IN THE HIGH COURT OF JUSTICE **CO/3753/2019**
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

THE QUEEN

(on the application of

END VIOLENCE AGAINST WOMEN COALITION)

Claimant

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

SHORT RESPONSE

TO THE DEFENDANT'S SUMMARY GROUNDS OF RESISTANCE

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1. This is a Short Response by the End Violence Against Women Coalition ("**EVAW**") to the Defendant's Summary Grounds of Defence ("**SGoD**"), Submissions on Cost Capping, and the evidence served with the SGoD.

2. EVAW is conscious of the significant volume of material already placed before the Court on this claim at the permission stage, and therefore by this document seeks only to synthesise, and briefly respond to, a number of key points that arise from the Defendant's SGoD. It is hoped that this will assist the Court.

(i) The nature of the dispute

3. The Defendant seeks to characterise the dispute between the parties in this case as almost exclusively factual, in an effort to persuade the Court that the claim is unsuitable for public law proceedings and relief (see e.g. SGoD, §§2, 3(i)). Upon scrutiny, however, it is apparent that the SGoD and the accompanying evidence concede quite a number of the factual planks on which EVAW has built its case, such that much of the matters in issue are common ground. In particular:

a. At no point in the SGoD, or in the statement of Ms Ashton, does the Defendant contend that EVAW is wrong to assert that there has been a precipitous drop in both the rates and volumes of prosecutions for rape and other serious sexual offences. Indeed, such a point could not be seriously contested in light of the government's own conclusions on this issue (see EVAW's Detailed Statement of Facts and Grounds ("**DSFG**") §§58-66), which appear themselves to be reflected in the data now presented by Ms Ashton in her JA/1.

b. It is common ground that all previously existing and legally binding guidance to prosecutors relating to the application of the Merits-Based Approach has been removed or deleted by the CPS: McGill 1, §§49 and 50.

c. It is likewise common ground that prosecutors have been trained away from the Merits-Based Approach. Mr McGill's own evidence is that in the course of the RASSO Roadshows conducted between November 2016 and September 2017 he said to prosecutors that the "*Merits Based Approach was ... sometimes confusing. ... I explained that the only test that prosecutors should apply was the Code test ... I said that we wanted to remove references to the Merits Based Approach from legal training. This is because we were ... satisfied that it was properly reflected in the, then current, version of the Code which had been published in 2013*" (McGill 1, §43).

d. Mr McGill himself recognised that in a paper he prepared for a meeting of the CPS Senior Leadership group in September 2016 that there *"are a number of dedicated members of staff who are highly committed to RASSO work and committed passionately to the VAWG agenda... [a number of whom] could be highly concerned by what could be described as a change of approach to prosecuting cases of this nature. Any such change in approach may be concerning to these staff:* Exhibit GM6, p241, §13.

e. It is not disputed that there has, since Mr McGill assumed his role as Director of Legal Services in January 2016, been a new and significant focus on conviction rates in rape and serious sexual offence cases as an indicator of "performance". Thus, McGill 1 explains how:

i. Soon after he took on his new role, "*he became concerned that our conviction rate for offences of rape and serious sexual offences were particularly low. In 2015/16 we introduced ambitions in terms of the conviction rate in relation to cases of rape and domestic abuse; we identified that a conviction rate of 60% would be the benchmark by which to measure our performance*": McGill 1, §31. As set out further below (at §0), the CPS has recently been quoted in press articles as saying that this target was "*not appropriate*" and "*may have acted as a 'perverse incentive' on prosecutors, deterring them from charging less straightforward cases*".

ii. In early / mid 2016, Mr McGill met with Area RASSO management teams to discuss low conviction rates: McGill 1, §37.

iii. In the paper prepared for a meeting of the CPS Senior Leadership Group in September 2016 (referred to above), Mr McGill also stated that "*it will require only 197 more successful cases to secure the overall conviction- rate of 61 %. Likewise, the same result can be achieved if 350 weak cases were not to be charged. In reality, the improved conviction rate will be secured through more successful outcomes and fewer unsuccessful outcomes*" (Exhibit GM6, p.240, §7).

f. Finally, Mr McGill himself recognised the risk that what he intended to be a "*touch on the tiller*" may turn out to have more extensive impact. As he said in the September 2016 paper: "*there is a risk that any change to the approach in Code decision making in these cases may lead to an overcorrection and result in a failure to prosecute some difficult cases where the Code Test is arguably met. Care has to be taken to ensure a risk averse approach does not develop. That is not what is being suggested here. What is being suggested is a real focus on the-decision making in those cases which are causing CPS real difficulties at present. It has been described as a "gentle touch on the tiller" rather than a fundamental-change of- approach*" (Exhibit GM6, p241, §11).

