

# Thematic Review of the CPS Rape and Serious Sexual Offences Units

February 2016



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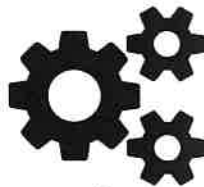


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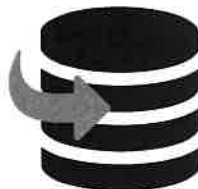
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# 1 Preface

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1.1 The purpose of this review was to examine and compare the structure of the units designated in each Crown Prosecution Service (CPS) Area to handle rape and serious sexual offence (RASSO) casework and assess the quality of the casework delivered.

1.2 Across the Areas there are many committed and professional individuals trying to deliver a quality and timely product. There were a number of obstacles to achieving this, including deficiencies in the quality of police files referred to the CPS and a lack of staff resource within the units. As a consequence, the standard of casework is not what should be expected from specialist units and there is significant duplication of effort and re-work. We found that in over 10% of cases the Code for Crown Prosecutors (the Code) was not applied correctly at the charging stage, which is a worse result than our findings in relation to non-specialist cases. It also takes too long for the CPS to provide charging advice, thereby increasing the anxiety for vulnerable victims.

1.3 The policy and legal guidance for RASSO casework is sound and when correctly applied should deliver quality casework. Compliance with that guidance, however, was not at the level to be expected, with cases not always being handled by a specialist prosecutor, or even by a specialist unit. The level of care for victims and witnesses fell well short of what is expected.

1.4 It is a matter of regret that each CPS Area devised a different operating model for how it handles its RASSO casework. We found that there was limited compliance with the minimum standards required for these units and there was limited quality assurance against the standards, with no sanction for non-compliance. In our view there should have been more prescription on structure and resourcing at the outset. More guidance is now needed to achieve what is required to deliver the work.

1.5 In contrast, there are positive trends in the data; the volume of prosecutions completed reached its highest level during 2014-15 with an increase in the number of convictions, although the overall conviction rate fell slightly. Recently there has been significant internal and external scrutiny as well as a reinvigoration of the commitment by the CPS at a national level and the beginnings of a cultural shift within the Service. The CPS has already undertaken an internal study of its RASSO casework prior to our fieldwork and identified similar aspects for improvement. A number of recommendations were made to deliver that improvement which we have endorsed with our recommendations. This ongoing work is most welcome to drive the change required and ultimately provide a better service to victims and witnesses in these sensitive cases.





## 2 Executive summary

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### Context

2.1 The focus of this inspection was to review the current arrangements for handling RASSO casework and the ability of the current CPS RASSO units to deliver fair and successful outcomes in the most efficient and effective way. We report on the quality of casework in part 1 of the report and examine and compare the structure of the designated units in each CPS Area to handle RASSO casework in part 2.

2.2 The inspection took place against a background of internal and external scrutiny of the prosecution of RASSO allegations. This has become the subject of significant political and media attention, particularly due to a number of high profile defendants and the rise in volume of non-recent allegations, previously referred to as historic abuse.

### Key findings

#### The model

2.3 In March 2013 the then Director of Public Prosecutions (DPP) announced that RASSO units would be rolled out by every CPS Area and minimum standards were drawn up as a guide (detailed at annex D). The intent was right but the timeframe for implementation was ambitious. As a consequence different models have been developed in each CPS Area. Compliance with the minimum standards is poor with no individual minimum standard applied across all Areas; more prescription around structure and resource was necessary at the outset.

2.4 There is also significant variation in the models deployed across the police forces, which vary from specialist units to investigations sited in operational command units and force criminal investigation departments; this gives rise to a significant variation in terms of service delivery to victims across a single CPS Area.

2.5 The remit of the individual units varied across Areas. Complex RASSO casework could sit in either the RASSO unit or the Complex Casework Unit. In fact one Area had no RASSO unit at all and another had a Public Protection Unit (PPU), which was changed to a RASSO unit just prior to the fieldwork. RASSO casework involving youth defendants is handled similarly variably, with not all appropriate youth work referred to the RASSO units and not all RASSO lawyers undertaking the work are youth specialists. There are variations in the roles and responsibilities of the unit heads; some spans of control are unwieldy and prevent the units from operating at their most effective.

2.6 The expectation was that the RASSO units would be staffed with rape specialist prosecutors and paralegal staff; this is not reflected in the various models deployed (see annex E). Most Areas with established units have no plans for rotation or succession of staff although the more recently established units had considered this in their planning. There are limited welfare arrangements in place to support staff who handle exclusively such sensitive and distressing casework.

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2.7 It is hard to understand the rationale behind resourcing the units when they were established or since as part of a holistic resource model. CPS Headquarters has now undertaken some work to understand the resourcing requirements of the units. This is a new approach with a move away from caseload per lawyer to a task-based system of activities required on a case and the average throughput time to undertake a task. The model has shown that the CPS is under-resourced for the current volume of work and even more so for anticipated future increases. Since the fieldwork steps have already been taken to address resourcing across the Areas.

### **Casework quality**

2.8 Across the Areas there are many committed and professional individuals trying to deliver a quality and timely product, with appropriate consideration of the needs of victims and witnesses. This is despite the challenges of the models and the environmental conditions in which they currently operate. Building effective cases and providing the required level of victim care is time-consuming, often involving the viewing of lengthy visually recorded interviews, thorough inspection of third party material prior to charge, a potential pre-trial witness interview, a conference with counsel and a special measures meeting with the victim. Resourcing of the units across the Areas is insufficient for this, which has been borne out by the resource modelling undertaken by CPS Headquarters (further detail can be found in part 2 at paragraphs 6.29-33). The findings in relation to casework need to be set in the context of the current insufficient resource available, compounded by inefficiencies derived from considerable duplication of work and re-work required on individual case files, due to poor quality police files.

2.9 It was evident from the file sample that casework was not always handled by specialists in dedicated units and there was not an end to end approach with continuity of prosecutor throughout. This may explain the finding that compliance with all elements of the RASSO policy was not high. There was compliance post-charge in 35 of the 59 relevant cases (59.3%).

2.10 The case was dealt with by a rape specialist in only 53 of the 85 applicable cases (62.4%), there was continuity of prosecutor in only 44 of the 72 relevant cases (61.1%) and it appears that the file was dealt with in a dedicated unit in only 42 cases (46.7%) with a further eight where it was not known.

2.11 Early investigative advice is under-used and where it is provided it is not very effective. There is a lack of clarity on what it is and how it should be used and as a result it is sometimes confused with the police supervisory role and the 'gatekeeping' of files referred to the CPS. There was poor quality decision-making in too many cases at charge, the Code for Crown Prosecutors was not applied correctly in 10.1% of cases and also post-charge, where decisions are supposed to be taken by trained specialist lawyers working in specialist units.

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**2.12** Lack of time was an issue for almost all rape specialists and in many Areas the time taken for a charging decision was measured in months, the average time in the file sample was 53 days against a target of 28 days. Areas have instructed counsel to provide pre-charge advice in a drive to improve timeliness and reduce backlogs, but this initiative has a number of short-comings.

**2.13** The quality of the police file can impact on timeliness of decision-making and is the biggest contributory factor in terms of duplication and re-work on a case; the quality of files submitted for advice needs improvement. A number of Areas have introduced a checklist and/or a 'triage' system and other activity is being trialled to address the issue, such as embedding police officers in RASSO teams or lawyers with the police investigative units.

**2.14** Victim and witness care can be paramount in RASSO cases. In the file sample the level of care fell well short of what is expected and there was compliance with all relevant victim policies in only 66.7% of cases. Compliance with the sound RASSO policy and legal guidance was also not at the level to be expected with the application of policy post-charge achieved in only 59.3% of cases. Cases were not always handled by specialists or even by a specialist unit, continuity of lawyer was not guaranteed, essential instructions to the advocate were often absent, case conferences with prosecuting counsel were not held across all Areas, and CPS prosecutors for the most part do not attend the special measures meeting with the victim.

**2.15** Most specialist lawyers working in the RASSO units were trained to undertake RASSO casework. However, the need for refresher training was identified, as was youth training for RASSO specialists and specialist training for paralegal staff. The various assurance mechanisms currently in place to examine the quality of casework need to be used more effectively to learn and disseminate lessons, drive improvement and ultimately deliver a better service to victims and witnesses.

## **Conclusion**

**2.16** Considerable work has been undertaken by the CPS to prioritise improvement in rape prosecution outcomes, this has contributed to an improving trend in the data with an increased volume in rape prosecutions. In 2014-15 a national programme of work was developed seeking to address issues across the criminal justice system. As part of this the CPS undertook an internal review in the latter half of 2014 and identified where improvement was required and a significant number of recommendations were made to deliver this. We endorse these and reflect them in a number of recommendations that we make. A Delivery Board is in place which has already progressed a number of work strands, from joint workshops with the police through to delivering training courses for specialists, with continued work planned throughout 2016. It is hoped that this work will demonstrate in practice the commitment to ensuring RASSO is a priority and deliver the qualitative improvements required. We will assess the progress made during our follow-up work. In light of our findings we make five recommendations for improvement.

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## Recommendations

2.17 In light of our findings in the report we make the following recommendations:

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- 1
  - Guidance is developed to clarify the purpose and provision of early investigative advice (EIA) to the police and the process to be followed.
  - CPS Headquarters explore the possibility of an integrated gatekeeping and EIA process with the police, taking account of and accommodating the variety of police models.
  - A new protocol should be developed and signed with each police force, capturing expectations for gatekeeping, early investigative advice, file quality and mechanisms for non-compliance (paragraph 4.15).

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- 2
  - CPS Headquarters develop a process to ensure membership of the advocate rape panel includes advocates of the right skill set, enabling Areas to have access to a sufficient number of advocates to cover the available work and a mechanism to ensure the panel is updated.
  - Guidance is developed on the various available mechanisms that can be used to monitor the effectiveness of advocates, and how the indicators should be used to inform membership of the advocate rape panel (paragraph 4.105).

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- 3
  - All RASSO lawyers to undergo refresher training, including the role of the merits-based approach in the context of the Code for Crown Prosecutors.
  - National training to be made available to support Areas ensuring new staff deployed to a RASSO unit have access to appropriate training.
  - Develop and deliver a training course for RASSO unit paralegal staff, and to non-specialist paralegal staff who cover RASSO work.
  - Bespoke training is developed and delivered to RASSO unit heads on the application of Individual Quality Assessments (IQA).
  - Welfare training is developed and provided to members of the RASSO team.
  - All RASSO lawyers undertake training on youth casework (paragraph 4.112).

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- 4
    - All RASSO units are identified accurately on the case management system (CMS) and the corporate information system (CIS) to facilitate the collection of accurate data.
    - All staff deployed to an Area RASSO unit are allocated to the unit on CIS.
    - Creation of a finalisation code on CMS to capture the finalisation of early investigative advice (EIA) files not subsequently referred to the CPS by the police as pre-charge advice files.
    - Ensure quality assurance mechanisms capture compliance with policy and legal guidance and there are sanctions for CPS Areas for non-compliance.
    - CPS work to develop a joint performance data set for each police force area and an effective mechanism for discussion between agencies at CPS Area level to facilitate improvement in performance (paragraph 5.28).
  
  - 5
    - CPS Headquarters provides detailed guidance of the recommended national model to be deployed locally, including clear expectations for service delivery.
    - The model should provide for succession arrangements and include a mechanism for delivering rotation in the RASSO units.
    - CPS should explore ways of moving work between geographical locations to provide greater resilience.
    - The RASSO resource model is published, applied and used at Area level to ensure appropriate resourcing of RASSO units, but capturing the risks to the organisation in terms of other casework that cannot be resourced.
    - There is clarification of roles and responsibilities with job descriptions for all cadres within a RASSO unit to include the unit head, specialist lawyer, paralegal and administrative staff.
    - There is clarification of the role and responsibilities of any trained RASSO lawyer outside the RASSO team.
    - Clear guidance is developed about the role of the second opinion in cases, whether there is any element of compulsion and, where it is used at Area level, how this is aligned to the expectations for the task under the new RASSO resource model developed by CPS Headquarters.
    - Clear guidance about where and how RASSO youth casework is handled in CPS Areas (paragraph 6.51).
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## 3 Introduction

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### Context

3.1 This review took place against a background of internal and external scrutiny of the prosecution of rape and serious sexual offence allegations. This type of offending has in recent years become the subject of significant political and media attention. It has also been the topic of research and published reports.

*“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. Women, men, children, and people of all ages and all social groups can become rape victims.”*

3.2 Considerable work has been undertaken by the CPS to prioritise improvement in rape prosecution outcomes and in 2014-15 it developed a national programme of work seeking to address issues across the criminal justice system. During the same period, whilst there was an increase in the volume of completed cases, the conviction rate fell.

3.3 It was in this context that a decision was taken by Her Majesty’s Crown Prosecution Service Inspectorate (HMCPIS) to review the current arrangements for the handling of RASSO casework. This was undertaken to assess what level of confidence Ministers and the public can have in the ability of the current CPS RASSO units to deliver fair and successful outcomes in the most efficient and effective way, through the provision of high quality decision-making, case preparation and advocacy by specially trained and experienced prosecutors. The inspection’s terms of reference required inspectors to examine and compare the structure of the units designated in each CPS Area to handle RASSO casework, the quality of casework delivered, and how the various local models impacted on quality.

### Background

3.4 Across Government RASSO casework is one strand of the Violence Against Women and Girls (VAWG) strategy; the CPS aligns with this and has a well-established approach to VAWG. There is a Chief Crown Prosecutor (CCP) champion for VAWG, a discrete RASSO policy lead and strategy managers who have responsibility for implementing the overall strategy in order to improve confidence. There is also an assurance mechanism to examine outcomes in respect of allegations of rape. This has been established since 2011.

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<sup>1</sup> A report by Baroness Vivien Stern CBE of an independent review of how rape complaints are handled by public authorities in England and Wales [The Stern Review]; Government Equalities Office/Home Office; March 2010.

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**3.5** During 2012-13 an analysis of performance by the CPS revealed a huge disparity across England and Wales in respect of rape outcomes; this led to the then DPP requiring each Area to establish a RASSO unit and minimum standards were published.<sup>2</sup> The range of offences dealt with by the units was later extended and the minimum standards varied to reflect this. Originally it was intended that each Area would have a team in place by October 2013, but not all Areas achieved the deadline and, in practice, each developed a different model to reflect local variations and resources.

**3.6** Other work was commissioned. A network for RASSO unit heads was established and a workshop was held in December 2013 which examined unit structures, job descriptions and responsibilities. It also considered the issues arising from having to deal with multiple police forces and the additional burden of tackling backlogs. A monthly RASSO bulletin was launched in December 2013 to update prosecutors and unit heads on legal and operational issues as well as sharing good practice and solutions to common problems. Although the network subsequently lost momentum, and the bulletins lapsed for a time, the network has recently been reinvigorated and bulletins issued once more.

**3.7** During 2012-13 it was also identified that there was a fall in the number of RASSO files referred by the police since 2010-11 and therefore a reduction in casework volumes since 2011-12. This seemed to be an unlikely scenario and required investigation to understand the causes. In April 2014 the joint National Scrutiny Panel<sup>3</sup> was launched to consider why the police were referring fewer cases.

**3.8** The panel found that the fall in referrals was due to a number of issues, which resulted in a joint national Action Plan being drawn up and published. This included an action to undertake an internal review of the structures and resourcing of CPS RASSO units. As part of the review a resource model specific to RASSO casework was designed. The model is based on the average time to undertake tasks required to conduct a case, rather than the previous model, based on actual caseload, which did not necessarily reflect the work and resource required for this specialist area of casework.

**3.9** Other measures flowing from the Action Plan included work to revise the Joint Police and CPS Rape Protocol on the Investigation and Prosecution of Rape.<sup>4</sup> This was launched in January 2015, as was the guidance on the issue of consent. A national conference was held as a platform to launch the new initiatives. Work has also been carried out to address concerns about the quality of specialist RASSO prosecution advocates, although at the time of inspection this is far from complete.

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<sup>2</sup> The minimum standards for RASSO units detailed the expectations in relation to protocols with the police, charging arrangements, the casework to be included in the RASSO unit, location, staffing and performance management arrangements for the unit. The minimum standards are included at annex D.

<sup>3</sup> This included, amongst others, the DPP and the Assistant Commissioner of the Metropolitan Police Service.

<sup>4</sup> *Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape*; ACPD; January 2015.



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**3.10** The DPP and the Commissioner of the Metropolitan Police also announced the review by the Rt Hon Dame Elish Angiolini DBE QC,<sup>5</sup> which was supported by both a police and CPS lead. The report has been published and recommendations made for improvement and, whilst these are directed at the investigation and prosecution of offences in London, many are transferable elsewhere to drive progress.

### **Next steps**

**3.11** Actions to improve rape prosecutions are planned for 2015-16. There are new appointments to the CCP VAWG lead and the prosecutor policy lead post. The restructure of CPS Headquarters has meant there are now improved links across the strategic lead, policy and operations, including the compliance team. The VAWG strategy managers have taken over the management of the bi-annual RASSO unit head meetings and this forum will take forward training and issues arising from the two recent reviews.

**3.12** Joint workshops with the police are planned across England and Wales, these began in July 2015 and further work is taking place to implement the resourcing model for the CPS units. The National Rape Steering Group and Delivery Board has been established to take forward the work of the internal CPS review and implement actions arising from it, as well as joint work commissioned on a predictive model to forecast future work, so that a more accurate assessment can be made of what is needed to meet demand.

**3.13** Work is planned to evaluate local pilots where lawyers are embedded in police stations. In addition, there are examples where police officers are embedded in the CPS units, whose effectiveness and impact also need to be assessed.

**3.14** Outstanding actions arising from the Joint CPS and Police Action Plan on Rape<sup>6</sup> are currently being progressed, namely a revision of the Director's Guidance on Charging<sup>7</sup> to give greater clarification of the criteria and process for early investigative advice. Consideration is being given to the use of a '13th' juror to assess the victim's experience in court, whereby a volunteer attends the trial of a sexual abuse case as an observer.<sup>8</sup> Despite the significant amount of work remaining around training and updating CPS legal guidance, the aspiration was that this would be completed by summer 2015; it is still ongoing.

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5 *Report of the Independent Review into the Investigation and Prosecution of Rape in London*; Rt Hon Dame Elish Angiolini DBE QC; April 2015.

6 *Joint CPS and Police Action Plan on Rape*; April 2015.

7 *The Director's Guidance On Charging - fifth edition*; CPS; May 2013.

8 The 13th juror project is dealt with in more detail at paragraphs 5.20-22.

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### **The literature review**

**3.15** The literature review found at annex F highlights all the reviews undertaken in sequence over the past 13 years. The recurrence of themes is clear as is the failure to address repeated recommendations effectively. This stance is no longer acceptable in light of the public scrutiny and high profile of this area of casework. It is essential that the CPS and its partners have the appetite to drive the change required, it is no longer acceptable to be aware of what is required and do little to deliver, letting any momentum wane.

### **The structure of this report**

**3.16** The narrative starts by examining the various reports that have been conducted over the last 14 years. It then moves on to examine the quality of RASSO casework in part one, before considering in part two the models currently deployed across the CPS Areas and the structures, governance, resourcing and factors that impact on the effectiveness of a RASSO unit, such as the team structures deployed by the police.

**3.17** In examining the current levels of performance of the various models, the report highlights positive practice that should be included in any national model, as well as current obstacles to success that need to be addressed.

**3.18** The report does not make any direct links between the files examined and the models deployed in Areas because many of the files pre-dated the model observed during the fieldwork visit. Irrespective of this there are lessons to be learned and shared nationally from the files examined by inspectors.

### **Methodology**

**3.19** The inspection team visited six CPS Areas and interviewed operational staff and leads within the CPS, as well as leads within police forces, counsel and members of the judiciary. In addition, inspectors visited a further Area to observe the co-located model<sup>9</sup> and received information from the RASSO unit heads in the remaining Areas not visited during fieldwork, as well as representatives of the third sector.

**3.20** Fifteen files from each of the fieldwork Areas were reviewed against agreed criteria. The methodology is set out at annex A, CPS performance data at annex B and the file reading data at annex C. The minimum standards for the RASSO units are set out at annex D. Additional detail about the models deployed in CPS Areas can be found at annex E and there is a glossary at annex G.

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<sup>9</sup> A unit based in a single location comprising specialist CPS lawyers and a specialist police team.

# Part 1

## 4 Casework quality

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### Context

4.1 Inspectors examined 90 files comprising of 15 cases from each of the six CPS Area visited during the fieldwork. The cases were all finalised during April to September 2014. It is important to note that although this report highlights certain themes arising from the files examined in the context of the models deployed in Areas visited, it does not make direct links to the performance of the current models. Many of the files were charged and or finalised prior to deployment of the Area models observed during the fieldwork.

4.2 The file sample comprised of an equal mix of successful outcomes, unsuccessful outcomes and cases where the decision at the pre-charge advice stage was to take no further action (NFA). The file sample contained 62 cases involving an allegation of rape, 12 sexual offences (other than rape), 15 allegations of child abuse<sup>10</sup> and one case involving child sexual exploitation (CSE). Twenty seven of the files were non-recent allegations.

4.3 All the defendants were male, 82 victims (91%) were female and eight were male; 78 were adult defendants and 12 were youths. There were 79 cases where the decision at charge was made by a CPS prosecutor, ten where charging advice was provided by counsel and one where the CPS provided advice, the police made the decision to NFA without reference back to the CPS, and then failed to notify the CPS of that decision.

### Early investigative advice

4.4 At present the various pieces of guidance lack clarity. In the Director’s Guidance it states under “early investigative advice”: *“Specific cases involving a death, rape or other serious sexual offence should always be referred to an Area prosecutor as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail.”*

4.5 Whereas in the Rape and Sexual Offences guidance it states under “case building”: *“Early consultation between the police and the CPS is essential in rape cases and the investigating officer will arrange an early consultation with a rape specialist prosecutor once the appropriate evidential standard is passed, where the allegations have not been or are not being admitted, or it seems likely that they will be denied.”* It continues: *“Early consultations need not be restricted to cases where there is already an identifiable suspect or that pass the threshold test. They may take place in any case where the early involvement of a prosecutor would assist in the gathering of relevant evidence, the questions to be asked of suspects, any pre-charge court procedures and any strategy for a likely prosecution. A brief written record of the consultation should be made on an MG3....”*

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<sup>10</sup> The child abuse cases comprised a mix of rape and other serious sexual assaults.

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*Where the rape specialist prosecutor considers there is not enough evidence to proceed to charge but that further evidence could be obtained, they will provide investigative advice identifying all steps and evidence needed to provide a realistic prospect of conviction, including a detailed action plan on the MG3."*

**4.6** If it is to be effective, early investigative advice (EIA) should be provided at the start of investigative process and assist the targeting of police enquiries. The police should be sufficiently informed in order for the lawyer to provide meaningful advice to assist in the investigative process. The added value is derived from identifying the legal issues pertinent to the case so the police investigation is conducted in a manner that complements the strategy, reducing the need for triage and re-work at the pre-charge stage, and subsequently. It should not be used as an alternative to police supervision of file quality.

