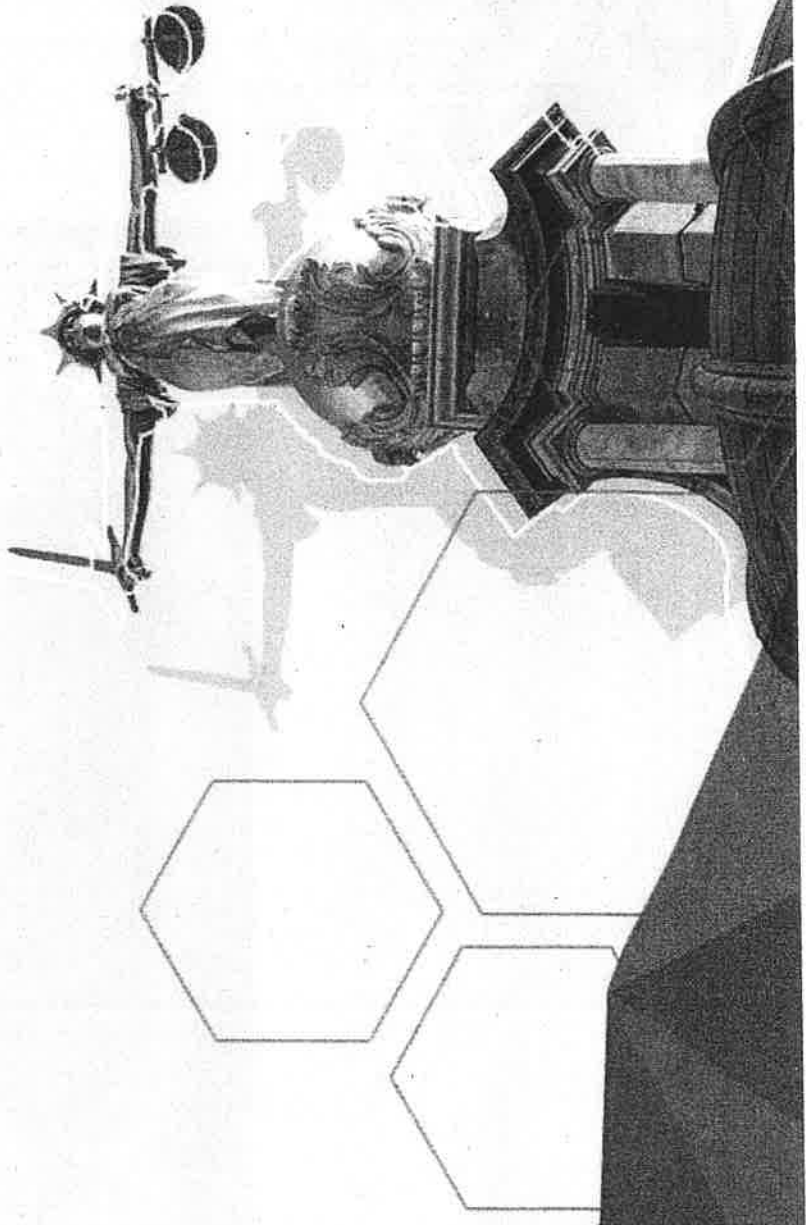
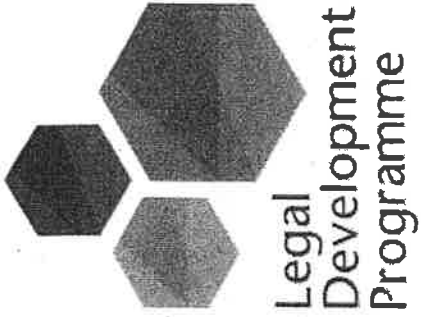
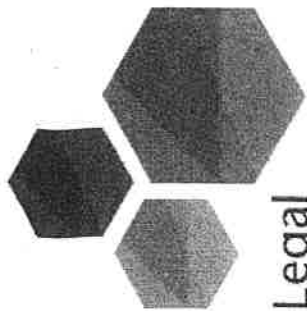


# RASSO Refresher (2016)

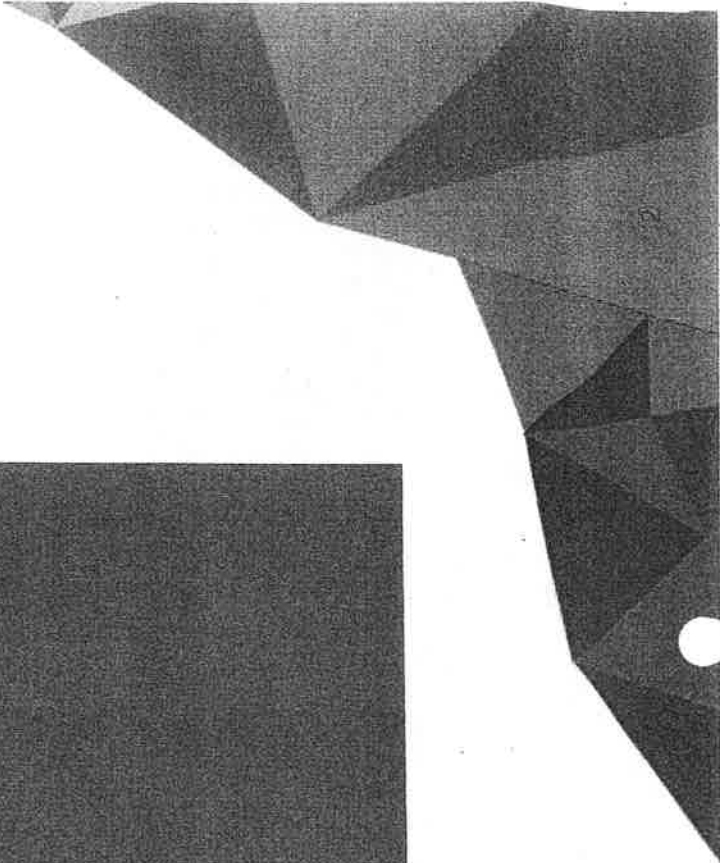


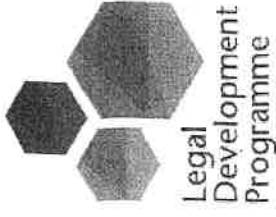


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# Session 1

## Introduction



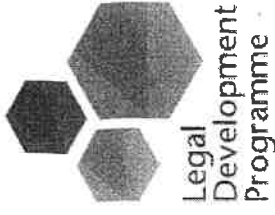


## Aims of course

- ▶ To ensure continuing awareness of and compliance with CPS Rape and CSA Policy
- ▶ To ensure an overall consistent approach across the CPS in relation to the handling of rape and serious sexual assault cases and the application of the Code
- ▶ To raise awareness of victim issues in the context of gang related sexual violence