4. In the Claimant's submission, the now undisputed facts summarised in the paragraph above are more than sufficient to justify the grant of permission.

5. The primary, limited issues of mixed fact and law which remain in dispute between the parties are: (i) whether or not the change of approach by the Defendant led to a drop in charging rates and charging volumes; and (ii) whether that indicates that either the bookmakers' approach has been adopted, or that the change of approach has created an unacceptable risk that prosecutors have adopted a practice of applying the bookmaker's approach. On those points, there is limited dispute on the evidence between the parties:

   a. The evidence of Professor Adams concludes that the available statistical evidence is consistent with such a change in practice towards the charging of rape, and that none of the factors relied on by the Defendant at the time of her report explain the changes observed to the volumes and rates of rape charges.

   b. The Defendant's position appears to be (although it is not clear) that he does not know what has caused the fall in volumes and rates, and that a number of factors could be relevant. Ms Ashton's evidence suggests that a number of further factors (not previously relied upon by the Defendant in this litigation or otherwise on this issue in the public domain) could be relevant. Yet even if those further factors could be relevant in accounting for the drop in charging rates, this does not detract from or undermine Professor Adams' conclusion that the available statistical evidence is consistent with a change in approach to charging practices.

6. The questions in dispute are therefore narrow questions which are indeed matters suitable for judicial determination: insofar as questions of fact arise, those are questions "*which present no greater difficulty than many other questions of fact which are routinely decided by the courts*".[1].

7. Moreover, those disputes are only relevant to certain of the grounds advanced by EVAW. As set out in §93 of the DSFG, different grounds are in issue depending on the Court's characterisation of the Defendant's change in approach. It is submitted

[1] As was the issue of whether prorogation frustrated or prevented Parliament's ability to perform its legislative functions and its supervision of the executive: *R (Miller) v Prime Minister*,[2019] UKSC 41; [2019] 3 WLR 589, §51.

that the vast majority of the grounds of challenge advanced by EVAW are unaffected by those limited disputes (including Ground 3 as to the rationality of the change of approach, Ground 5 as to the procedural fairness of the changes made, and Ground 7 as to whether or not any relevant changes were transparent).

8. In the circumstances, it is submitted that, even if the Court is ultimately not minded to grant EVAW permission to rely on certain evidence submitted with its claim to which the Defendant objects (such as the witness statement of XX or the expert report of Professor Adams), this should not affect the grant of permission for judicial review.

(ii) The significance of the change of approach by the CPS

9. In light of the factual common ground between the parties outlined above, the Defendant's attempts to minimise the significance of those changes are specious. The SGoD develop two principal lines of attack, set out below.

10. **First**, the Defendant seeks to portray the changes made to the guidance as ones of form rather than substance: indeed, the SGoD are liable to give the impression that EVAW is merely complaining about a change in terminology. Thus, the SGoD variously describe how the CPS has made a "*change in wording*" (§30) by removing from guidance "*use of the specific term 'merits-based approach*" (§9 and see also §14: there has been "*an excision of the term 'merits-based approach'*" (emphasis in the original)), with the result that "*any change has been a matter of form or clarification*" (SGoD, §29).

11. However, as is explained in the Claimant's DSFG, the guidance that the Defendant has in fact "*excised*" includes 6 pages of detailed explanation as to how prosecutors should approach charging decisions in line with the Merits-Based Approach (the "Primary Guidance" – see §23 DSFG), as well as explanations to the same effect in its Legal Guidance for Rape and Sexual Offences and its Guidelines on Prosecuting Cases of Child Sexual Abuse (the "Supplementary Guidance" – see §22 DSFG). To suggest that the wholesale removal of this legally binding guidance to prosecutors is just a "*change in wording*" or that the CPS has retained the substance of the guidance but now uses some different terminology is wholly inaccurate.

12. Moreover, if the change to the guidance was not intended to have any substantive impact one might reasonably ask: what was the point of doing it? But the Defendant

did not bring about this change for no reason. As Mr McGill makes clear he did intend the removal of the MBA guidance to have a substantive impact. He says he intended it to stop prosecutors "misapplying" the Merits Based Approach by charging cases that did not meet the Full Code Test. But his intention and what change was actually brought about are two separate matters.

