

Case study 1: Anna

1. Anna was raped three times (once at knife point) over the course of four days in July 2017 by a man with whom she had previously been in a short consensual sexual relationship. Anna told her friend about the second and third attacks on the day that they happened. Two days later, at the behest of that same friend, Anna reported the attacks to the police.
2. Anna's attacker was subsequently charged and, at a hearing in October 2017, pled not guilty to three counts of rape, as well as charges of impersonating a police officer, assault by beating, false imprisonment and criminal damage to property. Subsequently, on 22 December 2017, a Senior Crown Prosecutor informed Anna that the prosecution was to be discontinued. In a letter of the same day, the prosecutor informed Anna that she had *"reviewed all of the evidence the police gathered [and] decided that there was not enough to have a realistic prospect of conviction"*. The letter did not explain the reasons for that decision in any greater detail.
3. At a subsequent meeting between Anna and the Senior Crown Prosecutor in February 2018, the prosecutor explained that the credibility of Anna's account had been undermined by: (a) the fact that she had made a 999 call to police falsely reporting an attempted break-in, even though that had (on Anna's account) been at the behest of her attacker; (b) the fact that Anna had returned to the flat where the perpetrator was after the second attack; (c) the fact that Anna had failed to tell police who visited her flat on day of the second attack about the crimes (even though she was then in the presence of the attacker); and (d) subsequent WhatsApp messages exchanged with the perpetrator which might be interpreted as encouraging sex.
4. Other evidence which would have been available to the prosecution had the case proceeded to trial included Anna's police interview, photographic evidence of bruising to her thighs and hand, exhibits of her slashed clothing and the knife used to threaten her, WhatsApp messages from her attacker after the incidents apologising for "what he had done" and expressing disbelief and remorse, witness evidence from the friend to whom she first disclosed the crimes and other witness testimony about the perpetrator's attempts to impersonate a police officer.

5. Anna requested a review of the decision to discontinue her case. That request led to a further meeting between Anna and the Senior Prosecutor which took place on 1 February 2018. On 23 April 2018, the VRR process was brought to a close with a letter sent by the Chief Crown Prosecutor to Anna, which upheld the decision to discontinue.

Case study 2: Barbara

1. Barbara was raped by her mother's cousin after a family gathering in December 2015, when she and her mother were staying at the cousin's guesthouse. Barbara was 21 at the time and in a lesbian relationship. Her mother's cousin was 55 years old.
2. Barbara reported the incident to police by telephone on the following day but declined a visit / interview due to the levels of distress she was experiencing. A statement was not taken from Barbara until January 2016. The statement makes clear that her recollection of the night in question was limited: the last thing she remembers is drinking champagne with her mother's cousin after they had returned to the guesthouse sometime after midnight.
3. The suspect's position, when he was interviewed also in January 2016, was that the sex had been consensual and that he had viewed CCTV from the guesthouse, which he said showed Barbara acting in a confident and energetic manner. However he was unable to provide the police with copies of the CCTV as he had inadvertently wiped it while trying to make a copy.
4. On 20 May 2016, the police contacted Barbara and told her a decision had been made not to refer the case to the CPS because "*there was not strong enough evidence*". No other reasons were given. Barbara exercised her right to victim review on 27 May 2016, followed by further representations by her solicitors.
5. At some point Barbara and her legal team were informed of the fact that the perpetrator had attended the police station on 8 December 2015 (2 days after the rape and well before his interview under caution in January 2016) to state that a family member would be making an allegation of a sexual nature against him.
6. On 29 September 2016, Barbara was informed by the reviewing office that the original decision was correct and that the matter would not be referred. Reasons given included Barbara's initial reluctance to engage with police about the complaint, the fact that Barbara could not provide an account of the events and there was no evidence to suggest she was incapacitated. On 21 December 2016, Barbara issued a judicial review of the 29 September 2016 decision. On 5 February 2017, East Midlands police wrote to Barbara stating that whilst they did not accept there was a proper challenge to the decision, they

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would nevertheless refer to the case to the CPS for a charging decision. A matter of weeks after the referral, the CPS did charge Barbara's attacker with rape and prosecution proceedings commenced. Trial was initially set down for the autumn of 2017 and then re-listed for October 2018.

7. On 19 July 2018, the CPS wrote to Barbara informing her that a decision had been made to stop the prosecution on the basis that the CPS did not believe now that there was enough evidence to prosecute him. The letter stated that this was because "*there is no other evidence that would allow the prosecution to contradict what [the Defendant] has said, namely that he believed that at the time you consented*". The analysis of the evidence was very similar to that relied on by the police in 2016 to take no further action. The CPS formally offered no evidence against the defendant in court on 31 July 2018.
8. Barbara subsequently exercised her right of review, although the CPS had already made it clear (in a letter of 30 July 2018) that since that the evidential test had not been met, a review could not lead to a reversal of the decision to drop the prosecution. The CPS responded by way of two letters dated 27 November 2018 and 6 February 2019, upholding the decision of the reviewing lawyer as correct. The 6 February 2019 letter explained the author's view that the original decision to charge was incorrect (whilst acknowledging that it was a "*difficult*" and "*finely balanced*" case).

