2005) and *Fatma Yildirim v Austria* (1 October 2007) where the CEDAW Committee found Member States to have breached their 'due diligence' duties in protecting victims of domestic violence. For a full outline of recent institutional activities undertaken by the UN Department for the Advancement of Women see: www.un.org/womenwatch/daw/vaw/index.htm
- ²⁷ For a full outline of recent institutional activities undertaken by the UN Department for the Advancement of Women see: www.un.org/womenwatch/daw/vaw/index.htm
- ²⁸ UN Commission on Human Rights, Res 2003/45, 23 April, 2003, E/CN.4/RES/2003/45.
- ²⁹ Case 12.051, *Maria da Penha Maia Fernandes v Brazil* Report No 54/01, OEA/Ser.LVII.111 Doc. 20 rev at 704 (2000).
- ³⁰ *Velasquez-Rodriguez v Honduras*, judgment of 29 July, 1988, Inter-Am CtHR (ser C) No 4, para 172. This decision states that: 'An illegal act which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the state, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.'
- ³¹ Report of the Special Rapporteur on violence against women (Yakin Ertürk), 'Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women – The Due Diligence Standard as a Tool for the Elimination of Violence Against Women' [2006] (E/CN.4/2006/61)
- ³² *Ibid*, page 2.
- ³³ Committee of Ministers of the Council of Europe Recommendation No R (2002) 5. Adopted by the Committee of Ministers on 30 April 2002, and Explanatory Memorandum H/Inf (2004).
- ³⁴ Committee of Ministers of the Council of Europe Recommendation (2002), Paragraph 41.

- ³⁵ Committee of Ministers of the Council of Europe Recommendation (2002), Paragraph 42.
- ³⁶ Committee of Ministers of the Council of Europe Recommendation (2002), Paragraph 43.
- ³⁷ Londono also refers to *E v United Kingdom* (2003) 36 EHRR 31 where the ECtHR held that a local authority's failure to monitor and investigate complaints regarding sexual and physical abuse constituted a breach of the positive obligations arising out of Article 3.
- ³⁸ Patricia Londono, 'Positive obligations, criminal procedure and rape cases' [2007] *EHRLR* 158.
- ³⁹ *SN v Sweden* (2004) 39 EHRR 13.
- ⁴⁰ *SN v Sweden* (2004) 39 EHRR 13, paragraph 47.
- ⁴¹ *PS v Germany* (2003) 36 EHRR 61.
- ⁴² *PS v Germany* (2003) 36 EHRR 61, paragraph 24.
- ⁴³ *PS v Germany* (2003) 36 EHRR 61, paragraph 23.
- ⁴⁴ *PS v Germany* (2003) 36 EHRR 61, paragraph 23.

Annex B

Evidence gathered

Regional visits

East, October 2009

- Representatives from local authorities, the police, the NHS, social services and voluntary organisations

North West, November 2009

- Representatives from Community Safety Partnerships, primary care trusts (PCTs), the police, the Crown Prosecution Service (CPS), Sexual Assault Referral Centres (SARCs), voluntary organisations and local authorities

Wales, November 2009

- Representatives from the police, SARCs, the CPS and voluntary organisations

South West, November 2009

- Representatives from Community Safety Partnerships, PCTs, the police, the CPS, SARCs, voluntary organisations and local authorities

Bolton, November 2009

- Members of the judiciary

South East, November 2009

- Representatives from the police and voluntary organisations

Midlands, November 2009

- Representatives from voluntary organisations, the NHS, the CPS, local authorities, local government and academia

North East, November 2009

- Representatives from the CPS, Her Majesty's Inspectorate of Constabulary, local authorities, voluntary organisations and the police

Durham, December 2009

- As a guest of the Taskforce on Health Aspects of Violence Against Women and Children visit

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Scotland, December 2009

- Representatives of the judiciary, the police, the Crown Office, academia, the Scottish Government and voluntary organisations

London, January 2010

- Forum of stakeholders (as previously engaged in the review)

Wood Green Crown Court

- Observation of several rape trials

Programme of meetings

Amelia Walker, Local Government Information Unit

Anthony Heaton-Armstrong, Barrister

Baroness Gould, Chair, Women's National Commission

Camilla Batmanghelidjh, Director, Kids Company

Caroline Bates, Detective Chief Superintendent, Metropolitan Police Service

Ceri Goddard, Chief Executive, The Fawcett Society

Chief Constable Dave Whatton (Cheshire Police), Association of Chief Police Officers