13. **Second**, the Defendant relies heavily on the fact that the Full Code Test refers to an objective jury, and that he has not removed the guidance for prosecutors on avoiding stereotyping, myths or prejudices when prosecuting rape and serious sexual offences (see SGoD, §§9, 11 and 61). This is not an answer to the claim, however, for the following reasons.

    a. It is clear from the SGoD that the Defendant accepts that in order for prosecutors to comply with the Full Code Test and act lawfully when taking charging decisions they must, in substance, apply the Merits-Based Approach. Thus, the SGoD (i) explains how the Merits-Based Approach was not a "*separate test or a different approach*" to the Full Code Test but "*a shorthand as to how the Code should be applied in any event*" (§56); (ii) relies on the (now deleted) guidance which made clear that "*applying the code correctly necessarily involves taking the merits-based approach*" (§57, our emphasis); and (iii) suggests that the "*merits-based approach is implicit in the Code*" (§58, emphasis in the original).

    b. The question which all of this begs is precisely that raised by the Claimant under Ground 4 of its claim: namely has the removal of the Primary and Supplementary Guidance, which made explicit an approach which is now merely "*implicit*" (but which the Defendant accepts is critical if prosecutors are to take lawful decisions in accordance with the Full Code Test) created an unacceptable risk of illegality? The SGoD almost entirely overlook that this is one of the ways (indeed one very important way) in which the Claimant puts its case: see in particular DSFG §§114-118. In EVAW's submission, the acceptance by the Defendant that his prosecutors must in substance apply the Merits-Based Approach when considering the Full Code Test, accompanied by the simultaneous assertion that it was appropriate to remove the Merits-Based Approach guidance because prosecutors were confused by it, actually

underlines why there is a serious risk of illegality now permeating CPS decision making in relation to charging.

c. Further, as noted at §3.f above, Mr McGill himself acknowledged that risk in the paper he prepared for the September 2016 meeting. He also said in that paper (see §3.e.iii above) that in order to avert that risk that the gentle touch on the tiller is misinterpreted by pressure groups and stakeholders, any communication issued about this would need to be properly communicated. There is no evidence whatsoever that the changes of the guidance was properly communicated to the CPS' own staff. Certainly, and as set out in DSFG §§166-172 in connection with Ground 7 (transparency), the changes made were not communicated at all to pressure groups or stakeholders, let alone properly communicated.

d. The fact that the Defendant has retained what Mr McGill himself describes as the "*quite separate*" guidance on myths and stereotypes is no answer to the above point (McGill 1, §17):

    i. The Claimant of course welcomes the fact that the myths and stereotypes guidance has not been deleted by the Defendant, as the Merits Based Approach guidance has been. But when one looks at this guidance (contained at Chapter 21 of the RASO Guidance **[CB/A/1/20]**), it is evident that it does not address the same issues as the now deleted Merits Based Approach guidance and cannot be regarded as a substitute for that guidance.

    ii. Chapter 21 explains and seeks to "debunk" ten common myths which abound in rape and serious sexual offence cases. It contains one sentence to the effect that prosecutors must "*recognise these myths and challenge them at every opportunity*". What it does not do, however, is seek to explain to prosecutors <u>how</u> they should take such myths and stereotypes into account when deciding whether the Full Code Test (and, in particular, the Evidential Test) is met in any given case. Indeed, since the deletion of the Primary and Supplemental Guidance on the Merits Based Approach there is

nothing other than the Full Code Test itself which explains this to prosecutors.

iii. As set out at §117 of the DSFG, in circumstances where the Divisional Court has previously recognised that there are two ways in which the Full Code Test can be interpreted, one which is right and one of which is wrong and unlawful, the failure of the Defendant to take positive steps to tell his prosecutors which approach they need to apply must give rise to a real risk that at least some prosecutors will adopt the wrong, and unlawful, interpretation. Again, the Defendant has not addressed this critical aspect of EVAW's case.

14. Ultimately, whether or not there has been a substantive change in approach must be an objective question for the Court to consider and answer: the DPP cannot be permitted to insulate himself from challenge by simply asserting that changes he has made to legally binding guidance are minor, or were not intended to have major consequences in light of other guidance. Such matters squarely fall within the competence of the Administrative Court.

(iii) The justification for the change in approach

15. The SGoD, and the evidence of Mr McGill, make clear that the primary reason for the change in approach described at §3 above was the HMCPSI Review.