Case study 3: Charlotte

1. On 27 October 2016, Charlotte was forced to have both oral and vaginal sex without a condom, by a man she had met on via a dating app and with whom she had once previously had consensual sex.
2. Charlotte underwent medical examination on the same day and reported the rape to police on 18 January 2017. Both Charlotte and the perpetrator made their phones available to police during the course of the investigation.
3. On 26 July 2017, the CPS wrote to Charlotte to inform her that no further action was going to be taken in the case. The reasons given in the letter was that the *“defendant ... has a defence if he has a reasonable belief that you consented to what you both agree happened. I have been through in great detail a large amount of messages taken from phones in which he described to you what he wanted to do and I have examined your replies in those messages. Combining the messages with the pattern of behavior in the build-up to the incident I am satisfied he would be successful in showing his belief in consent was reasonable”*.
4. Charlotte exercised her right to review by letter dated 20 August 2017. The CPS responded on 31 August 2017 indicating that it considered the original decision to be the right one. More specifically, the letter noted that the original prosecutor had filed to consider medical evidence to the effect that Charlotte had sustained injuries to her mouth which were consistent with an allegation of oral rape but went on to say that nonetheless the *“nature and content of the extensive ‘whatsapp’ messages between you and the suspect prior to the 27 October 2017 undermine the prosecution case. The messages include reference to the suspect behaving dominantly towards you. There is also an indication about role play. The suggestion from the messages is that you would be a willing participant in this scenario”*.
5. Charlotte sent further correspondence on 13 September 2017 challenging the contents of the review letter of 31 August 2017. The CPS responded on 7 December 2017 refusing the request for a review, and reiterating that it considered the right decision had been made.

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Case study 4: Daphne

1. Daphne was a school teacher. She was sexually assaulted by a colleague at that colleague's house after a staff Christmas party on 20 December 2017. She was intoxicated at the time and her recollection of the evening was impaired. The morning after the assault, Daphne was very uncomfortable and tried to make light of the incident as she got ready to leave.
2. After the Christmas holiday, when both Daphne and the suspect had returned to work, he initiated a conversation in which he admitted that he had behaved wrongly and apologized for assaulting Daphne. Later in the day, Daphne and the suspect exchanged text messages in which he apologized again for his behavior and implicitly acknowledged that he had assaulted Daphne.
3. Daphne initially reported the incident to her union and head teacher. She then made a report, in February 2018, to the police. On 24 July 2018, the CPS wrote to Daphne to inform her that no further action decision would be in relation to her case.
4. Daphne's solicitors exercised her right to review on 23 October 2018. Further submissions were sent by her solicitors on 1 November 2018.
5. The CPS responded on 7 November 2018, indicating that the local resolution stage of the VRR process had completed and the original decision had been upheld. A further request for a formal review led to an additional letter being sent by the CPS on 13 February 2019, which again indicated that in its view the right conclusion had been reached. That letter referred to Daphne's "hazy" and "*sporadic recollections of the precise details of what happened*"; the fact that Daphne voluntarily stayed in the suspect's house, changed into his clothing and slept in his bed and the fact that Daphne "*appears not to have protested or left the flat immediately after the incident*".

Case study 5: Emily

1. Emily was raped and sexually assaulted by her husband on several occasions between 2003 and 2014. Emily reported her husband to the police in 2015 and after an investigation he was ultimately charged with several accounts of rape and sexual assault. At a pre-trial hearing on 27 October 2017, the Court dismissed two of those charges. A trial in respect of the remaining charges (being seven counts of rape and one of sexual assault) began in February 2018, but was then adjourned until September 2018 at the request of the Crown. The reason given was that the Crown needed to review digital evidence in more detail.
2. On 29 August 2018, the CPS wrote to Emily. The letter indicated that a decision had been taken to stop the case, such that at the next hearing the Crown would offer no evidence. The author of the letter explained that she had recently been allocated the case following the departure of the previously allocated lawyer and that she had conducted a review “*in light of material obtained from your mobile telephone and representations made by the defendant’s solicitors regarding that and other evidence*”. That review had reached a “*different conclusion to the original prosecutor*”. The letter specifically referenced “*the fact that the messages between [Emily] and the defendant do not include contemporaneous complaints of offences to him. ... In addition, there are message at the time relevant to the charges against the defendant, in which you make intimate comments to the defendant and positive comments about your relationship to him and other people*”.
3. Emily sought a review of that decision by email dated 4 September 2018 (although the CPS’s letter of 29 August 2018 made clear that “*any review will only take place once the case has been formally stopped at court. ... [A] review cannot affect the outcome of the court case*”). The CPS responded to that review request on 25 September 2018 and confirmed that in its view the decision to stop the case was the right one.