**4.7** There were 15 files (16.8%) where there was an early consultation or EIA and in three further files it was not possible to discern whether or not there was EIA. In 14 of the 15 the EIA was timely; however, in only three of those 15 (20.0%) did the EIA result in the investigation reaching a proper and timely conclusion.

#### **A positive example of early investigative advice**

The defendant was charged with a series of assaults and rapes against two former partners during the currency of their relationships with him. The case arose from a complaint in one of those cases. There were four separate MG3s (record of charging advice) prepared by the lawyer including three by way of investigative advice. The lawyer added real value to the investigation at that early stage by suggesting that former partners be visited; this eventually resulted in a second complainant coming to light. The reviewing lawyer dealt with the advice expeditiously when the police got back to her and made herself available to give advice when the planned arrest and re-interview was effected; this allowed the defendant to be charged and put before the court for a remand application without further delay. The defendant was convicted after trial.

**4.8** It seemed clear from the review of files that EIA is under-used and where it is used it is not very effective. This was highlighted in the joint inspection report on Achieving Best Evidence in Child Sexual Abuse Cases published in December 2014<sup>11</sup> and is borne out by the recent internal review undertaken by the CPS. The Joint CPS and Police Action Plan on Rape<sup>12</sup> also underscores the need for greater clarity on the use of EIA.

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<sup>11</sup> Paragraph 7.2, *Achieving Best Evidence in Child Sexual Abuse Cases – A joint Inspection*; CJI; December 2014.

<sup>12</sup> Action 8, *Joint CPS and Police Action Plan on Rape*; April 2015.

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**Case study**

In a case involving an alleged assault on a four year old girl by her uncle, which came to light when the girl told her mother he had penetrated her vagina with his fingers, the matter was reported to police and the girl provided a video recorded interview. It was, however, not clear from that interview whether penetration had in fact taken place. The case would have been suitable for referral for early investigative advice in order to consider a strategy for dealing with the issue, such as an anatomically correct doll being used to assist the child. It might also have considered her legal competence to give evidence. No early referral was made and the file took five months to reach the CPS. At this point it was not dealt with by a specialist prosecutor in a RASSO unit and no consideration was given to the above issues. Despite the lack of evidence of penetration, a charge of assault by penetration of a child under 13 (section 6 of the Sexual Offences Act) was preferred.

Subsequently the charge was substituted with one of sexual assault (section 7) and the defendant was convicted after trial.

**4.9** At national level the CPS state that EIA is provided in all Areas. We found the reality to be that EIA appears to be provided only in the most serious and complex cases. One Area visited by inspectors has now withdrawn from the provision of EIA altogether. In that Area the overall police consensus was that EIA was something the agencies could ill-afford when resources were so stretched and that the files were being better supervised by the police since EIA had stopped.

**4.10** In another Area a system has been set up whereby all police requests for EIA are screened by the respective District Crown Prosecutor (DCP) but this is currently under-used by the police. We were told by CPS staff and the police that lawyers do not have time to provide EIA and police rarely request it because of time constraints and a lack of awareness of the benefits to a case of early advice from a lawyer. Elsewhere a duty lawyer is rostered daily to provide EIA, however the police officers spoken to did not know what the process was intended to achieve.

**4.11** It is clear that EIA is being confused with the gatekeeping role and police supervision rather than what is intended. The police do not need guidance around investigation in standard cases and it is not and should not be a substitute for police supervision of the standard of the police investigation and quality of the file.

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4.12 Problems can also be caused where there is a lack of continuity of lawyer. This can lead to inconsistencies of approach where EIA is provided if the second lawyer is of the view issues have been missed and so re-work is required. In one Area the DCP provided all EIA so as to ensure a consistent approach which is helpful to the police. However, this approach still requires re-work by lawyers who are subsequently allocated cases that are submitted for a charging decision.

4.13 In another Area EIA was apparently provided post-bail in every case within 72 hours, which has seen benefits in terms of improved file content. It should be noted that this Area has a relatively low volume of rape cases and is not one of the best performers in terms of outcomes, but this should not discourage the increased use of EIA in RASSO cases. Inspectors did not visit this Area as part of the fieldwork so could not assess the quality of the EIA provided or the impact of other factors that can determine the outcome in individual cases. Overall, there is a lack of understanding of what value can be added through effective EIA; this needs to be addressed.

4.14 The importance of "*Getting it Right First Time*" was espoused by The Rt Hon Sir Brian Leveson in his 2015 review.<sup>13</sup> If the CPS "*make appropriate charging decisions, based on fair appraisal of sufficient evidence, with proportionate disclosure of material to the defence, considerable delay can be eradicated*".

4.15 If the use of EIA or early consultation is to be promoted to ensure work is front-loaded, there needs to be clear guidance as to what constitutes EIA, and what does and does not fall within the remit of such advice. There needs to be a clear and joint understanding by the police and the CPS as to the purpose of EIA and its benefits. The CPS needs to ensure that there is an agreed process to ensure it is timely and there is continuity of lawyer and/or decision-making. In light of these requirements we make the following recommendation:

#### Recommendation

- Guidance is developed to clarify the purpose and provision of early investigative advice (EIA) to the police and the process to be followed.
- CPS Headquarters explore the possibility of an integrated gatekeeping and EIA process with the police, taking account of and accommodating the variety of police models.
- A new protocol should be developed and signed with each police force, capturing expectations for gatekeeping, early investigative advice, file quality and mechanisms for non-compliance.

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<sup>13</sup> *Review of Efficiency in Criminal Proceedings*; The Rt Hon Sir Brian Leveson; January 2015.

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## Decision-making at charge

### Quality

**4.16** Current guidance<sup>14</sup> makes it clear: *“When determining whether to prosecute rape cases, prosecutors should adopt a “merits-based approach” to the evidential stage of the Code for Crown Prosecutors’ full Code test and ask whether, on balance, the evidence is sufficient to merit a conviction taking into account what is known about the defence case.”*

**4.17** Of the 89 relevant cases, there were nine cases where the Code test was not applied correctly at charge (10.1%); one of those nine was stopped by the police without reference back to the CPS. This reflects poor quality decision-making where decisions should be made by trained specialist lawyers working in a specialist unit operating individual case ownership. This level of performance is poorer than the outcomes in the HMCPSI Annual Casework Examination Programme (ACEP)<sup>15</sup> sample, where the Code test failure rate was 4.7% in rape cases and 3.4% in sexual offences other than rape. It is even worse than the Code test failure rate relating to all casework examined (8.3%).

### Case study

In a case involving multiple defendants and charges, a proper review to establish whether the evidential test in respect of each charge was met was missing from the file. There was a failure by the charging lawyer to properly assess the credibility of the complainant; this was compounded by the police who had access to undermining material and failed to supply this at the pre-charge stage. Even when the undermining material became apparent, a decision was made to continue the case. The case was only stopped after it had reached trial and when the judge raised the issue. It appeared that the lawyer felt under pressure to continue the case following a poor charging decision. This resulted in unnecessary cost and a waste of resources, and more significantly a particularly poor service to the victim.

**4.18** There was one case where the threshold test was wrongly applied; the decision was made prematurely before all the evidence that was likely to be available was known where there was no substantial bail risk. It is of note that the relevant CPS policies were not applied in 27 of the 89 relevant cases (30.3%); this undermines the proposition that specialist knowledge is being applied to the casework and highlights a significant training need.

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<sup>14</sup> Chapter 8: [Case Building] The Merits-Based Approach, CPS Rape and Sexual Offences guidance.

<sup>15</sup> Further details of the data can be found in the *HMCPSI Five Year Review and Annual Report 2015*.

**4.19** There is evidence from a limited number of Areas that some lawyers apply the merits-based approach far too vigorously and cases are charged that do not have a realistic prospect of conviction. Inspectors were also made aware of times when the merits-based approach has been viewed as separate to the Code for Crown Prosecutors rather than an integral part of it; this can result in poor decision-making, an increase in unsuccessful outcomes and ultimately a poor service to victims. In one CPS Area refresher training is planned to address this. All Areas need to ensure that the guidance on the merits-based approach is understood and applied properly across the specialist teams.

**4.20** In another Area inspectors were told about an internal investigation of the low conviction rate which revealed that some charging decisions were not always in accordance with the Code. Action was taken with all the specialist lawyers to clarify the position, with discussions about applying the Code and the merits-based approach, as well as a refresher on the legal guidance. The successful outcome rate rose in the subsequent quarter.

**4.21** Internal and external feedback from the police, counsel and the judiciary suggests that because the workload exceeds the units' capacity, it is difficult to achieve quality casework, from decision-making through to all the elements of preparation of a case. In addition, it was felt that there is considerable pressure on the CPS to improve on success rates and to prosecute more cases, which may lead to some cases being pursued even though there is little chance of obtaining a conviction after a trial. Further, that decisions on cases are rushed to achieve timeliness targets and then subsequently dropped when more thought is given to the detail of the case. In such circumstances the timeliness target can be a perverse driver.

**4.22** The Achieving Best Evidence (ABE) pre-recorded interview was not viewed before making the pre-charge decision in 21 of 76 relevant cases (27.6%). This is not an acceptable level; it impacts on the ability to make a fully informed decision and undermines the notion of front-loading the case, whereby the file has all the information required, evidential enquiries have been completed and third party material obtained, prior to charge. A recent joint inspection report<sup>16</sup> also highlighted this issue and determined that this was due to time pressures, which continue to increase as caseload volume increases, whilst resource remains static. If the ABE had not been viewed, it is hard to see how the CPS can provide feedback to the police about it and how any realistic consideration of edits and admissibility can be undertaken at charge.

**4.23** There was a proper case strategy in the MG3 in only 60 of the 89 relevant cases (67.4%); this level of performance needs to be improved. The strategy behind the preparation and ultimately the presentation of the case in court is crucial and can impact on the outcome of a case particularly in light of the need to address myths and stereotypes, ensuring that they are not used to undermine the case, as well as tackling the issue of consent.



**A good example of a case properly prosecuted applying the merits-based approach and ignoring myths and stereotypes (such as style of dress, consumption of alcohol and voluntarily accompanying the defendant)**

The complainant was a 20 year old girl who accompanied her girlfriends to a sex club which was holding a "Swinger's Night". The defendant was an entertainer, in his late 40s, who was part of an act at the club that night. The complainant was wearing revealing clothes and had been drinking. She engaged in conversation with the defendant and he eventually prevailed on her to go with him to one of the "play areas" in the club where people go to be intimate. The complainant felt pressured into going along and rather naively agreed; she left her friends and ended up alone with the defendant. He tried to kiss her which she tried to laugh off; he then proceeded to touch her in the genital area and vaginally rape her. She was intimidated by him and did not fight him off. She immediately reported the offence to her friends and then to the police. The defendant was convicted.

4.24 There was reference in the MG3 to relevant applications and ancillary matters in 23 of the 62 pertinent cases (37.1%), demonstrating a failure to consider a coherent and holistic case strategy in nearly two thirds of cases. The action plan was satisfactory in 29 of the 44 relevant cases (65.9%). This shows that in over a third of cases the opportunity to alert the officer in the case to what was needed to strengthen the case was lost, which can impact on case outcomes. Where cases are not front-loaded as they should be, the action plans are often vital to the success of the case. They need to be of sufficient focus and quality, particularly because the CPS faces challenges securing evidence from the police after the first hearing date.

4.25 The overall quality of the MG3 was excellent in one case (1.1%); good in 45 cases (50.6%); fair in 27 (30.3%); and poor in 16 (18.0%). The example of excellent quality was in a case where the decision was to take no further action.

**Case study**

In a decision relating to non-recent allegations by a pupil at a school in the late 1980s the reviewing lawyer gave early investigative advice on two occasions including obtaining information by way of letters of request because one of the potential defendants lived abroad. The MG3 is broken down into four elements: Background and history; The allegations; Analysis; and Decision. It is apparent from the document how well this difficult case has been handled by the lawyer and it resulted in a decision to take no further action.

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4.26 The most appropriate charge was advised in 49 of the 59 relevant cases (83.1%) and factors pertinent to mode of trial were considered in 33 of the 50 relevant cases (66.0%). In contrast, there were appropriate instructions to the prosecutor in court in only 26 of the 59 relevant cases (44.1%).

#### **Instructing counsel at the pre-charge stage**

4.27 In the past year Areas have increasingly instructed counsel to provide pre-charge advice, as well as using Area crown advocates, as a means of addressing the increasing backlogs. We see this solution as short-sighted and costly. Areas reported that the advice provided by counsel was of variable quality and, despite timeliness improving because counsel were required to work to stringent timescales, there were difficulties with these cases post-charge and outcomes did not improve. Inspectors were told of increased charge to no further action (NFA) ratios and also higher rates of discontinuance and acquittals. This seems to reflect the contention that counsel were advising on charge prematurely, without sight of all the material or with the expectation that further material would be provided from investigators post-charge, which did not then happen in practice.

4.28 There is a risk that this approach can unduly influence the decision on whether to charge a particular case, in circumstances where counsel who advises to charge goes on to prosecute the case. It appears there is also a risk where counsel is briefed to prosecute the case following advice provided by different counsel at the outset. Inspectors were told of examples where the subsequent advice from the latter counsel was for a different strategy or set of charges where there had been no change in circumstances. This was unfair to the victims and embarrassing for the Service.

4.29 The effect of instructing counsel at the pre-charge stage was to shift the delay further along the process. The Code for Crown Prosecutors places the duty of CPS lawyers to determine whether to charge. Advices to charge provided by lawyers outside the CPS therefore have to be authorised by specialist lawyers, as have second opinions on cases where NFA is advised. This involved significant re-work by the CPS as did the allocation of the case to a specialist lawyer after it had been charged. There was also a lack of continuity post-charge.

4.30 There are real risks to the case and the CPS's reputation when the prosecutor merely 'rubber stamps' the advice instead of carrying out an effective review that is properly recorded; this was evident in the file sample. In some cases, CPS lawyers appeared merely to have extracted parts from counsel's advice and pasted into the MG3 without there being any evidence of that advice having been given independent assessment or consideration. Some files were not subject to any CPS lawyer review throughout the life of the case.

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**Case study**

The case was sent to counsel for pre-charge advice, who advised two charges. After the decision to charge was advised by counsel it was authorised by the CPS on an MG3, but this noted that the lawyer had not considered the evidence. The defendant was acquitted.

**4.31** There have been particular problems in relation to third party material when this was not obtained and viewed prior to provision of the advice. There was also a tendency to charge without an action plan for securing the further material that was required for trial. The impact of this practice can be significant on the paralegal staff, who start on the back foot when requests have to be made to the police and chased in order to obtain the necessary material after charge.

**4.32** Feedback from counsel who provided advice to Areas reported tight turnaround times of ten to fourteen days and, in one instance, of three days. They complained of insufficient time allowed and commented on the fact that some cases had already been delayed without action by the CPS by a number of months.

**4.33** Instructing counsel at the pre-charge stage is, in our view, flawed and leads to delays. Counsel is not always fully instructed and on occasions not given sufficient time or information to advise adequately. There can then be added delay awaiting for the decision to be reviewed and authorised by a CPS lawyer. It is not only an inefficient system but in terms of outcomes for files also ineffective; this is not a viable alternative for under-resourced units.

**4.34** Feedback from Areas suggested that lessons have been learned from the exercise and the use of counsel to advise on charge should be restricted to the most complex cases or those involving multiple victims, as was traditionally the case. In the past, Areas have used overtime to reduce backlogs. This has been shown to be more effective and preferred by the units for consistency and minimising re-work. There are, however, risks for the welfare of staff when overtime becomes the norm.

**Timeliness**

4.35 Charging advice was timely in only 35 of the 89 relevant cases (39.3%). The target time to charge is 28 days although the average time in the file sample was 53.3 days, which echoes the CPS findings for 2014-15 (55.1 days).<sup>17</sup> This is a rise from the 39.6 days recorded in the previous year. In 12 of the files in our sample it took longer than 100 days to provide the advice and on one it was provided 207 days after submission; this case involved significant delays by both the police in providing all the information required and the CPS in making a decision.

4.36 It was apparent during the fieldwork visits that the units are already stretched to deliver within this timeframe, yet despite this one Area had agreed a target of 14 days, the rationale for which was difficult to justify. In the file sample for this Area only six of the files were within this challenging target and only nine, including the six already referred to, within the agreed national target of 28 days.

4.37 The issue of Areas undertaking unnecessary work on cases - either re-work on cases that are submitted more than once or undertaking work on cases where the police should properly make the decision to take no further action - needs to be addressed. This avoidable work impacts on the capacity of the unit to cope and ultimately the timeliness of decision-making.

**Case study**  
In a case that was clearly one in which the police should have made the decision to take no further action, after a five month investigation it was sent to the CPS and took a further 98 days for the advice to be supplied by counsel and the second opinion to be provided by the CPS.

4.38 It is evident from the CPS resource modelling that units are not resourced to meet the current demands; this shortfall is exacerbated by the considerable re-work required on police file submissions. It is therefore not surprising that the Areas are not able to meet timeliness targets. There is also a tension between categories of work, with cases already before the courts taking priority over cases requiring pre-charge advice; this impacts on timeliness. Individual lawyers felt increasing pressure to charge when cases were not dealt with in a timely manner rather than return them to the police for necessary further work to be undertaken. This approach increases the risks in individual cases.

<sup>17</sup> Violence against Women and Girls Crime Report 2014-2015; CPS; July 2015.

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**4.39** Some Areas reported to inspectors that backlogs of six to eight weeks are common with others citing longer times, which was evidenced. Some had been able to reduce the backlogs and delay by using overtime for specialist prosecutors and the use of crown advocates and external counsel to assist with the provision of pre-charge advice. However, when these measures ceased the backlogs began to creep up again. Headquarters requested that Areas aim to achieve the 28 day target by the end of May 2015 but only one Area visited was redirecting resource in an attempt to achieve this.

**4.40** There are a number of pilot sites for the implementation of the provisions for pre-recorded cross-examination under section 28 of the Youth Justice and Criminal Evidence Act 1999. These cases need to be dealt with expeditiously and as such have shorter timescales of seven days for the provision of advice. The impact of this, where resource is limited, is to delay decisions on cases involving victims with different vulnerabilities. Areas need to be mindful of this when it is rolled out nationally.

**4.41** The CPS target does not accurately represent the overall time to investigate and prosecute cases. There may be a lengthy police investigation at the outset followed by the rejection of the police file on first submission to the CPS, which requires further work before it is adequate for re-submission for a charging decision. This acts to start the CPS clock anew. This process can be repeated on the same file, adding to the delay. It is this element that needs addressing through early advice and effective supervision to minimise delay and eliminate duplication of work on individual cases.

**Role of CPS Direct**

**4.42** CPS Direct (CPSD) is the CPS Area which takes the majority of CPS decisions as to charge under the charging scheme. CPSD handles threshold test cases out of hours with Area RASSO teams dealing with cases between nine and five. CPSD lawyers will not authorise no further action on a rape allegation however poor the evidence, instead it will instruct the police to bail the suspect and refer the case to the relevant Area RASSO unit for a decision, although they will NFA minor sexual allegations. Cases reviewed by CPSD are given an action plan requiring that police refer the case to the relevant Area within three days of the decision, whether or not the defendant is remanded in custody or bailed. There is no RASSO team in CPSD but over 90% of lawyers are rape specialists and they deal with all rape work.

**4.43** The minimum standards state:

- current out of hours charging arrangements are to be maintained using rape charging lawyers; and
- daytime charging decisions to be referred to the RASSO units.

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**4.44** The joint report on Achieving Best Evidence<sup>18</sup> found there is a disparity between the expectations of the CPS Areas and the police forces with which they deal over what CPSD can and should deliver in practice. It appears that this still has not been clarified and communicated to Areas.

**4.45** In our file sample the level of service and decision-making by CPSD was generally good, with experienced lawyers making good decisions, adding value and building cases. In contrast, some of the feedback from Areas suggested the quality of CPSD decision-making was sometimes poor and that cases are more likely to be discontinued because the decision is made too soon by CPSD and without the full benefit of disclosure issues being explored. It was also suggested that a large number of cases are returned to Area which could have been charged by CPSD and that this reluctance to advise on sexual offences results in more files submitted for advice to the RASSO units or that a 'holding charge' is often authorised.

**4.46** Inspectors were told that the police frequently refer inappropriate cases to CPSD. Cases are submitted on the basis that the threshold test is applicable because there is a substantial bail risk when in reality there are insufficient grounds to remand in custody and further evidence is necessary to submit the case for a full Code test review, which should be undertaken by the local RASSO unit. This theme seemed to be more common in cases involving non-recent RASSO allegations. More robust police supervision could minimise wasted CPSD lawyer resources deployed in considering such cases and any subsequent appeals that have to be considered afresh by managers. These issues need to be taken up with police forces at Area level.

**4.47** CPSD have indicated that they would welcome more feedback from Areas about the quality of their advice, whether the threshold test is applied appropriately and how cases are dealt with in court. There is a feedback system set up on the CPS electronic workspace (KIM) which is currently under-used. Areas should take better advantage of this mechanism to assist CPSD. Equally CPSD needs to clarify that its remit is restricted to threshold test cases and that it will not make decisions to take no further action, to stop the misplaced expectations of Areas that persists.

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<sup>18</sup> Paragraphs 7.4-7.7, *Achieving Best Evidence in Child Sexual Abuse Cases - A joint Inspection*; CJI; December 2014.

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### **Decision-making post-charge**

**4.48** The Code was applied incorrectly post-charge in eight of the 59 relevant cases (13.6%), most of the eight were decisions to let a case continue when it had been wrongly charged. This level of performance must improve and is worse than the outcomes in the HMCSI ACEP sample, where the Code was applied incorrectly in 7.0% of rape cases and in 4.8% of sexual offence cases other than rape. Not all cases are rigorously reviewed as to whether there remains a realistic prospect of conviction when further information comes to light which affects the credibility of the victim.

**4.49** In contrast, all decisions to discontinue cases were Code compliant. The decision to discontinue was timely in five of the nine relevant cases (55.6%). The police were consulted in a proposed discontinuance or alteration of charges in eight of the 15 cases (53.3%) and the victim was consulted in a proposed discontinuance or in relation to alteration of charges in seven of the 15 (46.7%).

### **File quality**

**4.50** The quality of the police file is the most significant determining factor in terms of the amount of unnecessary work that needs to be done on a case. If the file is incomplete because an important part of the investigation is ongoing or because material has not been sought which thereby prevents a pre-charge decision being made, then the file will be returned to the police for further work before it is re-submitted. This process can be repeated more than once. It leads to delays, it is inefficient and places undue pressure on the finite resource available. With the shift of emphasis to front-loading work in order to progress cases more effectively, police file quality is increasingly important and can be an obstacle to delivering a more streamlined criminal justice system.

**4.51** A number of Areas have introduced a checklist and/or a triage system to weed out incomplete files, although this additional process needs resource. Other activity is being trialled to address the issue, such as embedding police officers in RASSO teams or lawyers with the investigative units, referred to further at paragraphs 6.43-48.