Cllr Anne Lucas, Local Government Association

Dave Gee, Association of Chief Police Officers

David Wolchover, Barrister

Dennis O'Connor, Chief Inspector, HM Inspectorate of Constabulary Domestic and Sexual Violence Steering Group, Women's National Commission

Faye Maxted, Survivors Trust

The Rt Hon Lord Justice Gill

The Rt Hon Lord Justice Goldring, Senior Presiding Judge

Gillian Guy and Rachel Griffin, Victim Support

The Lord Chief Justice Judge

Kier Starmer QC, Director of Public Prosecutions, Crown Prosecution Service

Lisa Longstaff and representatives, Women Against Rape

Dr Louise Ellison, Senior Lecturer in Law, School of Law, University of Manchester

Murray Hunt, Legal Advisor to the Joint Committee on Human Rights

Nick Hardwick, Chair, Independent Police Complaints Commission

Professor Betsy Stanko, Head, Strategic Research and Analysis Unit, Metropolitan Police Service

Professor Cheryl Thomas, Centre for Empirical Legal Studies, University College London

Professor Jill Radford, Director of Gender Violence and Gender Justice, Teesside University

Professor Liz Kelly, Professor of Sexualised Violence and Director of the Child and Woman Abuse Studies Unit (CWASU) at London Metropolitan University

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Professor Mike Hough, Institute for Criminal Policy Research, King's College, London

Professor Sir George Alberti, Chair, Department of Health's Taskforce on Violence Against Women and Children

Professor Vanessa Munro, Professor of Socio-Legal Studies, Faculty of Social Sciences, School of Law, Nottingham University

Richard Curen, Chief Executive, Respond

His Honour Judge Rook QC

Sara Payne, Victims' Champion

Sarah Allum and Sue Dunstall, National Society for the Prevention of Cruelty to Children (NSPCC)

Sean Sutton, National Policing Improvement Agency

Sheila Coates, Rape Crisis England and Wales

Simon Foy, Commander, Metropolitan Police Service

Stephen Wooler, Chief Inspector, HM Crown Prosecution Service Inspectorate

The Rt Hon Lord Justice Thomas, Vice-President of the Queen's Bench Division and Deputy Head of Criminal Justice

Zoë Lodrick, Senior Practitioner, Portsmouth Area Rape Crisis Service

Additional contributors

Contributions were received from the following organisations by way of correspondence, replying to the call for evidence, or independent written submissions:

Ambulance Service Network Diversity Forum (NHS Confederation)
 Amnesty International
 Aretta Support
 Association of Chief Police Officers in Scotland
 Asylum Aid
 Barnsley Sexual Abuse and Rape Crisis Helpline
 Cambridge Rape Crisis
 Cambridgeshire Sexual Violence Task Group
 Campaign to End Rape
 Cleveland Police
 Coventry Rape and Sexual Abuse Centre
 Engender
 False Allegations Support Organisation
 Fawcett Society
 Harrow Women's Centre
 Imkaan
 Independent Police Complaints Commission
 Joint OSC Working Group on Rape Prosecution and Performance, Royal Borough of Kensington and Chelsea
 Legal Assistance Centre, Namibia
 Local Government Association
 Mankind
 Metropolitan Police Support Group
 Next Link
 NSPCC
 Rape Crisis
 Rape Crisis (Wycombe, Chiltern and South Bucks)
 Rape Crisis Scotland
 Rape Crisis (Brighton)
 Safe Link
 South Essex Rape & Incest Crisis Centre
 Support After Rape and Sexual Violence Leeds (SARSVL)
 Survivors Trust
 Truth About Rape
 Victim Support
 Welsh Women's Aid
 Women's Aid

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ENDNOTES

Introduction

- ¹ Clarke *et al* (2002), p. 20.
- ² Brown *et al* (forthcoming).

