

**PROSECUTING RAPE CONFERENCE 2007**  
**Working Together: Building Better Cases**

**23 & 24 MAY 2007, BRITISH MUSEUM, LONDON**

[presentations will be sent round]

**MIKE O'BRIEN, MP SOLICITOR-GENERAL**  
**KEYNOTE SPEECH**

Last conf nov 2005  
Thematic report; highly criticised  
Many criticisms

Showed there has been progress but not enough  
Much work to do if rape reduced and CJS works

Convicting more rapists; protect victims in better way

Ministerial group of sexual offending: few more important issues than dealing with rape

Ref. case unduly lenient sentence. 10yrs with wife, repeated rape. Personal impact statement. Victim described before meeting abuser, successful graduate. Now isolated and imprisoned.

“victims of rape deserve best possible support from us” they should know getting excellent service. Currently varies from excellent to poor. Professional duty to deliver.

Too many rapists get away with it, not just because some lapses in service.

Prosecutor must prove beyond reasonable doubt. Burden of proof will not be changed, so we must work hard

15% report rape to police  
4/10 tell no-one

Today many more people report  
1997: 6628 – 14,000 (2005-6)

Convictions risen 618 1997 – 820 (2005-6)

Conviction rate slowly moving in right direction  
2004: 5.4% – 2005-6: 5.7%

Women more worried about rape than any other crime  
Must show victims will be treated with dignity and respect

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Laws and procedures must be kept up to date  
Bad character evidence can be used in certain cases  
Changed hearsay rule so all relevant evidence can be accessed rather than excluded  
Constitutional reform issued in 2006 (publication next few weeks)

Where victim drunk/drugged referred to jury.. need statutory definition of capacity?  
Expert evidence of psychological state of victim  
All complaints of rape to be admissible as evidence irrespective of when made  
Adult video statements to be automatically admissible if preferred by prosecution and victim; nobody should be obliged to give live/video evidence if want  
Whether to define complainants capacity attracted great media interest  
Capacity = difficult issue. Never contemplated creating grid system to judge capacity to consent.

Arvus & bree (CA mar 07) Lord Justice Judge: makes clear complainants capacity to consent may evaporate well before they become unconscioue. If jury is so drunk cannot consent, then jury should convict.

Would have been helpful to have clear guidance for jury, but overall helpful judgment.

There has been movement.

Reforming law = not enough.  
SVAAP -2 April 2007: identifies key actions being taken. Improving CJS response; maximise prevention of SVA; increase services for victims.

Important to understand what underlies  
1<sup>st</sup> problem is victim's reluctance to report  
Cases fall out of system of all stages. 4/10 do not proceed because victim withdraws support for prosecution

Invested c.£7m to support victims over last 3 yrs; £3m 2007-05-23 15 SARC, 13 more in development

Independent SA advisor project... using successful DV model. Funding has provided advisors = vital to ensure access, informed decision, full support

e.g. showing victim court beforehand; helps to reassure victim and encourage to see case through.

2006: funded 38 independent advisors in SARCs, evaluating impact in coming year.

Cases to court: just over half = acquittal. Usually turn on consent. Thematic report: "in many respects policies are sound and in place it is not a question of changing approach but ensuring what should be done is actually done in practice"

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Learning lessons from each case outcome

Each police force asked to implement Action Plan; but to see sustained improvement managers must monitor; ACPO, COS, inspectorates: performance of police and CPS against number of indicators. Not about blame culture; about delivering high quality service.

Local CJS boards: must review rape policy and take active role.  
 Cannot stop all rapes, but can reduce number.

Strengthening Law

What needs to be done by CPS

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**SIR KEN MCDONALD, QC**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

Context within which rape offending occurs... always will be difficult to deal with; aim must be to put best evidence before court, empower witnesses to give best platform. To what extent are we empowering ourselves to put strongest cases... all of this takes place within context of fair trials.

Fear of rape has huge influence of public confidence; must prosecute cases more successfully and treat victims with dignity.

2002 inspectorate report; equittals occur even where everything done properly.

Abundance of misconception about how complainants *should* behave.  
 Ref. AIUK report: flirtatiousness, dress; jury takes these attitudes into court room.  
 Therefore CJ cannot resolve alone; society as a whole must change attitudes.

Cases must be proactively built by prosecution team.

1. does it pass the code test? If yes, joint working with CJS and police to prosecute.

Medical/scientific evidence

Appropriate material must be sent to prosecution; case building is one part  
 Accept recommendation in *Without Consent*; rape cases require checklists, continuity of specialist prosecutors = essential.

Action plan: implementing recommendations and insurance

Quality of legal decisions and involvement of counsel will be scrutinised.

Rape delivery unit

Fact that area had rape

*Without Consent*: coordinators are pivotal. Must enforce strategy, management and analysis; failure = to apply these in the past

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Closer working with police = fundamental  
Early liaison between police and prosecutors  
e.g.. murder as soon as occurs, number of senior CPS to kickstart inter-agency  
early as poss, lines of inquiry must be pursued, CCTV footage, otherwise evidential leads  
will be lost. Early partnership = positive impact

CPS: organised crime division works only with SOCA, along with advocates who must  
be involved as early as possible.  
Deprecate practice of rape briefs being returned: same advocate, same counsel  
Sometimes acquittal is the right result; so long as weve prevented best evidence in best  
way –that’s the responsibility.

Bar creditation and monitoring has been running for a few months. Specialist advocates  
being recruited in some areas.

Building better cases places more emphasis on justice; supporting victims = essential part  
of building better cases. Individual attention to needs of victims; must be told important  
decisions; proper comms is only way to ensure special measures are applied for,  
challenges of Section 1, cross-examination, derogatory evidence etc.

Multi-agency with support groups; work important and commended

Share good practice and ensure take back lessons to areas.  
All know CPS has to do better; use conf to learn how to do so



**JOHN YATES, ASST COMMISSIONER, QPM,<sup>1</sup> MET POLICE**  
**ACPO lead on rape & sexual assault**  
**POLICE PERSPECTIVE**

Performance, leadership, ambition.

Half-full approach: much improvement in last year  
Vast majority of CPOs really engaged...

What makes rape difference? The only offence where we seriously assess credibility of  
victim before proceeding? Why aren’t there SARCs across nation?

“rape remains big, big news”  
Panorama, dispatches, Fawcett etc.  
Scrutiny is good; never had Stephen Lawrence or Victoria Climbié both of which resulted  
in overall

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<sup>1</sup> Queens Police Medal

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Homicide investigation has cache as career; rape does not.

Amongst range of priorities, rape simply doesn't feature. Delighted to note that 2008-9 will see some proper measurement. What gets measured, gets done, is still true for rape.

How often do forces review rape convictions? Not very enough.