**4.52** In the file sample police provided relevant background material at the pre-charge stage in 50 of the 87 relevant cases (57.5%). The overall the quality of service from the police was not as good as the sample of rape cases considered as part of ACEP. This picture is not good in the context of a service provided by trained officers and where, in many forces, the investigation is sited within a specialist police team or unit.

	Excellent	Good	Fair	Poor
Police file quality: RASSO file sample	None	44.4% (40 cases)	38.9% (35 cases)	16.7% (15 cases)
Police file quality: rape files ACEP sample	9.3%	53.5%	25.6%	11.6%
Quality of liaison with the police	None	60.0% (54 cases)	34.4% (31 cases)	5.6% (5 cases)

**4.53** Feedback on the quality of police file was mixed, which mirrors the findings in the file sample. It was no surprise that there were suggestions that the level of detail in cases from specialised police teams is better than cases from divisional teams, which often lacked background information; this was attributed to the lack of experience of some of the officers. Even where there were specialist police teams it was accepted by all parties that some files still needed further work and were submitted two or three times. The Areas were sometimes careful in their criticism of file quality because of the delays incurred in their decision-making; equally the police were sometimes slow to criticise the delays in the knowledge that file quality was deficient. The CPS backlogs and delays, and the inadequate file quality, fuel each other to form a vicious circle. This is an issue that has to be tackled jointly with greater acceptance by both organisations of the flaws that need to be addressed. In the file sample there were examples of cases where the file should have been returned for further work but the delay by the CPS in providing advice appeared to put undue pressure on the lawyer to advise a charge where the evidence was lacking and the investigation required further work. This can raise the expectations for the victim but ultimately leads to failing the victim further along the process when the evidence is not forthcoming and the case is stopped.

**4.54** Areas have tried a variety of activities to drive up file quality. These include pre-charge checklists that require endorsement by a police supervisor prior to submission, to various triage systems which can involve a paralegal, a lawyer or lawyers, up to the unit head; all of which is resource intensive. One Area has submitted a bid for funding the work to the local Police and Crime Commissioner. In another Area senior officers examined a sample of files in the CPS office and found the standard to be unacceptable. As up to that point the discussions between the agencies had been based on anecdote, it was felt that there was now an evidential base to build on to try to drive improvement. One unit conducts face to face charging with one force. Whilst this was felt to be a form of natural triage and should drive up quality, it could not be repeated easily elsewhere due to geographical restrictions.



**4.55** In one Area where 50% of police submissions were rejected by the CPS triage process, considerable lawyer resource was deployed providing police supervision, which the Area could ill-afford. Elsewhere we were told of a rejection rate of 70% at first submission followed by a rate of 50% at the second submission, thereby involving considerable re-work by both agencies.

**4.56** Elsewhere we were informed that virtually all the advice cases have action plans requiring the police to complete evidential enquiries and for the handling of unused material, and often a second action plan is issued when not all work is completed. Inadequate files should be picked up by police supervisors prior to submission of the file for charge to avoid unnecessary work by CPS prosecutors when the file is re-submitted. In addition, where action plans to complete evidential enquiries are issued post-charge there are risks. The material is less likely to be forthcoming from the police post-charge than pre-charge. This was found to be an issue when counsel advised on cases to be charged where there was incomplete file. It appeared that counsel placed greater reliance that following the charge the material requested in the action plan would be delivered, whereas a CPS lawyer would generally not proceed to charge in those circumstances and return the file to police for further work.

**4.57** In one location there was a file quality monitoring form to be completed by lawyers and returned to the police; it was not clear how frequently this was completed and there was no indication that it was driving improvement.

**4.58** File quality can also vary across the various forces that refer cases to an individual CPS Area and, equally, quality can vary across a single force where different models are deployed to investigate allegations of rape. The multiple points of contact within a force and across a number of forces are a challenge for RASSO unit heads.

**4.59** The approach now is to move towards front-loading cases and “Getting it Right First Time”,<sup>19</sup> which is reliant on the police providing all the material the CPS needs at an early stage. It was apparent during this review that there is no clear strategy to achieve this and, with current training needs, achieving effective front-loading of files will be a significant challenge.

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19 2.1 Getting it Right First Time. “Thus, the first overarching principle must be Getting it Right First Time. This is particularly important for the police and the CPS who are the gatekeepers of the entry into the criminal justice process. If they make appropriate charging decisions, based on fair appraisal of sufficient evidence, with proportionate disclosure of material to the defence, considerable delay can be eradicated. ....getting it right first time is the absolute priority of any improvement to efficiency and it must be recognised that this will impose additional burdens on the police and CPS....”. *Review of Efficiency in Criminal Proceedings*; The Rt Hon Sir Brian Leveson; January 2015.

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### Case progression

**4.60** The appropriate level of control over case management and progression was apparent in only 30 of the 59 relevant cases (50.8%). This level of 'grip' and quality of case handling is troubling because they are supposed to be dealt with by specialists from start to finish in dedicated units. This data may reflect the fact that many of the cases were not dealt with by a specialist prosecutor, there was no continuity of prosecutor or that there was not even the involvement of a dedicated unit. It is also apparent from the fieldwork visits and feedback provided that this now reflects what can be delivered in practice by a small, finite resource under increasing pressure from expanding caseload volume and the levels of unnecessary rework required.

#### Case study

An MG3 was submitted by the police on 9 May 2013. CPSD rightly refused to apply the threshold test and sent the police away with an action plan. The police submitted the file to the Area on 24 October having completed extensive enquiries. The case was not considered by the Area until 6 January 2014 when the matter was advised as no further action on public interest grounds. The rationale for the decision failed to show an awareness of the issues involving vulnerable children. The police appealed the decision and the appeal was granted in part, resulting in the defendant being charged. However, no MG3 was completed in respect of the authorisation to charge and so much confusion followed because the last MG3 on file stated that all matters were to be no further action. The matter was adjourned for review on two occasions in the Youth Court during which no action was taken to review the file. The defendant pleaded guilty.

**4.61** The Leveson Review of Efficiency in Criminal Proceedings defines case ownership as the second overarching principle which is allied to "Getting it Right First Time", allowing parties to maximise the opportunities for case management. It is vital the CPS applies this in all RASSO casework in order to eliminate duplication of effort and re-work.

**4.62** In other elements of case management, performance was not much better; correspondence was dealt with efficiently in 31 of 57 relevant cases (54.4%) and there was timely compliance with judge's orders in 32 of 54 applicable cases (59.3%). Recording of information needed improvement; from the files it was not possible to determine who was responsible for the delay when additional material was requested because it was not obvious when the material was received. Better recording of hearings would also result in greater efficiencies, for example paralegals would not have to chase results with courts or advocates. In contrast, there was good performance in relation to appropriateness of charge: the trial charges were correct in 43 of the 46 cases (93.5%) and the indictment was correct in 47 of the 55 relevant cases (85.5%).

**4.63** There was an adverse outcome report (or similar) in only seven of the 15 relevant cases (46.7%) which meant that in over 53% of the cases it was difficult to learn lessons and drive improvement within the unit, or jointly with police counterparts. Where reports were provided from counsel following an acquittal or adverse outcome, they often contained limited, generic information; this is exacerbated by the absence of anyone from the CPS with knowledge of the case attending court for the trial.

### Disclosure

**4.64** The rating of the handling of the disclosure of unused material is detailed in the table below. Overall this compares less favourably with the assessment in rape cases in the ACEP sample.

	Excellent	Good	Fair	Poor
RASSO file sample	None	51.7%	23.2%	25.0%
Rape files: ACEP sample*	None	57.1%	28.6%	9.5%

\* 4.8% of cases not known

**4.65** Third party material includes material held by social services or the local education authority, for example. It may or may not be relevant and/or disclosable to the defence depending on the circumstances of the case. Third party disclosure was dealt with appropriately in 37 of the 49 relevant cases (75.5%) and in three cases it was not possible to make an assessment from the information available on the file. Third party material can impact significantly and adversely on the outcome, it can both support and undermine a case, particularly in terms of the credibility of the complainant. Where third party material is not considered at the outset but a charge is brought, there is the risk that later consideration will find the case fatally undermined resulting in discontinuance and a seriously negative impact on the complainant. It is therefore noteworthy that it was not dealt with appropriately in a quarter of the cases assessed.

**4.66** Feedback and fieldwork observations suggest that the disclosure of third party material is an enduring problem. Various causes have been identified, which include the need for better training of investigators on the issues, obligations and relevance of the material and the inconsistent approach across local authorities, even within a single police force area. This can cause difficulties in the run up to trial and even derail a trial, thereby impacting on the service to victims.

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**4.67** Despite a national protocol being launched to improve co-operation and understanding in the handling of third party material, the varying practices of so many different local authorities means that in many cases local protocols have yet to be agreed and signed. In some police force areas we were told agreement is imminent and in one CPS Area a Circuit Judge is driving it forward to achieve a consensus.

**4.68** Police files should be complete to ensure a charging decision can be made and the case can be progressed to trial. Unused material, particularly that held by third parties, is an integral part of this process and unless material is sought and considered at an early stage, the process will be undermined, files will be rejected and re-work required. We deal with police file quality at above paragraphs 4.50-59.

#### **Case study**

When the case finally arrived at the Crown Court it was apparent that disclosure was dealt with very poorly. The police provided information pre-charge that there had been social service involvement with the family due to concerns about neglect of the complainant, who had been scalded in the bath in an earlier unrelated incident. This information was sensitive and not relevant to any issue in the case, nevertheless when the defence wrote to the lawyer requesting disclosure of all social services material the response in the letter stated there was nothing relevant but then provided detail of the sensitive information regarding the complainant being scalded in the bath.

#### **Acceptance of pleas**

**4.69** Pleas to some of the charges only or pleas offered on a certain factual basis were properly dealt with (accepted or rejected) in four of the six applicable cases (66.7%), but in none of the six cases was the basis of plea set out in writing as required by the legal guidance. There is a requirement for victims to be consulted on pleas, but this happened in only three of the relevant cases. In at least one case it appeared that an inappropriate basis of plea was accepted for reasons of expediency.

### Case study

When the prosecutor picked up the case file to prepare for the sentencing hearing, the reviewing lawyer was asked for clarification about the case and the basis of plea, as endorsed on the case management system (CMS). There was a simple note on CMS from the reviewing lawyer which stated "Basis of plea discussed with XX. Plea acceptable. Defence and OIC informed". The accepted basis was that their sexual relationship started sometime in January 2013 and all sexual contact ended in February 2013, a period of just 2 months. The allegation was that the victim, who was now 12 nearly 13, had been subject to the offending behaviour since she was 10 and had been effectively groomed and abused by the defendant for a number of years. The basis of plea did not allow this to be explored in sentencing. There was no evidence of any consultation with the police or family, and nothing to justify the acceptance of such a plea on the file.

### Victim and witness issues

**4.70** It is significant to note, bearing in mind the nature of the charges and the specific vulnerabilities of victims of rape and serious sexual offences, that in too many cases the level of victim and witness care falls well short of what is required. In the file sample victims' policies<sup>20</sup> were complied with in 48 of the 72 relevant cases (66.7%). All steps were taken to protect the victim, witnesses and public from harm in 59 of the 69 cases (85.5%).

### Case study

A young vulnerable complainant received poor service including the case being initially listed for trial in March which was then moved to August without notice. The case was discontinued on the second day of trial when it became apparent that relevant undermining material, which had been in the possession of the prosecution for some time, had not been disclosed to the defence. The letter from the CPS to the victim to explain what had happened stated that the information came to light on the day of trial; this was incorrect. There was no offer of a meeting or reference to the Victims' Right to Review (VRR) scheme, which should have been included.

<sup>20</sup> The *Victims' Code*, the *Prosecutors' Pledge* and other policy guidance on the treatment of victims and witnesses.

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**4.71** There was appropriate consideration of special measures in 47 of the 55 applicable cases (85.5%) and appropriate use of special measures in 41 of these cases. There were a further five cases where the use of special measures or not was not recorded on the case file or electronic case management system. In cases where it was appropriate to apply for special measures, the applications were timely and of good quality in 38 of the 50 pertinent cases (76.0%).

**4.72** In the joint inspection report dealing with Achieving Best Evidence in child abuse cases<sup>21</sup> it was found that early discussions between the police and CPS about special measures were generally not taking place. Rather, lawyers were instructing police officers to ask the witness what special measures they wanted post-charge. Any discussions about how a witness would give evidence were usually led by the trial advocate at the special measures meeting prior to trial; this was usually combined with the court familiarisation visit. The reviewing lawyer rarely attended this meeting due to resource limitations and the length of time it took to travel to some of the court centres. Paralegal officers sometimes attended the meeting but did not necessarily have any connection with the case. There was little feedback to the CPS lawyer from counsel who attended the meeting and limited evidence of any audit trail on the case file.

**4.73** The evidence collated from this inspection suggests little has changed since the joint inspection in terms of meetings held, who attends and the quality of recording of information on the file. 18 of 25 questionnaire responses (72.0%) received from the voluntary sector stated that victims and witnesses do not get to meet a representative from the prosecution prior to trial, at either the court familiarisation visit or the special measures meeting.

**4.74** Feedback from externals from the criminal justice system and the third sector stated that victim care was dealt with primarily by the police with very little CPS input. Special measures applications were often not ready for the plea and case management hearing, meaning victims are not aware of what special measures have been granted in sufficient time prior to the trial. Inspectors were told in survey responses that despite some examples of excellent practice by the prosecution many victims experience poor treatment including cold, unfriendly and sometimes patronising attitudes that do little to help allay fears about being in a court room and the trial. There is limited paralegal support at court and they may have little or no knowledge about the case; this restricts the amount of victim care that can be provided by the CPS at court to some of the most vulnerable victims.

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<sup>21</sup> *Achieving Best Evidence in Child Sexual Abuse Cases – A joint Inspection*; CJI; December 2014.

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**4.75** This approach to special measures needs to be addressed. There needs to be early consideration, which should flow from front-loading the case. The reviewing lawyer should attend the special measures meeting. The proposed resource model allows sufficient time for this task provided the units are resourced in line with the calculations flowing from the model. In addition, there needs to be more and closer liaison with the Independent Sexual Violence Advisors (ISVAs) whose role is intended to provide support to victims and who should be monitoring the service their clients are receiving from agencies in the criminal justice system,<sup>22</sup> in order to improve the treatment of victims and witnesses. RASSO units should take advantage of the opportunity to receive local feedback on the delivery of services with the mechanisms already in place, and also be aware of the guidance currently being prepared by both the Home Office on the role of the ISVA, and the Ministry of Justice in relation to the role of the supporter in court.

**4.76** Feedback from the voluntary sector highlights the importance of effective communication: *“The victim needs to be regularly updated throughout the investigation. I supported a client who met the barrister at the pre-court familiarisation visit and this made a huge difference to the client and her confidence in the process. He explained the benefits of being in court to be cross-examined. There was more continuity and the witness felt that meeting the barrister at the visit gave her more confidence to give her evidence in court rather than via a video link. Meeting the barrister prior to the trial would benefit both the client and the prosecution as any questions can be answered and the witness feels that it is more personal.”*

**4.77** In contrast: *“Witnesses ... often comment that the defence have more contact with their barrister and cannot understand why they only meet once briefly before the trial. They often feel like a number rather than an actual person.”*

**4.78** It is important to recognise that although there are differing roles and responsibilities of prosecution and defence advocates at court, prosecutors need to have sufficient contact with the complainant to meet the needs of the victim and the case.

**4.79** A pre-trial witness interview (PTWI) was considered in 12 of the 62 relevant rape cases (19.4%) but there was no PTWI in any of the four cases where inspectors considered it would have been appropriate to conduct one.

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<sup>22</sup> In accordance with Home Office guidelines.

**4.80** In relation to other elements of victim and witness care, there was a victim personal statement in only 19 of the 50 applicable cases (38.0%). The attendance of victims and witnesses was secured appropriately in all 47 relevant cases and the victim was offered a meeting (where policy directed one should be held) in 18 of the 73 cases examined (24.7%). There was compliance with CPS policy on retraction by the complainant in all nine relevant cases and no cases proceeded against the victim's wishes.

**4.81** There was a timely Victim Communication and Liaison scheme (VCL) letter in 29 of the 46 applicable cases (63.0%), but the letter was of the right quality, in terms of content and tone, in only 16 cases (34.8%). There was a reference to VRR where appropriate in only 22 of the 38 relevant cases (57.9%). The data is detailed in the table below and the victim letters often failed to offer a meeting despite the requirement in the Victims' Code.

	Successful outcomes	Unsuccessful outcomes	No further action
Reference to the VRR in the letter	0	2	20
No reference to the VRR in the letter	5	6	5

#### Case studies

Two letters wrongly mentioned the Victims' Right to Review when the complainant had withdrawn support.

Another letter was written using an out of date template; this mentioned the Ombudsman instead of the Victims' Right to Review scheme.

**4.82** Ten of the 19 substantive responses received from the voluntary sector stated that victims and witnesses are generally not satisfied with their treatment by the prosecution, and pointedly 11 of the 19 responses stated the satisfaction level was not mainly influenced by the outcome of the case. A reduction in CPS staffing levels has resulted in considerably less liaison with the voluntary sector which is unfortunate because better communication at local level would provide Areas with more opportunities to improve through feedback. Inspectors received feedback from the voluntary sector on the quality and timeliness of decision-making, the time taken to get the case to trial, and the effectiveness of communication with victims and witnesses on such issues as case updates and court dates.



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**4.83** Feedback from the voluntary sector highlights the importance of providing proper explanations for decisions:

*"Victims can be very unhappy about the decision, unaware of the reasons behind decisions, and unhappy about the length of time it takes for the CPS to reach a decision."*

**4.84** In contrast:

*"Witnesses have fed back that although cases have been discontinued they felt believed at discontinuation (sic) meetings and have been treated courteously and sensitively at those meetings."*

**4.85** The complaints that were made about the quality of pre-recorded Achieving Best Evidence interviews during the joint inspection in 2014 endure. Amongst other things concerns about the quality and length of interview; and the absence of a mechanism between the advocate, CPS and the police to feedback on the quality of the interview; as well as the officers often being over complimentary to the victim about the veracity of their evidence during the pre-recorded interview (which can be used against the victim at trial); remain. There continues to be over-use of the video link and a presumption by the police that the evidence will be given by way of a pre-recorded disc rather than a decision based on the informed consent of the victim. In addition, young witnesses are still being interviewed without intermediaries. The joint inspection report makes a number of recommendations that need to be implemented to address the concerns raised and deliver improvements.

**4.86** Both the voluntary sector and representatives from the criminal justice system expressed concern about the length of time it takes to get a case to trial and on occasions the venue is moved without sufficient regard to the sensitivity of the case or the vulnerability of victims. Of particular concern is the practice at some court centres of not providing a fixed date for trials, which undermines the ability to provide continuity of advocate and quality care for victims and witnesses. This position is unlikely to improve with an increasing volume of cases and a finite capacity of 'ticketed'<sup>23</sup> members of the judiciary and suitable court rooms. These matters are not usually within the gift of the CPS, but robust representations should be made by the prosecution on matters that adversely impact on a victim and in many cases are not made; Areas need to work with the court centres to improve the quality of victim and witness care.

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<sup>23</sup> Trained and experienced specialists.

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### Compliance with policy

**4.87** It was evident from the file sample that the casework was not always handled by specialists in dedicated units and there was not an end to end approach with continuity of prosecutor throughout. This may explain the finding that compliance with all elements of the RASSO policy was not high. There was compliance post-charge in 35 of the 59 relevant cases (59.3%). In addition, the nature of the case was not always identified and highlighted on the case management system (CMS) appropriately; only 76 of the 90 cases (84.4%) were flagged.

**4.88** Only 53 of the 85 applicable cases (62.4%) were dealt with by a rape specialist and in another 13 cases inspectors were not able to determine this from the information available on CMS. There was continuity of prosecutor in only 44 of the 72 relevant cases (61.1%). It appears that the file was dealt with in a dedicated unit in only 42 cases (46.7%) with a further eight where it was not known. This is most likely due to the fact that until recently four Areas did not have units registered on CMS and the corporate information system (CIS). In fact one Area did not have a RASSO unit at all and another had a Public Protection Unit (PPU), which was changed to a RASSO unit just prior to the fieldwork.

### The second opinion

**4.89** The mandatory requirement for a lawyer to obtain a second opinion in order to discontinue a rape case was implemented nearly a decade ago. The minimum standards state that “...second opinions are to be monitored....to assess effectiveness and emerging issues”. In the file sample a second specialist was consulted in 25 of the 38 relevant cases (65.8%); it is clear there is not full compliance.

**4.90** CPS staff have mixed views as to the added value of this process. Some managers feel there are sufficient opportunities for the specialists in small teams to discuss casework together, that VRR scheme or the police appeal process<sup>24</sup> are sufficient assurance and that second opinions were causing delays.

**4.91** In some files examined there was a full further review whereas elsewhere it appeared that the second opinion involved a discussion without even a cursory look at any of the evidence. This inconsistent approach was confirmed during the fieldwork visits. Some managers used it as a quality assurance mechanism or as supervision for less experienced specialists. In one Area the second opinion was undertaken by trained lawyers who were not part of the RASSO unit. Although this has the benefit of maintaining skills for rotation and succession, it is difficult to retain the specialist label if not undertaking the work regularly as part of a dedicated unit and could be a burden for lawyers whose day job is a completely unrelated remit. Recording of second opinions was poor.

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<sup>24</sup> Where the police disagree with the pre-charge decision of the CPS prosecutor there is a right to seek a review of the decision made through an agreed escalation procedure.

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**4.92** A decision was made, following the CPS internal review, that this process should be discretionary to accommodate the mixed opinion on this topic. There is value in undertaking a second opinion on casework to encourage consistency across a unit particularly where lawyers are located at split sites, for mentoring less experienced specialists, and the benefits of peer review as a check and balance, and in such circumstances Areas may wish to exercise in favour of obtaining a second opinion.

**4.93** The resource modelling by CPS Headquarters provides for a second opinion as a casework task, the time allowed does not accommodate a complete further review but does provide for a proportionate lighter touch critique. It would be helpful to Areas to have guidance on the level and depth of the review for a second opinion and the expectations in terms of record keeping, to achieve best value from the process.

### **Service delivery from the advocate**

**4.94** The legal guidance states it is essential that the brief to the advocate contains detailed information covering all relevant issues within the Rape Prosecutions Advice/ Review Checklist,<sup>25</sup> namely:

- an analysis of the evidence
- to confirm the visually recorded interview has been viewed, and comment on quality, admissibility, transcribing and editing
- which behaviour is covered by which charge
- the acceptability of pleas (taking account of views expressed by the victim)
- a reminder to counsel to introduce themselves and provide explanations/updates to witnesses
- a reminder that offensive and irrelevant cross-examination should be challenged
- a reminder to tackle inappropriate cross-examination about previous sexual history
- a reminder to consider sentencing and ancillary orders, including Sexual Offences Prevention Orders (SOPOs) and compensation
- information on third party material with instructions that disclosure should only be made in accordance with the statutory tests
- a reminder to consider seeking an adverse inference where section 11 Criminal Procedure and Investigations Act 1996 allows; and
- to request a written report on any case that results in an acquittal.