# Objectives



- By the end of the course, you will be able to:
- ▶ state what is CPS Policy and good practice in relation to rape and serious sexual assault cases including the application of the evidential test and how to build effective cases
  - ▶ deal appropriately with requests for disclosure where there are linked family and criminal proceedings in RASSO cases
  - ▶ identify what are the current issues in relation to indictment drafting in particular in non-recent cases
  - ▶ use multiple incident counts when drafting indictments
  - ▶ state what issues are faced by victims of gang related sexual violence

# RASSO Steering Group and Delivery Board

Joint with Police - Established Sept 15 to respond to recommendations from the internal RASSO review

Development of Optimum Resource model

- ▶ Identifies resources required to meet demand

Development of Optimum Business model

- ▶ A standard approach to RASSO

Key Priorities and work in progress

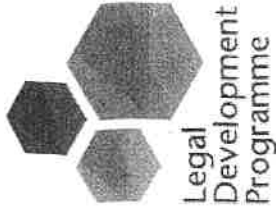
- ▶ File quality
- ▶ Third party material, streamlined medical

# Background

A series of reviews highlighting areas for improvement

- ▶ Internal RASSO review Dec 2014
- ▶ Report into Investigation and prosecution of rape in London – Dame Angiolini QC June 2015
- ▶ HMCPSI thematic review of RASSO units published Feb 16
- ▶ Henriques Review and recommendations following Janner plus
- ▶ Learning from VRR cases and
- ▶ Judicial Feedback from Court of Appeal cases

# RASSO 2016 training update



## National Rape Action Plan – Tools and skills

### Rape training strategy:

2015

- ▶ Regional workshops and toolkits
- ▶ Induction training and induction programme
- ▶ Consent Toolkit training /PCJ training

2016

- ▶ Refresher training /consent master class webinar
- ▶ Victim /witness training – speaking to witnesses at court
- ▶ ‘Advocacy and the Vulnerable’ (Handling vulnerable witnesses) – Rook training
- ▶ Updating of legal guidance
- ▶ Development of Knowledge Hub RASSO pages
- ▶ E learning / Youth training

# HMCPST report Feb 2016

‘Across the Areas there are many committed and professional individuals trying to deliver a quality and timely product’

## **Casework quality - Common themes which emerged**

- ▶ Inconsistent application of our policies and protocols throughout the life of the case – incl. failure to apply the Code and Merits based approach correctly
- ▶ Failure to record our decisions properly or keep accurate records to evidence compliance with policies



## Casework Quality findings (1/2)

- ▶ Code not applied correctly 10.1% of cases
- ▶ ABE not viewed in 21/55 27.6% of relevant cases
- ▶ Relevant CPS policies not applied in 27/89 30.3% of cases
- ▶ Case Strategy outlined in MG3 in 60/89 67.4% relevant cases
- ▶ Reference to relevant applications in 23/62 37.1% relevant cases
- ▶ Satisfactory action plan in only 29/44 relevant cases
- ▶ Poor MG3 in 16 cases 18%

## Casework Quality findings (2/2)

- ▶ Post charge – code applied incorrectly in 13.6% of cases
- ▶ Third party disclosure dealt with appropriately in 37/49 75% of relevant cases
- ▶ Victims policy complied with in 48/73 66.7% cases
- ▶ All steps taken to protect victim in 59/69 85.5% relevant cases
- ▶ PTWI considered in only 12/62 relevant cases and of 4 considered appropriate for PTWI none took place
- ▶ File sample of 95 cases finalised between July and September 2014

## Use of RASSO checklist

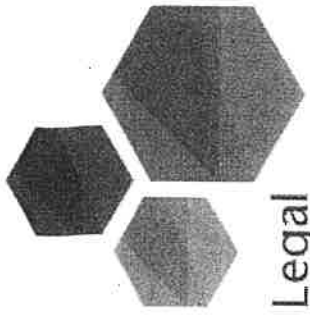
- ▶ Updated into an electronic documents
- ▶ Consent and Vulnerable Victims Toolkits plus Key Dates table

### Review Key Aspects of checklist

Discuss why it is important to evidence compliance with policies and not simply record

*'rape policy complied with or myths and stereo types considered'*

See case of R (on application of E) v DPP



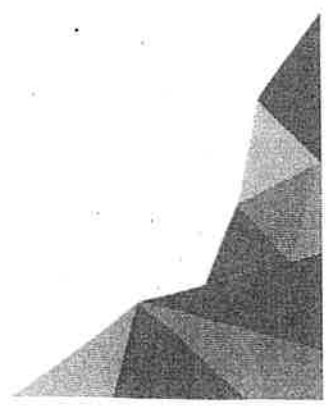
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## Session 2

Myths and stereo types, application  
of Code, learning from VRR and  
case building

# Topics

- ▶ Myths and Stereo Types DVD
- ▶ Applying the Code
- ▶ Learning from VRR
- ▶ Case Building



# Myths and Stereo types

- ▶ Key learning points from DVD – discuss delegate views
- ▶ How to approach myths and stereotypes in sex sexual violence cases – Are there additional considerations?

## Myths and stereotypes in same sex sexual violence

Stakeholders have made the following points which need to be considered when making decisions:

- ▶ Possible homophobic response of men who identify as heterosexual
- ▶ Perpetrators may justify violence by saying it was provoked by an unwanted sexual advance
- ▶ Internalised homophobia can cause victim distress eg low feeling of self worth
- ▶ Victim blaming may be prevalent

## Cont...

- ▶ Balance of power not gender related but may be linked to class, wealth, strength, degree of being out
- ▶ Awareness of HIV status – HIV infection of suspect does not vitiate consent in rape NB. Referral to DLA
- ▶ In cases involving transgender people, one of the most common misconceptions is that there is some equivalence to being gay, lesbian or bisexual.
- ▶ Sexual orientation is separate and unrelated to transgender identity.
- ▶ The sexual orientation of transgender people may be heterosexual, gay, lesbian, bisexual or non-binary.



## Code for Crown Prosecutors

- ▶ The Code is the starting point – test is same ie is there a realistic prospect of conviction
- ▶ CPS rape policy – we will ensure myths and stereotypes play no part in our decision
- ▶ CPS Rape Policy – we will actively build cases incl. case building to address myths and stereo types

# Applying the Code

Evidential stage is met where:

- ▶ “An objective, impartial and reasonable jury or bench or judge ... properly directed and acting in accordance with the law, is more likely than not to convict the Defendant...”

Code requires:

“an objective assessment of the evidence including the impact of any defence and any information that the suspect has put forward on which he or she might rely”

What is meant by merits-based approach? How then is the question of whether there is a realistic prospect of conviction to be approached?