Our job is to search for the truth, convict guilty, free the innocent

**ACPO Rape Working Group: Lilith to join**

Multi-agency, police, voluntary, CPS, SPU

**Sir Charles Pollard re. restorative justice for rape victims**

**Visits to forces:**

Wholesale consultancy visit around all forces. Rape fallen off radar of many forces, significant lack of interest; cultural issues abound, strange rape is serious, others not,

HMIC report: further engaged again visited all forces (2x in one year)

West Yorks: force-wide team only same lines as child protection

Greater Macn declared intent to become best in rape cases

North Yorks FSS, CPS group

Immensely encouraged, but must maintain and embed progress

Nothing reduces public confidence more than high profile failure of individual case or perceived failure to tackle root causes. Know what works, best practice is available.

Must ensure what should be done is actually carried out with proper support.

Final analysis: leadership and ambition.

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**PAIGE KIMBERLEY & GI GERRY McDONALD**  
**METROPOLITAN POLICE**

*Without Consen (WC)t*

Inspectorate for WC.

HMIC & HMCPSI joint thematic

18 recommendations, 3 suggestions = largely accepted; in Jul 2002 almost all accepted leading to rape action plan, leading to SOA 2003

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HO ACPO CPS stock take 2005

Feb 2006: report WC: investigation on joint review of the investigation and prosecution of rape offences.

**High attrition:** overriding concern. Falling off process = consistently higher than other crimes.. between 75-95% rapes are not reported. Concept that real rape = stranger persists.

Declining conviction rates: 41%/37%/30% impacting on overall attrition..

Stranger 1: complete 1in4 1in5 rapes  
 Stranger 2: acquaintance  
 Family member & friends = big chunk

Without stranger 1; 80% of rapists known to victims  
 Forces ready to deal with 20%, but dismiss 80%  
 Lack of protection – perceived as lack of interest by public

Report finds that framework is there; now reliant on stringent implementation

Problems: insufficient e

b/w half-2/3 will drop out; over half who continue = acquittal

sanctioned detection  
 non-sanctioned detection  
 no crime (outside jurisdiction; error in reported crime; no verifiable crime)  
 undetected (80%)  
 NCRS: National Crime Reporting Standard  
 HOOCR: Home Office Counting Rules

Many layers where process is not being monitored correctly

**Primary Recommendations**

Audit “no crime” rapes  
 Review of STOs (specially trained officers)  
 Review quality of rape investigations (10 hrs, 7 days, 28 days review)

Kept revisiting quality of investigations

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**CHARLOTTE TRIGGS**  
**CPS**

**Why are we here? Setting the scene – HMIC/HMCPSI report**

Responsibility of not delivering lacklustre prosecution

Closer working relationship

**Prosecution team:**

- investigating officer (marshals evidence)
- rape specialist lawyer
- counsel HCA rape specialist
- forensic physician
- forensic scientist
- CPS caseworker

**Full & early consultation**

Recommendation 8: police forces and CPS ensure that rape cases receive full and early consultation between the investigating officer and rape specialist prosecutor.

**Joint approach to building cases**

MG3/3a? recommendation 11: CPS produces and circulates a rape checklist to address all relevant issues at advice stage

**Learning lessons from results**

Recommendation 7: CPS should empower rape coordinators to sample systematically rape files

**Improving performance**

Learning together

Spreading good practice

Consistent delivery of high quality work

*Without Consent* wake-up call; massive scrutiny by managers and media

Perception = yet another postcode lottery

Everyone wants to see results

Must not cause further harm to victim's of this most damaging crime.

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DVD "if it doesn't wet the appetite"  
[www.stmaryscentre.org](http://www.stmaryscentre.org)  
Great Manc & Channel M collaboration  
Going out nightly to inform public

Aim to roll out nationally

**DAVID GEE, ACPO/PSU RAPE ADVISOR**  
**INVESTIGATING A RAPE CASE**

Working in this area since 2000  
Hears rhetoric from people speaking at the top  
Fantastic tin, but nothing inside.  
People here don't need persuading, please return to forces and tell them there is a line in the sand. Second to homicide, rape is most serious crime.

Every force and CPS area should be able sort this out. Not a single force in E&W re.best practice. This is not volume crime, only 14,500. one every three days. Some forces have "only" 100 rapes a year.

Still getting forces who are just doing review of stranger

THE problem is relationship rape. Where we dismiss potential for conviction when we dismiss report; i.e. looking at victim before considering offence.

Too much time investigating complainant, and not the complaint. Treat all bodies as potential homicide and you won't go wrong. Still getting wrong language "run of the mill" rapes, "straight forward" rapes... if officers cannot get through this their heads, then should go.

**INVESTIGATION**

End of day = he said, she said.  
Apart from taking testimony, what to do? Many forces seduced into belief that if STO or SARC then the job is done, with shiny unopened policy. Missing component: investigation starts when phone rings. Majority of rape victims self-refer by phone to police. Police must treat first phone call as part of the investigation; NOT wait until first officer arrives (not trained, relatively new in service – not qualified to assess). Investigation must move forward not backward, reliant on rape specialists, SARCs pulling it out of the bag cannot be relied upon if investigation before and after is full of holes. Most of call handlers will never deal with rape victim; must be equipped with right information and answers to give to victim, who believes they are speaking to someone who knows what they're doing. Call handlers deal with everything from lost dogs to murder; they must be properly equipped to deal with rape cases.



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Remedies are not difficult to implement. 1/4-1/3 of staff less than 5 years of service. And yet inexperienced officers sent to scene/1<sup>st</sup> response.

Expertise is there but most forces are not linking it up and providing correct support immediately. All the time clock is ticking and confidence is being lost in the police, by the victim, every second.

Dv victims telling officers that victim of sexual violence as part of DV, which is not being investigated. Cynics still say nothing to support fact that most allegations are true. If proper investigation, these facts will come out.

Never had it so good...if you don't know what to do, call/email and ask ACPO etc. for simply remedies to assist with investigation.

How many forces making judgment call on who deals and how. If it's a stranger rape, then all stops pulled out for media. If DV, then dismissed. Investigate as any other serious crime would be investigated; don't prejudge.

No reason or rationale behind not doing properly. Don't brag about Cumbria only having 70 rapes p.a. and still not being conducted/reviewed properly.

Joint working relationships are out there, must be used. Successes = manifestation of working together.

Big stick 2008 re. performance measures; nobody likes to come last. 21 forces left to do. Get people round table who matter and enforce change, which starts with attitude. If that is wrong, everything else will be wrong.

?rape champion?

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**FAY MAXTED, NATIONAL CO-ORDINATOR**  
**SURVIVOR'S TRUST**

**"Supporting a Victim"**

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[survivorstrust@btconnect.com](mailto:survivorstrust@btconnect.com)

recognise HR and dignity  
 variety of experience and culture  
 commitment to justice  
 continual development of professional knowledge

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sexual abuse and rape is preventable

core value: empowering survivors and supporters, individual and creative response

125 specialist member groups

40 women only

10 men only

18 women and men

41 all classes

1 youth

1 young women girls

27 girls boys

13 girls

**Client groups:**

106 incest

100 childhood

91 adult

22 CSA

84 all survivors

73 partners

57 professional support

15 perpetrator/survivors

**Service provided:**

- 98 Info & advice
- 89 training
- 88 counselling
- 77 tel support
- 52 mutual support
- 45 supervision
- 34 newsletter
- 26 therapy
- 4 penpal/contacts
- 3 online
- 2 accommodation (ref. Supporting People fund)
- 2 retreat programmes

Support action:

What is the purpose of support?