In addition there needs to be early instruction of the advocate and continuity throughout the case.

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<sup>25</sup> Appendix D: Rape Prosecutions Advice/Review Checklist, CPS Rape and Sexual Offences guidance.

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**4.95** There is a low level of compliance with the above: essential instructions to the advocate were included in only 32 of the 53 relevant cases (60.4%). In addition a number of sources who provided feedback felt that counsel is often instructed late. A combination of these factors has an adverse impact on individual cases and their outcome. In particular, late instructions impact on the thoroughness of preparation and can lead to the unnecessary duplication of work.

**4.96** The legal guidance makes it clear that in cases involving an allegation of rape a conference will be held with counsel; it should include the officer in the case, the forensic physician, and any other expert witnesses (unless there are particular reasons for not doing so), and be arranged at the earliest possible opportunity. The advocate should be instructed to attend early special measures meetings to meet the witness and also be instructed to provide a written advice on lessons to be learned in the event of an acquittal.

#### **Case study**

In a case where the issue was whether the victim had consented and where there were no genital injuries there was a failure to have a conference with the forensic expert with a view to addressing "neutral" forensic evidence; there was an acquittal after trial.

**4.97** It was disappointing to find that a conference was held with the advocate in only 17 of the 53 applicable cases (32.1%); there was little evidence in the file sample that the conference is attended by the forensic physician. The advocate generally attends the special measures meeting, as already discussed this is in place of the reviewing lawyer. In the file sample the advocate had input where expected in 39 of the 52 relevant cases (75.0%) but only provided a report in ten of the 21 unsuccessful cases (47.6%). The reports that were available did not really assist with learning lessons and assessing trends to disseminate to staff.

**4.98** The approach across the Areas was mixed, some stressed that conferences were always held whereas elsewhere very few were held. This is a crucial element in preparing the case and insufficient weight is attached to its importance due to the tension between the time required to conduct a conference and the resources available in RASSO units. Feedback from externals indicated that some reviewing lawyers have to justify conferences with counsel and they are discouraged by managers from attending; this is a false economy and is at odds with the guidance. There were also suggestions that due to the limited number of specialist counsel available in certain Areas and the rising volume of cases it was becoming increasingly difficult to arrange a conference with counsel, and crown advocates were also found to be stretched with other duties. Where a conference

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was held there was often no record on the case management system. It is important that an agreed minute is created and kept as a record of the event; this is particularly important where the continuity of the reviewing lawyer, advocate and paralegal cannot be guaranteed. The proposed resource model provides for a conference on each case.

**4.99** In the joint inspection report on Achieving Best Evidence in child abuse cases in 2014 inspectors highlighted as **good practice** where a lawyer requested to see the opening note prepared by counsel to ensure that myths and stereotypes are addressed when the case is opened to the jury; this is equally valid as part of this inspection.

**4.100** The legal guidance is also clear that prosecutors must ensure that only advocates possessing the right skills are briefed to conduct such cases. In 2006 an agreement between the CPS and the Criminal Bar Association was reached that included a framework of accreditation and monitoring of advocates who wish to prosecute rape cases. This has been superseded by the panel system of specialist advocates who have to apply for inclusion, from which all advocates are selected to prosecute RASSO cases. The basic principles are:

- only advocates who have been appointed to the CPS Advocate Panel Rape and Child Sexual Abuse List may prosecute rape and child sexual abuse
- advocates must have attended a CPS accredited training course and demonstrated the right skills whilst being monitored
- advocates must attend a minimum of one such course every four years; and
- an advocate need only be monitored by one CPS Area if on several Area lists.

The CPS specialist crown advocates are also instructed to prosecute these cases, although the current approach to crown advocacy is unlikely to accommodate significant deployment and in-house advocacy is less likely to be in a position to provide a 'cradle to grave' service.

**4.101** There were some effective processes operating at Area level for the selection of counsel, although this was not widespread. For example at one site the reviewing lawyer proposes three options to the unit head, this is subject to discussion followed by the selection of the advocate. However, there are a number of issues at Area level that operate against the appointment of the most appropriate counsel for a RASSO case. There were concerns that the advocate is allocated by a central Area advocacy team with little or no input from the RASSO team with knowledge of the case. At times there appeared to be a tension between delivering quality whilst achieving advocacy savings for the Area. It was felt that advocates should be instructed on merit and availability, whereas some Areas strived to ensure a fair and equitable distribution to panel members, applying a 'five bar gate' method of allocation regardless of skill set and needs of the case.

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**4.102** There was limited feedback of the service provided by advocates other than in terms of the number and timing of returned briefs. What is clear is that the panel system is not as effective as it should be with reports that the membership is not up to date and with the increasing volumes there are too few specialist advocates available to prosecute cases.

#### **Case study**

In an acquaintance rape with a number of witnesses on either "side" the complainant was let down by poor presentation of her account and the fact that the jury must have been bemused by the presentation of, in effect, a defence witness by the prosecution, in what otherwise was a sound allegation. The circumstances were as follows:

There was a poor pre-recorded Achieving Best Evidence (ABE) interview where the officer argued with the adult complainant. The issue was not addressed by the police or the CPS by conducting another ABE interview, holding a pre-trial witness interview or calling the complainant to give evidence live. As a result the examination-in-chief of the complainant was not optimal. There was also a statement from a witness who supported the defence of consent, which was served as part of the prosecution case and the witness was called as a prosecution witness at trial by the crown advocate conducting the trial. The acquittal report from the advocate states it was too late to do anything about the witness. The witness should have been tendered to the defence, this could have occurred as late as the day of the trial when the witness attended, with no prejudice to the defendant.

**4.103** More significantly there is no consistent and effective monitoring of the advocates, although there were examples that some individual monitoring undertaken locally had led to the identification of poor performance and resulted in the advocate not receiving further instructions to prosecute such cases; this practice is not widespread. The collection of data by CPS Headquarters on case outcomes by advocate is little more than an indicator that individual monitoring should take place where the data shows repeated adverse or unsuccessful outcomes. The opportunities to monitor counsel are limited and reducing and there are a number of obstacles that prevent this, starting with the lack of continuity of the reviewing lawyer and the paralegal.

**4.104** Reviewing lawyers do not routinely attend case conferences with counsel, which would enable them to assess counsel's understanding of the case and the trial strategy, and attend even less the special measures meetings to be able to evaluate counsel's 'softer' skills. Lawyers no longer go to court at the start of the trial and paralegals are not in court sufficiently to provide useful feedback and often may have limited or no

knowledge of the cases they are covering. There is also limited communication with the voluntary sector who provide advocacy services to victims at court. Even if the reviewing lawyer was able to maximise the opportunities to communicate with and observe the advocate, the lawyer often has little involvement in the selection of the advocate for their case. In addition, in the main counsel do not supply meaningful reports in the event of an unsuccessful outcome, which could provide some insight of the case. It would be helpful to have a report from counsel on aspects that worked well to inform future decision-making and approach; this would be best practice if it could be achieved.

#### **Case study**

In an allegation of rape committed by a 28 year old defendant on a 71 year old complainant, who was suffering from mild memory loss issues, the case was originally recommended for no further action by the CPS lawyer, including at second opinion. On an appeal by the police further information was sought by the RASSO unit head and a charge eventually authorised. At trial there was a conviction and the defendant was sentenced to 13 years in prison. It would have been helpful to have a report about what happened at trial so that positive lessons could be learnt bearing in mind the initial decisions not to prosecute due to perceived difficulties in the complainant being able to give reliable evidence.

**4.105** The CPS needs to ensure advocates are monitored on the quality of service they deliver and not only in the strict sense of advocacy skills at court. There needs to be a mechanism to capture the softer skills which can be more important in terms of delivering a successful outcome to a victim regardless of whether there is a conviction or acquittal. If all the legal guidance and policies are complied with this will provide a number of scenarios where an assessment of the advocate can be undertaken. In addition, if the 13th juror project (discussed further at paragraph 5.20) is rolled out, this provides a mechanism to assess the effectiveness of the advocate from the perspective of the lay observer in court.

#### **Recommendation**

- CPS Headquarters develop a process to ensure membership of the advocate rape panel includes advocates of the right skill set, enabling Areas to have access to a sufficient number of advocates to cover the available work and a mechanism to ensure the panel is updated.
- Guidance is developed on the various available mechanisms that can be used to monitor the effectiveness of advocates, and how the indicators should be used to inform membership of the advocate rape panel.

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## Training

**4.106** At the time of the fieldwork there was an e-learning RASSO training programme on the Prosecution College website, but no classroom training. Electronic training is also available through the Advocate's Gateway, which is hosted by the Advocacy Training Council; this gives free access to practical, evidence-based guidance on vulnerable witnesses and defendants.

**4.107** The majority of lawyers based in the units had received specialist training at some point, other than those in the Area which incorporates RASSO casework in the Violence Against Women and Girls (VAWG) model. There has been a significant passage of time since some lawyers received the training, highlighting a pressing need to refresh the earlier teaching. Some feedback stated that there was a lack of RASSO training available and more courses were needed; in one unit a relatively new lawyer is restricted to prosecuting non-penetrative sexual offences due to the limited national RASSO training. It was felt that if courses could be provided then non-specialists should be encouraged to participate in order to facilitate rotation arrangements and provide more resilience; this needs to be considered as part of Area plans for rotation and succession. A number of paralegals also highlighted a requirement for specialist training.

**4.108** In addition to the national courses there are pockets of complementary training. Inspectors are aware of training on myths and stereotypes that was funded through individual learning accounts (ILAs). Additionally, a number of events have been held where the local Bar has provided training, for example in relation to vulnerable witnesses and the use of intermediaries, and some specialists have also attended the RASSO advocacy course. Furthermore, there are examples of informal learning activity, such as monthly Area updates or sessions on issues flowing out of unsuccessful outcome analysis, which all contribute to the sharing of knowledge.

**4.109** Training has also been provided by the CPS to other agencies, for example in one Area to the Sexual Assault Referral Centre and the RASSO specialist advocates on the Crown Court circuit, and there has also been training of specialist lawyers in another criminal justice jurisdiction. These are all positive examples of sharing expertise to improve performance across organisational boundaries. There has also been involvement in Rape Crisis training on pre-trial support in another Area; this has improved relationships and has led to positive outcomes for survivors.

**4.110** Analysis of the file sample shows that there is still a training need to address a variety of issues. Likewise, the joint action plan and the two recent reviews<sup>26</sup> identified that further training should be provided, as well as other learning mechanisms such

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<sup>26</sup> *Report of the Independent Review into the Investigation and Prosecution of Rape in London*; Rt Hon Dame Elish Angiolini DBE QC; April 2015 and the internal *Review of CPS RASSO Units*.



as conferences and workshops. As a consequence of this work and with the change to the governance structures there is renewed impetus. Work is underway to identify the learning needs of specialist prosecutors, rape training is to be revised and updated, joint regional workshops have been held with the police to disseminate and embed the consent guidelines and a training package has been developed in relation to alleged false complaints of rape and domestic abuse, which will be delivered locally. In addition, the network for the RASSO unit heads has been reinvigorated and will meet bi-annually and the intention is to continue with the RASSO newsletter under the guidance of the VAWG strategy managers. The progress of local delivery of training will be monitored through the VAWG assurance mechanism. It is important that where training is mandated, there are sanctions for non-compliance.

**4.111** As part of the consideration of training needs it should be noted that in more than one Area the requirement for RASSO youth training was identified and in more than one police force joint training would be welcome, particularly in relation to disclosure. This could help officers understand why requests are made at the pre-charge stage, in order that the files are front-loaded to avoid duplication of work.

**4.112** In light of the number of recommendations made in previous reports in relation to training and the subsequent investment in the relevant training, which has not delivered the outcomes expected, it may be appropriate to consider how the training is approached, delivered and monitored, and how the evidence base is developed. There are opportunities for external involvement in the development and delivery of appropriate training through the scrutiny panels and incorporating the learning from the panels into any training, to ensure it is disseminated effectively across the CPS.

### Recommendation

- All RASSO lawyers to undergo refresher training, including the role of the merits-based approach in the context of the Code for Crown Prosecutors.
- National training to be made available to support Areas ensuring new staff deployed to a RASSO unit have access to appropriate training.
- Develop and deliver a training course for RASSO unit paralegal staff, and to non-specialist paralegal staff who cover RASSO work.
- Bespoke training is developed and delivered to RASSO unit heads on the application of Individual Quality Assessments (IQA).
- Welfare training is developed and provided to members of the RASSO team.
- All RASSO lawyers undertake training on youth casework.

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## 5 Outcomes, performance and governance

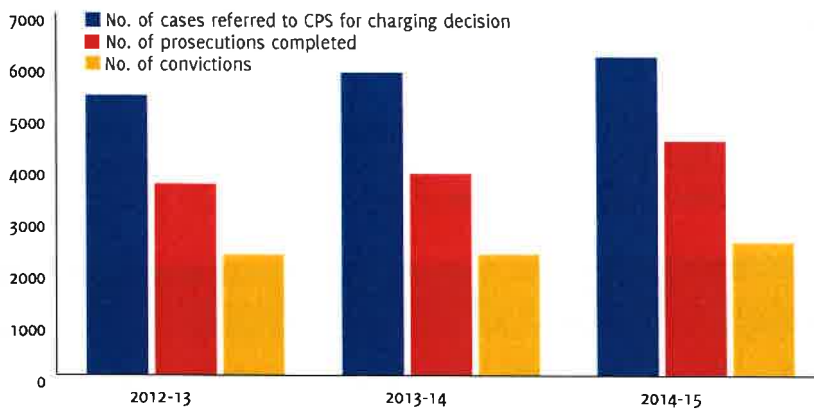
### Volume and outcomes in rape cases

5.1 The current performance levels in relation to RASSO casework, as reported by the CPS,<sup>27</sup> show that the volume of rape referrals has risen by 5.3% during 2014-15 from the previous year, an increase of 309 referrals. There was also a rise, albeit a small one (0.75%), in referrals charged to 59.2%, equal to 27 more defendants than the previous year.

5.2 The volume of prosecutions completed has reached its highest level, increasing by 16.6% from the previous year with a similar position for the volume of convictions, a rise of 9.9%. Despite the increase in the number of convictions, as a proportion of all contested cases the overall conviction rate fell by 3.4% to 56.9%.

5.3 At a local level it is reported that there is an increase in non-recent cases of sexual abuse, with one Area suggesting there has been a rise from 10% to 50% of RASSO casework. These cases tend to be more complex and time consuming than other RASSO work. However, it is not possible to disaggregate the data on the CPS performance information systems to measure the volume and understand the impact of non-recent cases.

**Number of rape cases referred to the CPS for charging decisions, number of rapes prosecuted and number of convictions nationally**



	2012-13	2013-14	2014-15
<b>Rape conviction rate</b>	63.19%	60.34%	56.90%

<sup>27</sup> Violence against Women and Girls Crime Report 2014-2015; CPS; July 2015.

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5.4 Performance for the last year and the first quarter of 2015-16 is detailed below in the table, the full data set can be found at annex B. The figures show a further increase in the volume of referrals for pre-charge advice and a small increase in cases that proceeded to prosecution. The charge to no further action (NFA) rate has remained static for the last two years.

CPS national rape cases	2012-13	2013-14	2014-15	12 months to June 2015
Pre-charge	5,404	5,850	6,159	6,231
Simple cautions	16	12	21	18
Simple caution % of caseload	0.3%	0.2%	0.3%	0.3%
Conditional cautions	0	3	5	3
Conditional cautions % of caseload	0%	0.1%	0.1%	0.0%
Completed prosecutions	3,692	3,891	4,536	4,653
Charge to NFA rate	1.2	1.8	1.8	1.8

5.5 In 2014-15 the proportion of cases discontinued increased slightly to 13.3% compared with 13.1% in 2013-14. This has risen by a further 0.2% for the first quarter of 2015-16. The attrition rate has fallen slightly for the first quarter of 2015-16.

CPS national rape cases	2012-13	2013-14	2014-15	12 months to June 2015
Prosecutions dropped	13.7%	13.1%	13.3%	13.5%
Attrition	36.8%	39.7%	43.1%	42.8%
Convictions	55.1%	53.0%	48.3%	49.4%
Jury acquittals	42.6%	44.6%	49.3%	48.0%

5.6 There has also been a fall of 1.9% in the guilty plea rate in rape cases, although the level of guilty pleas in rape cases is always more likely to be significantly lower in comparison to other crime, with more defendants contesting cases.

5.7 The average number of days to charge has dropped significantly during the first quarter of 2015-16; this may be explained by the drive from CPS Headquarters requiring Areas to reduce the time to charge to the target of 28 days by the end of May 2015.

CPS national rape cases	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
Average number of days to charge	53.06	54.70	54.84	55.07	45.02

### Data quality

5.8 It is always difficult to assess resource requirements and performance outcomes in the absence of accurate data, which also makes it challenging to compare the different unit models that are currently operating. At the start of the inspection there were three Areas who had not registered a RASSO unit on the digital case management system (CMS) making it problematic to collect performance data; this had reduced to one by the end of the fieldwork phase.

5.9 The recently established units could provide little meaningful data. In the absence of electronic data, Areas have to rely on manual counts or case flagging on CMS, neither method is entirely accurate.

5.10 The CPS flag rape cases as part of the national CPS VAWG assurance mechanism. There can also be confusion at local level where cases are flagged as rape at the charging stage, but no rape charge is advised. Areas try to note and amend these cases prior to ensure accurate returns, but this is not always possible.

5.11 The information as to gender is not captured fully. During 2014-15 99% of defendants were men;<sup>28</sup> however, the recording of victim gender was only recorded in 76% of cases, and is not robust enough to include in data sets.

5.12 The CPS also flag cases of child abuse but the process does not differentiate between recent allegations and non-recent allegations where the victim reporting is now an adult. Therefore meaningful analysis of the data is not possible; in the current climate with the apparent significant increase in the reporting of non-recent cases it is unfortunate that meaningful collection and analysis of the relevant data cannot be undertaken to inform forecasting of referrals and case volumes.

28 *Violence against Women and Girls Crime Report 2014-2015*; CPS; July 2015.

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5.13 There is currently no mechanism to record on CMS cases that are finalised after the provision of early investigative advice; this means that the volume of work is not taken into account fully in terms of resource required and case outcomes may be overlooked. Data entry needs improvement, as does the capture of meaningful data to predict future trends in volumes and understand the application of any resource model, as well as performance levels, in order to drive improvement and ensure appropriate resourcing levels.

### Quality assurance

5.14 The minimum standards provide for a quality assurance mechanism both at local level, through the assurance of casework quality, and nationally through the bi-annual VAWG assurance process. As part of this regime the Areas were also asked to dip sample cases in order to assess quality; however, over time the same issues were identified on a regular basis which led to changing the focus of the assessment to consider what success there was in addressing the issues already identified. The newly established compliance team in CPS Headquarters has been tasked to examine quality as part of its remit, which should result in a more consistent approach.

5.15 The assurance envisaged at local level at the time of developing the minimum standards, known as Casework Quality Assurance, has since been superseded by the Individual Quality Assurance (IQA) tool. Views on the effectiveness of the process for RASSO work are mixed and cover the full spectrum. IQA is a recent introduction and in the absence of any evaluation it is difficult to assess which view reflects what is happening in practice.

5.16 Areas also utilise other methods to assure quality; in one a roundtable meeting is held every two months involving the RASSO unit head, Deputy Chief Crown Prosecutor, Crown Court team head and Complex Casework Unit head, where a sample of charging decisions by each RASSO lawyer is analysed and feedback provided. Elsewhere there is mentoring and close monitoring of lawyers new to a RASSO unit to enable staged development and assurance of quality. Areas also rely on adverse outcome reports and reports from counsel, although as we have commented previously these are not always completed.

5.17 The assessment of casework quality detailed in this report shows that there are various aspects that need improvement, particularly in relation to decision-making, which need to be addressed. The various mechanisms currently in place to examine the quality of casework need to be used more effectively to learn and disseminate lessons, to drive improvement and ultimately deliver a better service to victims and witnesses.

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### **The scrutiny panel**

5.18 The National Rape Scrutiny Panel sat in 2014 to investigate the fall in the number of rape-flagged cases on the CPS case management system and to assess overall performance. The national Rape Action Plan was developed from this work and the actions are being taken forward. There are also local Area panels that meet at various intervals to scrutinise cases involving allegations of rape and serious sexual offences. In addition, there is a VAWG External Reference Group and a Community Accountability Forum which enable members of national third sector groups to input into national policy on RASSO casework.

5.19 The local panels allow members of the local community to examine the details of anonymised cases, the opportunity to provide their perspective on the way cases are prosecuted and provide feedback about the way people and communities perceive CPS decision-making and the way it handles cases locally. They provide for a further assurance of casework and an opportunity to be informed by the third sector. Fifteen of the 26 questionnaire respondees from the specialist voluntary sector attend regional scrutiny panel, only one did not find it helpful.

### **The 13th juror project**

5.20 The 13th juror project is a scheme whereby a volunteer attends the trial of a sexual abuse case as an observer. The volunteers are subject to a code of conduct and only observe elements of the trial that the actual jury in the case observes; they are instructed not to discuss the case during its currency. At the conclusion of the trial a report is submitted. It is possible to have a second volunteer as a 14th juror who would submit their own independent report. The project has been piloted with the support of an educational establishment in the North West, with a further pilot in the North East.

5.21 Although only a small number of trials have been observed the reports have been a valuable source of information in terms of a qualitative assessment of how the case was prosecuted, the conduct of the advocate, factors that positively or negatively influenced decision-making and lessons for improvement. Feedback from the 13th jurors has included the poor quality of the Achieving Best Evidence pre-recorded interviews, a long-standing issue still needing to be addressed. There was also some positive feedback regarding the performance of prosecution advocates.

5.22 The project is a helpful quality assurance tool that has the capacity to complement other arrangements. The CPS needs to investigate whether it is feasible for Areas, in conjunction with organisations drawn from the local community, to roll this out to other court centres in order to obtain the lay perspective to inform casework. At a time where the CPS presence at court is minimal and unable to be a source of such qualitative assessments of service delivery, such a project and its outcomes could be significant.

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### **Joint performance and data sharing**

**5.23** There is a disconnect between the criminal justice agencies in data recording, accordingly there can be no meaningful comparison between CPS data and police data, there are also discrepancies with the data collated by Her Majesty's Courts and Tribunals Service (HMCTS).

**5.24** Police data records the number of offences rather than the number of suspects, whereas the CPS records the number of defendants prosecuted and those who are convicted. Therefore if a case has multiple defendants an outcome for each will be counted separately by the CPS but could be recorded by the police as one crime, for example if a victim is raped by two suspects it would be recorded as one crime but potentially two decisions to charge, two prosecutions and two convictions. If one suspect rapes two victims this could be recorded as two crimes by the police and potentially one decision to charge, one prosecution and one conviction by the CPS. Added to this is the time lag between every stage of the criminal justice process: between the recording of crime, referral to the CPS for charging, prosecution, conviction and sentencing. The time lag in RASSO cases can be significant – well over a year in some cases. The CPS data on pre-charge decisions during the financial year is not directly comparable to the data of finalised cases prosecuted during the same financial year. These idiosyncrasies in the data mean that comparison year on year and between Areas can be misleading.

