

Rape: Effective Investigation leading to Successful Prosecution of Known Offenders

Seminars and workshops for Police, Crown Prosecution Service, Victim Care organisations, Barristers/Lawyers, Courts, Probation, and partners

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Aims of conference:

- **Seminars:** fully introduce changes to rape prosecution and reporting represented by Government White Paper **Protecting the Public** (pub. Nov. 2002)
- debate reforms of issue of consent, medical evidence and previous sexual history
- examine problems and examples of good practice in Police investigation of rape, training of frontline officers
- discuss recent developments in victim and witness care, particularly **Sexual Assault Referral Centres (SARCs)**
- compare investigation and prosecution in USA with UK practice, identify areas of good practice
- **Workshop** (Implications of the New Legal Framework: Consent and Previous Sexual History)
- make recommendations for further improvements
- **Lilith** suggestions

Keynote session

Outlining current national network of support and investigation of rape cases

- support and advocacy is patchy and often related to 'postcode lottery'
- local partnerships are poorly funded and organised or non-existent (SARC in Cleveland given green light then all funding was cut)
- Police often resent being given 'hand-holding' role

Problems with current treatment of women making rape allegations

- over-sympathetic treatment of 'horror' of testifying
- exaggeration of difficulty in making a conviction
- witness implicitly invited to retract statement

Lenient sentences for acquaintance rape are not to be encouraged

- necessary to deter perpetrators
- need for clearer, tighter and more widely understood controls

From Vision to Practice: New definitions of Rape and Sexual Consent

Rt Hon Harriet Harman QC MP, The Solicitor General

- The White Paper 'Protecting The Public'
- The new definitions of rape and issues of consent
- Specialist rape prosecutors

Cultural opinion about rape is based upon a background of deeply ingrained values, often illustrated in published judge's remarks of 'what did she do to bring it on' or 'it's clear the young man was just misbehaving a little'. Half the young men interviewed in a recent poll thought using force to get sex was acceptable, and there was very little understanding of consent. Despite public perception of the 'stranger rapist' 90% of rapes are perpetrated by someone the victim knows.

- As recently as 1991 rape in marriage was disbelieved or ignored
- 1991-rape of a wife was challenged by the CPS
- husband was eventually convicted after case was fought all the way through CPS system

Witnesses often retract their statements for a variety of reasons

- wish to protect family
- fear of being put on trial
- traumatic reaction (Post Traumatic Stress Disorder)
- fear of not being believed

This illustrates the need for a compassionate but balanced approach.

There have been new experimental schemes in **victim support** to make the trial process less daunting. Where the Police were the principal (and sometimes only) contact with the witness, now the option of a pre-trial meeting with a CPS rape

specialist is offered. The new White Paper strictly limits the amount of previous sexual history of the witness that can be brought up in a trial, and how much previous sexual behaviour on the part of the victim can be brought up.

The new **Special Measures** that were outlined in 1999 to protect victims and have been used successfully in child victim case were made available for rape cases in **August 2001**. These include

- Evidence given via a live TV or CCTV link
- The court being cleared so that the witness can give evidence in private
- Screens to be used to conceal witness from court
- The witness evidence being pre-recorded and being shown at the trial

All of the above measures must be applied for by the prosecuting CPS officer to the presiding judge before the trial. There have been cases where the judge in question refused the special measures and was replaced as trial judge.

Other suggested procedures of good practice for CPS included the prosecuting barrister to introduce himself to the witness beforehand (although this was common in US, it was prohibited in the UK to avoid claims of 'witness coaching'). In **2002** the **Lord Chief Justice** laid down ruling **that would not allow more lenient sentencing for acquaintance rape** as opposed to unknown rape cases. Any lenient sentencing could be referred by the Solicitor General and Attorney General, providing that the referral was made within 28 days of the original sentencing.

'Protecting the Public'- The Government White paper on Sex Offenders and Offences

Issue of consent has become focal centre of rape cases, since DNA testing can verify an assault and the identity of the perpetrator without any room for argument.

Consent must be both **reasonable** (anyone who is unconscious, detained or has had force used upon them is deemed not to have given consent) and **demonstrable** (the perpetrator must prove that he took a number of steps to ascertain consent).