Case study 6: Freya

1. From the age of 14, Freya was groomed by a man ten years her senior, who was friendly with one of her neighbours. They soon started a sexual relationship, which lasted several months. Sometimes, Freya “consented” to sex; but on at least one occasion he forced her to have sex with him, following an argument when Freya asked him to drop her home. She was also, on one occasion, physically assaulted by him. Freya called the police several times during the course of that assault, but he grabbed the phone off her. When the police attended her home address, Freya denied knowledge of the phone call and the police left.
2. Freya reported the perpetrator to the police on 27 July 2017, around a month after their relationship ended. He was charged shortly thereafter with six counts of sexual activity with a child, two counts of rape and one count of making indecent photographs. The police investigation continued following charging, during which time the police downloaded the contents of Freya’s mobile phone. The suspect refused to disclose the passcode to his phone so his device was not examined.
3. On 19 December 2017, the CPS decided to discontinue the prosecution. A victim review was requested in March 2018, which was followed by further submissions from Freya’s solicitors. The CPS responded on 20 April 2018 indicating that they considered the decision to stop the case was correct. That letter referred to a lack of evidence “*to confirm that the defendant was aware of [Freya’s] age*”, as well as the fact that text messages on Freya’s phone contained communications with third parties in which she said that she was older than she was.

Case study 7: Gina

1. Gina was raped in April 2017, when highly intoxicated, by one man, whilst being videoed by another. She reported the rape that night and underwent a full medical examination. The police carried out an investigation, which included analysing Gina's phone as well as that of the two suspects.
2. On 28 May 2018, the police told Gina that they were not proposing to take any further action, as they had been advised by the Crown Prosecution Service that there was insufficient evidence to charge. No further explanation was given.
3. On 18 July 2018, Gina attended a meeting with the police where she was told for the first time that videos of her had been found on the suspects' phones and that the first man, accused of rape, had initially lied when interviewed under caution. He initially denied having sex with her until confronted with forensic and video evidence. Nonetheless, the police maintained that Gina's evidence was undermined because, due to her intoxication, she could not remember being driven to the property where she was raped or what had happened.
4. Gina exercised her right to review, but on the 13 March 2019 received a letter from the police confirming that the decision to NFA the case had been upheld. The letter maintained that Gina's evidence was irrevocably undermined due to her flawed recollection of events.

Case study 8: Holly

1. Holly was raped on 4 March 2016 by a man she had been dating for approximately 6 months. A few weeks later, he threatened to rape her for a second time. Holly told a friend about the rape at the time. He encouraged her to go to the police but she refused, as she did not want her parents to find out what had happened.
2. In the following weeks, Holly discovered a blog post online written by another woman who had dated the same man and who said that he had also forcefully had sex with her. The two women subsequently communicated about the man and Holly learned that he had also abused a young girl. Holly wrote her own blog post, which she published online in April 2016, about the emotional abuse she had suffered at the hands of the man, and alluded – in that post – to other forms of abuse.
3. In December 2016, Holly received a letter from the suspect's solicitors making a series of demands regarding the removal of publicly available information and advising them to seek legal representation.
4. On 1 March 2017, Holly attended the police station with another young girl, who had been abused at age 14 by the same man. Holly was intending to support the girl as she reported the abuse the man had committed against her. At the station, Holly was asked by an officer whether the man had committed a crime against her, and if so, whether she'd like to report it. Holly did so. Holly was video interviewed around a fortnight later. Her phone download was also taken, which showed that she and the other women now being sued for defamation by the man in question had a WhatsApp group.
5. On 25 September 2018, the CPS refused to charge the man with Holly's rape. The letter said that the *"difficulty in your particular case is that throughout your video interview you did not seem too sure about what happened and seemed to preface every answer with the words "I think". You also frequently mentioned other women who you had talked to subsequently about the male concerned and this causes me concerns. In addition, I was concerned about the timing of your reporting the matter to the police, which seemed to coincide with another female (the same day) and not long after you had received a pre-action court letter regarding the defamation case which has been brought against you. The content of the WhatsApp messages also causes me grave concern"*.

6. Holly subsequently exercised her right to a review and a VRR local resolution decision was communicated to her by way of letter dated 12 October 2018. That upheld the charging decision.
7. A further formal review was sought on 22 October 2018. A final letter from the CPS dated 13 February 2019 concluded the formal review process, stating that the decision not to prosecute was correct. In the letter, the reviewing lawyer stated that he must assess if the allegation would “*realistically survive adversarial proceedings*”. One of the main reasons given for the decision was that “*the prosecution has only your version of events upon which to rely*” in stating that Holly did not consent to sex. The reviewing lawyer also described the “*backdrop to the case*” as “*tainted*” by other allegations of sexual assault against the same suspect which have not led to a charge. Other elements of Holly’s account and behaviour were described as additionally “*unhelpful to any prosecution of this case*”, including her consumption of “*a moderate level of alcohol*” on the night in question, and also the timing of her allegation bearing in mind the suspect’s threatened legal action against her. The letter also referred to comments made in Holly’s interview such as that she did not explicitly “*class it as rape*” at the time of the incident.