**5.25** There is no mechanism to collect meaningful data on individual cases from end to end which would inform all the cross-cutting issues in RASSO casework, particularly in relation to timeliness and attrition. One model was devised and used in the past to measure timeliness in relation to persistent young offenders; this was effective in terms of capturing joint performance data to drive improvement across the agencies. The CPS may wish to consider with partners whether a similar performance mechanism could be developed and would be appropriate for RASSO casework.

**5.26** The minimum standards include feeding back to the police at least monthly; however, the sharing of data with individual police forces takes many different forms across the Areas. In some forces the Prosecution Team Performance Management (PTPM) structures appear to have fallen into abeyance although other meetings between RASSO unit heads and the police may have replaced them. The approach can be inconsistent; a mechanism to share and discuss performance with one force is not repeated with other police forces in the same CPS Area. Some forces are proactive and will consider file quality and compliance jointly whereas others have limited or no engagement with the RASSO unit. There can also be an inconsistent approach within a single force; the various police models adopted across forces, from specialist rape investigation units to general command units and force criminal investigation departments (CID) contribute to this and affect communication between the agencies. The impact of and compliance with the joint action plans and protocols for local performance is equally variable.



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**5.27** In contrast, there were some pockets of positive joint working, for example discussions between the CPS and police on a monthly basis in relation to a sample of cases where decisions to take no further action had been made by the police and CPS. This also happened on a quarterly basis elsewhere but was not widespread.

**5.28** There needs to be regular regional liaison meetings for RASSO work with the police leads for each force who take responsibility for performance, regardless of where the work sits within a force area. This needs to be used as a platform to improve performance in terms of file quality and timeliness, minimise duplication and rework, and learning lessons and sharing good practice.

#### Recommendation

- All RASSO units are identified accurately on the case management system (CMS) and the corporate information system (CIS) to facilitate the collection of accurate data.
- All staff deployed to an Area RASSO unit are allocated to the unit on CIS.
- Creation of a finalisation code on CMS to capture the finalisation of early investigative advice (EIA) files not subsequently referred to the CPS by the police as pre-charge advice files.
- Ensure quality assurance mechanisms capture compliance with policy and legal guidance and there are sanctions for CPS Areas for non-compliance.
- CPS work to develop a joint performance data set for each police force area and an effective mechanism for discussion between agencies at CPS Area level to facilitate improvement in performance.



## Part 2

### 6 The CPS RASSO units

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#### Introduction

**6.1** In March 2013 the then Director of Public Prosecutions announced that Rape and Serious Sexual Offences units would be rolled out to every CPS Area. Minimum standards were drawn up and agreed by the Chief Crown Prosecutor (CCP) Group. It was intended that by October 2013 each Area would have a unit. Whilst not all Areas had set them up by the deadline, by November 2013 it was stated that they had been established in all Areas. Subsequently the range of offences dealt with by the units was extended and the minimum standards varied to reflect this. The amended minimum standards are set out at annex D. As discussed earlier in the report in relation to casework, compliance with the minimum standards is poor and no individual minimum standard is applied across all Areas.

**6.2** In practice one Area did not have a RASSO unit at all until the time of our fieldwork in April 2015 but was reporting to CPS Headquarters on the performance of its 'virtual' unit; this was the performance of specialist lawyers working in the Area Crown Court teams. There were other variations locally including a Public Protection Unit; this had a wider remit than the RASSO unit which has recently replaced it. There is also a hybrid model where part of the Area work still sits with other Crown Court work, and more recently one of the Area RASSO units has been broadened to a Violence Against Women and Girls (VAWG) unit, which includes a significant amount of Crown Court domestic abuse casework. Each of the seven Areas visited during the fieldwork deployed a different model and information received from the other CPS Areas suggests there are even more variations nationally. It is impossible to discern what the characteristics are that define a model for a national service.

**6.3** The minimum standards state that all Areas have to provide a RASSO unit on an Area basis, which could be in geographical locations if needed, either in the Complex Casework Unit (CCU) or the Crown Court (CC) unit. No further instruction or guidance was provided. This allowed too much discretion at local level and has led to significant variations across England and Wales: despite the CPS being a national service, what was and continues to be delivered locally does not reflect a standard model and does not provide consistent quality. When the police investigative unit models are added to the picture, which vary from specialist units to investigations sited in operational command units (OCUs) and force criminal investigation departments (CID), it gives rise to a 'postcode lottery' in terms of the service provided to victims, even across a single CPS Area.

**6.4** Previous studies have highlighted numerous advantages that flow from the establishment of a dedicated RASSO unit in an Area, from the high level of support for the unit from the CCP; enhanced levels of communication about rape inside the CPS and with externals; prosecutors and paralegals developing a genuine specialism resulting in increased productivity and efficiency; unit members having 'ownership' of cases, being able to plan the work and focus on effective case preparation (factors which apparently

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compensate for the seemingly unremitting level of sensitive work and long hours that they undertake); to effective multi-agency governance linked with processes for reviewing outcomes and sharing lessons learned with the police. It should be noted that more recently many of the benefits are less visible due to the current difficulties resourcing the units at the optimal level.

6.5 It is disappointing to note that of the feedback from 26 members of the specialist voluntary sector three were unaware of the RASSO unit in their Area, 14 were not aware who was the unit head and 11 never had any contact with their local unit.

6.6 When considering the various models for delivering RASSO casework it is important to note that, as with many inspections of the CPS, regardless of the model or processes utilised the delivery of high quality casework is dependent on committed professional individuals who often deliver despite the model and environmental conditions. Equally Areas that appear to incorporate many or even most of features of the minimum standards can achieve poorer outcomes than Areas who do not.

#### **Remit of the RASSO unit**

6.7 Cases to be included in RASSO units under the current amended minimum standards include:

- all cases currently covered (namely rape, non-summary serious sexual offences and penetrative offences including those in domestic violence situations)
- all Crown Court cases of child sexual abuse
- sexual offence cases with multiple victims
- sexual offences with vulnerable adults
- cases involving allegedly false rape and/or domestic violence allegations; and
- youth cases.

6.8 Areas could include other cases if capacity allowed such as lesser sexual offences, indecent images or forced marriage and 'honour' based violence.

6.9 Although this is a wide remit it does not allow for the VAWG model (detailed further at annex E) and, as it transpires, the Area deploying that model does not have the capacity to cover such work within the unit without compromising some other standards, in particular the purported specialism of the unit and skills of the staff.

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### **Serious and complex casework**

**6.10** The minimum standards state that RASSO units would generally deal with cases involving protracted investigations, large scale child sexual abuse/exploitation, grooming or paedophilia; however, the scale of such offending may make it appropriate for referral to the CCU and rape specialists within the CCU would need to work on the cases with links to the RASSO unit.

**6.11** In practice the arrangements are flexible and vary from Area to Area. There are Areas where all RASSO work handled by the CCU fits the 'blueprint' for such work, particularly large scale child sexual exploitation cases. There are also Areas where the CCU does not take on all the RASSO work it should due to insufficient resources. In one Area the CCU was no longer accepting large scale cases and the RASSO team as currently resourced did not have the capacity to deal with them. In another the CCU, which has taken one case, does not have any available resource to take on further work even where it meets the criteria for such cases.

**6.12** In contrast, elsewhere it was felt that the CCU was being required to undertake work due to the under-resourcing of the RASSO unit and this work did not reflect guidance for such referrals. As well as large scale cases, a CCU invariably handles the high profile, media interest cases. It was suggested that this could lead to the disparity of a two tier system for victims where 'ordinary' though equally serious RASSO cases are handled by under-resourced RASSO units, and media cases receive a higher quality service in the CCU due to the resources allocated to them. The Service needs to be mindful of these issues, particularly where they relate to the current resourcing of RASSO units.

### **Youth Court**

**6.13** The expectation in the minimum standards is that Youth Court rape and sexual offence cases are included in the remit of the RASSO unit with all major decisions on youth cases taken by rape specialists who have also undergone youth specialist training.

**6.14** All rapes or serious sexual offences should go to the RASSO teams at the pre-charge stage and be allocated to a youth specialist within the unit, but it appears that not all appropriate youth work is referred to the units and not all lawyers in the various models across the Areas are youth specialists. The absence of the youth specialism in the unit can lead to an imbalance of work if only one or two RASSO specialists are trained. With the increasing number of cases it may be advisable that all lawyers undertaking RASSO work are trained as youth specialists as well.

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6.15 The picture across the units is mixed with some handling youth cases in the RASSO unit and others not and lacking the capacity to take on the work. In the file sample there were examples of youth cases not dealt with by the RASSO team as they should have been. Youth cases which were sent to the Crown Court would remain with the unit; however, cases which stayed in the Youth Court could and did lose their way, ending up outside the unit, often not properly prepared and then briefed to counsel to prosecute the trial late at a late stage.

6.16 The fieldwork visits and feedback suggest that the approach to youth RASSO cases and youth specialist training in RASSO units is muddled and requires clarification; it would be helpful if CPS Headquarters provided guidance on expectations and arrangements made for the provision of specific RASSO training for youth cases.

### **The structures**

6.17 From all the earlier studies it is clear there are merits in having a specialist RASSO unit. It allows the development of legal and practical expertise, a consistent approach to the handling of casework, and continuity of lawyer from cradle to grave. Timeliness should improve as specialist lawyers are exposed regularly to issues that impact on RASSO work and confidence in case handling improves. The unit should be able to develop links across the various police forces that refer cases to the unit, which in turn should improve file quality. The reporting lines should lead to the Deputy Chief Crown Prosecutor (DCCP) who holds the Area Violence Against Women and Girls lead to provide appropriate oversight and reassurance at national level through the VAWG assurance mechanism. In practice, these benefits are not always apparent because the minimum standards are not adhered to and some local variations have been introduced.

6.18 The models examined and considered are as follows:

- single site
- multi-geographical site with a single management structure
- multi-geographical site with a shared management structure
- hybrid model
- Violence Against Women and Girls (VAWG) unit; and
- co-located unit with the police.

6.19 The detail of each model with benefits, risks and obstacles to success can be found at annex E.

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## Resources

### Roles and responsibilities

6.20 The issues arising from the various roles and responsibilities that unit heads currently undertake are highlighted earlier in the report, as are the risks involved to casework from additional responsibilities for unit heads outside the unit, where there are challenges of dealing with split sites and a number of police forces. There needs to be a realistic expectation about the role which is applied consistently across all Areas.

6.21 The minimum standards stated that further detail around job descriptions of unit heads was being prepared. This has not been forthcoming so local variations and practices have grown up instead. CPS Headquarters needs to provide clear guidance on the expectations for the role in order to deliver the minimum standards as stated and the level of care to victims and witnesses to which the DPP has committed.

6.22 The expectation in the minimum standards was units would be staffed with rape specialist prosecutors and paralegal staff. This does not reflect the various models deployed. All Areas have specialist prosecutors although in one this is not exclusively so, but in relation to paralegal staff there is a mixed picture across the 13 units. Ideally paralegal staff should carry an individual caseload which also allows for some attendance at court on their own cases, applying the personal knowledge of the case to provide a better service to victims and witnesses.

6.23 In practice the models vary significantly, including having no ring-fenced paralegal staff. This has the potential to provide more resilience but can lead to tension between the work priorities of the RASSO unit and the Crown Court team to which they are allocated, therefore case management and preparation of RASSO cases is not always given the correct priority. In addition, where this model was used there was not always adequate resource at court for this sensitive casework.

6.24 There are also various approaches to utilisation of ring-fenced paralegal staff. This should afford the specialist lawyers more time to concentrate on legal work; however, the method of deployment and workloads are obstacles to this. Staff absence and the need to cover courts dealing with non-RASSO work has diluted the beneficial effect of having dedicated paralegal staff, leaving insufficient time to attend to their own caseload. In the Area that has just established a RASSO unit the paralegals still have responsibility for non-RASSO work and, even though they do not attend court, the limited number of staff impacts on their ability to deal with RASSO casework and also has an adverse impact on their well-being.

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6.25 There are also different models within an Area, for example where there are split sites one site has dedicated paralegal staff who also cover their own cases at court whereas at the other the work is distributed amongst the non-ring-fenced staff; this has the potential to provide a different service dependant on location. Another Area has tried to overcome the problem by dividing the paralegal staff into an office-based unit and a team providing court coverage. Although this may reduce the burden on the staff, there is limited opportunity for those covering court to have a working knowledge of the case. Feedback suggests that there is considerable advantage to the dedicated paralegal staff attending court, even if just for the first day, to provide a better quality of service to the victim.

6.26 Inspectors did not observe a model that was effective in its use of paralegals in terms of case preparation in the office whilst providing the appropriate coverage at court and a service to victims and witnesses. The approach nationally is muddled and requires clarification. There has been a recent proposal that paralegal staff should cover a maximum of two courts but this does not address their deployment to RASSO work. CPS Headquarters needs to state what the expectations are for the paralegal role within a RASSO unit.

6.27 The approach to the deployment of administrative staff is equally varied. A number of Areas had no dedicated administrative team, believing this model provided the most resilience for all casework in light of the reduction in the number of administrative staff in the Areas. In practice this was inefficient because the staff allocated to the unit could change daily and were not always knowledgeable about what the work entailed. Other Areas felt a dedicated staff would be preferable but this did not feature in current Area plans. Elsewhere there was dedicated administrative support, which was thought to provide the best efficiency and effectiveness; however, in one such Area this consisted of one member of staff, which provides no resilience at all.

6.28 The minimum standards require Areas to decide on the number of other rape specialist prosecutors required outside the RASSO units who can be used to cover RASSO cases in the magistrates' courts, review and appeal work. Again the approach is confused, providing an inconsistent national picture.

**Resourcing of the RASSO units**

6.29 In the context of the new CPS resource model it was apparent that all Areas visited during the fieldwork were under-resourced in terms of staffing the units as well as those non-fieldwork Areas who provided evidence to the review. Traditionally the CPS has allocated resource according to caseload with an optimum caseload for each lawyer and paralegal member of staff. This does not necessarily reflect the actual workload. There can be cases sitting on shelves awaiting trial that require no action and some files for advice, which may take a number of days to review due to the nature and circumstances of the allegation.



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**6.30** What is difficult to understand is that there is very little evidence of any consideration of the resource required when the units were established or since then by the Areas as part of a holistic resource model, until the recent modelling undertaken by CPS Headquarters. The staff complement was based on availability rather than an analysis of the amount of work required. Areas could not tell inspectors how many specialist lawyers were required to deliver the work, but all Areas reported that the current number deployed in all the units is insufficient.

**6.31** Areas felt that not all work undertaken was accounted for when bidding for resource. For example, Areas had estimated the amount of work done on cases where no further action was taken because this work was not captured in any data. It was also felt that work carried out on handling complaints and supporting victims was also not taken into account. The implications of this shortfall in resource are that work is not timely, decisions are rushed and staff are not as on top of individual caseloads as they should be.

**6.32** CPS Headquarters has undertaken some work to understand the resourcing requirements of the units. This is a new approach with a move away from caseload per lawyer to a task-based system of activities required on a case and the average throughput time to undertake a task, for example to provide the charging advice, the further review, a conference with the advocate, holding a special measures meeting, or to undertake a second opinion. The model has shown that all Areas are under-resourced for the current volume and even more so for anticipated future increases. The shortfall in resource is exacerbated in Areas that have 'legacy' cases from previous structures to add to the caseload and the hybrid structure that incorporates other Crown Court cases. The adverse impact is heightened by the significant rework and duplication of effort to progress cases.

**6.33** A detailed operational model is vital to ensuring the business is run efficiently and effectively and is the basis of any business case when bidding for funding. Funding is required to provide additional resource otherwise there will be real risks to RASSO casework. In the absence of additional funding the Service will necessarily have to provide the resource from elsewhere in the organisation, which will move the risk to other victims and witnesses and society at large in terms of public safety.

**Rotation and succession**

**6.34** The minimum standards propose that succession plans are drawn up by Areas to incorporate shadowing and mentoring. The time period for rotation was measured in years in order to build up and capitalise on experience. Most Areas with established units have no such plans and were under such pressure with backlogs of advice files that changes were unrealistic unless there was natural wastage. The recently established units had considered rotation and succession in their planning.

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**6.35** The approach across the Areas was variable. A number of Areas did not rotate staff and did not have any plans to do so. One Area had trained lawyers sited in both the Crown Court and magistrates' courts teams but they had not been deployed to RASSO work for over two years making it difficult to re-skill; the Area had no plans to rotate in any event. As discussed above, the hybrid model allows for a reduction in the workload of individuals if a welfare issue arises but this does not fill all the needs of a rotation policy and there is no mechanism or plans for the other unit in the Area. Even where a unit was recently established and succession planning has been considered, staff and managers are sceptical whether this will be capable of operation at all offices. An Area that had established a policy of rotation of staff after seven months had to revisit the decision and extended this to 18 months. Seven months is an unrealistic time scale for RASSO cases especially when taking account of the delays in the provision of pre-charge advice, and is completely impractical. There is genuine concern that under the present circumstances rotation into the units is no longer an attractive proposition. The Service needs to consider how it can promote the work as something to which staff want to aspire.

#### **Welfare arrangements**

**6.36** The minimum standards include consideration of welfare arrangements for staff working within the RASSO units, encouraging Areas to engage an organisation offering counselling related services to both public and private sector workers.

**6.37** The overwhelming feedback from all Areas is that it is not the nature of the work that is causing issues but the current volume of the work that is increasing stress levels, and showing no sign of respite. Again the approach is mixed with some Areas having not considered it and with nothing planned. In one Area a senior manager suggested if it was required that the individual learning accounts should be used to fund it. Elsewhere wellbeing has been discussed and assistance offered but staff did not want it so managers did not pursue it. One Area has training planned for staff well-being and another has already held a workplace wellness session for all RASSO staff and, despite the initially reluctance it was well-received by staff and improved morale.

#### **Joint working**

**6.38** The minimum standards request all Areas implement a rape protocol with local police specialist services. The standards document also states that co-location with the police is not required but systems are necessary to link with specialist police teams. These standards appear to assume that all forces have specialist police units; the evidence collected during this review suggests that a number of forces do not have specialist teams as part of the force model, making it impossible to comply with one of the standards as currently stated.

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**6.39** Although a new Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape<sup>29</sup> was agreed in January 2015, this had not been adopted across police forces during the fieldwork visits. There were some pre-existing protocols with the relevant police forces that refer cases to the CPS but these were not in place across all the Areas. There were examples where a protocol had previously been agreed but had since been abandoned and others where following agreement it was not applied in practice. The new protocol needs to be agreed with every police force; it is of particular importance where the RASSO work sits outside the police specialist units.

**6.40** It was clear from the responses and feedback from all the CPS Areas that there are differing levels of engagement with the various police forces that refer cases to a single Area, as well as across a single police force. Much of this can be attributed to the various models deployed by the 43 police forces which align to the 13 CPS Areas. The models can vary with specialist units - which include rape investigation units, public protection and child protection units - to specialist borough command units, general operational command units and force criminal investigation departments. There can be a combination of police teams referring cases to the CPS from a single force and this is multiplied across the other forces that align to an Area.

**6.41** A number of forces have no specialist units at all and one force has reduced the specialist team and returned some of the work to the divisions. Most RASSO units have multiple contact points with the police; this can be an obstacle to communication and to consistency. This approach is exceptionally challenging for a single unit head trying to work with criminal justice partners to drive improvement, particularly in relation to improving file quality.

**6.42** Variations to the police and CPS models are in operation or are being trialled to improve joint working and address the issues of effective use of early investigative advice, police supervision and gatekeeping, and police file quality. Officers are embedded in some CPS units and lawyers in police teams. There are clear benefits to both approaches but equally there are risks that need to be addressed.

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<sup>29</sup> Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape; ACP0; January 2015.

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**Embedding police officers**

6.43 In one Area there are four police liaison officers embedded with the CPS RASSO team, split equally between pre-charge and post-charge work. This has helped in terms of progressing actions on cases but has had little impact on improving file quality.

6.44 Elsewhere a Detective Inspector is embedded in one of the two RASSO sites in the Area, although this only covered cases from one of the two forces referring cases to the team, which was just one of four forces overall who were referring cases to the RASSO unit, leaving the referrals from the other three forces exposed. Feedback after an eight month period suggests that police submissions have improved as have the relationships between the agencies.

6.45 The strategy of embedding officers in CPS units is positive and ensures that gatekeeping arrangements and file supervision rightly sits with the police. However, unless all forces have representation in the RASSO units or arrangements are made for joint provision there are clear risks in the current approach to placing police officers within the CPS units; the issues will perpetuate and there will be even greater inconsistency.

**Embedding lawyers**

6.46 At the time of the fieldwork there were no examples of lawyers embedded with specialist police teams for the provision of early investigative advice, although in one Area there were plans to embed a lawyer in one of the two forces that referred cases to one of the Area teams.<sup>30</sup> This initiative is funded by the force where file quality and, particularly, poor performance in relation to unused material have been identified. The specialist police team is responsible for 70% of the force referrals because the remainder of the work sits in the force divisions; this is a risk-based approach to improving performance in the specialist unit.

6.47 As a result of the Dame Elish Angiolini DBE QC report it is proposed to site a lawyer in each of the five specialist police hubs in London; this is a significant resource for the CPS and will need to be evaluated in light of the fact there are already police officers embedded in the CPS unit. Elsewhere funding bids have been submitted to the relevant offices of Police and Crime Commissioners to take this initiative forward.

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<sup>30</sup> The Area with the co-located model has lawyers working jointly with the police in police accommodation on all aspects of RASSO casework but not specifically embedded to provide EIA.

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**6.48** The approach to embedding lawyers with police teams lacks clarity, if it is police funded then there is an expectation that the role will be used to improve file quality. This should sit with police supervision and will return to the police when the funding stops. If it is funded by the CPS then the role should be to undertake early investigative advice and not be confused with the gatekeeping function. The biggest risk is the ability to impact across a force or many forces that refer to a single Area. If a lawyer sits in the specialist police unit there is no mechanism to impact on the work that sits elsewhere in the force. If there is no specialist unit there is the issue as to where the lawyer should be located to have the greatest impact and the risk to the rest of the referrals from that force. There is also the issue of duplicating this model across a number of forces that refer cases to a single Area RASSO unit; this model would require significant resource to cover the many referral points across a force. Insufficient resource may lead to greater risks for little return and ultimately question the added value, and there are risks that the CPS funded lawyers would in any event be drawn into undertaking police functions.

**6.49** There is also the co-located team where lawyers and police work together in a joint unit; performance is good, although the total number of referrals is fewer than other Areas, but co-location is no longer seen as the model for joint working.