16. Even setting aside the fact that, as set out in the DSFG (§§34-40), the HMCPSI Review was only one of three reviews conducted in 2015-16 in relation to the CPS' approach to prosecuting rape, it is notable that neither the SGoD nor McGill 1 address the facts which underpin Ground 3 of the challenge (irrationality) namely that: (i) the HMCPSI Review did not advocate removal of the Merits-Based Approach guidance (rather, it noted that the "*policy and legal guidance for RASSO casework is sound and when correctly applied should deliver quality casework*", at §1.3); or (ii) the training recommended in the HMCPSI Review had already been carried out, by way of specific RASSO Refresher Trainings. In other words, no rational justification for the change of approach has been set out in the Defendant's response.

17. Rather, the Defendant's only response to Ground 3 is to say that the DPP's supervision of the Code is not a matter which ought to be the subject of challenge due to the Court's "*self-denying ordinance*" (which is wrong and addressed separately at §19 below). For the avoidance of doubt, the Claimant refutes the contention made at SGoD, §102 that it is implicit in Ground 3 that the DPP's true motivation for changing the guidance was to employ a bookmaker's approach: this ground is premised upon the Defendant's case that the reason for the change was to meet the concerns expressed in the HMCPSI Review. It is neither necessary, nor do the Claimants invite such a finding in relation to Ground 3.

(iv) The significance of the Government Review

18. The Defendant places very significant weight both in his SGoD and his Submissions on Cost Capping on the Government Review of the Criminal Justice System in relation to the prosecution of rape. EVAW has and does welcome the Government's review of the criminal justice system to consider the contributing factors to the fall in volumes, and its desire to develop recommendations in light of that review. Indeed, EVAW is an active participant in that process. However, as explained in its DSFG, §§204-205, that broad-brush review, conducted by senior officials and working level practitioners, simply cannot objectively and independently consider the legality of the CPS's change of approach according to judicial review principles (including irrationality, transparency, and breach of procedural fairness).[2] There is no adequate alternative remedy to this claim: judicial review proceedings are indeed "*required*", for that assessment.

(v) The Court's powers of review

19. While the Defendant continues to put significant weight on the line of case law which recognises the discretion afforded to the Defendant in respect of individual decisions in individual cases, he makes no attempt to grapple with the points at DSFG §§176-180. As set out there, very different considerations apply where, as here, the Court is considering the legality of the Defendant's approach to policies and procedures. It is well established that the Court may inquire into the sufficiency and legality of the Defendant's guidance.

[2] This is clearly also the case in respect of the newly announced HMCPSI investigation, which as is clear from the summary at §65 of McGill 1, will not address any of the relevant legal questions posed by this claim.

(vi) The position of the Claimant

20. **First**, the Defendant continues to wrongly elide the position of the Claimant with the position of individual women who have been affected by the change in approach of the Defendant.

21. EVAW takes issue with the contention made at §35 of the SGoD that it rejected the offer for each of the cases detailed in the Confidential Annex, not subject to VRR to be reconsidered. As has been explained, EVAW is not at liberty to agree to such matters on behalf of individuals which it does not represent.[3] However, EVAW understands that the Centre for Women's Justice did write to the Defendant seeking such reconsideration, and that the Defendant rejected the option of so doing, as he said (at that point) that this was a matter it would not consider as EVAW had continued with its claim.

22. **Second**, as part of tis submissions regarding EVAW's application for a Cost Capping Order, the Defendant argues that EVAW has "*not provided any evidence about the willingness or ability of its membership or its funders to fund this litigation*" (§§2-3, 13-16). Out of an abundance of caution, EVAW will provide further information in a signed witness statement for the Court on this issue.

(vii) New matters arising

23. As briefly adverted to above, it is of considerable concern to EVAW that matters are still coming to light in relation to the change of approach in issue.

24. On 13 November 2019 (almost two months after EVAW filed this claim) the Law Gazette reported that in 2016 the CPS set an internal target of 60% for rape convictions which remained in place until 2018 (this article is annexed as Annex 1). This was not previously known to EVAW: in particular, it was not something which the Defendant aired in the substantial pre-action correspondence which was exchanged between the parties, despite its clear relevance to the claim.