Chapter One

- ¹ A range of estimates exists for prevalence levels of stranger rape, e.g. Povey *et al* (2009) give a figure of 12 per cent for serious sexual assault, Feist *et al* (2007) 14 per cent, and Myhill and Allen (2002) 8 per cent. Kelly *et al* (2005) (from a larger study) give a figure of 28 per cent.
- ² Feist *et al* (2007) defines 'acquaintance' as any of the following: met within 24 hours; met prior to 24 hours; known vaguely; prostitute and client; met via the internet.
- ³ HM Crown Prosecution Service Inspectorate (2007).
- ⁴ For female victims of serious sexual assault since the age of 16, the most common perpetrator was a (current or former) partner (53 per cent) (Povey *et al* (2009)); 33 per cent of assailants are acquaintances and 19 per cent are current and ex-partners (Kelly *et al* (2005)); and women are most likely to be sexually attacked by men they know in some way, most often partners (32 per cent) or acquaintances (22 per cent) (Myhill and Allen (2002)).
- ⁵ *R v H* [2007].
- ⁶ Abused participants (females with confirmed histories of childhood sexual abuse) reported twice as many subsequent rapes or sexual assaults than did comparison participants (Noll *et al* 2003).
- ⁷ Walker *et al* (2009) (table 2.04).
- ⁸ Brown *et al* (forthcoming). Findings in a recent attitudinal survey suggest that 67 per cent of respondents think that a man should 'resist the rape and risk personal injury' (compared with 45 per cent for women).
- ⁹ www.met.police.uk/sapphire/docs/malevictimsofsexualassault_english.pdf – the leaflet is available in 13 languages in addition to English.
- ¹⁰ See the following website, supported by the Scottish Government, for further information on rape trauma syndrome: www.rasane.org.uk/what-is-rape-trauma-myths.html
- ¹¹ 24 per cent of 18–24-year-olds said wearing a short skirt, accepting a drink or having a conversation with the rapist made victims partly responsible (Opinion Matters (2010)).
- ¹² Mayor of London (2007), p. 21.
- ¹³ Povey *et al* (2009).

- ¹⁴ Walker *et al* (2009), p. 51.
- ¹⁵ Kershaw *et al* (2008).
- ¹⁶ www.guardian.co.uk/uk/feedarticle/8963100
- ¹⁷ Home Office (1999). This figure is for rape of women only (statistics on rape of a male commenced in 1995).
- ¹⁸ Home Office (1999).
- ¹⁹ Walker *et al* (2009). Revised table 2.04.
- ²⁰ UK Statistics Authority (2009).
- ²¹ Temkin and Krahé (2008).
- ²² Ellison, L. and Munro, V.E. (2009) and Temkin and Krahe (2008).
- ²³ 73 per cent of people feel that a person should take responsibility for being raped if they perform another sexual act on that person. 66 per cent feel that a person should take responsibility if they get into bed with that person (Opinion Matters (2010)).
- ²⁴ *R v JD* [2008].
- ²⁵ Despite extensive legal reform, 'real rapes' continue to be understood as those committed by strangers, involving weapons and documented injury. See Myhill and Allen (2002), Kelly *et al* (2005) and Konradi (2007).
- ²⁶ See: www.opsi.gov.uk/acts/acts2003/ukpga_20030042_en_1
- ²⁷ HC Deb 15 July 2003 c182.
- ²⁸ *R v Bree* [2007].
- ²⁹ Sexual Offences Act 2003 S 1/2/3/4 (2).
- ³⁰ *R v Bree* [2007].
- ³¹ Rights of Women (2008).
- ³² www.telegraph.co.uk/news/newsttopics/politics/lawandorder/6468036/Prison-inevitable-for-false-rape-claims.html
- ³³ See Feist *et al* (2007), Rumney (2006) and HM Crown Prosecution Service Inspectorate (2007).
- ³⁴ Home Affairs Select Committee (2003). Chapter 7: Anonymity.
- ³⁵ *Ibid*, paragraph 70.
- ³⁶ See, for example:
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www.dailymail.co.uk/news/article-1181468/Britain-lowest-conviction-rates-rape-Europe.html
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<http://news.bbc.co.uk/1/hi/uk/6313479.stm>
- ³⁷ See Feist *et al* (2007) and Daly and Bouhours (2009).
- ³⁸ Crown Prosecution Service (2009), p. 35.
- ³⁹ Thomas (2010).
- ⁴⁰ See Kelly *et al* (2005); Feist *et al* (2007); and Deputy Commissioner's Command, Director of Strategic Development and Territorial Policing, Project Sapphire (2005).
- ⁴¹ McMillan and Thomas (2009).