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Report, CJS, physical/mental effects, social stigma, burn-out of family/friends, back to work, recovery/resilience,.

Context

Global, human rights issue

Consequences of SV

Prevalence studies

Reporting

Krug, Dahlberg, Mercy, Zwi, Lozano, 2002

Multi-level ecological perspective

Human rights: HRW 2006 statement on SV; continues to be systematic and unrelenting because of state failure to prosecute routine and widespread discrimination and violence during peace times

Treatment of Women in Ties of Peace

Male victims:

Socialisation and stereotypes make it less likely to seek help/suitable services

2001 HRW: male prison rape "no escape"

Physical consequences:

Immediate/long-term psychological consequences

Men involved combat 11% likelihood of developing PTSD; victims of rape 80% (inc. fear of loss of life)

Chronic psychological consequences:

Depression

Suicidal

Alienation

PTSD

Unhealthy diet behaviours

Social complications:

Strained relations with family/friends

Less emotional support; less contact

Lower likelihood of marriage Clements et al 2004

Health behaviours:

High-risk sexual behaviour

Unprotected, early initiation etc

Prevalence studies:

50% W 70%M raped before 18 yrs old

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Risk of rape of W as child/adolescent steadily risen over recent decades  
*Extent, Nature & Consequences of Rape Victimization 1996: National VAW Survey US*  
 Dept of Justice

16.7% W 22.8% raped by partner  
 43% W 9% M raped by intimate partner

2005 Denise Lievore: No Longer Silent

19.1% W 12.9% M report to police

“real rape” myth: police officer, DC, June 2002 Gap or a chasm: attrition in reported rape cases, Liz Kelly 2004

False allegations:  
 8% designated as false by police  
 Higher proportion 16-25 yr olds

MH problems, previous convictions  
 Down to 3% if analysed (Liz Kelly)

What works?  
 Gender-sensitive counselling  
 mutual support groups  
 social support  
 interventions supporting resilience  
 recognition of psychological distress following sexual assault  
 existential doubt, low self-esteem

Australian Institute of Family Studies, Dec 2006, Jill Astbury, Research Professor,  
 Victoria University

**UK action:**

Cross-govt SVAAP  
 VVAPP  
 MH Trusts Pilot Collaboration project  
 Indpt SV advisors programme, Home Office  
 Development Nat Service Guidelines

SV/DV differences  
 Referrals: has to go through 2 assessments = secondary trauma  
 Risk assessments  
 Sharing info  
 Victims' needs/desires right to empowerment and autonomy

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Victim satisfaction

Role of humiliation in securing justice (victim AND perpetrator)

2 cases in recent weeks:

16 yr old girl. Defence counsel commented that she'd lost weight, was fat and maybe welcomed the attention

10 yr old: judge commented she was out looking for a man and got what she wanted

OZ study: conclusion. SV = multidimensional problem in attention to work sensitively and effectively with survivors

No single factor can explain or tackle rape

Rape = murder of the soul; living with knowledge that someone tried to kill; changed forever. "Liz" went to court, rapist given 2 life sentences, when verdict announced, social worker & psychiatrist delighted, but victim felt nothing.

Paying the price of being a survivor

Chaperone from night of attack to conviction = wonderful; trusted, good rapport = integral to process and confidence to go through with prosecution

Approaching sentencing = extremely nervous

Everyone around her = ecstatic, but victim wasn't. just felt confused, anxious, depressed, took while to appreciate conviction. During time, seeing psychiatrist; now with hindsight not really sure why seeing psych. Reserved on service received, didn't feel understood; similar difficulties with friends, not got much family around, friends very supportive in beginning, but very little concentration so very difficult to have conversation/no common ground. Felt forced to move out, flatmates supportive but felt alienated, nobody could understand.

Time of sentencing: friendships becoming increasingly difficult; afterwards felt couldn't talk to anybody about anything, felt totally soulless. Didn't recognise self; couldn't receive visitors.

Since then, struggling back to normality... cost her everything, still paying price. Had to resign as employer wanted to return after conviction; couldn't face confrontation re. why hadn't returned to normality. Glad managed to find voluntary sector to assist in recovery.

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**WORKSHOP 1: investigation**

Leics – duty office sergeant  
 West Yorks – comms officer

**VICTIM:**

Examples of duty office expected to deal with everything; sometimes unavoidable  
 Onus on call handler to ensure district supervisor also attends. “Daft Dave” is better than nothing. Priority to get someone to scene. All handlers have “idiot’s guide” to open book to tell them what to do.

But call handlers need supervision always should be accessible, as investigation begins with first call.

Handbook: not national document. Minimum standards documents if unsure what to do in first arrival of serious crime, inc. rape scenario. “Patrol directory”

Possible recommendation? To have minimum standard handbook in every force.  
 Herts. Has had success with, only trained officers would go and know that starting point is logbook. Includes how to deal with victim.

Northumbria: get SOLO & SOIT/super there asap.

Guidance for dealing with sexual offences: must be high ranking officer to coordinate.

**SCENE:**

Close down scene straightaway; contain  
 Without a SARC, where would you take victim? Dedicated units e.g. child abuse investigation units. Lincs: dedicated units, sometimes involves transporting victim for up to 90mins. Variable across country: CAUs, police-owned property.

If no SARC, how is problem managed. Early evidence kit. Take non-intimate samples; get victim to unit, hope can make contact with FME. (forensic medical examiner) better for continuity and evidence. Judgment call to be made by detective inspector making decision, rather than STO = policy decision.

Move scene of examination into hospital; if no injuries, take direct to SARC.

Specially trained SOLOs/SOITs...

Herts. After 18 months all officers trained; then fully trained SOLO pick it up, depends on circs, state of victim. ICOs.

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If there is no dedicated team, then firstline trained officers = lottery, ability do job is diminished. Best practice = dedicated team of officers.

486,000 trained...but out of date.

How many accounts does victim give of what's happened?

If straight to SARC – up to 3. initial officer, STO, paramedic, doctor. Scope for variation/contradiction in accounts. Ref. triage.

Account: ID, nature of incident, description of suspect.

Early evidence kit: in all police cars, kept in cars, custody, stations, enquiry offices.  
Hospital?

Surrey protocol with ambulance service. If unconscious victim who believe sexually assaulted; will take urine and blood then get consent to use it... infringement of rights?

If EEK is not available, use anything available. Hospitals have sufficient receptacles.  
Common sense and justifying actions = no reason for court to accept, providing audited.