- ▶ R v (FB) v DPP [2009] EWHC 106 – Objective assessment rather than predictive
- ▶ Proceed on the basis of a notional jury, intelligent and unaffected by myths or stereotypes

## Merits based approach:

- ▶ is not a different test, merely the approach we must take in applying the Code test;
- ▶ does not change, or differ in any respect from, the Code test - RPC;
- ▶ is not new - it is a different way of expressing what has always been there; applies in all cases, not just rape cases;
- ▶ reflects the requirement to assume that every case will be considered by an objective, impartial and reasonable tribunal, properly directed and acting in accordance with the law;
- ▶ does not involve suspending judgment but it does require prosecutors to take objective decisions that are fair and reasonable.

## Cont...

- ▶ Consider what the defence may be and undermining factors. Not every defence point will be a good one
- ▶ Assess undermining factors objectively and the cumulatively effect objectively in the context of the strength of the case
- ▶ Consider whether the combined effects after an objective analysis means evidential stage is not met
- ▶ If factors are not objectively undermining to that extent or at all, a prosecution should follow, otherwise it should not
- ▶ Prosecutors must not introduce a requirement for corroboration - one person's word can be enough but the quality of the evidence must be assessed in the manner described above.

# Learning from VRR – application of code in practice

ARU ( Appeals Review Unit) 2015 report - a common theme emerges each year

A failure to consider the overall credibility of a complainant's version of events and to attach far too much credence to the account of a suspect, even where:

- ▶ The suspect's account is implausible; and
- ▶ There is evidence supporting the complainant's account

## ARU - observations

- ▶ The ARU have dealt with a number of cases across the services where CPS policies, particularly our child abuse and rape policies have not been considered
- ▶ For example ARU have observed instances where entries in third party material consistent with CSA have been cited as reasons not to charge
- ▶ **Myths and Stereotypes:** The ARU have observed instances where the review note appears to make reference to myths and stereotypes.
  - ▶ e.g. comment that a teenager wearing a t-shirt with 'dork' written on it is inappropriate

# ARU observations about the application of the Code in VRR cases

- ▶ **Over reliance on police views counsels views and other in relation to credibility.** These might be important but we need to remain independent and objective. A police officer may not have had the benefit of training on this issue or experience in investigating rapes.
- ▶ **Weight given to suspect's account – greater than that given to the victim**
- ▶ **Delays in reporting** cited as undermining e.g. "she did not call police for several days. She explained why, but this is still a weakness."
- ▶ **Inconsistencies in the account**
- ▶ **Word against word** – corroboration is not essential element but may assist.



## Appeals unit - general observations on application of CSA policy (1/2)

- ▶ Child victims deemed 'liars' because they have told a fib about something trivial – e.g. 13 year old telling friends at school she had two horses when she only had one
- ▶ References to the complainant being sexually active and this being undermining
- ▶ References to explicit language used by the child (which apparently shows they are sexualised) or switching between adult and childlike language (which apparently shows they may have been coached by an adult)
- ▶ Inappropriate emphasis placed on credibility of the complainant rather than the credibility of the allegation



## Appeals unit - general observations on application of CSA policy (2/2)

- ▶ Child has disclosed that someone else has made inappropriate sexual advances towards her which suggests she is profligate with her allegations (unless there is any substance to that allegation)
- ▶ “C has been surrounded all her life by dishonesty and to some extent by her mother’s allegations, including sexual allegations. The concept of making accusations can hardly be unknown to C.”
- ▶ Continuing to associate with the suspect
- ▶ Opinions of family members that they are lying – e.g. a comment that another family member “is adamant that her father would never touch children”



# Case Building

- ▶ Develop a Case theory – who, what, where, how and why
- ▶ Develop a case narrative which focuses on the actions of the offender
- ▶ Explore all evidential avenues which point towards and away from suspects guilt
- ▶ Consciously build cases to address issues and discrepancies, offender behaviours, evidential weaknesses etc

# Developing a case theory

- A good case theory
- ▶ demonstrates how the defendant made choices to avoid detection – offender behaviours and tactics
  - ▶ considers the vulnerabilities of the victim and how they explain why the victim was targeted
  - ▶ addresses defence points and evidential weaknesses
  - ▶ addresses reasonableness of suspect's belief in consent

# Offender tactics and behaviours

## Toolkit Table 1

### Consider Victims Toolkit table 1

- ▶ **Encourage police to take an offender centric approach to their investigation focusing on actions before, during and after the assault**
- ▶ What steps did the suspect take to find out if she was consenting?
- ▶ Is suspect's behaviour consistent with how he presents himself?
- ▶ Timing and location (to avoid detection/maximise opportunity/capitalise on trust or vulnerability?)
- ▶ Does the suspect attempt to reframe the offence?

# Victim vulnerabilities

- ▶ Vulnerable victims are often **targeted**, for a number of reasons:
    - ▶ More likely to succumb to advances
    - ▶ Less likely to report abuse
    - ▶ Less likely to follow it through
    - ▶ Less likely to be believed
    - ▶ Less likely to be detected and prosecuted
  - ▶ Targeting a vulnerable victim helps assess the overall credibility of the account
    - ▶ Recall and concentration
    - ▶ Cognition and interpretation of events
    - ▶ Communication
    - ▶ See Table 2 Vulnerable Victims Toolkit
- Understanding/explanation of victim's actions as per Nina Burrows

## Understanding victim reactions

- ▶ Inconsistencies or loss of memory may be entirely consistent with trauma
- ▶ Loss of forensic evidence through shower / washing sheets – may be because the victim feels “dirty” or ashamed.
- ▶ Medical evidence may show that the V is suffering from PTSD
- ▶ We need to understand the responses victims often exhibit when being raped – freeze/flop; flight or fight.
- ▶ Response afterwards – acting “normal” – trying to forget what happened / being unnaturally calm – “disassociating” from the rape.
- ▶ Failure to report may be because of ‘gender’ issues eg. if transgender or gay and victim fears being outed, family or social issues

## Developing an offender centric case narrative – Example

C went out and got drunk. She got talking to the doorman even though she didn't know him. She vomited.

She agreed to go with D in his car although expressed reluctance. She held his hand.

He drove them to his house. C said she didn't want to go in but didn't put up a fight when he carried her in.

He took her to his room where she lay on the bed and he raped her.



## Defence points

- ▶ When they arrived at his house and not her house, she must have known what was coming.
- ▶ She could have screamed to stop him.
- ▶ She could have hit him. She didn't.
- ▶ She need not have remained on his bed.
- ▶ She could have closed her legs.
- ▶ She has a boyfriend so needs to cry rape.