- ⁴² Feist *et al* (2007).
- ⁴³ See Kelly *et al* (2005); Deputy Commissioner's Command, Director of Strategic Development and Territorial Policing, Project Sapphire (2005); and HM Crown Prosecution Service Inspectorate (2007).
- ⁴⁴ Daly and Bouhours (2009).
- ⁴⁵ UK Statistics Authority (2009), p. 5.
- ⁴⁶ *Ibid*, p. 8.
- ⁴⁷ Independent Police Complaints Commission (IPCC) (2010), p. 2.
- ⁴⁸ *Ibid*.
- ⁴⁹ *Ibid*, pp. 10–11.
- ⁵⁰ *Ibid*, p. 10.
- ⁵¹ IPCC press release, March 2009: www.ipcc.gov.uk/news/pr260309_kirkreid.htm
- ⁵² *Ibid*.
- ⁵³ www.timesonline.co.uk/tol/news/uk/crime/article5989465.ece
- ⁵⁴ www.timesonline.co.uk/tol/news/uk/crime/article5894879.ece?token=null&offset=12&page=2
- ⁵⁵ Details of resourcing can be found at: <http://legacy.london.gov.uk/assembly/budgetmon/2009/jul14/item-04a.pdf>
- ⁵⁶ Units listed at: www.met.police.uk/sapphire/
- ⁵⁷ Independent Police Complaints Commission (IPCC) (2007).
- ⁵⁸ www.guardian.co.uk/society/2009/dec/01/rape-case-cctv-footage-destroyed
- ⁵⁹ HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary (2002).
- ⁶⁰ Home Office, HM Courts Service and Crown Prosecution Service (2002).
- ⁶¹ ICM (2005).
- ⁶² *Ibid*.
- ⁶³ Opinion Matters (2010).
- ⁶⁴ *Ibid*.
- ⁶⁵ *Ibid*.
- ⁶⁶ www.thisisnotaninvitationtorapeme.co.uk/
- ⁶⁷ <http://i.thisislondon.co.uk/i/pix/2009/11/26-cabposter-415.jpg>
- ⁶⁸ www.youtube.com/watch?v=SSWsc12IZw

Chapter Two

- ¹ Campaign to End Rape. Submission to the Stern Review. www.cer.truthaboutrape.co.uk/
- ² www.dailymail.co.uk/news/article-1044160/Dont-blind-drunk-women-rape-bear-responsibility-happens-them.html
- ³ HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary (2002).

- ⁴ Home Office, Crown Prosecution Service and HM Courts Service (2002).
- ⁵ HM Crown Prosecution Service Inspectorate (2007).
- ⁶ Association of Chief Police Officers (2009), p. 56.
- ⁷ See Kelly *et al* (2005) for more on this.
- ⁸ Deputy Commissioner's Command, Director of Strategic Development and Territorial Policing, Project Sapphire (2005).
- ⁹ See Chowdhury-Hawkins (2008). Research suggests that one-third of women would refuse an examination if the only option was a male examiner.
- ¹⁰ HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary (2006).
- ¹¹ HM Crown Prosecution Service Inspectorate (2007).
- ¹² Department of Health (2009).
- ¹³ *Ibid*, p. 48.
- ¹⁴ Home Office (2009).
- ¹⁵ Department of Health (2010).
- ¹⁶ Lovett *et al* (2004).
- ¹⁷ Fawcett Society (2009).
- ¹⁸ Department of Health, Home Office and Association of Chief Police Officers (2009).
- ¹⁹ *Ibid*.
- ²⁰ *R v Bree* [2007].
- ²¹ HM Crown Prosecution Service Inspectorate (2007).
- ²² List taken from Association of Chief Police Officers and Crown Prosecution Service (2009).
- ²³ Independent Police Complaints Commission (IPCC) (2010), p. 18.
- ²⁴ HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary (2002), and HM Crown Prosecution Service Inspectorate (2007).