CPS: joint working but not going to get prosecutor at this stage. From trial point of view; haphazard obtaining of possibly vital evidence; victim handling; multiple accounts...  
CPS need to check if difficulties arising and how to iron out. By time SOIT arrives...

Multiple accounts can destroy case; haphazard approach is not acceptable...

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**DR. MAUREEN DALTON, CONSULTANT OBSTETRICS & GYNAECOLOGY**  
**THE FORENSIC MEDICAL EXAMINER**

**Book on forensic gynaecology**

**Rape = legal concept, not medical diagnosis**

**But consequences = ill health**

Nordic study: once raped, self perceived health as poor

20% victims use health service

50% heavily embedded in health service = regardless of investigation/result

Aim: reduce future health problems, without prejudice but hopefully assist successful prosecution... not a scene of crime; person with health needs

Care in evidence package

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Without Consent: recommendation 3 – 1<sup>st</sup> response officers issued guidance re. attending report of rape inc. initial account.

Victims tend to remember first few words police/doctor say to them: first words critical, not judging empathising, listening, looking victim in the eye... makes them more willing to continue

**Forensic medical examination**

Areas for improvement: little consistency for FPs

Police/SARC/A&E/GUM/paediatrician/gynaecologist?GP/Family planning etc.

Diploma being developed (intercolleagiate) in clinical  
Multi-partner support... diploma *not* about expertise “competence to examine” not necessarily give an opinion... all medical colleges to agree competencies

FFLM: new faculty of Forensic & Legal Medicine – has to develop membership qualifications inc. fellowships. Will build on standards, develop gradation.

CRFP: council for registration of forensic practitioners  
Impt to get health authorities on board for clinical evidence; doctors want this.

Released last week in Ireland: National Guidelines (Dept of Health & Children; Justice, Equality & Law Reform) – not online.

**Problem:** lack of engagement with health services.

Each rape victim: £76,000  
62000 victims in 2006 x £76,000 =  
471m expense 2006

Needs statutory obligation on health for adults; no good coming from PCTs, must be top-sliced money from SHAs  
Allow cross boundary funding

Lack of availability of FP services, not being effectively monitored (rape = 5% of work)  
Highly specialised  
Outwith routine police work

**Peer Review:**

Paediatricians consider obligatory for CSA, should also be for adult; also for defence medical examiners

Implications for CPS: cost, time, legal, spent cases or live?  
If one person strongly disagrees: legal point of view; must have middle way. Peer review essential to keep standards



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Needs attendance register; capacity attendee or trainee, keep notes, court ask doctor is peer review

**Medical Evidence**

Not everybody has vaginal penetration

Biggs et al: 22% of women do not

20% no physical trauma

Recommendation 6: professional or expert witness = must clarify  
 Police believe = medical person = expert; not so in court

GMC advice: before agreeing to undertake, careful written instructions = not possible if  
 I am call.. transmigration during process = vulnerability

Supporting new examining doctors; refer to supervisor.

CPS: talk to doctors, feedback.

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**MARY NEWTON, SEXUAL ASSAULT ADVISER**  
**FSS (Forensic Science Service) SEXUAL OFFENCE SERVICE:**  
**BRIDGING THE GAP**

**PROSECUTING RAPE: BUILDING BETTER CASES**

Introduction of sexual offence service...  
 "life of a case" from offence to conviction

Offence

Pre-submission advice

Medical examination

Forensic submission

Strategy letter

Agreed timescales for formalised feedback to OIC

Forensic report

CPS review

Prosecution

Conviction

Training: STO, Invesitgator, FME

Consultancy: SARC, Force Strategy

Management Information: OIC

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SOS forces working with FSS  
Constant review of evidence-based sampling to inform FMEs

Problem profiling samples from victim / suspect; evidence gathering must promote welfare of patients

Regular comms with police trainers

Sample type / reasons for analysis / method of sampling /

**Improved lines of communication:**

STO logs / sexual offence guidance form  
Pre-submission avoids findings-led approach  
Case assessment strategy letter

**Continuous case assessment & evaluation**

Often just asked to test for semen for DNA – insufficiently probative  
Need to know finite detail, not mini-experiments days before court; needs both versions of events  
Amount/distribution of semen may be relevant

Damage to garment re. consent e.g. where clothes cut.  
Object insertion: heel of shoe; police did not request testing of shoe or fingerprinting; officer suggested semen on shoe could be drainage from vagina.

**STIs; other experts re. medico-legal cases**

i.e. if suspect claims impotent, ways of testing

Alcohol involved 50%; toxicology only requested in 1/3 cases  
Insufficient use of EEKs  
FSS looking at ways to remove ambiguity in toxicology statements. 2 cases recently dropped.

[table re. blood alcohol concentrations & general effects]

**To Move Forward**

How could FSS better communicate with CPS at national level?  
How could FSS be better integrate into tripartite process at operational level?  
How to develop consistency around interpretation of alcohol levels and impact on effective prosecution

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**WORKING WITH A SARC**  
**BERNIE RYAN, MANAGER ST. MARY'S CENTRE & KIM DOYLE, CPS**

**Kim Doyle**

Advice on how to get a SARC; keen to roll out more.

Specific remit: forensic examinations  
Shocked that there is no standard format of SARCs. In some places, FEs outsourced.  
Standard of care / lack of physicians to provide opinions = highly variable.

Doctors working at SARCs play integral part of CJ... witnesses, expert evidence, auditing.. without someone from CPS who will provide advice

New PPP material  
Don't ever call SARCs to conference, give evidence  
When acting for defence = fully prepared, rehearses; much better position than prosecuting.

Working SARC gives opportunity to develop relations with other agencies. Together, move forward , work out how to introduce.

**Bernie Ryan**

SARC – police – CPS  
Central = victim

Victim comes with own perceptions and misconceptions about how CJS works; own level of knowledge and understanding. Many assume medical examination, rather than forensic examination.

Number of issues that help police and CPS; SARC is independent, working for victim/client.. Manc: victim arrives at SARC within 1 hour

Offer counselling and other sexually related issues e.g. STIs  
Recently added to children. Links with voluntary agencies. Training to police, CPS, case workers, vol agencies and community groups.

Impt for SARCs to educate society about whole process; Manc police increased funding year on year for 20 yrs.

Gap/chasm research: operationally provide training and comms for operational officers...  
Train **nightingale officers** professionals in thie field lack internal support to enable them to do work.

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Huge support within police service; head of crime for Manc = very supportive. Sits on Talon group (quality assurance for rape cases)... undetected rapes stay on agenda – look at why and what is ungoing.

ISVA: Independent SV advisers: must refer if cases in the area

All SARC workers must understand police investigation process.

CPS: rape coordinator should be challenging

Chief Crown Prosecutor fully supports SARC and promotes services

ISVA & FP are now being invited to conferences. Gives prosecuting counsel better idea of what victim is going through. Input to disclosure policies.