## S's belief in consent

Ask S:

- ▶ Out of all the sober people in the nightclub why pick the drunken girl?
- ▶ Why pick one staggering rather than dancing?
- ▶ Why pick the one whose speech was incomprehensible?
- ▶ Why did you want sex with her given she had vomited?
- ▶ Were his actions at odds with his role e.g. bouncer rapes drunken girl after finding her in toilets – position of trust?

## WHY DID HE DO THIS?

- ▶ Turn the attention on S's conduct.
- ▶ Show he targeted C because:
  - of her state (drunk)
  - Which would make it easier for S to persuade her to go with him
  - Which would make it easier for him to penetrate V without a fight (surprise of it) or knowledge of what was happening



## New case theory

- ▶ S chose a girl who was drunk rather than sober. He didn't know the girl but approached her to talk to. She merrily chatted back. Despite having vomited and some reluctance on her part, S took her hand and escorted her to his car. She had to follow. He put her into his car saying he would take her home. He then drove to his own house. She didn't want to go in so he picked her up and carried her.
- ▶ Despite her protests she was too drunk to get away from him. Having carried her to his room, despite her objections, and with the risk she would vomit in his bed, he laid her down, held her legs open, moved her pants to the side and penetrated her with his penis. He was sober and strong. She was drunk and unable to resist. The next day, although hung over, she went straight to the police to report what had happened.



## Case building - Explore all evidential avenues

### Previous allegations

Check with police/CMS at pre charge stage for other complainants/previous allegations (Henriques recommendation)

Consider where appropriate

- ▶ Restarting a prosecution. What might be regarded as a wrong charging decision includes:
  - ▶ an unreasonable decision to disregard compelling evidence
  - ▶ a failure to consider, or an unreasonable decision to ignore relevant CPS policy;
  - ▶ an incorrect application of the law;
  - ▶ a significant misinterpretation of the evidence

Double Jeopardy case of *R v H* [2014] ECWA Crim 1816 where CPS successfully recharged an offence which had previously been to trial and ended with a judge directed acquittal due to non attendance by the victim.



## Joinder CrimPR 10.2.(3)

CrimPR 10.2.(3) Under Rule 10 2.(3). An indictment may contain more than one count if all the offences charged:

- ▶ are founded on the same facts
- ▶ form part of a series of offences of the same or similar character

## What amounts to a series? (2/2)

- ▶ In the case of *R v T* [2008] EWCA Crim 183 it was held that there was not a sufficient nexus between a charge of Perverting the Course of Justice based on allegations of rape in 2005 which had not been charged and a rape allegation which occurred several months later.
- ▶ Amendment at retrial post appeal *R v F* [2012] 1 W.L.R 3133. The prosecution was permitted to amend the indictment at retrial following a successful appeal to include offences relating to a third victim. Further evidence had come to light and the requirements of CPS 2011 r.14 .2(3) were met – that the alleged offences were of the same or similar character. The application for joinder was deemed reasonable and proper.

# Case building – explore other evidential avenues

- ▶ **Circumstantial evidence** - third party material is often a source, it can be good evidence.
- ▶ **Expert evidence** - Medical / forensic evidence / social media / telephone / cell site / ANPR evidence / Facial mapping/ gait analysis. Consider Psychological evidence of PTSD as per R v Adam Eden [2011] EWCA Crim 1690. See the case of R v FNC [2015] EWCA Crim 1732 – DNA
- ▶ **Pre trial witness interviews** to evaluate the witness or deal with specific issues. E.g. the motivation/delay in reporting which coincides with divorce proceedings, discrepancies between the ABE and what has been said in family proceedings.



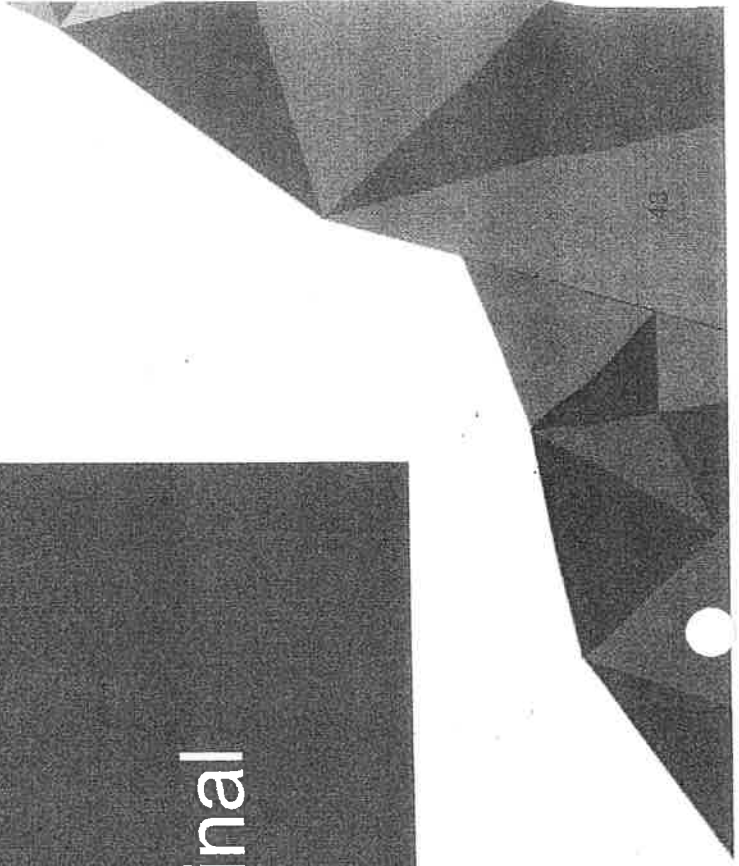
## Related offences or offending

- ▶ Bad character evidence – in particular history of DA including unreported rapes see R v P [2006] EWCA Crim 2517 where previous DA admissible under gateways 101(1)(c) and (d)
- ▶ Grooming – consider whether true consent given as in the case of R v Ali and Ashraf [2015] EWCA Crim 1279
- ▶ Coercive and controlling behaviour – could support use of s.75(2)(b) rape plus fear of immediate violence etc.
- ▶ Harassment, stalking, indecent images, violence etc.



# Session 3

## Linked Family and Criminal Proceedings



# Disclosure

## Importance of disclosure under Article 6 ECHR

- ▶ A fair trial
- ▶ Fair disclosure is an inseparable part of a fair trial
- ▶ A fair trial does not require consideration of irrelevant material
- ▶ Prosecution need to provide guidance to police at EIA stage re third party enquiries

## Common law /statutory obligation

### **Statutory disclosure (CPIA).**

- ▶ CPIA isn't triggered until the sending or NG plea in the MC.