Case study 9: Imogen

1. In April 2016, Imogen reported her ex-partner to the police for rape and sexual assault, psychological, physical and financial abuse and coercive control. The rape and sexual assault had taken place during the night of 4-5 April 2016, after Imogen had broken up with her partner.
2. On 29 May 2018, after a lengthy investigation, the CPS wrote to Imogen communicating its decision not to charge the suspect. That letter sought to justify the decision not to charge on the following basis:

“You were in a relationship with the suspect. The jury would be aware that you had enjoyed an adventurous sex life with the suspect before this incident.

You have told police that during the evening and early hours of 4/5 April 2016 you were forced to have sexual intercourse with the suspect against your will and that he inserted his hand into your vagina too, against your will.

The suspect was interviewed thoroughly by police and he gave a full and frank account. He says all sexual relations took place with your full participation and consent, albeit a few days earlier than you report.

The issue would be who would a jury be most likely to believe?

It would not be sufficient for a jury to think that you were more than likely telling the truth; they would have to be satisfied so that they were sure that when you had sex with the suspect and he fisted you, you did not agree to it.

I am afraid that the evidence you gave police that you were both naked when the suspect asked you to hold his penis, which you did voluntarily and then had intercourse without protest or sound is unlikely to persuade a jury that you were not agreeable to having sex nor would it assist the jury in coming to a decision that the suspect would have known you were not agreeable.

I know that you had told the suspect earlier in the day that you were not inclined to have intercourse that evening but your actions subsequently might persuade the jury that you had changed your mind.

You did not make an official complaint until a week later. At this time the medical evidence was not wholly supportive of a sexual assault.

In text messages you have told people that something very unpleasant happened but not that you were raped.

I was bound to consider also that you have made previous allegations of rape and sexual assault which were not pursued.”

3. In July 2018, Imogen submitted a very substantial request for a victims’ review (over 80 pages).

4. On 5 November 2018, the CPS communicated its decision on the local resolution stage of the VRR request. This upheld the original decision, albeit on different grounds to the 29 May 2018 letter. The author of the 5 November 2018 letter specifically disavowed the suggestion that the fact that Imogen had made allegations against other abusers in the past was something which undermined her case for example.
5. Imogen felt unable to pursue her VRR to the Appeals and Reviews Unit, as she did not feel well enough after the distress and psychological toll caused by decision letter she received from the local resolution team. She felt that she had to prioritise family commitments and her recovery.

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Case study 10: Juliet

1. In June 2016, Juliet reported historic sexual assault and physical abuse by her father, as a child. Her mother and two sisters made reports at the same time.
2. Juliet's father was charged with a total of 44 offences in September 2017. He pled not guilty at a hearing on 9 February 2018. A trial was set for the week commencing 17 September 2018.
3. On 10 April 2018, however, the CPS wrote to Juliet to inform her that the prosecution was to be stopped. The CPS indicated that this was because further information supplied by the police meant there was insufficient evidence to continue the prosecution. Specifically, the letter referred to documentation from a family court case in 2012, which related to custody issues surrounding younger children in Juliet's family, and which suggested that "*[Juliet] and the other people who have complained about [the Defendant] disclosed no concerns about the behavior of the [Defendant] in relation to sexual offending*". The letter went on to say that "*any doubt means that a Jury cannot be certain that an offence occurred*".
4. Juliet exercised her right of review on 17 April 2018. A meeting between the CPS, Juliet, her solicitor and her mother took place on 19 June 2018. The CPS insisted that this meeting formed the VRR, and therefore the decision was never independently reviewed. The only correspondence Juliet received after the meeting was a short letter from the Chief Crown Prosecutor confirming that her father had been formally acquitted of the 44 charges as a result of the decision to stop the prosecution.

Case study 11: Katie

1. On 16 October 2017, Katie reported several incidents of rape and sexual assault by her former partner to the police. Katie's relationship with the suspect had ended in July 2016. The most recent incident of rape had taken place one day prior, on 15 October 2017, when Katie had awoken to find her ex-partner in her bedroom naked.
2. On 14 November 2018, the CPS wrote to Katie indicating that no charge would be brought. The principal reason given was apparent inconsistencies in Katie's evidence as to when she had last had consensual sex with the suspect. In addition the letter referred to WhastApp messages exchanged between Katie and the suspect which were described as being "*amicable in tone and content and contains no reference to an incident of the type you have said took place*".
3. On the same day, Katie requested a review of that decision. The CPS wrote to Katie with the outcome of the local review stage of the VRR process on 3 December 2018. The decision not to charge Katie's ex-partner was upheld.
4. Katie subsequently exercised her right to request a further formal review on 14 December 2018. Further submissions were submitted by solicitors acting for Katie on 14 February 2019.
5. On 26 March 2019, the CPS notified Katie's solicitors of the conclusion of the final stage of the VRR process, which again was that no charges would be brought. The decision letter again relied upon the fact that Katie had given inconsistent accounts as to when she had last had consensual sex with the suspect, and expressed concern that Katie's allegations would not be deemed credible as she had not disclosed the fact that she had been raped at an earlier opportunity.