Victim-centred, but multi-agency around that. Has delivered greater understanding of awareness.

Developed understanding of roles and responsibilities.

Looking at how to include more voluntary agencies “anonymous intelligence” requires sensitive handling...

Social sevicees = most difficult to work with.

Victim has better understanding of CJS and health aspects  
Increased confidence and increased outcomes (not necessarily CJ)

Takes a lot of time & commitment...must have champion within CPS & police. Must challenge everything, question each day practice and services. Only as good as the last client you helped. Review both success and failure.

## BOBBY CHEEMA, TREASURY COUNSEL

Considerable power of investigation and coercion  
 Must gather evidence in favour of the accused as well against him  
 Art 6 b accused must have adequate time to collect evidence (para 55-58)

AG guidelines on disclosure, 2005 supersede 2002... but no need to reject spirit of earlier guidelines.

Prosecutors should take what steps they regard as appropriate to obtain  
 Where there is a protocol, you must find out what it is. No protection by protocol for not seeking third party. If no protocol or insufficient protocol, make it your job to create one, gather together relevant agencies in neutral manner.

Why don't counsel, CPS, police respect each other and see common goal? same is true for all agencies you may rub up against... where there is something of relevance, requirement to make a record of something seek which then becomes material in prosecution which can be considered for disclosure in the usual way.

### Read R. v. Brushett

Last resort: get consent of complainant/whoever involved. No duty on third party to disclose material to you. S2 Criminal Procedure Act 1965  
 Now, there is no need to produce affidavit... applicant has to identify witness, material.

Criminal Justice Act 2003

Flagging up procedure, for independent counsel to come alone and flag up what is relevant. S8 application for disclosure; third party material

Be very specific for any application made for disclosure; courts very reluctant to issue general disclosure esp. children's history (medical or psychological)

TB v. Stafford: 14 yr old girl made serious sexual allegations against a man. Copy served on NHS trust, not girl. Prosecution did not tell girl or family; info flagged up without notice. Lord Justice Butler Sloss (Minor A) may be hugely detrimental effect on children's personal records. Judge asked for girl to be brought in, asked directly, reluctantly said yes; case continued. Judicial review: high court was scathing of criticism of almost everyone involved exc. NHS. Lack of support and representation offended girl's rights under Article 8 and overriding principals. Duty of care is much higher to children and may not be overridden even for purposes of a trial. What happens if disclosure cannot be made or consent refused? Can you continue with your trial?

**MARK LINLEY, CPS**  
**Bad Character**

**Criminal Justice Act 2003**

General Principles:

CJA 2003 abolishes common law rules

Provides statutory framework for

- Admissibility of “similar fact” evidence

Different rules relating to defendants and non-defendants

**What is bad character:**

“disposition towards misconduct =

commission of an offence: previous/subsequent/foreign convictions, charged offences, acquittals

R v. Z (2000 AC 483

Rv Smith reported in R v Edwards and others 2005 EWCA Crim 3244

Reprehensible behaviour: for judge to decide whether reprehensible behaviour inc. element of blemworthiness.

Impt to consider whether bad character or not...

Non-defendants:

Prosecutors pledge “protect victim sfrom unwarranted or irrelevant attacks on their character” and steps if unwarranted or aggressive

Q uestions about sexual behaviour may not automatically engage bad character legislation...

Requires leave of court (s.100(4))

Only admissible if important explanatory evidence; substantial probative value

Practical issues: what enquiries must be made about character of witnesses?

R (Gleadhall) v Huddersfield Magistrates Court 2005 EWCA Crim 2826

“I am quite satisfied that it cannot be said that the interests of justice require that, in every case comprehensive enquiries are made about the character of every prosecution witness whose evidence is to be challenged.”

Neither we nor a court can properly decide whether the character of a witness is admissible unless we know what the issues in the case are... we need:

Proper defence statement, use Crim Procedure Rules in order to get it. Case management includes discovering what the issues are in the case.

### **Defendants:**

Must be admissible via gateway in section 101

Once admitted, the evidence can be used

Gateways:

Agreement, adduced by defendant, impt explanatory evidence, relevance to impt matter, substantive probative value, correct false impression, attack on another's character.

Propensity to commit offences of the kind with which charged s.103(1)a

### **R v Hanson Gilmore and P**

Consider each conviction and not rely on the name of the offence or the record as a whole  
Single previous conviction will not often show propensity

3 questions to consider:

- Does history of convictions establish a propensity to commit offences of the kind charged?
- Does propensity make more likely that defendant committed offence charged?
- Is it unjust to rely on convictions of same description or category; will proceedings be unfair if they are admitted?

### **Attack on Character**

Old considerations apply

Simply referring to complainants as a “slag” approved as attack on character

*Bovell v Dowds* (2005) EWCA Crim 1091

*Nelson* 2006 EWCA Crim 3412

Attack on character of non witness

### **Practical considerations**

If several complainants, bad character evidence for one applies to others

More info re. facts of offence, but seek agreement on previous convictions

*R v Hanson*: rare that there should be issue about previous convictions

CPR: assist in active case management

Foreign convictions available under Evidence Act 1851

Provable under Evidence Act: examined copies/sealed/signed

**Procedure**

Serve notices; if not ready to do so; seek pre-trial ruling

R v Gyima & Adjei 2007 EWCA Crim 429

May be cases where have to leave to end of case before considering

**Useful cases**

Hanson Gilmore

Bovell & Dowds

Highton & others

Edwards & others

Most cases to CA, have agreed with the trial.

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**SPECIAL MEASURES**

1997 Act: protection for serious sexual

SM creates to type of witnesses

1. assistance on grounds of age or incapacity "vulnerable witnesses"
2. fear or distress "intimidated witnesses"

**Children:** presumption that will be videoed, which will form evidence in chief  
Act provides video cross examination & re-exam [not yet available]

Child in need of special protection.

**Intimidated witnesses:**

Subs2: take into account whether witness should get SM: nature/circs, age, social/cultural/ethnicity/dom circs/employment/belief/politics.

Quality test: all that matters is complainant

Granting special measures... more evidence provided the better...

**Types**

Screens

Live link (TV)

Private

Removal of wigs & gowns

Video recorded

Video cross-exam

Exam through intermediary

Aids to communication



1-4, 8 SM implemented  
Child witnesses in need of special protection only

**Children’s Evidence**

Children in need of special protection (3<sup>rd</sup> limitation does not apply)  
All other children

Sexual  
Violent

Any special measure for child under age of 17 when case began; once 17 lose access to live link but can still give video evidence; as long as u17 when video made is admissible; after 17 can apply for any other special measures...  
Has not yet been tested in law...

**Application for Special Measures:**

Rule 29, CPR 2005

Time limits: youth court within 28 days of 1<sup>st</sup> appearance; crown court application = 28 days from date of committal; mag court within 14 days...extension may be applied for.