### **Common law obligations**

- ▶ Therefore, before that occurs disclosure should be approached on R V DPP ex parte Lee [1999] 2 All ER 737 principles (i.e. the defendant is entitled to know about material that undermines or assists that might be helpful for a bail application or sentencing or anything generally undermining)

## AG guidelines (see Handout)

- The AGs guidelines make it clear that:
- ▶ The prosecution should lead disclosure
  - ▶ A thinking approach should be taken;
  - ▶ And the defence must participate from an early stage in identifying material that is likely to meet the disclosure test.

## Disclosure – general principles

- ▶ Must disclose material which might reasonably be considered capable of undermining the prosecution case or assisting the case for the accused. (Section 3 CPIA).
- ▶ What should be considered is the issues in the case and any generally undermining material.

In deciding what to disclose consideration must be given to

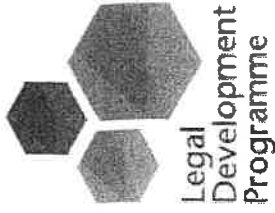
- ▶ Possible use in X-X and whether PII application is necessary
- ▶ Capacity to support defence submissions
- ▶ Capacity to suggest an explanation or partial explanation for accused's actions
- ▶ Impact on medical or scientific evidence

## Issues in the case – specific

The specific issues can be identified by considering:

- ▶ The general circumstances of the case.
- ▶ What has been said by the witnesses.
- ▶ What was said by the defendant during the incident.
- ▶ What was said by the defendant upon arrest.
- ▶ What was said by the defendant during the booking in procedure at the custody suite.
- ▶ What was said by the defendant in interview or through a prepared statement.
- ▶ What was said by the defendant when charged.
- ▶ What was advanced by the defendant's representative at their first court hearing/bail application.
- ▶ What was said on the defendant's behalf during subsequent hearings.
- ▶ The contents of the defence statement.
- ▶ The contents of correspondence received from the defence.

# Issues in the case – generic



The generic issues can be identified by considering:

- ▶ any material casting doubt upon the accuracy of any prosecution evidence
- ▶ any material which may point to another person, whether charged or not (including the co-acc.) having involvement in the commission of the offence
- ▶ any material which may cast doubt upon the reliability of a confession
- ▶ any material that might go to the credibility of a prosecution witness
- ▶ any material that might support a defence that is either raised by the defence or apparent from the prosecution papers.
- ▶ any material which may have a bearing on the admissibility of any prosecution evidence
- ▶ any material that might assist the accused to cross examine prosecution witnesses as to credit and/or substance
- ▶ any material that might enable the accused to call evidence or advance a line of enquiry argument
- ▶ any material that might explain or mitigate the accused's actions



# Consequences of non-compliance with CPIA

- ▶ Abuse of process argument at trial
- ▶ Applications for CTL extensions refused
- ▶ Defence released from obligations to make defence disclosure
- ▶ Wasted costs
- ▶ Victim disengagement due to delay/relisting
- ▶ Exclusion of evidence resulting in acquittal
- ▶ Successful appeals
- ▶ Disciplinary proceedings

# Disclosure in linked family and criminal proceedings

What does the protocol cover?

- ▶ Disclosure from family proceedings to prosecution
- ▶ Disclosure from criminal proceedings to Family Court
- ▶ Linked directions
- ▶ Objectives – a streamlined process, timely and consistent disclosure
- ▶ It simply enshrined existing principles of third party disclosure to provide a structure eg SPoC, prescribed forms and easier communication channels

## Key points

- ▶ The CPIA disclosure test (undermine or assist) has no place in this protocol until the material is in the possession of the police.
- ▶ In most areas the protocol is in place but not all, and the general process for the disclosure of third party material once agreed is used to apply to all third party material held by the Local Authority.
- ▶ All relevant forms contained in the Appendices

## What amounts to a series? (1/2)

- ▶ For counts to be properly joined on an indictment there needs to be sufficient similarity or nexus between the offences for them to be regarded as a series
- ▶ Two or more offences can amount to a series
- ▶ In *R v Baird* (1993) 97 Cr.App.R.308 counts of assaults committed 9 years apart were held to form part of a series
- ▶ In *R v Benabbou* [2012] EWCA Crim 1256 the refusal to sever an indictment containing offences one year apart was upheld by the Court of Appeal
- ▶ The greater the time gap the stronger the nexus required to establish a series
- ▶ *Indecent Images* - case of *R v D, P*. May establish propensity.

## Scope of the protocol

- ▶ Alleged child abuse including sexual and non sexual
- ▶ Children aged 17 and under at time of offending
- ▶ And/or Family Court proceedings concerning a child aged 17 and under
- ▶ CPIA disclosure test has no place in the protocol until material has been obtained by the police and thereby becomes prosecution material. The CPIA then applies ( if post sending or plea in MC) and the material is handled in accordance with the protocol e.g. relevance and disclosure test, relating to sensitive material.

# Responsibilities of CPS under the protocol

- ▶ Priority to charging decisions in cases involving Family Court proceedings
- ▶ Provision of updates to LA by secure email re timetable and directions within 5 working days of each case management hearing
- ▶ Make representations to Family Court to restrict disclosure to named persons or to object
- ▶ Must comply with court orders

## Requirements of disclosure requests from LA to police

- ▶ Proportionate
- ▶ Relevant to central issues in civil case
- ▶ Only relevant material to be disclosed
- ▶ Must be focussed



## Voluntary disclosure by police to LA

- ▶ Must be prior consultation with CPS (if charged or criminal proceedings contemplated)
- ▶ Pre recorded interviews must not be released w/o written undertaking from LA
- ▶ No disclosure where there is prejudice to investigation or prosecution
- ▶ Or necessary to obtain consent of the statement maker
- ▶ **Exception: unless necessary to ensure the immediate safety of a child**





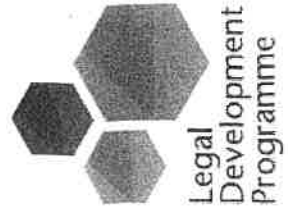
## Disclosure by LA to police

- ▶ Documents relating to family proceedings are not included in files passed to police
- ▶ LA provides a list of material w/o describing it in form of redacted court index and text or summary of relevant judgements and directions
- ▶ LA can disclose to the police docs which are lodged at court or used in proceedings which already existed e.g. medical reports

LA can disclose to police w/o approval of Family Court when:

- ▶ Police officers carrying out duties under s.46 Children's Act 1989 or serving in child protection unit or paedophile unit.
- ▶ Disclosure if for the purpose of child protection.

**Material provided under Rule 12.73 cannot be used for the purpose of the investigation nor passed to CPS w/o permission of Family Court**



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## LA advises CPS of non-disclosure – what can the CPS do?