25. Mr McGill's evidence now is that this was an "*ambition*" and an "*aspiration not a target*" (McGill 1, §32). According to the Gazette, however, the CPS has acknowledged that this was "*not appropriate*" and "*may have acted as a 'perverse*

[3] Similarly, therefore, EVAW rejects the claim that "*the Claimant has made a deliberate decision not to make individual public law challenges to these twenty decisions*" (see SGoD at §37).

incentive' on prosecutors, deterring them from charging less straightforward cases" (an admission which does not appear to be reflected in Mr McGill's evidence). Mr McGill merely says that "*the CPS removed these levels of ambition in rape cases as it was recognised that they were not as helpful as we had anticipated in performance measurement*" (§36). The timeframe Mr McGill gives for the removal of the targets (namely that they were removed in "2017/18") is also ambiguous (it is not clear to EVAW how removing such targets could have spanned a two year period) and not consistent with the Law Gazette report, which says it was 2018 before the targets were dropped.

26. In circumstances where EVAW alleges that the CPS has failed to act sufficiently transparently to uphold the duty of good administration (EVAW's Ground 7), it is of real concern that material continues to emerge which the CPS accepts (even if Mr McGill does not) was at risk of causing a downturn in prosecutions.

(vii) Conclusion

27. It is common ground that this claim goes to an important issue of serious public interest (see Submissions on Cost Capping, §9). For all the reasons set out in DSFG, and those set out above, EVAW respectfully submits that permission for judicial review should be granted.

PHILLIPPA KAUFMANN Q.C.
Matrix Chambers

JENNIFER MacLEOD
EMMA MOCKFORD
Brick Court Chambers

Witness: AA
No 1
Date: 04/12/2019
Exhibit

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
London

Claim No.

B E T W E E N:

R (on the application of THE END VIOLENCE AGAINST WOMEN COALITION)

Claimant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

SECOND SUPPLEMENTARY EXPERT REPORT
OF PROFESSOR ABIGAIL ADAMS

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1. I am an Associate Professor in the Department of Economics at the University of Oxford. I am also a Research Fellow at the Institute for Fiscal Studies, London. My area of research expertise is in Applied Microeconometrics, with a particular focus on the econometrics of consumer choice and policy evaluation.

2. I have been asked to prepare a short supplementary report to my main expert witness report dated 9th September and the supplement dated 19th September in order to address the points raised in Jean Ashton's Witness Statement and to clarify the relationship between her evidence and my own.

3. For the avoidance of doubt, I have not had access to the data underlying her Statement, and therefore I only respond to the points she has raised as opposed to conducting my own independent analysis of the data underlying Annex 1 – Annex 5.

Key Points

4. There is no factual disagreement concerning the trends in the charging of rape-flagged cases between my report and Ms Ashton's statement for the period 2009/10 - 2018/19. At [15] of my original report, I summarise the trends as:

   "[15] In summary:

   a. Reporting of rape is at its highest level since records began in 2002;

   b. The number of rape cases charged was lower in 2017/18 than in any year since 2009/10, the earliest period that information is available for;

   c. The charging rate looks set to be lower in 2018/19 than in any year since 2009/10, the earliest period that information is available for."

5. In my supplementary report, I concluded that these trends continued to hold for 2018/19 and that "[t]he charging rate for rape-flagged cases amongst those not administratively finalised ['AF'] was its lowest since 2011/12" [Supplementary Report, 4].

6. Ms Ashton's statement does not reject these findings:

   a. Ms Ashton's statement does not contain any discussion of trends in the reporting of rape offences.

   b. Annex 4-Centered Moving Average and Annex 4-Raw Data show that the number of rape-flagged cases that were charged in 2018/19 was lower than in any previous period she considers in these figures.

   c. Annex 3-Centered Moving Average and Annex 3-Raw Data shows that charging rate was lower in 2018/19 than in any previous period she considers in these figures.

   d. Annex 5-Centered Moving Average and Annex 5-Raw Data shows that the proportion of cases charged amongst those with a legal decision (i.e. the charging rate for rape-flagged cases amongst those not AF'ed) was lower in 2018/19 than in any previous period since approximately Q1 2012/13. I state 'approximately' because I do not have access to the precise numbers underlying the graphs presented.

   e. Ms Ashton also comments on the rise in the proportion of No Further Action decisions in the recent data: "The proportion of NFA decisions remained relatively static from 2013/14 until part way through 2017/18 when the rate starts to increase." [Ashton Statement, 44]

7. Ms Ashton does not provide evidence to contradict my conclusion that the factors previously identified by the CPS in their public explanation of the trends and in their internal briefing note to RASSO prosecutors are insufficient to fully account for the fall in the rape charging rate. Rather, the focus of Ms Ashton's statement is to point to other factors that have not been previously communicated by the CPS [Ashton Statement, 20].