**Special Measures Meetings:**

Required to have at least 2 mtgs  
Early special measures; whether to apply; what is required

**WORKSHOP 3 (group 2)**

“My husband and I split up because he was charged 2 years ago with the rape of a 15 year old girl. This was an alleged liaison with his boss’ daughter. There was an internal investigation which led to him losing his job. Charges were dropped at a later stage.”

ISVA: Independent Sexual Violence Adviser – where can they be found? Attached to different organisations. Being piloted; available in 12 areas.

DV workers; sexual offences mostly deal with crown court. Minimum expectation is for victim support to be involved throughout process. Rape co-ordinator should be contacting rather than other way round.

Emphatic no re. utilising ISVAs; e.g. sit with rape crisis. Claimant does not automatically get referred to ISVA/RC; if they say no...  
Only 12 month funding.

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Must establish whether in area, what do they know, what they can offer...

Ref. Lines: virtually no voluntary organisations; hear so much about Met areas.

NB. ISVAs are not sexual violence counsellors.; some are trained therapists.

Ref. Cumbria: rural area, but excellent victim support network, v. close links (2<sup>nd</sup> largest CPS area, 120 miles from Carlisle to Barrow)...use victim support as lynch pin.

Cumbria: "Let Go Project" Penrith, financed by ?London Rock?

Preparing for court; place victim at centre...

Many victims will opt for live TV link, misconception that defendant can't see them; but need to be made aware he can; so would opt for

Need for victim to understand options available through special measures...

Another aspect which needs to be considered...

[HA] ref. removal of screen at very last minute.

Role of judges: prefer to have practical measures; trying to make witness to change mind. SM brought in to protect witnesses, then all attempts to dissuade from using their rights. Equipment is very antiquated .

Working party involved in equipment? Evaluational pilot going for long time...

Must be more forcible with judiciary on case-by-case; must be careful how addressed.

**It is about involving the victim in an informed way; currently this is not being done.**

**CMS?**

From Sept SM of video recorded evidence in chief will be able in sexual offence cases; fear is that as a matter of course all evidence will be videoed. No, most areas do not have resources to do this.

Suggested model: transcript video; short statement. Danger is if start doing section 9 statement, then will come back to haunt witness under cross-exam. Very recent development (available on internet- where).

Every rape victims evidence will be videoed. Free recall is better than Q&A, to get best evidence. Does this remove choice for victim; does it raise expectation of witness? Sometimes only opportunity of how witness (is going to) comes across. Many other uses.. Sol-Gen's consultation paper concludes re choice of witness; if supported this will preside. But victim cannot choose to use video if not filmed in the first place.

Generally not involved with pre-trial interviews; exc. for pilot in Cumbria, Northumbria, Lancs, Manco, Cheshire. In Manco great issues about police and CPS working together. **Confusion re status of pre-trial interviews.** Purpose is clear, but status around country? Pilot is being evaluated; should be rolled out nationally.

Useful to stop case if it has no hope e.g. ironing out ambiguities  
Only country in the world where prosecutors do not speak to complainants in this way.  
Risk that articulate person with good English will have case pursued? [sdisagreement]

Indecision, exposes complainant to yet more trauma..

Pilot has gleaned nothing but positive response.  
Recorded meeting must be audited as unused material...then you can take another statement which is served.

AG sanction, code of practice signed off by DPP and circulated to high court judges...  
Next step? Combined interview wpoint (as USA: prosecutor takes statement)...

**Scenario:**

Section 41 incident – already having intimate relationship... bad character application?  
Reasonable line of character...

**Third Party Issues**

Losing job: must uncover facts of internal investigation? Potential red herring: to find out why charge was dropped.

Look at police information first? Decide whether to pursue...  
Issues around getting info: if charged, got prosecution file... not to go to employer initially... is it admissible? If the defence are able to get it, then they know

Police consensus: generally would not pursue info; women's orgs dismayed; change of opinion... it would be sought in a murder case, why not a rape case?

If allegation of violence, but defendant denies being violent; is not fishing for evidence; rather reasonable line of enquiry.

How to obtain info: go to company? Esp. if boss's daughter.  
Disclosure manual: you can request third party material; only problem if not prepared to disclose... then need to address how to obtain.

What do you know? What is likely to come out of it?

**3 critical issues for making progress?**

Witness support needs.  
Co-ordinating risk

Identification.

Thematic report: real question over ownership of witness – despite by CPS, police, ISVA etc. if you're not careful, everybody contacting witness; identify which person should liaise with witness.

Funding issues – must show leadership

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Lack of forensic evidence, physicians; highly disparate

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How officers and prosecutors join forces at earliest possible stage... quality or lack of expert opinion.

Protocol for early advice to be given to prosecutors

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## **DISCLOSURE**

MARK LINDLEY, POLICY & PERFORMANCE ADVISER

Impt in all investigations

Being done wrong for last 10 yrs; disclosure must assist complainants case

*Without Consent* inspectorate were critical re way in which disclosure dealt with; esp. rape cases. Unused material may include background information which may affect credibility of complainant (damaging or assisting)

### **Inspectoate criticism**

Late revelation: Delay; inconvenience' ineffective, no confidence, wasted costs... = risk of no disclosure, false allegations (Blackwell v Warren); risk of too much disclosure (personal information e.g. mobile number, new home address; if late then new and irrelevant info) Leads to miscarriages of justice.

Disclosure without prosecutor consideration:

Third party material: use of protocol; early consideration; witness summons' part 28 CPR

Failure to apply disclosure test: no blanket disclosure even if previous convictions; no voluntary disclosure (no such thing); proper consideration of defence statements; use CPR to ensure issues identified; judiciary brought onside by protocol.

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**MARTIN DECKER**  
**PROSECUTOR, MERSEYSIDE**  
**ESP. CHILD PROTECTION MEASURES**

**SECTION 41**

**YOUTH JUSTICE & CRIMINAL EVIDENCE ACT 1999**

Recent research has shown that application re sexual history 1/4 of cases, 2/3 being honoured. New rules that applications in writing invariably broken; belief that present situation is too stringent.. needs stronger education of barristers and judges about the law. Further consideration to mechanism about the law.

Defence counsels: often say conviction rate for rape is not abnormally low... believes jolts scales of justice

In questioning previous sexual behaviour, ensures sensitivity and judiciousness

If at a trial charged with sexual offence, no evidence may be adduced, no questions asked in prosecution about ANY sexual behaviour of complainants

Exceptions: subs 2, s41. court may give leave to written application made on behalf of accused...if sub.S applies..

A question may be asked about previous sexual history if evidence in question relates to relevant issue which is not an issue of consent; or if about consent, is alleged to have taken place around same time as alleged rape; or so similar to any sexual behaviour in past or sexual behaviour at same time

S5: if court believes evidence would go no further than necessary for defence to be able to rebut

“relevant issue” s42: any issue falling to be proved by pros/def in trial of accused

“issue of consent”

“sexual behaviour” any behaviour or experience involving accused, but excluding anything to do with alleged offence.