- ▶ Apply for witness summons in criminal court
- ▶ Serve application on criminal court, LA and where directed by the Crown Court the person to whom the confidential document relates
- ▶ If the family proceedings are on –going apply for a linked direction hearing

## Can CPS disclose to defence?

- ▶ Needs specific approval of Family Court
- ▶ If LA refuses disclosure to defence consider PII application – should be rare
- ▶ Negotiate with LA re. edits to material
- ▶ Overarching agreement to treat material as sensitive and not to disclose to defence without consultation and make PII application only if necessary

## Linked direction hearings – what might these address?

- ▶ Timetabling – will take account of investigation and prosecution process
- ▶ Directions
- ▶ Expert evidence
- ▶ Arrangements for interviewing children
- ▶ Appropriate transcripts of hearings
- ▶ Assessment or therapy for the child
- ▶ Restrictions on publicity
- ▶ Other legal or social work related steps in family proceedings

## Scenario 1

- ▶ PC Elliot from Middlemarch police station calls the CPS duty lawyer to advise that the Family Court has issued a direction to the LA for the disclosure of all investigative material including unused and sensitive material in a case which following triage the CPS have just returned to the police. The family judge has directed that the evidence in the criminal proceedings will assist in determining the issues in the family proceedings in relation to the children of the parties in the family case.

- ▶ What are the issues and what should the CPS do?

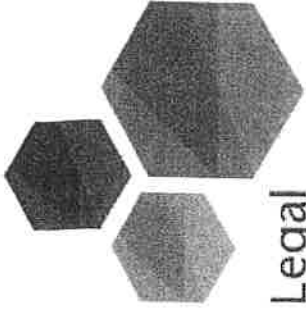
## Points

- ▶ Request not proportionate
- ▶ Impact on criminal case could be significant – Police may wish to consult with CPS about this.
- ▶ CPS/police will have no control over who the statements are disclosed to in the family proceedings once they are handed over.
- ▶ CPS should request linked directions hearing immediately following the protocol.
- ▶ If the case material is with the CPS then the CPS must prioritise the review
- ▶ Scenario 2 R v Smith & Jones – pre course reading

## Quiz questions

- ▶ When disclosing material to the police does the LA include documents relating to the Family Court proceedings?
- ▶ What do they provide?
- ▶ Is this redacted?
- ▶ How does the LA describe the material for the police and /or CPS?
- ▶ What documents can the LA disclose to the police?
- ▶ There are 2 exceptions where the LA can provide documents or information. What are they?
- ▶ If the police obtain material lawfully can they pass this to the CPS?
- ▶ How can CPS obtain this material?
- ▶ What rules of disclosure apply?
- ▶ What does the CPS have to consider if consent is not given by the relevant holder of the document?





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## Session 4

### Indictments

# What does it say in the Code?

- ▶ Paragraph 6.1 – apply same principles when drafting the indictment
- ▶ Must reflect seriousness and extent of offending
- ▶ Must give the court adequate powers to sentence and impose post conviction orders
- ▶ Enable the case to be presented in a clear and simple way

## SEE ALSO

- ▶ **R v Forbes and others** [2016] EWCA Crim 1388

This is a recent decision of Special Court (featuring nine conjoined appeals) which dealt with a number of issues in relation to sentencing for historic sexual offences. At paragraphs 30 to 34, the Court emphasised the importance of specifying the criminality in the indictment and taking care in framing charges.

- ▶ The CPS prosecutor is responsible for drafting an accurate indictment but may consult with counsel

# What are the consequences of defective indictments?

- ▶ Indictment quashed
- ▶ Trial a nullity
- ▶ Impact on victims – trauma of re-trial and loss of confidence in CPS
- ▶ Reputational damage for CPS
- ▶ Justice denied or delayed
- ▶ Costs to the criminal justice system

# Issues in non-recent cases

- ▶ Changes in legislation – 2003 Act repealed most but not all previous legislation
- ▶ Changes to sentencing options and maximum sentences

## Time barred offences under 1956 Act

### Unlawful sexual intercourse S.6 - 12 month time limit

#### Buggery contrary to s.12 buggery and Gross indecency contrary to s13

- ▶ Allegations of buggery are time barred by virtue of s.7 SOA 1967 UNLESS the act amounts to an assault (i.e. is non-consensual) or the complainant is under 16 [s.7 set a 12 month limitation].
- ▶ Allegations of gross indecency (contrary to s.13 SOA 1956) are also time barred by virtue of s.7 SOA 1967.
- ▶ The old offence of gross indecency survived only until 30th April 2005 (12 months after the 2003 Act came into force) and even then only in relation to offences carried out within the previous 12 months and in relation to which proceedings were commenced within 12 months of commission.

Charging s.5 unlawful sexual intercourse with a child under s.13, or s.1 rape under SOA 1956

- ▶ “Since the leading case of R v H and others [2012] 2 CAR(S) 21, the principles of which are now included at Annex B of the SC’s Definitive Guidelines, a convicted defendant must be sentenced according to current regimes and guidelines. The only matter of importance from the time the offence was committed is that the sentence must be restricted to the maximum as it then was. In this case, of course, that maximum is life imprisonment whether the offence is charged as rape or USI with a girl under 13.

...

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Cont.



...

- ▶ The judge would sentence on the basis of what the defendant actually did. If proved, in this case he had intercourse with a girl aged 9 to 11 years – therefore, the equivalent offence is rape a child under 13 [s.5 SOA 2003] and those guidelines would be applied. It is unnecessary for the absence of consent to be demonstrated by a conviction for rape because current sentencing regimes and guidelines, which the judge must apply, simply do not recognise consent as an issue having any relevance whatsoever when the victim is under 13, whether for the purpose of sentence or otherwise.

Neil Moore Director's Legal Advisor

See also **R v Forbes and others** [2016] EWCA Crim 1388

## Key points to be included

- ▶ In Rape specify whether vagina, anus or mouth penetrated
- ▶ Victim's age if proof required by legislation as may impact on sentence
- ▶ Dates – restricting this to offences between one birthday and next may be tidier and avoids mixing up different ages but only where appropriate to do so.

### Crim PR 10.2 (1)

An indictment must be in one of the forms set out in the Practice Direction and must contain, in a paragraph called a 'count'—

- (a) a statement of the offence charged that—
    - (i) describes the offence in ordinary language, and
    - (ii) identifies any legislation that creates it; and
  - (b) such particulars of the conduct constituting the commission of the offence as to make clear what the prosecutor alleges against the defendant.
- ▶ NB: CMS precedents for 1956 Act don't require this – but follow CrimPR

# Indictments and multiple incident counts

- ▶ Check the indictment
  - ▶ Ensure correct offence indicted.
  - ▶ Check the dates
  - ▶ Consider suitable alternatives
  - ▶ Particularise the offending



# Criminal Procedure Rules Multiple incident counts

Rule 10.2 reads as follows:

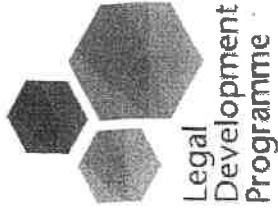
10.2.(1).....