## **Conclusion**

**6.50** There are clear potential benefits to establishing a RASSO team in each CPS Area; however, the current approach has resulted in limited compliance with the minimum standards and a wide variation in methodology. None of the current models delivers the level of service expected from a specialist team and to the standard to which the CPS has publicly committed. With hindsight the minimum standards allowed too much flexibility to Areas enabling them to follow their own path and disregarding the need to provide a consistent service as part of a national model. There needed to be clearer expectations, more guidance on how to implement and operate the model and significantly greater compulsion, with proper sanctions for non-compliance, in order to deliver a national service locally.

**6.51** There are difficulties and risks in implementing a national model due to the varying geographical and environmental conditions across England and Wales, but these are not insurmountable and counter measures can be put in place to minimise the risks where variations are necessary due to external demands. The key elements that constitute the model are detailed below. It is vital that CPS Headquarters provides written guidance, support and governance, where necessary, to implement the constituent parts consistently. Once in place it would be helpful to undertake a review to ensure the model is delivering what is expected.

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- **a single unit with a consistent team ethos regardless of the number of geographical sites or the number of unit heads.** Processes need to be in place to ensure consistency, for example, how new media methods can deliver the message consistently across multiple sites or the division of line management duties across geographical sites where there is more than one manager
  - **the unit should handle RASSO cases only.** It should not be a VAWG or hybrid model and the issue of the legacy cases needs addressing
  - **the unit head should be responsible for the RASSO unit only,** they should not have other duties and should have realistic spans of control. The role and responsibilities should be captured in documentary form
  - **the unit head(s) should report through to the Deputy Chief Crown Prosecutor with the VAWG lead** for consistent local and national assurance
  - **the unit should be resourced in line with the new resource model** designed by CPS Headquarters. Areas may need support and assistance to achieve the level of resourcing in the context of a holistic Area model and where the risks should sit in terms of other Area casework
  - **the unit should be staffed by ring-fenced specialist lawyers.** They should not be abstracted for other duties such as magistrates' courts advocacy. Refresher training should be compulsory for all established specialist lawyers
  - **there should be ring-fenced paralegal staff.** There should be clear written roles and responsibilities in terms of expectations for office cover and court coverage and resourced accordingly, applying the new Headquarters model
  - **guidance on what constitutes effective administrative support** and how this should be resourced. This may vary according to current Area staffing models, it would be unwise to ring-fence administrative staff if there is only one member, which provides no resilience at all, equally if it is shared resource there needs to be guidance on where RASSO casework appears in CPS priorities where there is a tension and conflict of duties. Training should be provided for all administrative staff undertaking RASSO work
  - **guidance on rotation for resilience.** Whether staff can be attached to the unit on a permanent basis and minimum and maximum terms for the cadre of staff nominated for rotation, and whether Areas should have contingency elsewhere and how those skills will be maintained

- 
- **compulsory welfare arrangements for all staff**
  - **guidance in relation to youth RASSO work** and what work falls under the remit of the specialist unit. Youth training should be provided to all RASSO specialists
  - **revised guidance as to the most serious and complex casework**, where it should sit and how it should be resourced at Area level, including contingency arrangements and processes for resilience
  - **consistent communication arrangements and points of contact with all police forces** that refer cases to the Area, as well as across the various police teams and units referring cases within an individual police force.

Other elements that need to be considered or progressed:

- evaluation of pilots in terms of embedding police officers in CPS units and lawyers in police investigative teams force models to consider whether the arrangements should be incorporated into the national model, or whether such initiatives remain part of a police funded response to drive up file quality in conjunction with the unit
- an updated protocol with each police force that takes account of the model operating within the relevant force, proposals for gatekeeping and file quality, the provision of early investigative advice and joint performance management
- ensuring third party protocols are in place in each Area between every local authority
- clarity of the role of CPS Direct for the Areas and the police
- clarity of the work that must be handled by the RASSO unit
- clarity about how and where sexual offences are handled that do not fall within the remit of the unit, namely magistrates' courts work
- clarity about the provision of the second opinion, whether mandatory or discretionary and the nature of the second opinion to be provided in accordance with the time allowed under the resource model
- clarity about the assurance mechanism to ensure the policy and the legal guidance are complied with locally, with sanctions for non-compliance (It would help to identify which elements of the policy are discretionary according to the circumstances of the case and those that are non-negotiable in all cases)

- 
- ensuring the specialist advocate panel is up to date and has sufficient numbers to undertake the work
  - guidance on the various mechanisms for monitoring specialist advocates ie conferences, special measures meetings, provision of advice; contact at court, feedback from the judiciary and the third sector, the role of the 13th juror project.

### Recommendation

- CPS Headquarters provides detailed guidance of the recommended national model to be deployed locally, including clear expectations for service delivery.
- The model should provide for succession arrangements and include a mechanism for delivering rotation in the RASSO units.
- CPS should explore ways of moving work between geographical locations to provide greater resilience.
- The RASSO resource model is published, applied and used at Area level to ensure appropriate resourcing of RASSO units, but capturing the risks to the organisation in terms of other casework that cannot be resourced.
- There is clarification of roles and responsibilities with job descriptions for all cadres within a RASSO unit to include the unit head, specialist lawyer, paralegal and administrative staff.
- There is clarification of the role and responsibilities of any trained RASSO lawyer outside the RASSO team.
- Clear guidance is developed about the role of the second opinion in cases, whether there is any element of compulsion and, where it is used at Area level, how this is aligned to the expectations for the task under the new RASSO resource model developed by CPS Headquarters.
- Clear guidance about where and how RASSO youth casework is handled in CPS Areas.



# Annexes

## A Methodology

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The aim of the review was to answer the following question: *What level of confidence can the public have in the ability of the current CPS RASSO units to deliver fair and successful outcomes in the most efficient and effective way through the provision of high quality decision-making, case preparation and advocacy by specially trained and experienced prosecutors?*

### **The team**

The team comprised three legal inspectors (including the lead), a business management inspector and an administrator.

### **File examination**

A sample of finalised rape cases was requested for review from six Areas prior to the site visits; the cases were finalised between April and September 2014. The sample was limited to 15 files from each of the six Areas due to the volume of the material usually contained on these files and the length of time that it can take to review an individual case. The sample included 29 successful and 30 unsuccessful outcomes and 31 cases where no further action was directed at the charging stage. A total of 90 files were examined. The file sample was assessed against set criteria and the data from the file examination is set out in annex B.

### **Analysis and surveys**

The inspection team reviewed various reports, including published independent commissions and inspectorate reviews, and unpublished internal CPS reviews.

Electronic questionnaires on key aspects of this area of practice were sent to RASSO unit heads in all Areas, specialist lawyers and crown advocates, specialists from the independent Bar, and defence solicitors, as well as national and local third sector organisations. One hundred and seventeen responses were received from representatives within the criminal justice system and 26 responses were received from the third sector.

### **The fieldwork**

The inspection team visited six CPS Areas (South East; Yorkshire and Humberside; North West; London; West Midlands; Thames and Chiltern) speaking to managers and operational staff in the Area RASSO unit. The team spoke to Area Business Managers and Area VAWG leads. They interviewed members of the judiciary sitting in the Areas visited and officers from specialist police units and teams, and also to national leads from CPS Headquarters. A short visit was made to the co-located Unity team (CPS Mersey-Cheshire) to examine the model in operation. The fieldwork concluded by the end of May 2015.

### **Project Reference Group**

A Project Reference Group was created from members of the third sector to provide: guidance to the thematic review team on the conduct of the review and methodology employed; to use their experience of the topic to help identify key issues affecting the review; and to comment at agreed intervals on inspection findings and judgements, and on the draft report. The inspection team is very grateful for their input.

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## B CPS Performance data

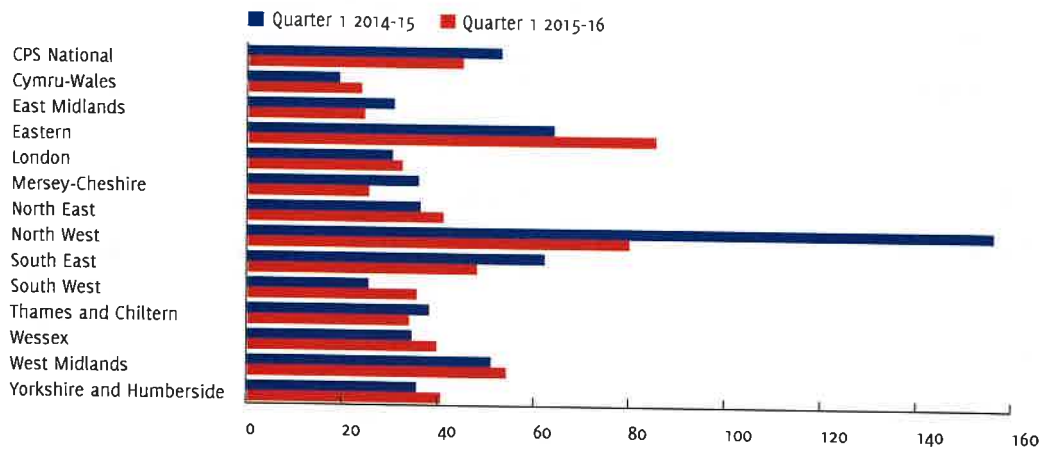
All data relates to cases involving rape allegations

### Pre-charge defendants

	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<b>Charge to no further action rate</b>					
CPS National	1.9	1.8	1.9	1.8	1.8
Cymru-Wales	1.1	1.0	0.9	0.9	0.9
East Midlands	1.7	1.8	2.1	2.3	2.8
Eastern	1.5	1.5	1.5	1.8	1.9
London	3.4	3.1	3.2	2.4	2.5
Mersey-Cheshire	0.6	0.7	0.7	0.7	0.8
North East	1.8	1.9	1.7	1.7	1.7
North West	1.4	1.4	1.4	1.3	1.2
South East	1.9	1.8	1.7	2.4	2.1
South West	2.4	2.0	2.0	2.1	2.4
Thames and Chiltern	2.6	2.4	2.6	2.9	3.3
Wessex	1.7	1.5	1.6	1.3	1.1
West Midlands	2.1	2.4	2.7	3.0	3.0
Yorkshire and Humberside	4.4	3.8	3.6	3.4	2.8
<b>Average number of days to charge</b>					
CPS National	53.06	54.70	54.84	55.07	45.02
Cymru-Wales	19.19	15.75	17.04	18.08	23.71
East Midlands	30.69	31.02	28.25	27.93	24.40
Eastern	64.16	70.56	77.34	82.02	85.54
London	30.41	27.57	27.38	28.79	32.33
Mersey-Cheshire	35.77	33.97	34.86	35.79	25.40
North East	36.17	40.56	48.77	44.07	40.92
North West	156.26	169.26	168.89	167.82	80.00

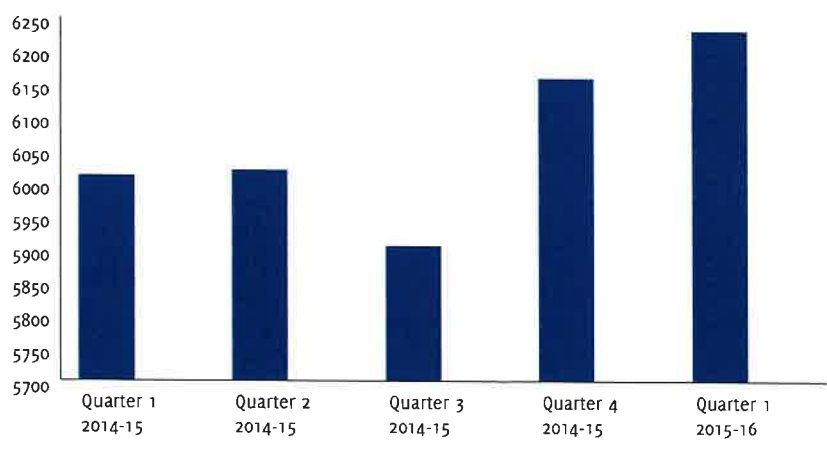
	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<b>Average number of days to charge</b>					
South East	62.24	63.13	62.54	52.47	48.03
South West	25.39	23.89	25.59	30.50	35.39
Thames and Chiltern	38.00	39.04	32.73	33.09	33.79
Wessex	34.45	35.08	31.22	40.94	39.57
West Midlands	50.98	51.65	48.50	48.40	54.14
Yorkshire and Humberside	35.46	37.05	41.12	37.29	40.43

Average number of days to charge in rape cases

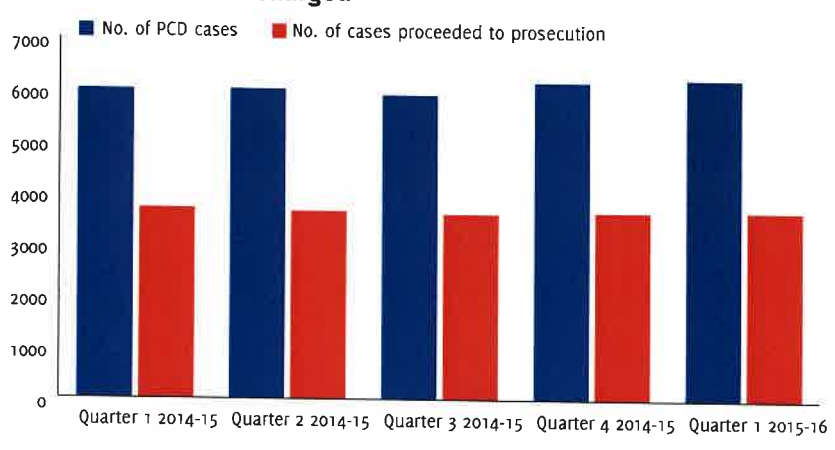


	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<b>Pre-charge case numbers</b>					
CPS National	6,011	6,019	5,905	6,159	6,231
Cymru-Wales	465	446	405	425	406
East Midlands	385	381	361	329	339
Eastern	380	417	403	456	445
London	808	809	794	791	836
Mersey-Cheshire	304	313	341	367	388
North East	305	289	274	332	371
North West	781	753	715	760	781
South East	426	401	375	392	430
South West	337	338	335	348	308
Thames and Chiltern	411	408	398	411	377
Wessex	351	355	333	353	354
West Midlands	517	535	603	608	635
Yorkshire and Humberside	541	574	568	587	561

Number of cases submitted nationally for pre-charge advice



### Number of cases submitted nationally for advice and the number charged



### Completed prosecutions

	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<b>CPS National</b>	<b>3,950</b>	<b>4,113</b>	<b>4,377</b>	<b>4,536</b>	<b>4,653</b>
Cymru-Wales	267	261	264	276	255
East Midlands	251	255	254	271	277
Eastern	220	238	254	266	280
London	727	745	804	811	784
Mersey-Cheshire	119	133	140	143	153
North East	185	196	224	214	218
North West	461	508	536	556	584
South East	279	276	297	328	343
South West	283	301	300	287	300
Thames and Chiltern	231	215	242	266	270
Wessex	201	191	198	221	227
West Midlands	358	357	383	398	429
Yorkshire and Humberside	368	437	481	499	533

	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<b>Caseload as a percentage of total Crown Court outcomes</b>					
CPS National	11.4%	11.9%	12.5%	12.8%	13.0%
Cymru-Wales	13.5%	13.6%	13.8%	14.0%	12.8%
East Midlands	10.9%	10.7%	10.5%	11.1%	11.5%
Eastern	13.0%	13.8%	14.1%	14.5%	14.9%
London	9.6%	10.0%	10.9%	11.0%	10.6%
Mersey-Cheshire	8.3%	9.0%	9.6%	9.9%	10.1%
North East	11.2%	11.5%	12.8%	12.1%	12.2%
North West	12.5%	13.7%	14.3%	14.6%	14.8%
South East	16.4%	15.6%	14.9%	15.7%	16.1%
South West	16.3%	17.9%	18.0%	17.3%	18.4%
Thames and Chiltern	12.1%	11.0%	12.0%	13.0%	12.9%
Wessex	14.6%	13.6%	13.8%	14.9%	15.1%
West Midlands	9.2%	9.4%	9.9%	10.2%	11.5%
Yorkshire and Humberside	10.1%	11.9%	13.3%	13.8%	14.3%
<b>Convictions</b>					
CPS National	59.5%	58.2%	57.2%	56.9%	57.2%
Cymru-Wales	56.9%	55.9%	52.3%	54.3%	52.9%
East Midlands	69.7%	68.2%	66.9%	68.6%	66.4%
Eastern	65.9%	63.9%	65.7%	62.0%	58.9%
London	50.5%	50.1%	48.6%	49.3%	52.0%
Mersey-Cheshire	73.9%	70.7%	72.9%	67.1%	67.3%
North East	55.7%	53.6%	52.7%	50.5%	55.0%
North West	58.6%	55.7%	52.2%	53.1%	52.2%
South East	57.3%	55.4%	57.6%	57.0%	55.4%
South West	60.8%	60.8%	59.7%	57.8%	57.7%
Thames and Chiltern	60.6%	62.8%	62.4%	59.0%	57.4%
Wessex	50.2%	44.0%	38.4%	40.7%	46.3%
West Midlands	65.6%	65.5%	65.5%	66.1%	66.2%
Yorkshire and Humberside	65.8%	63.8%	64.7%	63.7%	63.0%

	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<b>Accuracy of flagging</b>					
CPS National	98.6%	98.3%	99.3%	99.6%	99.5%
Cymru-Wales	97.4%	99.2%	100%	100%	100%
East Midlands	98.0%	99.1%	96.9%	100%	95.0%
Eastern	100%	100%	100%	100%	98.4%
London	97.6%	98.6%	100%	100%	100%
Mersey-Cheshire	98.0%	74.7%	100%	100%	100%
North East	100%	100%	100%	100%	100%
North West	100%	99.6%	100%	100%	100%
South East	94.9%	100%	100%	100%	100%
South West	100%	100%	99.4%	100%	100%
Thames and Chiltern	100%	99.5%	90.6%	97.4%	100%
Wessex	95.0%	100%	98.5%	96.4%	100%
West Midlands	100%	100%	100%	100%	100%
Yorkshire and Humberside	99.3%	98.2%	100%	99.0%	100%

**Attrition (Where cases fail to make it through the criminal justice system)**

	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
CPS National	40.5%	41.8%	42.8%	43.1%	42.8%
Cymru-Wales	43.1%	44.1%	47.7%	45.7%	47.1%
East Midlands	30.3%	31.8%	33.1%	31.4%	33.6%
Eastern	34.1%	36.1%	34.3%	38.0%	41.1%
London	49.5%	49.9%	51.4%	50.7%	48.0%
Mersey-Cheshire	26.1%	29.3%	27.1%	32.9%	32.7%
North East	44.3%	46.4%	47.3%	49.5%	45.0%
North West	41.4%	44.3%	47.8%	46.9%	47.8%



	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
South East	42.7%	44.6%	42.4%	43.0%	44.6%
South West	39.2%	39.2%	40.3%	42.2%	42.3%
Thames and Chiltern	39.4%	37.2%	37.6%	41.0%	42.6%
Wessex	49.8%	56.0%	61.6%	59.3%	53.7%
West Midlands	34.4%	34.5%	34.5%	33.9%	33.8%
Yorkshire and Humberside	34.2%	36.2%	35.3%	36.3%	37.0%
<b>Victim issues</b>					
CPS National	17.6%	17.1%	17.2%	17.0%	17.5%
Cymru-Wales	14.8%	14.8%	11.9%	15.1%	18.3%
East Midlands	19.7%	22.2%	22.6%	25.9%	21.5%
Eastern	13.3%	15.1%	13.8%	9.9%	15.7%
London	19.7%	19.4%	20.6%	20.7%	20.5%
Mersey-Cheshire	19.4%	15.4%	13.2%	17.0%	16.0%
North East	20.7%	23.1%	19.8%	15.1%	18.4%
North West	15.2%	12.0%	13.7%	13.8%	15.4%
South East	18.5%	14.6%	17.5%	17.0%	21.6%
South West	12.6%	15.3%	14.0%	13.2%	11.0%
Thames and Chiltern	19.8%	16.3%	18.7%	14.7%	16.5%
Wessex	19.0%	15.9%	13.9%	13.7%	11.5%
West Midlands	23.6%	23.6%	21.2%	20.0%	17.9%
Yorkshire and Humberside	11.9%	15.8%	17.1%	19.3%	18.8%

	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<b><i>Prosecutions dropped</i></b>					
CPS National	13.1%	13.3%	13.5%	13.3%	13.5%
Cymru-Wales	10.1%	11.5%	12.5%	14.5%	15.7%
East Midlands	13.1%	14.1%	15.7%	15.1%	17.0%
Eastern	12.7%	13.9%	11.8%	10.5%	12.1%
London	17.5%	16.6%	17.7%	17.6%	16.7%
Mersey-Cheshire	5.0%	6.8%	6.4%	11.2%	11.8%
North East	16.2%	16.3%	15.2%	11.2%	12.8%
North West	14.5%	15.0%	15.7%	15.1%	15.6%
South East	12.9%	11.6%	11.4%	10.1%	9.3%
South West	13.4%	14.0%	14.7%	14.6%	14.7%
Thames and Chiltern	10.4%	7.9%	8.7%	9.8%	12.2%
Wessex	11.9%	12.6%	10.6%	12.2%	11.9%
West Midlands	13.1%	13.7%	13.3%	12.6%	12.6%
Yorkshire and Humberside	8.7%	9.6%	9.6%	10.0%	9.6%

## Contests

	Quarter 1 2014-15	Quarter 2 2014-15	Quarter 3 2014-15	Quarter 4 2014-15	Quarter 1 2015-16
<i>Conviction rate in contested cases</i>					
CPS National	51.6%	49.8%	47.8%	48.3%	49.4%
Cymru-Wales	46.2%	44.2%	42.4%	47.2%	48.4%
East Midlands	63.2%	62.3%	59.6%	61.2%	61.8%
Eastern	60.7%	56.8%	56.5%	48.5%	47.3%
London	51.0%	49.5%	47.0%	48.8%	51.6%
Mersey-Cheshire	60.0%	59.7%	61.3%	53.8%	55.1%
North East	44.4%	41.8%	39.1%	38.0%	45.9%
North West	44.8%	41.9%	38.5%	38.9%	38.5%
South East	52.4%	49.2%	50.8%	50.7%	48.5%
South West	54.6%	54.3%	52.2%	49.0%	47.5%
Thames and Chiltern	50.4%	52.7%	53.6%	53.8%	54.4%
Wessex	37.8%	33.6%	27.0%	32.5%	40.8%
West Midlands	59.0%	58.8%	55.4%	56.6%	55.9%
Yorkshire and Humberside	52.9%	50.2%	51.2%	53.2%	53.1%

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## C File reading data

		Number	%
Case outcome	Successful	29	32%
	Unsuccessful	30	33%
	No further action	31	34%
Gender of suspect or defendant	Male	90	100%
	Female	0	0%
Gender of victim	Male	8	9%
	Female	82	91%
Adult/youth suspect or defendant	Adult	78	87%
	Youth	12	13%
Sensitive case category	Rape	62	69%
	Sexual offence (other than rape)	12	13%
	Child abuse	15	17%
	Child sexual exploitation	1	1%
Is the case a non-recent (ie historic) case	Yes	27	30%
	No	63	70%