Chapter Three

- ¹ Crown Prosecution Service (2008).
- ² House of Commons Justice Committee (2009) (HC 186), p. 16.
- ³ Crown Prosecution Service (2004).
- ⁴ Konradi, A. (1996), Konradi, A. (2007) and Payne, S. (2009b). Some said victims should be able to have support in court from whoever they wanted, and some suggested victims should be allowed to have legal representation of their own.
- ⁵ Crown Prosecution Service (2009a).
- ⁶ HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary (2002).
- ⁷ Crown Prosecution Service and Association of Chief Police Officers (2009).

- ⁸ Crown Prosecution Service (2009a).
- ⁹ Crown Prosecution Service (2009).
- ¹⁰ HM Crown Prosecution Service Inspectorate (undertaken September 2009), p. 21.
- ¹¹ HM Crown Prosecution Service Inspectorate (undertaken October 2009), p. 22.
- ¹² See www.cps.gov.uk/victims_witnesses/resources/interviews.html
- ¹³ HM Crown Prosecution Service Inspectorate (2009), p. 3.
- ¹⁴ Criminal Procedure and Investigations Act 1996.
- ¹⁵ Youth Justice and Criminal Evidence Act 1999, s17 (4).
- ¹⁶ See Ellison, L. and Munro, V.E. (2009a), Ellison, L. and Munro, V.E. (2009b) and Ellison, L. and Munro, V.E. (2009c).
- ¹⁷ Thomas, C. (2010).
- ¹⁸ *R v JD* [2008].
- ¹⁹ Crown Prosecution Service (2004), p. 5.

Chapter Four

- ¹ Payne, S. (2009b), p. 11.
- ² Konradi, A. (1996 and 2007) identified that victims:
- recall the rape experience through the act of testifying;
 - re-experience disempowerment upon encountering the defendant in court;
 - experience disempowerment through problematic interactions with defence barristers; and
 - experience intense negative emotions including shame, embarrassment, grief and anxiety as a result of being unfamiliar with the criminal justice system (and not knowing how to interact successfully) and processes, and having friends, family members and the general public see and hear them talk about the intimate violation they experienced.
- ³ Payne, S. (2009b), p. 5.
- ⁴ House of Commons Justice Committee (2009) (HC186), p. 58.
- ⁵ *Ibid*, p. 35.
- ⁶ Payne, S. (2009a), p. 22.
- ⁷ Sex Offenders Act 2001 (Ireland).
- ⁸ *Ibid*, paragraph 4A notes 1–6.
- ⁹ Bacik, I. *et al* (2010).
- ¹⁰ Articles 2 and 3 of the French Code of Criminal Procedure.
- ¹¹ Bacik, I. *et al* (1998).
- ¹² Daly, K. and Bouhours, B. (2009).
- ¹³ Payne, S. (2009a), p. 18.
- ¹⁴ Jordan, J. (2001).
- ¹⁵ Department of Health (2010).

- ¹⁶ See www.crimereduction.homeoffice.gov.uk/sexual/sexual26appinfo.pdf
- ¹⁷ Howarth, E. *et al* (2009).
- ¹⁸ The National Lottery's 'good causes' are listed as the arts, charities and voluntary groups, heritage, health, education, the environment and sports.
See www.lotteryfunding.org.uk
- ¹⁹ Grant funding for Independent Sexual Violence Advisors 2010/11. Guidance and eligibility criteria. Home Office: www.crimereduction.homeoffice.gov.uk/violentcrime/sexual12.htm
- ²⁰ Payne, S. (2009), p. 21.
- ²¹ Criminal Injuries Compensation Authority (2008).
- ²² www.cica.gov.uk
- ²³ www.timesonline.co.uk/tol/news/uk/crime/article4517962.ece
- ²⁴ As reported at: https://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/8508734.stm/
- ²⁵ Victim Support (2002).
- ²⁶ Deputy Commissioner's Command, Director of Strategic Development and Territorial Policing, Project Sapphire. (2005).
- ²⁷ See www.crimereduction.homeoffice.gov.uk/violentcrime/finalsvaap.pdf
p. 7, para 2.16.
- ²⁸ Health Committee (2009). Memorandum by the Royal College of Physicians (AL46).
- ²⁹ Race on the Agenda (2010).

Chapter Five

- ¹ Crown Prosecution Service (2009).
- ² Crown Prosecution Service and Association of Chief Police Officers (2009).
- ³ Crown Prosecution Service (2008).
- ⁴ Payne, S. (2009b), p. 11.