- With children under the age of 13 consent is not an issue
- Drug rape offences, which impair victim's ability to consent, are treated similarly

Additional suggestions:

- Is an independent source of legal advice (not CPS) needed in the UK and should it be institutionalised?
- Should the effects of traumatic reaction (PTSD) be publicised? This could support victims who suffer memory loss and therefore have 'unreliable' accounts
- Need for dedicated rape specialist Police officers nationwide and not just in the Met

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Police Strategy and Practice for Successful Prosecution

Alison Scott, Detective Inspector, Hampshire Constabulary

Rape Crisis Foundation statistics

- 12% of 15 000 rapes reported
- 1 in 5 (20%) reached trial
- 9% were convicted in 2001, **7.3%** were convicted in 2002

Problems identified with the investigation procedure within the Police in the UK were broadly within three categories; limited availability, lack of experience dealing with rape cases, and investigative procedure. Limited availability mostly applied to the distribution of SARCs and dedicated rape forensic suites around the UK. At the moment this distribution is reliant upon bids, limited funding and the 'postcode lottery', resulting in patchy coverage. In terms of victim care, this translates to:

- Lack of choice with gender of Forensic Medical Examiner (FME)
- Long waits and delays for equipment, resulting in compromised samples
- Unreasonably long round trips to a SARC
- Referrals to regular GP in surgery that has no protection against sample cross-contamination and even resulting in false readings if suspect has also been in surgery for some reason

The Met has identified lack of experience dealing with rape victims as a key problem. Often officers and callroom operators with less than 6 months experience are dealing with extremely traumatised victims in 'hostile' areas, resulting in poor quality of care. In the Met this is less pronounced, as all specialist officers dealing with rape victims¹ have to have at least 2 years service before being nominated. However, a **lack of back-up and follow-up care** has been identified, suggesting that a more integrated approach between voluntary sector advocacy and support schemes is necessary. This lack of co-ordination also persists into the CPS process, with victims often having to wait for unnecessary amounts of time to give evidence, and the risk of running into the defendant whilst in the court building.

The investigative procedure was seen to have the following weaknesses:

- Delays in provision of specialist services such as FME
- Delays in taking statements
- Statement content is varied, often including too much sexual history
- Resourcing of investigations often sketchy, creating problems at CPS level
- 18% of cases have evidence
- 3% provoke admission from accused
- interviews normally not monitored

Instances of good practice concerning rape cases were often centred on the superior care offered by the SARCs, including The Haven in Camberwell and Swindon Sanctuary. Other examples of good practice across the UK included:

- Dedicated trained officers (Met) including pass/fail courses

¹ Scene Of Crime Officers (SOC), at least one attached to each borough station, usually have to attend examined course on dealing with trauma victims.

- Early sample taking (Met pilot study Londonwide using Scenesafe Kits)
- Good practice forum (Northumbria)
- Strong leadership (often head officer who is passionate about improving) Leicestershire/Northumbria
- Bespoke suites (Manchester/Met/Northumbria)
- Sponsorship (Next in Leicestershire providing clothes)
- Information and toiletry packs (Project Sapphire, London)
- Regular CPS 'surgeris' for victims to keep them up to date

The Role of Sexual Assault Referral Centres

Linda Regan and Jo Lovett, Senior Researchers, CWASU, London Metropolitan University

- British Crime Survey estimates 61 000 rapes per year
- Rate of reporting is between 1 in 5 and 1 in 8

Reports are more likely where:

- Offence is by a stranger
- It fits ideas of 'real rape'
- The person the victim tells encourages her to report
- The victim has an expectation of justice

The Sexual Assault Referral Centres (SARCs) were created in the 80s and 90s in response to issues raised in a Thames Valley programme about the issues of FMEs and the need for greater victim choice. Samples were taken in GP's surgeries, risking cross-contamination, and there was often no medical follow-up for other injuries the victim might have sustained. The **lack of crisis counselling and the misuse of police officers as support workers** was also noted.

SARCs have been created in several different models across the UK, the most common being the following examples:

- Integrated single site forensic, medical and counselling (The Haven, Juniper Lodge)
- Multiple partnerships (REACH) and regional co-ordination (STAR project)
- Mobile forensic nurse (US)
- Sexual Assault response Teams (SARTS) also US
- Police and community services partnership of sites

CWASU has been conducting a study to evaluate the effectiveness of SARCs and has published the following interim findings:

Majority of users rate SARCs highly as a speedy and effective service that treats victims with dignity and respect

- High availability of female staff and FMEs
- Users also rate the the ability of SARCs to cater for their needs (including follow-up medical care and tests etc)

Areas that have a SARC have a consistently higher standard and amount of evidence

- More forensic examinations are taken, particularly where the statement is integrated

- More victim witness statements are taken by police in SARC areas
 - Cases are tracked more easily
- SARCs also offer a holistic function
- Information is more readily available
 - Crisis and ongoing counselling, and advocacy are ongoing
 - Long-term therapeutic care

Suggested improvements include:

- A forensic nurse examiner at St. Mary's
- Support worker to provide integrated victim support and chaperoning
- Integrated young people's services
- REACH and STAR websites

SARCs also act as a natural focal point for information and could be used to encourage inter-agency training and coordination, an example of this is the need to properly train barristers and CPS personnel who come into contact with the rape witness. There is no point in meeting the witness beforehand if the individual is unable to use correct techniques.