(2) More than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.

(3) .....

(4).....

## How to draft a Multiple incident count



### **R v A [2015] EWCA Crim 177**

- ▶ A defendant should not be sentenced for anything that he has not admitted or been convicted of. Therefore, the indictment must make the extent of his offending clear.
- ▶ Multiple Incident counts must specify the minimum number of occasions that each type of offending is said to have occurred.

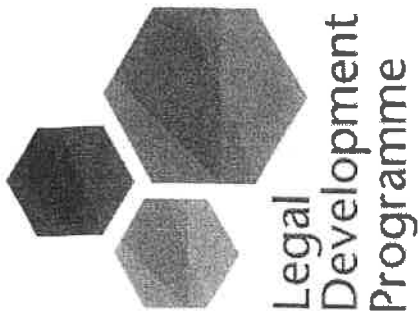
## Key points

- ▶ Defendant must know the precise nature of the case he is facing
- ▶ Court of Appeal wants counts particularised wherever possible.
- ▶ Victims may have difficulty remembering dates and link offences to particular periods in their life
  - ▶ e.g. abuse took place when I was in year 7
  - ▶ or dates
  - ▶ e.g. abused on my 10<sup>th</sup> birthday.
- ▶ Use a multiple incident count for year 7 and specific incident for 10<sup>th</sup> birthday.

## And finally on what to include

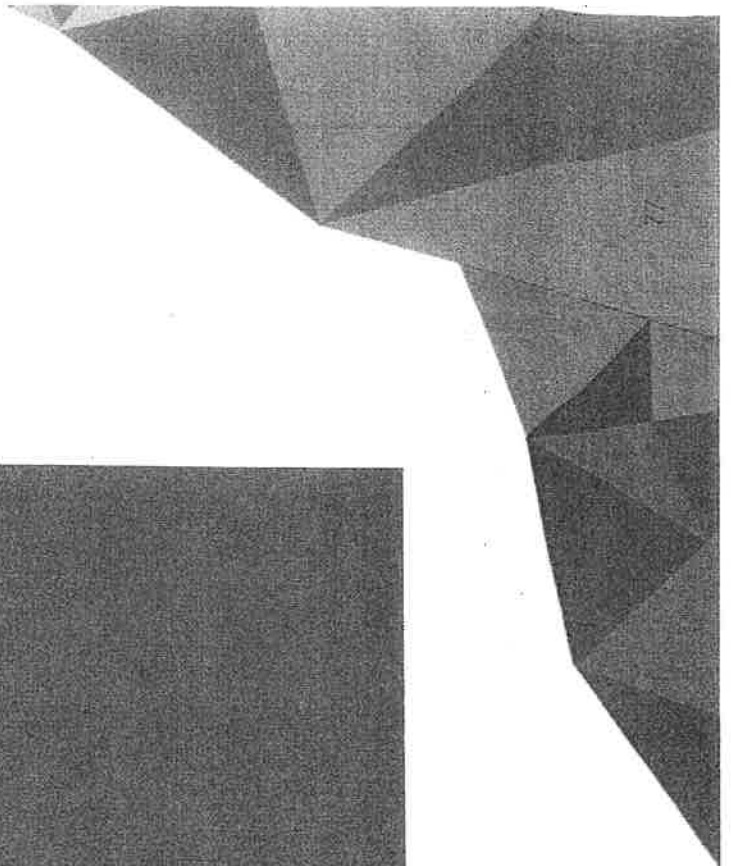
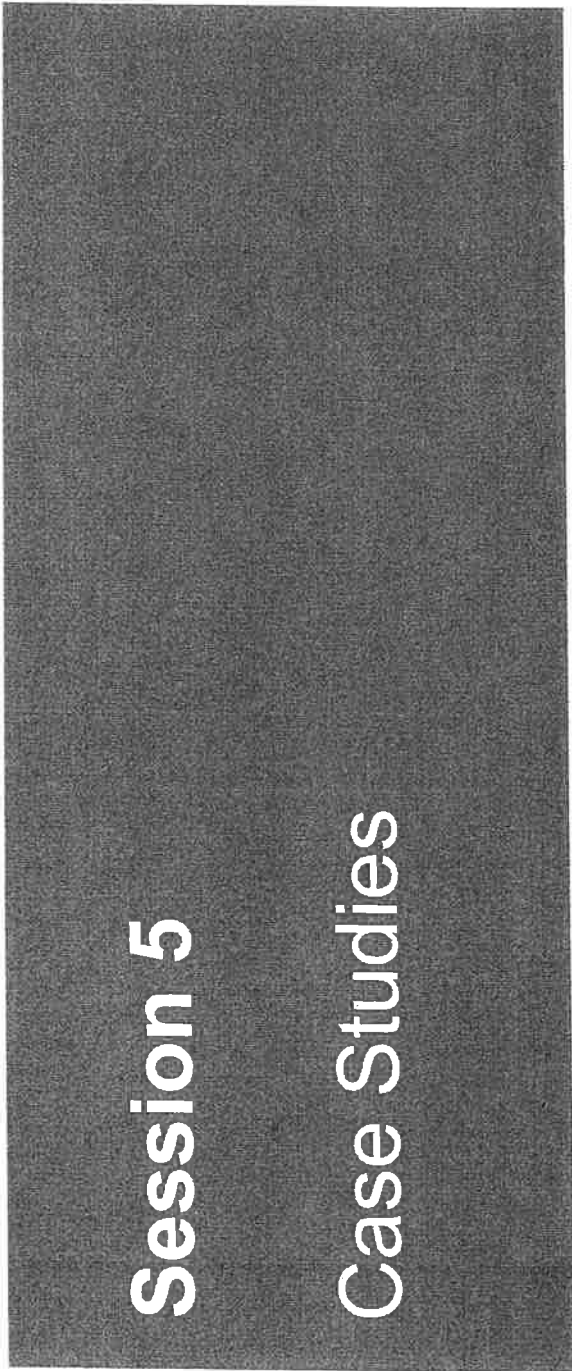
Some degree of selection:

- ▶ More trivial offences do not need to be included if they don't affect the criminality or sentencing powers of judge.
- ▶ Do not overload indictment.
- ▶ Take into account the case as a whole e.g. admissions or potential defences.
- ▶ Consider appropriate alternatives.
- ▶ Draft a guide to the indictment.