Case study 12: Louise

1. On 10 September 2017, Louise was attacked and raped by her husband. Immediately after the reported assault, Louise sent a distraught text message to a friend which recorded that her husband had *“been drinking all night & morning, he got cross earlier when I refused to have sex with him and pushed me over when I was holding [the couple’s child], and just now I finally gave in to the sex, I feel so shit. He’s just gone out to get more beer, I probably should call the police but I’m scared to”*. Louise then went to her friend’s home, where she immediately reported the rape to the police. She gave a statement and attended the police station on the same day to give a detailed account in an ABE interview. Louise also underwent a medical examination which noted that she had bruises on her upper thigh, in the shape of hand marks. Louise was able to provide the police with a recording of the suspect from the morning of the assault, in which he can be heard speaking aggressively and she can be heard protesting that she does not want to have sex.
2. After the incident, Louise separated from her husband. Shortly afterwards, he was arrested again in connection with a malicious communication about Louise and her family on social media, and given a police. He was also arrested and charged for breaching the occupation and non-molestation orders, which Louise obtained from the family court.
3. Louise also became aware, after the relationship ended, that another former partner of her husband was also raped by him but was afraid to press charges. Louise informed the police of this as she thought that the other woman might be persuaded to engage in the court case as well.
4. On 5 December 2018, the CPS wrote to Louise indicating that no charge would be brought. The only reason given in that letter was that it could not be provide that the suspect did not reasonably believe that Louise was consenting to intercourse. However, information from the police officer in the case suggested that the reason for the refusal to press charges was in the text message she sent to her friend on the night of the rape she said *“she had given into sexual intercourse”*. This, it was said, *“would undermine a prosecution for any potential offences on that occasion as the suspect would rely on her decision to consent to sexual intercourse. The Crown needs to prove that the complainant was not consenting at the time, but her text message would undermine that position”*.

5. On 27 March 2019, solicitors acting for Louise sent a VRR request to the CPS and a request for further information as to why a decision had been made not to charge the perpetrator. On 5 April 2019, the CPS responded, not addressing the concerns raised by Louise's solicitors, but confirming that the decision not to prosecute had been upheld following local resolution. The letter stated that Louise's assertion in the contemporaneous text message that she "gave in to the sex" following violence, together with an assertion she had made to the police to the effect that there had been "no point fighting" the perpetrator when he assaulted her, would cause a jury difficulties in ascertaining whether Louise was consenting.
6. Louise's solicitors then wrote again to the CPS requesting an independent review by the Appeals and Reviews Unit. In August 2019 Louise's solicitors were contacted by the CPS Appeals and Reviews Unit to inform her they had referred the case back to CPS London, on the grounds that more evidence and information should have been sought. Louise's solicitors were then notified that CPS London had referred the matter back to the police to re-investigate, almost two years after her initial complaint.

Case study 13: Marie

1. Marie was repeatedly raped by her ex-partner in the course of an increasingly abusive relationship that started when she was in her teens. Marie reported her ex-partner to the police in 2016, and provided two ABE (“Achieving Best Evidence”) interviews.
2. Marie was informed by letter dated 2 November 2018 that no further action was to be taken in relation to her complaint. That letter stated that there were “difficulties with the evidence”. The only example given was that there had been a delay in Marie reporting the incident.
3. At a subsequent meeting with the CPS on 25 January 2019, Marie was told by the prosecutors who had declined to charge her ex-partner that their decision was “*not based upon us not believing*” Marie’s account, but that they had to “*forecast*” what a jury would think. They proceeded to give examples of evidential difficulties which can arise in cases such as hers, although they would not indicate explicitly whether these had been factors in the decision in Marie’s case. The examples provided were: (a) the fact that a complainant has made inconsistent statements about the incident to doctors, counsellors or members of the family; (b) where it is identified that the complainant has made complaints before, and the credibility of those complaints have been questioned; (c) comments in school records suggesting that the complainant has fabricated things in the past; (d) where a relationship has continued after a rape, or text messages show the complainant has concluded text messages with kisses; and (e) where there has been a delay in reporting.
4. A letter of representations was sent by Marie’s solicitors to the CPS on 14 February 2019 requesting a VRR. The local review decision was then received just days later on 18 February 2019, providing more detailed reasons for the decision not to prosecute. Those reasons included: (a) a conclusion that the medical evidence available of Marie’s “post-coital bleeding” does not necessarily support her account that her ex-partner was sexually violent as a jury might disregard the medical notes (which attribute the bleeding to a previous abusive relationship) and conclude the bleeding was due to an undiagnosed condition; and (b) comments to the effect that her continuing relationship with her ex-partner in the aftermath of sexual and domestic violence would lead a jury to believe she was lying.

5. On 26 March 2019, Marie's solicitors initiated the formal review of the stage of the VRR process.
6. On 22 July 2019, the CPS' Appeals and Reviews Unit made the decision to reconsider Marie's complaint as a result of the VRR.