Comparisons with America: Recognising and Responding to Sexual Assault (Joanne Archambault), and Specialist Rape Prosecutors in Action (Alice Vachss)

The community doesn't always respond appropriately; it often distrusts victims that 'don't fit'. **Victims who are angry, inconsistent in their stories, or even those who are calm are often doubted by call-takers, and even by police officers.** The first respondent's conclusions can significantly reduce the victim's chances of survival.

95% of prosecutors are elected to their positions in the US, so unlike the UK, the post of prosecutor is primarily a political position. The US used to be more tightly focused on the rapist and convicting or treating the aggressor, however in recent years the approach has come to resemble that of the UK, offering a more victim-centred awareness.

The US does have an **institutionalised victim advocate scheme** which functions fairly well.

- Strength: volunteers offer a consistency of care
- Weakness: the level of skill varies dramatically
- The quality of police officers, skill of hospital and victim advocates crucial to victim's experience

In a departure from the UK approach, in the US **the prosecutor takes the statement from the witness**, and complete the post-investigative work. The prosecutor therefore becomes more involved with the victim and finds the victim's account more (or less) credible). However, when the victim makes the decision to go to court, it is strongly represented to her that the process will be draining and will take up to a year.

- Post- Damilola Taylor, it has been imperative to demand precognition (meeting beforehand between the prosecution and the witness)

Suggestions from US

- Using 'anonymous reporting' so that women can give samples anonymously and give evidence later
- Forensic service often instructed to do all tests regardless of what applies to the case, causing extra distress to the victim
- Distress of victim can be demonstrated to court by 'bracketing time', having character witnesses from just before and after the event.
 - North Yorkshire Police have begun videoing initial interviews to illustrate the victim's distress
- Juries need to be better educated about the effects of PTSD, and the attendant memory loss that may suggest inconsistencies

Implications of the New Legal Framework: Consent and Previous Sexual History

Vera Baird, QC, MP for Redcar

Rape cases traditionally seen through cultural filter

- References to 'victim', move now towards 'witness' or 'complainant'
- Awareness that any form of behaviour, clothing or attitude could be used by defence
- Lack of confidence in victims who don't have a regular partner, or are seen as somehow 'deviant'
- Section 41 is an attempt to remove attitude of 'loose women'

1999- Youth Justice and Criminal Evidence Act was introduced (including Special Measures and Section 41) Section 41 expressly forbids any mention of previous sexual history, even if this history is with the defendant. However, after the case of R vs. A. this was changed to allow some previous sexual history with the defendant, provided that it was around the time of the rape.

The issue of consent is only permitted in one of three forms:

- The perpetrator knows and can **prove** consent
- The perpetrator acted recklessly regarding consent
- The perpetrator believed that he had obtained consent

In the case of belief in consent, the law has been strengthened so that the defendant has to prove to the court that he took adequate steps to acquire consent

- Intoxication, either of the defendant or the witness, does not remove responsibility
- If force or detention was used, or the victim was unconscious, consent is not an issue.
- If the victim was under 13, consent is not an issue

A retrograde step has been taken in recent years, by attempting to allow the defendant to elect to dispense with the jury and be tried by judge alone. Although this is beneficial from the point of view of the CPS, it represents a problem in terms of **judge attitude**. As the press regularly demonstrates, judges are often unaware of the gender issues and trauma involved in both 'real' and acquaintance rape, and are

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disposed towards giving **lenient or no sentence for acquaintance rape**, considering that 'the boy was misbehaving'.

Suggestions to avoid this:

- High Court and Court of Appeal judges are made to undergo the same rape training as Crown Court judges before being permitted to sit on rape trials
- The defendant gives up his (well-protected) right to privacy in return for using previous sexual history
- Better education at school level to educate future juries (relaxed attitude towards rape and DV creates higher acceptability among future juries)
- Right for prosecutor to stand up and protect victim from barrister and judge questioning
- Better publicity for CPS directory – lists all barristers, their attitudes and effectiveness

Suggestions for more effective prosecutions:

- Improved structure: 'law teams' that work together with victim to provide continuity over a long time-period
- Holistic training approach for Bar and Judiciary
- Possibility of extending control of CPS (at the moment CPS don't prosecute, they have to instruct someone else)

London deals with 60% of rape cases in the UK

- Sapphire believes there is a need for a dedicated 'rape clinic' to take all of these cases, rather than spreading them around all lawyers
- Represents more effective uses of resources
- Potential for highly-trained staff

LILITH suggestions

Leaflet for women giving evidence at rape trials

- Ask as soon as you arrive at court how long it will take – can usually go and come back to minimise tension and possibility of seeing defendant
- If you smoke take cigarettes so you stay calm

Leaflet for women explaining new consent laws

- Possible section to explain to men/male friends

Campaigning for better witness care at trials

- Often can bump into defendant at trial in smoking rooms, car park etc
- Lack of sensitivity on part of CPS
- Hostile waiting areas