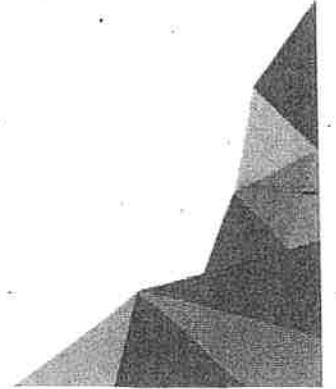
# Session 5

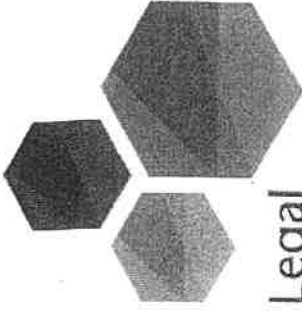
## Case Studies



## Case Studies

- ▶ Jack Diamond
- ▶ Andrew Silver
- ▶ Scott Windsor
- ▶ Mike Morris





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## Session 6

Sexual Exploitation and Violence  
in the context of gangs

## Types of offending/exploitation

- ▶ Girls pressured in to having sex with more than one person sometimes under threat of a weapon.
- ▶ Having sex in return for status or protection.
- ▶ Rape by an individual or group.
- ▶ Sex to pay for drugs or alcohol.
- ▶ Being used to set up other young men in a rival gang (find out what they are saying).
- ▶ Initiation – having sex with more than one member to become part of a gang.
- ▶ Sexting – being photographed or filmed.



## Features of SEV in gangs

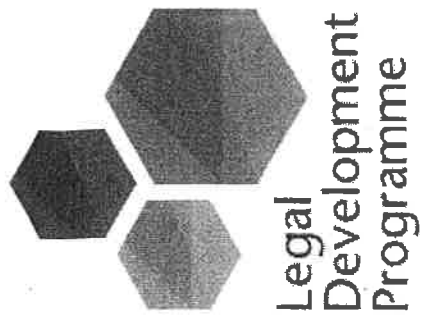
- ▶ Peer on peer abuse.
- ▶ Men hold a higher status which puts women at more risk of SEV.
- ▶ Men decide the role/status of women.
- ▶ Role is influenced by sexual relationships, previous sexual history and sexual reputation.
- ▶ Extent of violence depends on her role/status within the gang.
- ▶ Mostly young women but can be experienced by men.

## Roles of women in gangs

- ▶ Gang involved young woman – gangster girl.
- ▶ Female family members.
- ▶ Girlfriends (wifey's).
- ▶ Young women in a sexual relationship with a gang member 'Links' .
- ▶ Young women who have children by a gang member 'Baby mother' .

## Videos

- ▶ 10 key facts about child sexual exploitation
- ▶ Gang associated sexual exploitation and violence
- ▶ Making justice work for victims and witnesses in child sexual exploitation cases
- ▶ I define me



Session 7

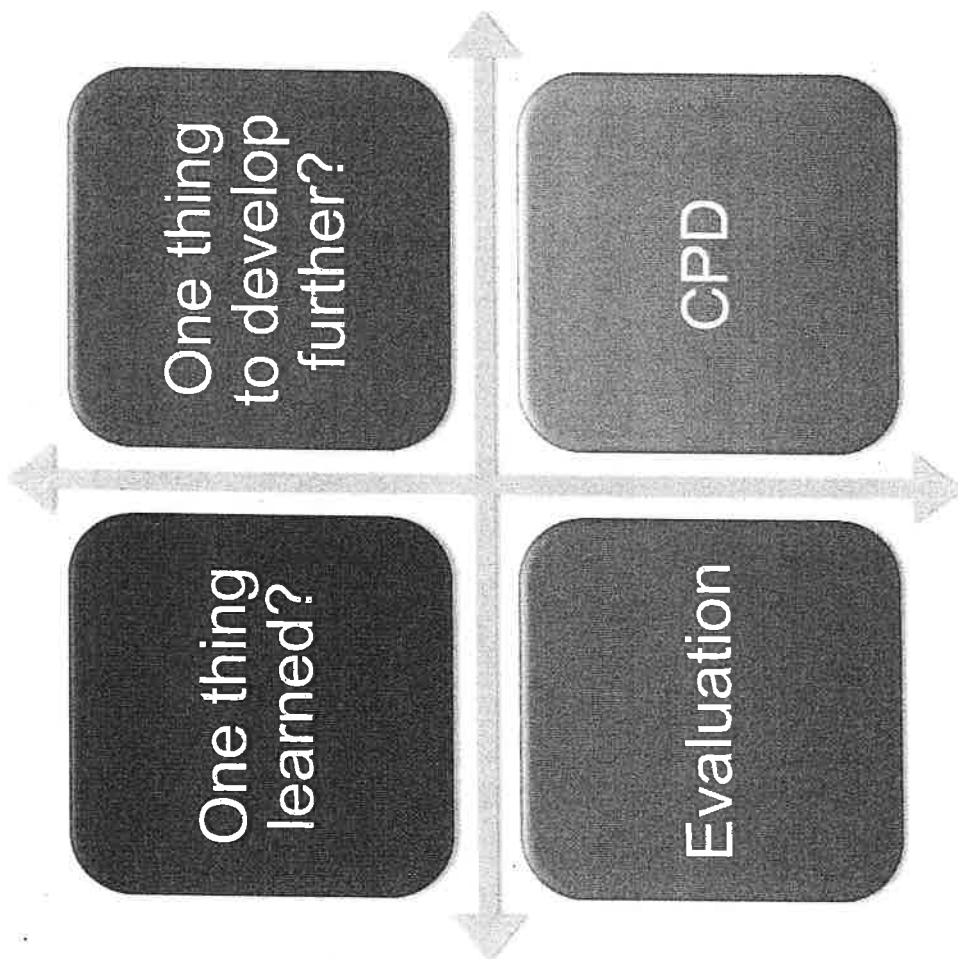
Final session

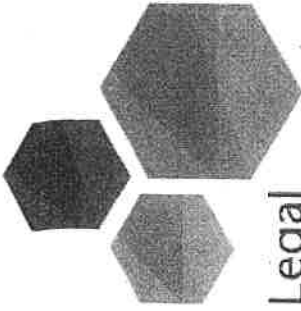
## Objectives

By the end of the course, you will be able to:

- ▶ state what is CPS Policy and good practice in relation to rape and serious sexual assault cases including the application of the evidential test and how to build effective cases
- ▶ deal appropriately with requests for disclosure where there are linked family and criminal proceedings in RASSO cases
- ▶ identify what are the current issues in relation to indictment drafting in particular in non-recent cases
- ▶ use multiple incident counts when drafting indictments
- ▶ state what issues are faced by victims of gang related sexual violence

And finally ...





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THANK  
you