8. The only point covered in my reports that is directly addressed by Ms Ashton is police referrals. As to that:

   a. Ms Ashton does not disagree with my conclusion that "a fall in the number of police referrals to the CPS cannot alone explain the drop in the CPS charging rate" [Original Report, 25]; the number of cases charged has fallen faster than police receipt. This is evident in Annex 3-Centered Moving Average which shows a fall in the percentage of cases charged amongst all those finalised.

   b. As to a change in volumes, Ms Ashton argues that a fall in police receipts might not be an outcome of a change in practice, pointing to the decline in receipts around the time of Alison Levitt QC's trainings in 2009 [Ashton Statement, 26]. I completely agree with Ms Ashton that this is a complicated matter and I have sought not to overstate my conclusions in this regard. In my Original Report, I observed that, given the guidance given to police officers on charging, [1] "[i]f police officers observe a change in what counts in practice as a 'realistic prospect of conviction' due to the removal of MBA guidance then they might respond by reducing referrals of more complex and difficult case" [Original Report, 26]. I still consider this to be a logical possibility (and have been instructed that this is a matter which has been addressed by factual evidence from other witnesses on behalf of EVAW).

9. Otherwise, as I indicate above, Ms Ashton does not argue that the trends in the charging of rape cases are inconsistent with a change in CPS practise toward the charging of rape following Greg McGill's RASSO roadshows and the removal of references to the merits-based approach ['MBA'] in CPS training courses and guidance. Rather she argues that given the "numerous events which occurred over the period in question... it is not possible to conclude the impact of any one event" [Ashton Report, 46] and that "the picture is significantly more complex" than just the removal of references to the MBA [Ashton Report, 4].

10. Ms Ashton and I are in complete agreement over the difficulty of making causal statements of the impact of the roadshows and the removal of references to the MBA. As Ms Ashton notes in her report, I explicitly note the difficulty of making causal conclusions at a number of points (see Ashton Report [7], [8], [40], [45], [46]).

11. However, the question I was asked to consider was "whether the available evidence is consistent with a change in Crown Prosecution Service ['CPS'] practice". I found that it was. I was also asked to consider whether the available evidence was consistent with the explanations that had (at that point) been put forward by the CPS, and concluded that they could not fully account for the observed trends.

Clarifications on any points of apparent disagreement

12. At [9], Ms Ashton argues that "As far as [she] is aware, CPS has never attributed the fall in rape charge cases solely to a decline in police receipts." I agree and I made this clear in my original report and in my supplementary report.

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[1] Charging (The Director's Guidance) 2013 - fifth edition, May 2013 (revised arrangements), para 8.

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a. In my original report, under the title "Assessing the CPS' Proposed Explanation of the Trends" ([22]-[]), I start by highlighting the factors identified by Susan Hemming and Greg McGill, Director of Legal Services in a briefing note for RASSO teams and staff ['CPS Briefing Note']. This excerpt is copied at Figure 1. Three factors were highlighted as the preferred explanation for a fall in the charging rates and caseload for rape:

   - A fall in charging referrals from the police;
   - A rise in cases where files are returned to the police;
   - An increase in the length of time for cases to progress through the system.

   In my original report, I then went on to assess the merit of each argument in turn.

Figure 1. Excerpt from CPS Briefing Note on 15th July 2019

Fall in cases

- The recent fall we have seen in caseload has been cited as evidence of a change in policy.
- We believe that actually a number of other factors have contributed to a fall in charging rates for rape, including a fall in referrals from the police and an increase in cases where we have given the police early investigative advice and where we have asked for further work to be done.
- As you will know very well, we have also seen an increase in the volume of digital data and the analysis of evidence gathered by following reasonable lines of enquiry. It is therefore taking longer for cases to get through the system from report to conclusion.

b. In my supplementary report, I was able to comment on the CPS' public explanation for the trends given in the VAWG Report 2018/19 (Figure 2). No further grounds of explanation for the decline were given beyond those that were articulated in the CPS Briefing Note on 15th July 2019, although more detail on the relationship between the number of police-CPS consultations and the increase in the length of cases is given. I again assessed each argument in the light of the publicly available data at that point.