Question		Number	%
<b>Pre-charge decision</b>			
Was there an early consultation/EIA	Yes	15	17%
	No	71	79%
	Not applicable	1	1%
	Not known	3	3%
The EIA was timely	Yes	14	16%
	No	1	1%
	Not applicable	74	82%
	Not known	1	1%

Question		Number	%
<b>Pre-charge decision</b>			
The EIA resulted in the investigation reaching a proper and timely conclusion	Yes	3	3%
	No	12	13%
	Not applicable	75	83%
The decision to charge/NFA was compliant with the Code test	Yes	80	89%
	No	9	10%
	Not applicable	1	1%
The pre-charge decision applied the correct test: full or threshold	Yes	88	98%
	No	1	1%
	Not applicable	1	1%
All relevant CPS policies were applied at the pre-charge stage	Yes	60	67%
	No	27	30%
	Not applicable	1	1%
	Not known	2	2%
Was there evidence that any ABE recorded interview was viewed before making the pre-charge decision (PCD)	Yes	55	61%
	No	21	23%
	Not applicable	14	16%
The MG3 included proper case analysis and case strategy	Yes	60	67%
	No	29	32%
	Not applicable	1	1%
The MG3 made reference to all relevant applications and ancillary matters	Yes	23	26%
	No	39	43%
	Not applicable	28	31%
The MG3 included appropriate instructions and guidance to the court prosecutor	Yes	26	29%
	No	33	37%
	Not applicable	31	34%
All factors relevant to mode of trial were considered at PCD	Yes	33	37%
	No	17	19%
	Not applicable	40	44%

Question		Number	%
The most appropriate charge(s) were advised at PCD	Yes	49	54%
	No	10	11%
	Not applicable	31	34%
The action plan met a satisfactory standard	Yes	29	32%
	No	15	17%
	Not applicable	46	51%
The police provided all the relevant background information at the PCD stage	Yes	50	56%
	No	35	39%
	Not applicable	3	3%
	Not known	2	2%
The charging advice was timely	Yes	35	39%
	No	52	58%
	Not applicable	1	1%
	Not known	2	2%
Time of submission of the file to the pre-charge advice	Average time for Area	53.3	
Who provided the advice	CPS	79	89%
	Counsel	10	11%
Rate the overall quality of the MG3 (advice and decision)	Excellent	1	1%
	Good	45	50%
	Fair	27	30%
	Poor	16	18%
	Not applicable	1	1%
<b><i>Post-charge review and decision-making</i></b>			
Post-charge Code decisions complied with the Code	Yes	51	57%
	No	8	9%
	Not applicable	31	34%
Any decision to discontinue the case was Code compliant	Yes	9	10%
	No	0	0%
	Not applicable	81	90%

Question		Number	%
<b>Case progression</b>			
The lawyer or team exercised sound judgement and grip on the case	Yes	30	33%
	No	28	31%
	Not applicable	31	34%
	Not known	1	1%
Any decision to discontinue was made and put into effect in a timely manner	Yes	5	6%
	No	3	3%
	Not applicable	81	90%
	Not known	1	1%
The prosecution dealt promptly and efficiently with incoming communications, correspondence, witness queries, and other material	Yes	31	34%
	No	26	29%
	Not applicable	33	37%
There was timely compliance with judges' orders	Yes	32	36%
	No	22	24%
	Not applicable	36	40%
The case proceeded to trial on the most appropriate charge(s)	Yes	43	48%
	No	3	3%
	Not applicable	44	49%
The indictment was correctly drafted in all respects	Yes	47	52%
	No	7	8%
	Not applicable	35	39%
	Not known	1	1%
Counsel or the crown advocate provided input where it would be expected	Yes	39	43%
	No	13	14%
	Not applicable	38	42%
Rate the quality of the service from the police	Excellent	0	0%
	Good	40	44%
	Fair	35	39%
	Poor	15	17%



Question		Number	%
Rate the quality of liaison with the police	Excellent	0	0%
	Good	54	60%
	Fair	31	34%
	Poor	5	6%
In adverse outcomes (NCTA, JDA, JOA/ discontinuance) there was an adverse case report or other evidence on the file or CMS that lessons to be learned had been noted	Yes	7	8%
	No	8	9%
	Not applicable	75	83%
<b>Policy</b>			
There was compliance post-charge with the relevant CPS policy for the type of sensitive or specialist case concerned	Yes	35	39%
	No	22	24%
	Not applicable	31	34%
	Not known	2	2%
CMS was flagged appropriately	Yes	76	84%
	No	14	16%
The case was dealt with by a rape specialist throughout its life	Yes	53	59%
	No	19	21%
	Not applicable	5	6%
	Not known	13	14%
There was continuity of prosecutor	Yes	44	49%
	No	27	30%
	Not applicable	18	20%
	Not known	1	1%
The case was handled within a dedicated unit	Yes	42	47%
	No	40	44%
	Not known	8	9%
A second specialist prosecutor was consulted in relevant cases	Yes	25	28%
	No	11	12%
	Not applicable	52	58%
	Not known	2	2%

Question		Number	%
The victim was offered a meeting in relevant cases	Yes	18	20%
	No	55	61%
	Not applicable	17	19%
There was compliance with CPS policy on retraction	Yes	9	10%
	No	0	0%
	Not applicable	81	90%
The case proceeded against the victim's wishes	Yes	0	0%
	No	31	34%
	Not applicable	59	66%
The advocate provided a report in not guilty cases	Yes	10	11%
	No	11	12%
	Not applicable	69	77%
There was a conference with the advocate	Yes	17	19%
	No	31	34%
	Not applicable	37	41%
	Not known	5	6%
Have the essential instructions to counsel been included in the brief	Yes	32	36%
	No	21	23%
	Not applicable	37	41%
In rape cases has the reviewing lawyer considered a pre-trial witness interview (PTWI)	Yes	12	13%
	No	50	56%
	Not applicable	27	30%
	Not known	1	1%
In rape cases if the reviewing lawyer has indicated a PTWI, has this been recorded on the MG3	Yes	1	1%
	No	0	0%
	Not applicable	89	99%

Question		Number	%
There was a PTWI in appropriate cases	Yes	0	0%
	No	4	4%
	Not applicable	85	94%
	Not known	1	1%
<b>Disclosure</b>			
Any third party disclosure was dealt with appropriately	Yes	37	41%
	No	9	10%
	Not applicable	41	46%
	Not known	3	3%
Rate the overall quality of handling of unused material by CPS	Excellent	0	0%
	Good	29	32%
	Fair	13	14%
	Poor	14	16%
	Not applicable	34	38%
<b>Acceptance of pleas</b>			
The prosecution was right to accept or reject the pleas offered and/or any basis of plea	Yes	4	4%
	No	2	2%
	Not applicable	83	92%
	Not known	1	1%
The victim was consulted on acceptance of pleas	Yes	3	3%
	No	5	6%
	Not applicable	82	91%
Any basis of plea was in writing and signed by the prosecution and defence	Yes	0	0%
	No	6	7%
	Not applicable	84	93%
When proposing to stop the case or to alter the charges substantially (where it was practicable to do so) the police or other investigators were consulted before reaching a final decision	Yes	8	9%
	No	7	8%
	Not applicable	75	83%

Question		Number	%
<b>Victims and witnesses</b>			
The Victims' Code, Prosecutors' Pledge and any other policy guidance on the treatment of witnesses was complied with	Yes	48	53%
	No	24	27%
	Not applicable	18	20%
There was appropriate consideration of special measures in relevant cases (ABE, screens, live link)	Yes	47	52%
	No	8	9%
	Not applicable	35	39%
Special measures applications were timely and of a good quality	Yes	38	42%
	No	12	13%
	Not applicable	40	44%
There was a Victim Personal Statement in appropriate cases	Yes	19	21%
	No	30	33%
	Not applicable	40	44%
	Not known	1	1%
The attendance of victims and witnesses was secured appropriately	Yes	47	52%
	No	0	0%
	Not applicable	42	47%
	Not known	1	1%
The views of the victim were taken into account when deciding to discontinue one or more charges, accept lesser pleas or take a basis of plea	Yes	7	8%
	No	8	9%
	Not applicable	75	83%
All necessary steps were taken throughout the case to protect the victim, witnesses and public from harm	Yes	59	66%
	No	3	3%
	Not applicable	21	23%
	Not known	7	8%
There was timely Direct Communication with Victims (DCV)/Victim Communication and Liaison (VCL) scheme communication when required	Yes	29	32%
	No	17	19%
	Not applicable	44	49%

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Question		Number	%
The DCV/VCL communication was of a high standard	Yes	16	18%
	No	19	21%
	Not applicable	55	61%
There was reference to the Victims' Right to Review where appropriate	Yes	22	24%
	No	16	18%
	Not applicable	52	58%

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## **D Minimum standards for RASSO units - October 2013**

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### **Protocols**

1. All Areas are requested to implement the Rape protocol with local police specialist services (national update to be provided, when completed, following any revisions, including addressing ABEs, PTWIs and third party disclosure).

### **Charging**

2. Current out of hours charging arrangements are to be maintained using rape charging lawyers.
3. Day time charging decisions to be referred to the RASSO Units.
4. Face to face/Area based charging (details tbc once plans are confirmed nationally).
5. Second opinions to be monitored (recorded on CMS and Head of Unit to assess effectiveness and emerging issues, then fed into CQSM).

### **Cases to be included in RASSO Unit/s**

6. Cases to be included in RASSO Units will be:
  - a. All cases currently covered: rape, non-summary serious sexual offences (SSO) and penetrative offences including those in domestic violence situations and in addition;
  - b. All Crown Court cases of child sexual abuse;
  - c. Sexual offence cases with multiple victims (to cover Savile type issues);
  - d. Sexual offences with vulnerable adults, due to the complexities and expertise needed;
  - e. Youth court rape and sexual offence cases (all major decisions on youth cases to be taken by rape specialists who are also youth specialists).
  - f. Those involving allegedly false rape and/or domestic violence allegations.

However Areas may wish to include other cases including lesser sexual offences, indecent images or forced marriage/HBV if capacity allowed, at their discretion.

7. RASSO Units would generally deal with cases involving protracted investigations, large scale child sexual abuse/exploitation, grooming or paedophilia, within the above criteria. However, the scale of such offending may make it appropriate for referral to the CCU - if so, rape specialists within the CCU would need to work on the cases with links to the RASSO Unit.

### **Location**

8. All Areas to provide RASSO Unit on an Area basis - in geographical locations if needed.
9. Areas to decide on the location of their RASSO Unit in either CCUs or ATUs.
10. Co-location with the police is not required but systems are required to link with specialist police teams.

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### **Staffing**

11. RASSO Unit Head to be at least Level D (Unit Heads at Level E may have overall responsibility for RASSO performance but may also have other responsibilities, for example for the Complex Casework Unit). Further detail around job descriptions is being prepared for views.
12. Areas to decide on the number of rape specialist prosecutors and paralegals in RASSO Units.
13. Areas to decide on number of other rape specialist prosecutors required outside of RASSO Units for use in Magistrates' courts, reviews and appeals.
14. Succession plans to be drawn up in Areas - suggested at least two years within Unit, with planned shadowing and mentoring.
15. Areas to work with Care First to avoid burn-out.
16. Areas to determine use of in-house or external advocates.

### **Performance management in RASSO Units**

17. Overview through CQSM and bi-annual VAWG assurance.
18. Report Area-wide performance rape and sexual offence performance, as in VAWG assurance, including breakdown by RASSO Unit.
19. 15% of all rape cases - or ten cases, whichever is larger - to be assessed for VAWG Assurance.
20. Reviews to be held at least monthly by the Head of Unit and VAWG Coordinator to discuss outcomes of CQSM and rape qualitative assessments as well as issues raised in specific cases, feeding back to the police at least monthly and the SMT at least quarterly.



## **E RASSO models deployed by the CPS (as at April 2015)**

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### **Single site**

The benefits of the single site are clear, a dedicated team of specialist lawyers at one site with a dedicated District Crown Prosecutor (DCP) as unit head; this allows cases to be discussed and the sharing of experience, with easy access to the unit manager. In one Area a real benefit of the system is the ability to hold regular short briefings two or three times a week with the lawyers (**good practice**) and a complete team meeting once a month, which is used to pass on feedback from the judiciary and discuss lessons learned across the whole team. In this Area there are dedicated paralegal staff but no administrative staff who work exclusively for the RASSO unit. The unit head reports to the DCCP with the VAWG lead, providing proper oversight of the issues through the line management chain. There is a willingness of the unit head to involve staff in considering ways to work more efficiently, for example to clear the backlogs in advice files, as a consequence staff are engaged and offer suggestions and solutions. Serious RASSO youth cases are dealt with by the unit.

There are some drawbacks when a single geographical site is established in a large Area serving a number of police forces, particularly when the site is not close to the police force with the largest volume of referrals. Feedback indicated that there was a disconnect with the largest force and this inhibits the ability to build relationships. There are also practical problems such as moving documents and discs of the pre-recorded Achieving Best Evidence interviews from the police forces to the unit. In addition, there has been a loss from the experienced specialist lawyer cadre who were unable to move the significant distance to the new single site, many left the Service under the voluntary early release (VER) scheme. This could have implications for future rotation arrangements, with insufficient experienced staff to rotate into the unit. Feedback suggested that in the Area visited communication between the RASSO team and the advocacy unit is difficult and lawyers seldom see the crown advocates who undertake RASSO work who are based elsewhere.

In another Area a different single site RASSO structure has been established; the previous structure dealt with all public protection cases. In this unit inspectors observed a highly motivated and committed team and communication is good, with dedicated lawyers and paralegal staff at one site with the unit head. However, the line management structure was unclear at the time of the fieldwork, the decision on whether the reporting line should go through the head of the Crown Court team or CCU or the VAWG lead had not been made. It is expected by CPS Headquarters that this should be through the VAWG lead otherwise responsibility and accountability is split and there can be a tension if it sits with a manager who has other casework priorities. Despite being a specialist unit, the lawyers currently carry a non-RASSO caseload which was allocated prior to the change of structure and it will be some time before this is concluded. This is an additional burden in light of the increased volumes in RASSO work. At the time of our visit the unit was still structured as a public protection unit (PPU) on CMS. The specialists were not all trained youth specialists, the unit would be more efficient if they had this training and skill set, and there was greater clarity over who was responsible for RASSO youth cases in the Area.

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The Area has implemented a policy that all lawyers must attend the magistrates' courts once a month to maintain skills. However there is limited benefit in deploying a RASSO lawyer with a large caseload to deal with, for example a contested road traffic case. The rationale would be sounder if lawyers attending court were deployed to prosecute youth cases prepared by the RASSO unit. It is ironic that counsel have been instructed to assist the unit by undertaking charging decisions to clear the backlogs whilst the specialist RASSO lawyers undertake magistrates' courts advocacy.

An Area not visited during the fieldwork appears to implement a single site model with ring-fenced lawyers, paralegals and administrative staff and a dedicated unit head, and also seems to have lower case volumes in comparison to the resources available in the unit; performance outcomes, however, were the poorest nationally in 2014-15. The Area needs to investigate the drivers for this performance level in order to address it, whether the move to a single site in a large geographical Area has resulted in the loss of the most experienced specialists and also the impact of all cases being referred from police force CIDs, where none of the forces have specialist investigative units. We discuss the implications for file quality from police structures at paragraphs 4.50-59. It is clear adopting the model is not the determining factor in terms of delivering a quality service to victims and successful outcomes where appropriate.

#### **Multi-geographical site with a single management structure**

The most common model is a single RASSO team based at a number of sites, with a single overarching unit head.

In one Area visited there was a single RASSO unit split over two geographical locations. The unit had specialist lawyers, dedicated paralegal and administrative staff and a single dedicated unit head managing lawyers at both sites. The unit head was line managed by the head of the CCU although since our visit line management responsibility has moved to the DCCP responsible for the Crown Court. This has helped overcome the tension from the previous arrangement where the unit was competing with the Crown Court team for resources, now all work is overseen by a single manager.

The split sites enable the team to be staffed from a wider pool of lawyers resulting in greater expertise and experience in the members of the team. The benefits of a split location were seen to be better communication locally with the police and counsel, but worse with partners who were not local. Added to this, one police force of the three referring cases to the two sites felt that they did not have a RASSO unit because it sat outside the force area, and this relationship was not being managed. Despite being a single unit there was no resilience in terms of transferring work between the sites and, although there was a single manager, staff in the units were concerned about whether there were

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consistent messages across the team and whether the same processes were in operation at both sites; these concerns were unfounded. The burden on the unit head in travelling between sites to manage a single unit as well as managing relationships with a number of police forces can be considerable when done properly. In other Areas where there are two sites inspectors observed lighter touch management with greater reliance on the delivery by the team at each location, but this is not to be promoted if a single team ethos across the Area is required. The burden on managers could be reduced if opportunities to use electronic meeting media such as instant video messaging are maximised, both with partners as well as for regular keeping-in-touch briefings across the entire team and the unit head varying the site the meeting is transmitted from.

In an Area not visited during the fieldwork there is a small RASSO team which is located across three offices, with dedicated paralegal and administrative support. The unit head visits each office monthly and has to manage relationships with four separate police forces. Where there is such a small unit that is split by geography, it is important that communication is maintained on a weekly basis to maintain the team ethos and consistency across the unit. In this unit the DCP was managed by the head of the CCU but due to structural changes the line management responsibilities were going to move to the head of Crown Court work, there are some reservations about this decision in the unit arising from concerns that this may result in conflict in relation to resources.

In another non-fieldwork Area the dedicated RASSO unit head manages staff at three sites; this was previously at four sites up to the time of recent restructuring. The only ring-fenced staff are specialist lawyers and the unit head reports to the DCCP who has the VAWG lead, which is where the accountability and responsibility should sit. There are four police forces that refer cases to the unit. It is important to note that the demands on a unit head managing staff at split sites and relationships with a number of police forces are great. In circumstances such as this there can be considerable welfare issues for managers that need to be monitored; as noted above the use and effectiveness of all alternative media for communication between offices needs to be explored to minimise the burden. In addition, the greater number of sites appears to reduce the resilience of a unit. We were told of work that cannot be transferred between offices as RASSO files are not normally in a digital format; this inability to move files undermines the status of the single unit and needs to be resolved.

There is a further Area where specialist lawyers at two sites are managed by a single unit head, there are also ring-fenced paralegal staff and additional trained lawyers who sit outside the unit and are available as a contingency resource. The positive element of this is that it allows trained lawyers to maintain their skills outside the unit providing a foundation for rotation and succession arrangements, but conversely, unless a trained lawyer undertakes sufficient casework it is hard to attach the label of specialist.

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Another Area with a split site unit only has ring-fenced specialist lawyers and is managed by a unit head who also manages a small number of crown advocates, as well as other additional duties. The unit head also has to maintain relationships with five police forces. It is important that the spans of control and remit for a RASSO unit are not so great that it is hard to manage the unit and relations with partners effectively and/or welfare issues arise. One of the benefits of the structure is that where the specialist unit is located at more than one site lawyers appear to be able to get to know and use appropriate local counsel. Although responsibility for the selection of counsel does not always sit within the RASSO unit and often falls under the remit of the crown advocate unit.

The final non-fieldwork Area that deploys a split site model has specialist lawyers at each of the two sites but ring-fenced paralegal staff at one. Up to April 2015 the lawyers were managed as part of the Crown Court team at each location with a separate RASSO lead. This is the same as one of the sites in the hybrid unit model, discussed below, and is not a RASSO unit as envisaged under the minimum standards. Since April 2015 the Area lead has been heading the unit.

#### **Multi-geographical site with a shared management structure**

In one Area visited during the fieldwork a multi-site unit had just been established from the previous virtual unit, which had consisted of specialist lawyers sited in Crown Court teams. The newly established unit was located at three sites, co-terminous with the three police forces. The specialist lawyers are ring-fenced but not the paralegal or administrative staff. There were two DCPs who manage staff at all sites. This cross-site management had the potential for greater awareness of issues across the Area and ensuring consistent practices; the responsibilities were also shared by the two managers. The line management of the DCPs had not been settled and the unit was carrying the legacy of non-RASSO cases that had been allocated to lawyers prior to the change, which was an added burden. At the time of our inspection it was too early to judge the effect of the new arrangements and there were no plans to evaluate the effectiveness of the new structure by the Area.

#### **The hybrid model**

Only one Area operates with two units that employ different models. There is a dedicated unit at one site with a dedicated unit head handling cases from two police forces in the Area. The second unit also takes cases from two other forces and is a Crown Court team where the specialist lawyers undertake a mixed caseload. Neither site has any other ring-fenced staff and there is no overall unit head for the Area. Unit managers report to their local Senior District Crown Prosecutor (SDCP), only one of which reports to the DCCP holding the VAWG lead for the Area: the lines of accountability lack clarity. Cases are not transferred between the sites and there is no interaction between the units; there is no resilience and the disparate set up does not provide any mechanism for shared learning

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and consistency of approach. Both units had similar RASSO caseloads per lawyer but the Crown Court unit staff also appeared to carry additional general Crown Court cases. It should be noted that in the absence of any rotation or succession arrangements the mixed unit has the capacity to reduce RASSO caseload for individuals and increase the mixed Crown Court work should a welfare issue arise, although this is a benefit, solutions to welfare issues and succession arrangements need to be found with the dedicated model structure. Since our visit there is a proposal to move to a single geographical site.

**The Violence Against Women and Girls (VAWG) unit**

In CPS London there operates a model that was not envisaged by the minimum standards. This has extended the RASSO unit to cover serious allegations of domestic abuse in the Crown Court to reflect the Area’s specialist magistrates’ court unit. The Area has created a VAWG unit which deals with all Crown Court domestic violence cases, all sexual cases including indecent images and Area-based charging for domestic violence cases. As a consequence specialist RASSO lawyers could be providing advice on domestic violence cases destined for the magistrates’ courts. The unit has two teams; these are separately managed reporting to the unit head, who in turn reports to the head of CCU where the unit sits in the Area structure. Despite the teams being located at the same site there is no cross-working and the structure does not provide resilience across the unit.

Although RASSO work falls under the overarching VAWG strategy and there is a perception of similarity due to overlapping victim and witness issues, the different nature of the work means that they are not suitably aligned and the current structure detracts from the specific specialism required by the RASSO team. It transpired that there was significantly more domestic violence work than originally anticipated, so non-specialist lawyers have been moved into the unit to help out. Although the additional staff were supposed to be restricted to the domestic violence casework inspectors received evidence suggesting that the non-specialists had undertaken work on RASSO cases prior to their specialist training.

Inspectors were told that since the introduction of the new structure there has been a higher turnover of staff than previously, resulting in less experience across the teams and impacting on the ability to deliver on quality and timeliness. Feedback from external partners suggests that performance has got worse since the inclusion of domestic violence casework and that decision-making is poor.