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Courts may only give leave if:

Evidence rebuttable by prosecution

If issue is not for consent

If is about consent, must have occurred at similar time or so similar cannot reasonably explained as coincidence

Courts will refuse if aim is to undermine complainant's reliability.

Legislation affords better protection against unnecessary scrutiny of sexual behaviour

S41(3) all applications MUST be in writing (part 36 CPR)

Invariably defence should (within 28 days of service of papers) asking for admittance of sexual history, then must clearly set out objections to defendant's application.

If prosecution has been robust

More likely if intimate partners that previous history will go in.

Where application determined, court must state in open court (in absence of jury) reasons for refusing leave)

Court may also make provision to request party to proceeding

Following application, may seek further evidence

Must take into account any case law esp.

R v A: guidance re when application is likely to be successful: art 6 ECHR. Whether any previous episode of consensual sex is admissible; to exclude would endanger fairness of trial.

R v F: once application is successful, court cannot limit extent that admitted evidence can be excluded.

During trial: court must ensure defence does not ask inappropriate questions of victim, nor repeat, nor unnecessary aggression, recognising need for fair trial and that difficult questions may be asked. Court must allow defence to pursue all reasonable lines of enquiry, although there are boundaries which should not be broken.

Honest belief; bias against accused; alternative explanation for physical conditions; young claimant's description of account belying knowledge of the sexual activity in question.

S112: nothing in act affects exclusion of.. suggestion of false allegation may be necessary to obtain leave under s110 and s41

If reasonable evidence to assert allegation untrue; test for leave under 2003 act passed

Inclusion; must ensure that each and every line is dealt with.

**KIM DOYLE**  
**JOINT DIRECTIONS IN CRIMINAL & CIVIL PROCEEDINGS**

[Was to be by Judge Hamilton]

Crim and civ lawyers do not know much about each other's proceedings.

e.g. s47 police/crim think assault ; civil think children's act;

in Mancs: if joint investigation e.g. child raped by single –parent father, so nobody to care for child; police and social worker will have strategy discussion (required since Climbe) relationship should continue, if that happens, then become aware of evidence being collected by each side.

Police & social worker start off holding hands, then go in different directions, with unknown overlap.. mechanism does not exist to allow crossover of information

Authority: S v L CA – child found dead. Police investigation, simultaneous care proceedings, risk to a sibling. Care proceedings went ahead care order was made, but couldn't say who was responsible for death of child. Finding of fact by Mr Justice Headley must be known in court, because finding of fact made, can't pursue trial. Didn't find much weight with judge: care proceedings deal with issues around where child is going to live. Prosecution having criminal trial in criminal court in very different way.

Case had not been subject of any coordination or directions, not until very late stage that CPS aware of care proceedings and evidence within = most undesirable state of affairs... schemes are endorsed, encouraged and instituted nationwide.

Case raised by civil side, not crim.

London Scheme, similar scheme being developed in Manc (summer 2006).. scheme whereby civil and criminal proceedings tied together

Mechanisms are not in place to share info; don't as a matter of course to adopt protocol for inter-agency with civil lawyers and social services.

Means that proceedings must be timetabled together. Protocol now written. Must agree beforehand what each party has, needs etc. hard work to establish and maintain.

**PCMH**

Manc: 10 local authorities to coordinate; might be easier in smaller areas.  
 Other issue: people being bailed off in order to collect evidence... advice: start to build relationships now, as judge have high expectation for delivery.

Protocol: written specifically for Manc court.

## WORKSHOP FEEDBACK, Q&A

### Workshop 1:

Bad character

SARCs, FMEs, HA funding support for doctors examining victims.

Postcode lottery. London SARCs = jointly funded by health authority & police. Same areas PCTs supposed to fund but don't have money. One area, got SARC but no money to continue running. Trouble recruiting doctors as no money.

### Workshop 2:

Victim-focus: difficulty coordinating number of different advisers/assistors to victims

Where a prosecution

Where that remains if it can be changed

Early rulings about special measures.

### Workshop 3:

Special measures

S17(4) automatic right of eligibility to make SM.. need quality information; use ISVAs

What about those who actively want to give evidence in court

Anecdotal evidence, potential lack of impact/admissibility

Huge geographical discrepancies re. plasma screens/tiny out-dated equipment.

Needs collaboration to get quality info from victim to help case.



**ANDY FEIST**

**UNDERSTANDING ATTRITION IN THE INVESTIGATION, DETECTION AND CONVICTION OF RAPE**

**AIMS:**

Why do detection rates for rape/SOs vary by force?

Why have rates fallen since 199?

What factors most accurately predict successful outcomes at court?

8 forces – 2 high detection, 2 low, 4 middle, harris & grace 1997

100 offences of rape since 2003 (fully though CJS)... police and cps files, stripped data

Case file analysis

Data collection issues

Quality of analysis = quality of case

Data access/ DP issues

Random sample

Inability to start sampling trail (incidents to crimes to outcome)

Multiple goals from one study

**Quality assurance:**

Additional information added from HO PNC offender criminal histories and outcomes

Limited internet searching

Extensive cross checking / cross tabulation

Offender-victim relationship

14% stranger

27% acquaintance

22 % ex/partner

Relative 15%

10% friend

13% other

**Time between offence and report by age**

+16 52% report on day; 8% 6 months after

6 months after offence took place 30% for u16s

+16s; marked decline in sanctioned convictions the longer victim delays

**Evidence gathering**

Forensic in 52%

Stranger.acquaintance/other = higher forensic recovery

Victim's medical history in 9% cases

**Factor linking the suspect to the offence**

Role of victim; over 2/3 cases suspect named by victim

Critical point: process of attrition

Original crime sample detection rate of about 30%

72 offences resulted in conviction, about 12.5%

Progression through CJS by force area

Discrepancy between diff forces – why?

**Victim withdrawal**

58% before suspect arrested

33% after arrest by before charge

31% victim withdrawal (mainly during police investigative stage)

Reasons for withdrawal:

20% didn't want to 20% move on

12% impact on family/friends

10% concern re proceedings on suspect

9% other

Nature of withdrawal, focus on relationship

Only 16% of rape victims by relative continued, compared to 58% general pop

Friends: almost 2/3 withdrew

**What factors predict withdrawal?**

- Offender-victim relationship (e.g. relative)
- Whether other victims
- Injury caused
- Time between offence – report (more than 1 day makes huge difference)
- Police force area – why?

**Significant factors on getting to court:**

- Offence linked\*\*\*
- Victim medical history\*\*\*
- Forensic evidence\*\*\*
- Threat to victim\*\*\*
- Victim-offender relationship\*\*\*
- Presence of witnesses\*\*\*
- Police force\*\*

For adults, less imp't re. relationship; time of reporting takes over.

All victims: victim age; previous allegations;

Adult conviction: similar

Presence of witness & victim medical history – rare variables therefore good predictors

8% sample / 37% successful cases: victim's medical history

What predicts predictor: vulnerability, injury.