Figure 2. CPS Explanation in VAWG Report 2018/19

Potential factors which may have impacted on the drop in rape charges:

The growing gap between the number of rapes recorded by the police, and the number of cases going to court is a cause of concern for all of us in the criminal justice system. However, it is not an indication of any change in policy, or lack of CPS commitment to prosecute.

There are a number of factors which we believe have contributed to the drop in rape charges:

- **a reduction in the number of referrals from the police to the CPS;**
- **an increase in the volume of digital data which takes time to investigate, and so may result in cases taking longer to reach the CPS;**
- **an increase in the number of consultations between the police and prosecutors pre-charge, with action plans put in place to set out what further work is needed for a charging decision to be made. This can result in charging decisions taking longer, but should mean stronger cases are taken forward; and**
- **an increase in the number and proportion of cases where the police have not responded to either early investigative advice or requests for more information.**

Source: Violence Against Women and Girls Report 2018/19, p15.

13. At [10], Ms Ashton suggests that my report does not take into account all relevant events over the period: "At paragraph 6 of her statement, Professor Adams identifies four key events over the observed time period. However, there were many more events over this period which may have impacted the data (see full list at paragraph 20)." As to that point:

    a. First, the list that I give at [6] of my original report is simply the list of events that relate to the CPS change in practise toward the charging of rape cases. These were the events that I was instructed to consider.

    b. The list of additional factors that I considered in my report were those explicitly mentioned in the CPS Briefing Note and VAWG Report 2018/19.

    c. In my report, I also included an explicit discussion of the change in disclosure practise ([37]-[41]) and explicitly stated that "The evidence I have outlined … indicates that there are other potentially relevant events [in addition to those explicitly highlighted by the CPS] relating to the significant fall in rates and volumes observed" [42]. Indeed, Ms Ashton directly quotes this passage in her own report.

14. Ms Ashton argues that the CPS' quarterly presentation of the data allows "data trends to be more easily identifiable and allow[s them] to more accurately map multiple events across the timeline" [Ashton Statement, 18]. She goes on to present the data as a centred moving average trend that smooths out short-term fluctuations in the data.

    a. Ms Ashton does not identify any specific trends that are obscured by my presentation of the data.

    b. I focused on annual data in my reports as this was the form in which the public VAWG statistics are presented and I did not have data from 2018/19 in a less aggregated format. While I had access to data at the monthly level following the Freedom of Information Request by Ms Rachel Krys on 21st June 2019 ['Krys FOI Request'], I did not focus on this data in my report given it: a) showed the same trends as the annual data but in a less transparent manner given seasonal trends and b) was not available for 2018/19.

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c. Nonetheless, in Figure 6 of my initial report, I used the monthly data to show that the data I had access to "suggests that the increase in the NFA rate may have started to increase in March 2018 but it [was] difficult to establish this without further [granular] data into 2018/19" [Original Report, 29]. Ms Ashton has access to more granular quarterly data through to the end of 2018/19. She finds support for my hypothesis that the NFA rate appeared to increase in 2017/18, stating that the NFA rate starts to increase "part way through 2017/18" [Ashton Statement, 44].

d. At [19] of her statement, Ms Ashton describes her use of the centred moving average methodology. Intuitively this method involves taking an average of the data values before and after an event. While it is true that this can "help to determine the movement of the trend" [Ashton Statement, 19], it is more controversial and not-robust to argue that it helps "to visualise change when it actually happens". Indeed, as Ms Ashton advises in Annex 1, smoothing methods can actually complicate identifying the timing of changes in trends: "trends may appear to start 2 quarters earlier because of this methodology" [Ashton Statement, Annex 1]. This is important to bear in mind given the interest in changes in charging rates over a short window of time.

15. The additional "events considered to be relevant" by Ms Ashton that I do not address in detail in this report or in my Original or Supplementary report are as follows:

a. Events Pre-2013: Public Services Spending Review 2010; Operation Yew Tree (October 2012).[2]

b. Events in 2017: CPS Admin Triage Implementation; changes made to pre-charge bail; CMS outstanding case checks.

c. Ms Ashton does not explain the relevance of the events occurring before 2013 for understanding the most recent falls in the volume of charging decisions or the charge rate of rape-flagged cases. She simply notes that pre-charge receipts "continue[d] to decline after the implementation of the 2010 Spending Review" but this decline "appeared to curtail around October 2012 with the beginning of... Operation Yew Tree" [Ashton Statement, 24-27]. She does not provide any further discussion of why these further matters are relevant for understanding recent trends.