There is no plan to evaluate the effectiveness of the VAWG structure and at the time of the visit it appeared the Area did not intend to follow the recommendations flowing from the CPS internal review.

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The review by the Rt Hon Dame Elish Angiolini DBE QC<sup>31</sup> referred to the inclusion of domestic violence work within the unit as “regressive” and that it “*may further exacerbate the substantial challenges affecting these very serious cases*”.

### **The co-located unit**

The last model is a long established team that is co-located with the two police forces that refer cases to specialist lawyers at the two sites, one in each force area. All the lawyers are fully trained with additional resource in the Crown Court team where some non-penetrative allegations are dealt with by specialists. Both police forces have rape investigative units which refer cases to the unit as well as cases referred from police borough command unit teams who deal with other serious sexual assaults. The unit head is not ring-fenced to the unit and also manages part of the Area Crown Court team, but visits the sites once a month. This light touch approach is only effective due to the experience and commitment of the staff deployed and the relatively small size of the unit, but it can detract from operational duties and is not conducive to a consistent way of working and sharing lessons across the Area. This is exacerbated by the fact that there is no longer time to have full team meetings incorporating both sites. Although there are ring-fenced paralegal staff, at one site there is insufficient room to accommodate all paralegal staff in the police accommodation so one is located elsewhere in CPS accommodation. There is no ring-fenced administrative support, which is also sited in CPS premises.

The benefits of this model include: the availability of the CPS to the police for the provision of early investigative and charging advice and ongoing case preparation; the positive working relationship with the police; and the speed of resolution of issues and the ability to rescue a case by having an immediate face to face conversation with the officers. But, in contrast, there is a lack of resilience on the unit, and even annual leave can impact on performance and the absence of administrative support has resulted in paralegal staff undertaking the administrative tasks rather than their own duties. The model is not transferable in the current climate where the appetite for co-location has been lost, compared to the time this unit was established.

It is not unreasonable to expect that such a close working relationship with the police should contribute to successful outcomes, especially taking into account that for year 2014-15 the unit had the lowest volume of police referrals for allegations of rape. It was the second best performer in terms of successful outcomes. In relation to referrals for other sexual offences, the Area had the smallest volume during the same timeframe and achieved the highest proportion of successful outcomes, although some of these cases were handled outside the specialist unit.

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<sup>31</sup> Report of the Independent Review into the Investigation and Prosecution of Rape in London; Rt Hon Dame Elish Angiolini DBE QC; April 2015.

## F Literature review

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For well over a decade various reviews have been undertaken around the investigation and prosecution of rape and serious sexual assaults. HMCPSI first undertook a joint study with Her Majesty’s Inspectorate of Constabulary (HMIC) in 2002 to analyse and assess the quality of the investigation, decision-making and prosecution by the police and CPS of allegations of rape.<sup>32</sup> In response the Government published a Rape Action Plan in July 2002, accepting virtually all of the recommendations put forward. A number of recommendations taken forward included the need for a second opinion before discontinuing or taking no further action (NFA) in a rape allegation and tackling inappropriate cross-examination of victims. However, several other recommendations remain relevant today and in our view still need addressing, namely: file content; recording of review decisions; deploying a specialist prosecutor to deal with a case from cradle to grave; counsel to provide a report on any case resulting in an acquittal with lessons learned to be shared with the police; holding a conference with trial counsel in every case; Chief Crown Prosecutors (CCPs) to monitor counsel performance; CPS guidance to be revised; and CPS training to be updated.

This was followed up by a further joint review five years later.<sup>33</sup> Broadly the findings were that there had been little improvement since the 2002 review and that the majority of the recommendations that had been made in the 2002 report had not been followed. There were particular matters of note for the CPS that remain relevant today, namely:

- the forensic physician to be included in the conference with the CPS and also be warned as a live witness<sup>34</sup> in any trial
- a standard to be set for specialist training and accreditation to be subject to continuous review; full early consultation in rape cases
- CCPs to ensure that conferences with trial counsel take place in every rape case
- counsel to provide a written report following an acquittal to be used to discuss with police lessons to be learned
- the need to comply with the Criminal Procedures and Investigations Act 1996 and timeliness of third party disclosure
- the need for prosecutors to watch the pre-recorded “achieving best evidence recording” (ABE) to satisfy the evidential test; and
- CCPs to ensure that there is continuity of counsel as well as specialist prosecutor and that the caseworker should attend court throughout the trial.

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<sup>32</sup> *Joint inspection into the investigation and prosecution of cases involving allegations of rape*; HMCPSI and HMIC; April 2002.

<sup>33</sup> *Without consent: joint review of the investigation and prosecution of rape offences*; HMCPSI and HMIC; January 2007.

<sup>34</sup> Where a witness attends court and gives evidence in person, including via a live television link or from behind screens

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It was clear that the 2002 recommendations in relation to specialist prosecutors, continuity of prosecutor and taking second opinions were not being followed. In addition, early special measures meetings rarely took place and pre-court familiarisation visits were not being undertaken systematically.

In 2010 Baroness Stern was invited to carry out an independent review<sup>35</sup> into the treatment of rape complaints by public authorities. The terms of reference were: to examine the response of public authorities to rape complaints and how more victims can be encouraged to report; to explore ways to reduce attrition; how to increase victim and witness satisfaction; to explore attitudes to rape and how they impact on outcomes; to use information from other relevant authorities; and to make recommendations with particular reference to improving implementation of current policy and procedure. The main findings were that: the conviction rate had taken over the debate; the positive obligations to victims needed to be recognised and the existing policies were right but implementation was patchy and needed to be improved.

Most of the recommendations were not directed to the CPS, but those that were and that remain as relevant today include the need for:

- joint police and CPS performance measures
- file ownership by the CPS; and
- the CPS to work with other agencies to resolve issues around third party material to enable a protocol to be adopted on the exchange of material.

There were also concerns about the quality of ABEs and their effectiveness in court.

The CPS also undertook its own internal reviews during 2009-10<sup>36</sup> to monitor compliance with the 'Essential Steps'. The Essential Steps were based on existing CPS policy guidance, recognised good practice and the recommendations arising from the 2007 joint review. Areas were expected to comply with these guiding principles to ensure the appropriate handling of rape cases locally. However, the internal monitoring over a two year period found that compliance was patchy, with no one Area achieving full compliance. The unpublished findings confirmed that the CPS policies were essentially sound, but there was a systemic failure in their application, as found in the Stern Review.

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<sup>35</sup> A report by Baroness Vivien Stern CBE of an independent review of how rape complaints are handled by public authorities in England and Wales [The Stern Review]; Government Equalities Office/Home Office; March 2010.

<sup>36</sup> Area Rape Visits - Composite Findings & Good Practice Guidance Joint Area rape visits 2009-10: undertaken by the CPS Policy Lead and ACPO portfolio representative.



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In 2009 the first joint guidance on investigating and prosecuting rape was published by the Association of Chief Police Officers (ACPO) and the CPS. As part of the CPS drive to improve the quality of rape investigation and prosecutions, and building on this joint working initiative, the CPS Rape Prosecutions Delivery Unit undertook a series of joint CPS and ACPO visits to Areas and police forces. The purpose of the visits was to give advice and support, and to suggest recommended actions for improvement to be included in an action plan, against which progress would be monitored.

The themes highlighted in the unpublished report were never truly addressed and continue today. Whilst all Areas had rape specialist prosecutors, their level of expertise varied. Not all Areas routinely followed a policy of allocating rape files to an individual rape specialist who maintained responsibility from the beginning to the end of the case and a few Areas had specifically adapted their structures in a way which ensured that following the policy was not possible. In many Areas the time taken for a charging decision could amount to months, which was unacceptable.

File reviews also revealed significant issues with accurate file endorsements and recording of actions and many instructions to advocates were of a poor standard. Whilst early consultation between the police and CPS was acknowledged nationally to be of critical importance in improving performance, there was a significant amount of confusion amongst both the police and the CPS about what early consultation actually consisted of, when it should be sought and the practical mechanics of obtaining it. There was a lack of consistency around what information would be required, and reluctance on the part of some lawyers to engage when it was clear that the threshold test had not been met, or to provide advice without seeing all of the evidence. In some Areas delays in obtaining an appointment for providing early consultation effectively cancelled out the usefulness of the initiative.

One of the most significant issues that the police raised was the delay in obtaining a charging decision: up to eight weeks was not unusual. Many CPS action plans were not sufficiently strategic. In many instances the police believed an action plan was merely a delaying tactic and there appeared to be a fundamental misunderstanding of their purpose.

There were issues around the lack of police supervision and effective gatekeeping arrangements which meant that the CPS were providing advice in cases that were clear “no further action” decisions, which could and should have been taken by the police without recourse to CPS advice. Some forces were under the mistaken impression that all decisions had to be made by the CPS, others simply preferred to get the CPS to make the decision. It was acknowledged by both the CPS and the police that whilst performance measures remained conflicting (ie a sanction detection target for the police as opposed to attrition rates (unsuccessful outcomes) of charged cases for the CPS), this situation was unlikely to improve. The earlier Stern Review had reached the same conclusion.

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A further internal CPS review was undertaken in March 2011.<sup>37</sup> The review considered three different models: a specialist CPS unit dealing with specialist police units; the co-located CPS and police 'Unity' team; and a specialist CPS unit with referrals from non-specialist police units, namely police operational command units (OCUs) and criminal investigation departments (CID). The advantages of each model were highlighted, as were the obstacles to success and the lessons learned.

It was clear from this unpublished review that where attention was paid to embedding early consultation and joint working at the front end of the investigative process, unnecessary and time-consuming work was reduced later on. This theme still remains to be addressed effectively. In the Areas where the specialist CPS units were separated from the police, early consultation was not embedded and there was inadequate police supervision and gatekeeping. This impacted on the efficiency of the CPS units with too much time spent dealing with files that did not meet the threshold test or were inadequately prepared by the police. In addition, the take up by the police of early investigative advice was low. Other issues that were noted included that where individual caseloads were large it resulted in the specialist prosecutors having little time for meeting victims (special measures meetings with victims were not held), or developing relationships with criminal justice partners. It also impacted on the unit's ability to meet its six weeks target for reaching a charging decision. Where rape investigation was handled across a number of police units, prosecutors found they were dealing with a large number of officers; this worked against building relationships and an understanding of what prosecutors expect of investigators. One Area retained a small number of rape specialists outside the specialist unit who could be called upon to work in, or for, the unit at times of need. They assisted with any backlog of files and could cover staff absences; they also provided a pool from which staff could be rotated into the unit. There has been some regression in this regard with limited or no contingency arrangements for staff, or rotation plans in many Areas.

It appears from the most recent internal review the themes are recurring and little has changed.

A further joint review was undertaken by HMCPSI and HMIC in 2012;<sup>38</sup> this focused primarily on police issues. Baroness Stern's report had recommended that the inspection team concentrate on intelligence gathering by the police as the major focus. There were only two recommendations from the ten which involved the CPS, these were: the CPS and ACPO to review the use of bad character and hearsay evidence to find more efficient ways of ascertaining the existence of material that would support these applications; and protocols between the police, CPS and Social Services to be obtained across all Areas to facilitate the handling of third party material in accordance with previous recommendations.

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<sup>37</sup> *Specialist Rape Units – A Model For The Future? An evaluation of CPS dedicated Rape and Serious Sexual Offences (RASSO) Units in: West Yorkshire, Merseyside and Hampshire and Isle of Wight: undertaken by the CPS Strategy and Policy Directorate.*

<sup>38</sup> *Forging the links: Rape investigation and prosecution; CJI; February 2012.*

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HMCPPI conducted a further review in 2013 based on issues highlighted during other inspections, in particular the handling of disclosure of unused material specifically in relation to medical notes and counselling in rape cases.<sup>39</sup> The report concluded that a number of compliance issues needed to be addressed.

Up to this point, and despite significant work being undertaken, there appeared to be no momentum to take the work forward or to adopt and implement recommendations and ensure compliance. The same issues and themes arose in each of the earlier reviews and though recommendations were made they were, largely, not acted upon. In practice little appears to have changed in terms of the investigation and prosecution of allegations of rape and serious sexual offences. This was despite the considerable commitment of the then DPP.

More recently additional reviews have been undertaken and used to re-invigorate the commitment to RASSO casework investigations and prosecutions, particularly in the light of high profile media cases and the volume of non-recent cases that went un-investigated in the past. A further internal review of the structures and resourcing of the CPS RASSO units was undertaken<sup>40</sup> and a Project Board has been set up to take the recommendations forward.

There has also been a published review, which was commissioned by the Director of Public Prosecutions and the Commissioner of the Metropolitan Police.<sup>41</sup> A large part of the review deals with issues primarily affecting the police and The Havens,<sup>42</sup> there are a number of findings and recommendations that are applicable to the CPS nationally, including the need to address resourcing and the well-being of staff. Once again it was found that police file submissions are not as they should be, and the quality assurance checks on police files are described as “*time-consuming .... labour intensive .... and ineffective*”. The joint response was published at the same time and detailed activity already underway or to be undertaken to address the issues highlighted.

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<sup>39</sup> *Disclosure of medical records and counselling notes in rape and sexual offence cases*; HMCPPI; July 2013.

<sup>40</sup> *Review of CPS RASSO Units*.

<sup>41</sup> *Report of the Independent Review into the Investigation and Prosecution of Rape in London*; Rt Hon Dame Elish Angiolini DBE QC; April 2015.

<sup>42</sup> Specialist centres in London for people who have been raped or sexually assaulted.

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## G Glossary

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### **Achieving Best Evidence (ABE)**

The visually recorded statement of young victims and witnesses with the police is usually described as the 'ABE DVD'. It is usually played as their evidence-in-chief at trial.

### **Annual Casework Examination Programme (ACEP)**

Examination of a range of CPS files undertaken annually by HMCPSI. Files are taken from across the CPS and cover a range of serious and less serious casework.

### **Action plan**

A list of instructions to the police on the MG3 charging advice with completion dates.

### **Adverse outcomes**

Adverse outcomes include judge ordered acquittals and judge directed acquittals in the Crown Court and no case to answer in the magistrates' courts – where the case intended for trial is stopped before it reaches its conclusion.

### **Advocacy services (by the voluntary sector)**

Advocacy is a process of supporting and enabling people. It seeks to ensure that people, particularly those who are most vulnerable in society, are able to: have their voice heard on issues that are important to them; defend and safeguard their rights; and have their views and wishes genuinely considered when decisions are being made about their lives.

### **Ancillary matters**

This include issues such as bad character, hearsay, restraining orders and special measures.

### **Bail risk**

Risks include failing to surrender, commission of further offences or interfering with the course of justice.

### **Case management system (CMS)**

IT system for case management used by the CPS. Through links with police systems CMS receives electronic case material. Such material is intended to progressively replace paper files.

### **Charging decision**

Since the Criminal Justice Act 2003, this is the process by which the police and CPS decide whether there is sufficient evidence for a suspect to be prosecuted. The process is governed by the Director's Guidance, the latest edition of which came into effect in May 2013.

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**Code for Crown Prosecutors (the Code)**

The public document that sets out the framework for prosecution decision-making. Crown prosecutors have the Director of Public Prosecutions' power to determine cases delegated to them, but must exercise them in accordance with the Code and its two stage test - the evidential and the public interest stages. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest. *See also threshold test*

**Complex Casework Unit (CCU)**

A unit set up within each CPS Area which handles the most serious cases, such as organised crime, people or drug trafficking, and complex frauds.

**Counsel**

Barristers in practice at the independent Bar who are instructed to present cases for the CPS.

**Crown advocate**

A lawyer employed by the CPS who has a right of audience in the Crown Court.

**CPS Direct (CPSD)**

This is the CPS Area which takes the majority of CPS decisions as to charge under the Charging scheme. Lawyers are available on a single national telephone number at all times so that advice can be obtained at any time.

**Deputy Chief Crown Prosecutor (DCCP)**

The VAWG lead for a CPS Area.

**District Crown Prosecutor (DCP)**

CPS Level D unit head.

**Direct Communication with Victims (DCV)**

Replaced by the *Victim Communication and Liaison scheme* referred to below.

**Director of Public Prosecutions (DPP)**

A Senior Civil Servant who is the head of the CPS.

**Disclosure**

The prosecution has a duty to disclose to the defence material gathered during the investigation of a criminal offence, which is not intended to be used as evidence against the defendant, but which may undermine the prosecution case or assist the defence case.

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**Early investigative advice (EIA)**

Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution, or to decide if a case can proceed to court. Specific cases involving a death, rape or other serious sexual offence should always be referred to a prosecutor as early as possible. The advice or decision of the prosecutor will be set out in an MG3 and an action plan will precisely specify any further work with an agreed date for completion.

**Early special measures meeting**

An early special measures meeting is an opportunity for the investigating police officer and the CPS prosecutor to discuss the needs of prosecution witnesses who may be considered vulnerable or intimidated. In particular the eligibility of witnesses to benefit from special measures will be discussed. *See also special measures*

**Gatekeeping**

Quality assurance of files by police supervisors prior to submission to the CPS.

**Individual Learning Account (ILA)**

A sum of money allocated to an individual, which can be spent on appropriate training or learning opportunities. They support the CPS priority of having the right tools and skills for the job as well as the Civil Service Reform initiative that entitles all civil servants to a minimum of five days of learning each year.

**Intermediaries**

A professional communications specialist who has been recruited, selected and accredited by the Ministry of Justice, and whose details are recorded on the Intermediary Register, the Witness Intermediary Scheme's national database. Registered Intermediaries assist young witnesses and witnesses with a variety of disabilities communicate during an investigation and at any subsequent court hearings.

**Individual Quality Assessment (IQA)**

The CPS's new scheme to assess the performance of individuals and compliance with the CPS's Casework Quality Standards.

**Letter of request**

Letter to another jurisdiction requesting information, which includes investigative and judicial assistance.

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**Merits-based approach**

In applying the Code prosecutors are required to make judgements and should do so based on objective factors. The merits-based approach requires prosecutors to approach cases with an understanding that not every point that may be made by the defence will be a good point, let alone a point fatal to the prosecution. Cases do not fail the Code test merely because they are difficult. The review process should always involve assessing what the defence may be and factors which may potentially undermine the prosecution case. If such factors have been properly considered, and are not objectively undermining, the prosecution should be robust in the face of challenges. Decisions should not be based on perceptions of how myths and stereotypes might lead a particular jury to reach a particular conclusion.

**MG3**

Report to the crown prosecutor for the charging decision, this is used to record the decision made and any actions required to progress the case.

**Paralegal officer**

A member of CPS staff who deals with or manages day-to-day conduct of a prosecution case under the supervision of a crown prosecutor and, in the Crown Court, attends court to assist the advocate.

**Pre-charge decision (PCD)**

The process by which the police and CPS decide whether there is sufficient evidence for a suspect to be prosecuted. The process is governed by the Director's Guidance on Charging.

**Pre-trial witness interview (PTWI)**

In December 2007 the Director of Public Prosecutions signed a Code of Practice that permitted prosecutors to conduct PTWI. This was then piloted in a number of CPS Areas and a national Code of Practice was signed by the Director in February 2008. The guidance sets out that the purpose of PTWI is three-fold: it allows the prosecutor to assess the reliability of the witness; to assist the prosecutor in understanding complex evidence; and to explain the criminal process.

**Sanction detection**

A sanctioned detection occurs when (1) a notifiable offence (crime) has been committed and recorded; (2) a suspect has been identified and is aware of the detection; (3) the CPS evidential test is satisfied; (4) the victim has been informed that the offence has been detected, and; (5) the suspect has been charged, reported for summons, or cautioned, been issued with a penalty notice for disorder or the offence has been taken into consideration when an offender is sentenced.



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### **Section 11 Criminal Procedure and Investigations Act 1996**

Following disclosure by the prosecution, the defence become subject to a duty under the CPIA to give a defence case statement to the prosecutor and the court. A failure to do so and other specified failures, the jury, following considerations, may draw whatever inference appears proper in deciding whether the accused is guilty of the offence.

### **Section 28 Youth Justice and Criminal Evidence Act 1999**

For witnesses aged under 16 or witnesses suffering from a mental disorder, have a significant impairment or have a physical disability. The objectives behind the introduction of section 28 are: to facilitate improvement in the experience of witnesses by enabling them to give evidence at an earlier stage in proceedings, when their recollection of events is likely to be fresher; and to maximise the potential for earlier resolution of hearings as cross-examination might strengthen the prosecution case, thus encouraging the entering of a guilty plea, or it may result in the conclusion that there is no longer a realistic prospect of conviction.

### **Sexual Offences Prevention Order (SOPo)**

The purpose of a SOPo is to protect the public or specific individuals from serious sexual harm by the defendant. SOPos can be imposed either at the time of conviction or post-conviction if an application for such an order is made.

### **Special measures**

The Youth Justice and Criminal Evidence Act 1999 provides for a range of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. Special measures include: screening in court; giving evidence via 'live' link; evidence given in private; removal of wigs and gowns; examination through an intermediary; aids to communication; pre-recorded evidence-in-chief; and, currently being piloted, video recorded cross-examination and re-examination. *See also early special measures meeting*

### **Third party material**

The duties of disclosure are imposed upon two categories of persons only: the investigator and the prosecutor. All other categories of persons are to be treated as third parties, rather than as belonging to the prosecuting or investigating team. Third parties frequently encountered will include: owners of CCTV material; Social Services departments; forensic experts; police surgeons; and GPs and hospital authorities.

If the officer in charge of the investigation, the investigator, or the disclosure officer believes that a third party holds material that may be relevant to the investigation, that person or body should be told of the investigation. They should be alerted to the need to preserve relevant material. Consideration should be given as to whether it is appropriate to seek access to the material, and if so, steps should be taken to obtain such material. It will be important to do so if the material or information is likely to satisfy the disclosure test.

**Third sector**

Voluntary, as opposed to private or public, sector.

**Threshold test**

The threshold test is applied where a suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.

**Violence Against Women and Girls (VAWG)**

This is the umbrella under which rape and serious sexual assaults sit for work undertaken internationally, across Government, across the agencies and within the CPS.

**Victim Communication and Liaison scheme (VCL)**

Formerly Direct Communication with Victims (DCV). The CPS takes responsibility for informing the victim directly of any decision to drop or alter the charges substantially. The CPS must notify the victim of a decision to drop or substantially alter a charge within one working day for vulnerable or intimidated victims and within five working days for all other victims. In some case categories a meeting will be offered to the victim to explain these decisions.

**Victim Personal Statement (VPS)**

This gives victims a voice in the criminal justice process by helping others to understand how a crime has affected the victim. If a defendant is found guilty, the court will take the VPS into account, along with all the other evidence, when deciding upon an appropriate sentence.

**Victims' Right to Review (VRR)**

Under the scheme a review of the following CPS decisions can be sought: not to charge; to discontinue (or withdraw in the magistrates' courts) all charges thereby ending all proceedings; to offer no evidence in all proceedings; and to leave all charges in the proceedings to "lie on file" (this is the term used in circumstances where the CPS makes a decision not to proceed and requests that the charges be allowed "to lie on the file" marked 'not to be proceeded with without the leave of this Court or the Court of Appeal').



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