Trying to understand police force variable: close rate b/w high conviction rate/low withdrawal rate = must understand why; most occur during police stage.

**SIMON KING**  
**HEAD OF VIOLENT CRIME UNIT**  
**Chair of NEW RAPE PERFORMANCE MANAGEMENT FRAMEWORK**

**RESP. FOR DV, SV, GUNS, GANGS AND KNIVES**

Rape Perf group: membership and functions

Central gov; CWASU; ACPO; CPS; HMCPSI; HMIC

- Monitor perf
- Victim satisfaction
- Challenge & support
- Raise standards

As well as reducing absolute numbers of rape victims  
 Looking at specific incidents

**Map of Performane Measures**

Measure 1%

85% rapes are unreported

No crimes: average 17%. U5% o40% in some areas

¾ rapes do not go beyond sanction detection

Cases discontinued by CPS

Trials resulting in conviction: range = up to 90%...average 70%

1800 rape trials annually

**HOW TO IDENTIFY & RAISE CONCERNS?**

Flagging concerns to Chief constables/prosecutors/LCBJs

Trigger points

What's behind the figures  
Offering advice and support  
Rape Prosecutions Delivery Unit

### **Victim Satisfaction**

Treatment of victims – missing piece of the jigsaw  
Seeking agreement from forces/CPS, collecting data re victim withdrawal  
Conducting feasibility study on developing a measure for victim satisfaction

### **Public Service Agreements**

New PSAs to inc focus on serious sexual offences  
Justice for all: increase % serious/priority offences, maintain other OBTJs  
Safer communities: tackle ASBOs, reduce crime, tackle most serious crime and most harmful

No target as want many more rapes to be reported.

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**NWCJ:** 25% cases failed because of lack  
Non-attendance fallen to 14%  
1750 Witness Care Officers across countries  
Mark Jordon, Witness Care Unit Manager

Marital rape case:  
“determined to pursue once satisfied evidence there” struck by how horrible case was.

Victim care units – drew police, victim support, CPS etc.together.  
Witness turn up 9/10 times now, as opposed to 6/10 in recent years.

Initiative “no witness, no justice”  
Duty to ensure witness goes to court in best frame of mind possible.

### **PANEL SESSION**

Charlotte Triggs  
Mary Newton  
Jonathan Bushell (CPS policy directorate)  
Helen Musgrove (HO Policy on Sexual Violence)

Q: What does FSS want from CPS and police?  
MN: doesn't have to involve sexual offence service.. about information and communication e.g. defendant's statement; has never seen one in almost 30 yrs; defence experts' statements; should have this before going to court. Shouldn't be too difficult to have CPS caseworker on each; consider other evidence apart from body fluids/DNA. Use other experts as well.

- Q: Any new policy initiatives from HO relating to rape.  
 HM: Performance monitoring and PSAs. Cross-govt SVAAP published in April07 – lays down all steps being taken.  
 SARC:  
 National Stakeholder Advisory Group  
 Working with key stakeholders: most effective local response to crime
- Q: Development of SARCs – will it get to point of having forensic  
 DH, ACPO, HO – DH leading review, being led by Guy Norfolk.
- Q: Single point of contact?  
 [DG] reports going missing, confusion
- Q: Role of SARCs?  
 CT: last week published standard for rape specialist
- Nic: pockets of good practice; wide differences of practice; how can this be drawn together.  
 CT: some areas pulling weight, others not. In put from Notts & Met re. checklists.
- Q: CPS high court advocates, do they need specific training /. Accredited bar course?  
 JB: in order to prosecute rape, need to be rape specialist.
- Q: thematic review. Where unable to attend pre-trial; trial counsel should carry these out; if not, raise issue with chambers. But never say never...
- Q: child slapped...judge found against could use judge's findings.
- Q: [Angie Boyce, National Rape Crisis]  
 Between 5-10% got to police. Nat Rape Crisis, link into specialist violence sector.  
 CT: focus on training  
 DG: ACPO...next best thing = voluntary sector.

## HH JUDGE PETER ROOK QC

Direction of Old Bailey: mainly homicide; not like the “old days” 1726 Claps Moleyhouse, convicted of sodomy and sentenced to death.

“sex cases”

3 3-day residential courses p.a. recent developments in substantive law

S41 – third party rarely if ever admissible; rogue case McCardy = out of kilter (heavily criticised by Di Birch)

Improvement of substantive law; which offence to choose.. importance of gathering supporting evidence... very important to have elite cadre of counsel... defence counsel often more experienced can seem like "gang rape" 4 defence v. 1 wet-eared prosecutor.

#### Bad character

CA usually dismisses: leading case Hanson; in Gilmore **sexual mores change less over time than other morals...do they???**

Pioneer Dr. Fiona Mason, trauma of rape is NOT common sense. Judgment court marshall allowed expert evidence; forthcoming review.

Country-wide SARCs – applauded, roll out.

It is OK to show complainant e.g. CCTV and ask about IN THE RIGHT WAY; otherwise first time she sees it could be under hostile examination.

#### Elephant traps:

Capacity and consent

Ref. Swansea case

Juries do need direction; counsel must be aware of that. Judge in Bree did not appreciate that; read out statutory definition. Voluntary intoxication may reduce inhibitions, drunken consent is still consent BUT if complainant so intoxicated cannot understand what is going on then capacity dissolves.

#### Evidential Presumptions

Hardly ever arise, but if does OK

Alcohol: position of defendant (Hurd) CA Nov 2006 – repercussions way beyond rape. Sexual assault is offence of basic intent, not specific; just has to be deliberate, so drink doesn't really change; unless accidental e.g. touching someone due to staggering.

Bolt-on intent: extra sexual gratification; if intention is to penetrate, does not apply  
Absence of reasonable belief? Must look as all circs to establish whether belief reasonable, surely include drunkenness? 2 stage test – did defendant believe there was consent; if not = end of case; if yes, was it reasonable?

#### Indictments

Straddled old & new law, where complainant couldn't remember

Before/after 1 May 2004 = fatal to case

Procedural rules: don't have to have specimen

Old law: boy under age of 14 incapable of sex; case where boy started raping aged 10.

#### Sentencing

Extended sentences under new legislation = rarely available

Because most sexual offences = serious specific counts.

Please ensure counsel know way round provisions, CA encourages intervention

**Q&A**

Q: extent of judge's direction

A: Lang v. Howarth common law, where complainant has little or no understanding or what's going on, may not have capacity or be in position.

Practical exercise for judges = how to sum up (spotlight post-Dougall) no need to legislate, just raise awareness about it. Some issues very difficult to legislate; why not let jury decide?

Mark Lindley: decisions about special measures at trial by judge: training for judges... procedural matters; much training about pre-trial matters but often judge not available; often granted well before trial... judges will say this is matter for trial judge.

[presentations to be sent out by email]