Case study 14: Nina

1. Nina suffers from dissociation / dissociative disorder. She had a consensual sexual relationship with her pastor who attended training with her in order to understand how to spot if she was in a state of dissociation and how to bring her out of such a state. Some time after this relationship ended she reported two incidents of rape by her former partner to the police. The first incident took place in 2012, the second in 2014.
2. Between 2015 and 2017, the pastor faced charges brought by other women who claimed he had sexually or physically assaulted them. He was convicted of a late-night attack on a lone woman in August 2016. He was acquitted of another charge of sexually assaulting a teenager.
3. By way of letter dated 1 October 2018, Nina was informed that the CPS did not propose to charge the pastor in connection with Nina's complaints.
4. Nina exercised her right to review. The local VRR decision was made on 6 December 2018 and upheld the decision not to charge. The letter stated that there were inconsistencies in Nina's case, including that the disclosures she had made to third parties about the incident were not consistent with her account to the police.
5. Nina responded to the local VRR decision letter, making further submissions, but by a letter dated 24 December 2018, the District Crown Prosecutor who had locally reviewed the case defended her decision. That letter suggested that Nina's medical records undermined her account, but did not provide further details.
6. Nina then exercised her right to a further review by the CPS' Appeals and Reviews Unit. By letter dated 10 June 2019 she was advised that, following the Appeals and Reviews Unit review, a decision had been made to uphold the original decision not to prosecute. In that letter, the CPS informed Nina for the first time that the suspect had provided an account in interviews, in which he had denied altogether that his relationship with Nina was sexual. The letter then overtly accepted that it was in fact clear the account the suspect had given was untruthful, and that it could be proven in court he had lied. Despite this, the letter asserted that just because the suspect's account could be shown to be entirely false, this did not mean that a jury would be capable of reaching a conclusion as to whether the suspect lacked reasonable belief in consent.

Case study 15: Olivia

1. Olivia, a gay woman, was raped by a stranger in the early hours of Monday 6 August. She reported the rape later the same day, there was a swift police investigation and the perpetrator was charged on the same weekend.
2. A trial date was set for 25 February 2019, but on 10 December 2018 the CPS wrote to Olivia indicating that it intended to discontinue the prosecution. It said that this was because the CPS had recently been supplied with material “*which casts doubt on the account given by [Olivia] to the police*”. In particular, it referenced CCTV of the incident which – in the CPS’ view – did not show Olivia to be incapable through drink and indicated that there had been consensual sexual activity insofar as Olivia was “*engaging with the defendant*” and had “*followed the defendant out on to the street*”.
3. In January 2019 Olivia’s MP, Lucy Frazer QC (at that time the Parliamentary Under-Secretary of State for Justice) wrote to the CPS on her behalf to express concerns about its handling of her case. The CPS responded to this letter on the 26 January 2019, acknowledging that the police too had initially raised concerns about the decision to drop the case as they felt that the prospects of conviction were strong. The letter also acknowledged that to some extent the inconsistencies between Olivia’s evidence and the CCTV could be accounted for by her intoxication but that the inconsistencies were nevertheless considered to be ‘*too significant*’.
4. Olivia then instructed solicitors who wrote to the CPS confirming Olivia’s request for a victim review of the decision. Olivia’s solicitors highlighted in their letter of representations that Olivia was and had always been a lesbian, to which witnesses had attested; that multiple witnesses had expressed concern about her intoxication; that the CCTV footage did not cover the entirety of events; and that Olivia had a combination of documented medical conditions which would have prevented her from running away from the suspect. The CPS responded on 22 March 2019 by defending its decision setting out its detailed interpretation of the CCTV footage and asking Olivia’s solicitors to confirm if Olivia still wished to exercise her right to a full review. After further representations from Olivia’s solicitors in support of a further review, the CPS’ Appeals and Reviews Unit confirmed, by letter dated 24 April 2019, that it had concluded the original decision to discontinue proceedings had been correct.

Case study 16: Penny

1. In January 2019, Penny reported to the police that her husband had been raping her for a number of months. He was also exhibiting high levels of control, isolation and very jealous behaviour.
2. During the police's investigation of Penny's rape allegations, the husband was made to leave the family home. He moved into his place of work, which was a hotel. While residing there, he was arrested, charged and remanded for raping another woman. At the time of the second alleged rape, the investigation into the attacks on Penny was still ongoing.
3. It is known that the suspect pleaded not guilty to the second alleged rape. Shortly thereafter, the CPS took the decision to stop the case against him. Not long after that, the CPS made a decision that no further action would be taken in respect of the allegations made by Penny.
4. The CPS' letter to Penny (dated 18 March 2019) said that, in the view of the prosecutor, there was no realistic prospect of conviction in respect of her complaints for the following reasons: *"You have described a pattern of behaviour in which the suspect pestered and cajoled you into having sexual intercourse with him. I feel that his actions do not amount to rape. ... There are difficulties with the evidence including that you did not lock your door to prevent the suspect from entering the room and carrying out the rapes. Also, there is material to suggest that the rape complaint was motivated by your desperation to have the suspect removed from the house because he was refusing to leave"*.
5. On 10 May 2019, Penny requested a review of the decision not to prosecute her complaints. She has been informed that this review request will not be progressed at this time as they are still considering whether to charge the suspect with coercive and controlling behaviour as an alternative charge to rape. In the CPS' most recent letter to Penny, dated 29 July 2019, she was informed that enquiries were still underway with regard to the latter charge.

Case study 17: Zoe

6. Zoe was violently raped by a fellow student in 2008 in Cardiff, at gunpoint. She did not report the rape at the time, although she did give vague details to her then GP.
7. In October 2016, after volunteering in the women's sector for a number of years, Zoe decided to make a report to the police about the incident. The police indicated to Zoe that, in their view, the complaint passed the evidential test. However, in February 2017, the CPS indicated that no further action would be taken. The reason given was that, although it was clear that Zoe had not consented, it was not clear whether her attacker would have been reasonably aware of that. The letter pointed out that Zoe had not actually said "no" to her attacker, and said that the way Zoe had described the incident with the gun "*indicated that it was not a serious threat*".
8. Zoe exercised her right to a review on 9 March 2017. The local aspect of that review was completed on 7 April 2017, with the original decision not to charge being upheld.
9. Zoe asked for a further, formal review on the same day.
10. The CPS took a long time to conclude that further review, during which time Zoe was told by the investigating police officer that the CPS were preparing to reverse their decision and charge her attacker. Nonetheless, in October 2017, the CPS again decided not to charge. This decision, however, was taken on a different basis to the initial decision. It focussed on Zoe's personal medical history and the fact that she may have been taking anti-depressants and/or using ketamine at the time of the incident, which may in turn have undermined the reliability of her recollection.
11. Zoe requested a further review of that decision not to charge on 1 November 2017, as well as a meeting with the prosecutor. Her letter pointed out the letter from the CPS was factually incorrect and that Zoe's medical notes confirm that she had stopped taking anti-depressants 8 months prior to the incident in question.
12. The suggestion of a meeting was declined in a further letter from the CPS dated 29 November 2017, which appeared to accept that an error had been made as regards the medical notes, but nonetheless maintained the decision not to charge.

919

Case study 18: Sophie

1. In April 2018, Sophie was raped by a man known to her, who attacked her while she slept after drinking heavily. Sophie reported the incident to police the following day, when she realised what had happened.
2. A forensic examination was undertaken and the police took her clothes. A few weeks later Sophie did a formal ABE (“Achieving Best Evidence”) interview with the police and they took her mobile phone. The case was passed to the CPS and in December 2018, they charged Sophie’s attacker with rape. A trial date was set for August 2019.
3. In March 2019, however, the CPS indicated to Sophie that it was intending to drop the case. In a letter to Sophie dated 27 March 2019, the CPS prosecutor referred to her video ABE statement saying “*your account was that ... you would not have consented to any kind of sexual intercourse with [the suspect] because you were not interested in a sexual relationship with any man at that point in time. Northumbria Police then made further material available to me that indicated that the assertion that you were not interested in a sexual relationship with any man at that point in time was not correct*”. That letter did not explain what the “*further material*” was.
4. Sophie subsequently engaged a solicitor who obtained a copy of the ABE interview transcript. A review of this transcript confirmed that Sophie had not said she did not want a sexual relationship “*with any man*” but rather had said she “*did not want a sexual relationship*” and, when asked to clarify this, stated she meant specifically with the suspect. Sophie’s solicitor then wrote to the CPS on Sophie’s behalf requesting a victim review on 2 April 2019. In this letter they alerted the CPS to its mischaracterisation of Sophie’s comments in ABE interview.
5. The local stage of the VRR process was completed on 23 May 2019. By letter of that date, the CPS indicated that the further material it had previously referred to was “*a note ... [on Sophie’s phone] dated 19 March in which she suggested that she should move in with another male*” and again suggested that this was inconsistent with the assertion made by Sophie in the ABE interview that she was not interested in a sexual relationship, despite the submissions made by Sophie’s solicitors regarding her precise comments in the transcript.

6. On 4 June 2019, Sophie requested a further formal review of the decision. On 2 August 2019 the CPS wrote to Sophie maintaining that, after a further review, it was satisfied that the decision to discontinue proceedings had been correct. The letter relied on the lack of available evidence to corroborate Sophie's account that she had been unconscious at the time. With regard to the material on Sophie's phone – concerning another man – the reviewer stated *“I agree that this evidence could be used by the defence to undermine [Sophie] but put less weight on it than previous reviewers. In my view this would be used with other parts of the evidence to raise a doubt in the mind of the jury.”*

921

Case study 19: Theresa

1. As a teenager Theresa was sexually assaulted on more than one occasion by a serving police officer. The officer in question knew that Theresa – although by that time over the age of 18 – was a survivor of child sexual abuse, as he was involved in the investigation of a family relative of Theresa for child sexual offences against her.
2. Theresa first reported the conduct of the police officer in the late 1990s, but no criminal investigation followed. She later reported the assaults again in 2014. After a long investigation, charges were brought and a trial was scheduled for September 2017. That trial was however adjourned on the opening day.
3. Whilst awaiting a new trial date, Theresa was informed – in February 2018 – that the CPS was intending to discontinue the prosecution. Specifically, in a letter dated 12 February 2018, Theresa was informed that the prosecution had been stopped as her *“recollection of events has changed, quite significantly, over the course of proceedings”*. The “change” in question was that in July 2014 Theresa said that the assaults had consisted of the man *“touch[ing] [her] clitoris on two occasions”*, whilst in a subsequent interview in December 2017 Theresa said that sexual contact happened on three occasions, and that the *“same thing happened as happened on the other occasions; namely that he put his fingers in [her] vagina”*. The letter also advised Theresa that the police had not been able to locate some documents in connection to her first account to the police in 1998.
4. Theresa exercised her right of review by email on the 16 February 2018. By letter dated 26 February 2018, Theresa was informed that the decision to offer no evidence had been upheld following review by a Senior Crown Prosecutor. The letter reiterated that Theresa’s account had changed *‘significantly’* and remarked upon the passage of time since the incidents took place.
5. After receiving this decision, Theresa had an opportunity to review her initial statement to the police in July 2014. She noted that she had in fact clearly stated that the accused had touched her clitoris and her vagina, not just her clitoris. She also noted that she had clearly made reference at that time to a third incident of sexual contact, albeit that she had not expanded on it in detail. On 2 March 2018 therefore, Theresa sent an email to the CPS in which she exercised her right to a further review by a Chief Crown Prosecutor, as well as lodging a formal complaint. In her email, Theresa stated that she had had an

opportunity to remind herself of her initial statement to the police in July 2014 and she could not see any *'significant'* difference between the two accounts, citing the relevant sections of her July 2014 statement.

6. The VRR process concluded on 6 July 2018, with the CPS upholding the decision to discontinue on the basis that the prosecution had been presented "*with two different accounts about the nature of the assault*", as well as the fact that "*the jury would have questioned why following the first assault [Theresa was] with the [defendant]*" for a second time. This letter acknowledged that reference had indeed been made by Theresa in her first interview to an assault to her vagina, but stated that it had not been clear from her choice of words that she was describing digital penetration as she had only referred to her vagina being touched or caressed. The letter suggested that this remained a significant problem as her later interview had referred to penetration and therefore a jury would not know what to believe. A meeting subsequently took place between Theresa and the Deputy Chief Crown Prosecutor who made this final decision, in August 2018, during which the Deputy Chief Crown Prosecutor defended this position, despite Theresa's assertions that with regard to both accounts the nature of the assault she was describing was clear.

Case study 20: Ursula

1. In 2018, Ursula, a girl aged 14, was raped by a boy aged 13 at her school. When she disclosed what had happened to a friend, the incident was reported to Ursula's school, and subsequently social services and the police.
2. Ursula was questioned by the police in the days subsequent to the incident and underwent forensic examinations, which confirmed that sexual intercourse had taken place. She repeated her account, variously, to the safeguarding lead at her school, a social worker, a sexual assault referral centre, police officers during questioning, and finally in a video recorded interview. The accused meanwhile, when initially questioned, denied knowing who Ursula was. He was then invited to a formal voluntary interview. Ursula has been informed that during this interview he admitted that he did know Ursula, but stated that Ursula had had sex with him willingly.
3. While the police's investigation was ongoing, another teenage girl came forward and made an allegation of sexual assault against the same boy. Ursula understands that he had bragged about this earlier incident to a friend, who subsequently confirmed the same to the police.
4. By letter dated 20 August 2019, the CPS confirmed to Ursula's mother that a decision had been made not to bring charges. The letter stated that the CPS had considered Ursula's video recorded interview and the evidence of witnesses but that, since the accused had *'denied the allegation'*, this was a case of *'your daughter's word against the word of the accused and such cases are very difficult to prove'*. It was not clear from the letter whether the accused had denied having sex with Ursula, or whether he had admitted to having sex with Ursula but denied any element of coercion or force.
5. On receipt of that letter Ursula's mother requested a Victim's Right to Review on Ursula's behalf by telephone. In response, she received a local resolution decision letter dated the 4th September 2019, which upheld the original decision not to charge. That letter stated that Ursula's credibility would be undermined at trial as the Defence would seek to rely on the fact that she had not immediately reported the incident, and on inconsistencies between her initial account to the police and her video recorded interview. It acknowledged that the inconsistencies identified were *'understandable as she was trying to process what happened'*, but maintained that they would inevitably undermine the

prosecution case. The letter also explained that weight had been afforded to the 'good character' of the accused and the fact that he agreed to answer questions in his police interview, and that taking all this together the reviewing lawyer had concluded the evidential criterion was not met.