d. Ms Ashton discusses the CPS Admin Triage Implementation and changes made to pre-charge bail in the context of the decline in pre-charge volumes [Ashton Report, 30-33]. However, she provides no explanation for why these events might be relevant for the fall in the charging rate and the rise in the rate of NFA decisions.

e. Ms Ashton discusses changes to the CPS case management system made in June 2017 in which reminders were sent to the police where "a response had not been received to an action plan set by the prosecutor" [Ashton Statement, 42]. She suggests that this change might have been expected to increase the volume and proportion of administratively finalised decisions. In October 2018, new codes were introduced "to better explain the reason for pre-charge NFA decisions"

[2] Please see [8b] for a discussion of the point raised in connection with Alison Levitt QC's trainings on the MBA (December 2009- March 2011).

[Ashton Statement, 43]. However, she provides no explanation for why between these new explanatory codes might have affected the volume or proportion of cases charged and NFA'ed.

f. I have not had time to analyse in detail whether these events can account for the recent drop in the volume of charges and the charging rate and Ms Ashton does not address this point directly in her statement.

Statement of truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

Signed

Abi Adams.

5 December 2019

IN THE HIGH COURT OF JUSTICE **CO/3753/2019**
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

THE QUEEN
(on the application of
END VIOLENCE AGAINST WOMEN COALITION)

Claimant

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

SECOND WITNESS STATEMENT OF SARAH GREEN

Introduction

1. I am the same Sarah Green who made a previous witness statement in this case on 19 September 2019.

2. I make this statement on behalf of EVAW and do so in support of EVAW's challenge to the change of approach by the Defendant.

3. I have been provided with the Defendant's Submission in relation to Cost Capping, and have read the submissions made at paragraphs 203 and 13-16, in which the Defendant argues that EVAW has not provided any evidence about the willingness or ability of its membership or its funders to fund this litigation. It appears to be suggested that this is a reason not to grant a Cost-Capping Order.

4. In light of this, I set out below some further detail on our governance, membership, sources of income and reasonable expectations of what we can afford to contribute towards litigation we regard as absolutely critical and in the highest level of public interest.

EVAW's core governance and membership arrangements

5. I first address the possibility of seeking more funding from our members.

6. The EVAW Coalition is both a limited company and a registered charity. The EVAW Coalition has more than 80 organisations affiliated to us, whom we commonly refer to as 'members' but who in strict legal terms are in two distinct categories: first, actual members (whom we refer to as 'formal members': see our Membership Criteria and Application Form at Exhibit **SG/44**). These formal members are full company members as laid out in our Memorandum and Articles of Association (which I provide as Exhibit **SG/45**), including being full voting members at the AGM, and whose representatives are able to be elected to our board as trustees); and second, supporters (whom we refer to as 'informal members' (again, see the Membership Criteria)), who support our aims but who explicitly are not and do not have the rights of company members, cannot vote at the AGM and cannot become trustees. To explain more fully:

    a. The actual members are organisations whose work and expertise is violence against women and girls focused; we 'centre' these organisations because it is their knowledge, experience and expertise we aim to amplify in our campaigning work.

    b. The supporters, including Amnesty UK and the TUC, are not women's organisations and usually do not have the expertise that the organisations delivering support to women facing abuse in the UK have; they tend to be groups and organisations which support or back our aims, but who do not develop policy, knowledge or campaigning in this area.

7. EVAW carefully made the decision to make only the women's organisations working in this area into full company members in order that only these can influence our agenda and priorities, and to maintain a close connection to these organisations' work.

8. EVAW never asks its members, neither the full members nor the supporters, to contribute financially to our work. This is because the formal members are usually of low income themselves; we could never charge a large fee and a small fee would be significant administrative burden. Moreover, it is important to us to keep this area of our membership as flat as possible, such that an individual, local service provider in say Newcastle, can sit as an equal in our meetings with those who have services in

multiple locations. Introducing fees on a flat or sliding scale would, in our view, be a matter that would disrupt this equality.

9. We also decided from the outset never to be in an income generating space where we create obligations or problems for our members. What we need from them is participation and knowledge, not £100/annum.

10. Regarding the supporters (informal members), we have never asked them for money, because we don't want to be in a position of having income from organisations like those and not from our core women's organization members. It would potentially create imbalance, and possibly an expectation of influence.

11. In sum, there is no precedent for us ever asking our members, supporters or any other 'fellow traveller' for financial support for any campaigning work, including litigation. We occasionally appeal to members of the public to support our work, such as in the Crowdfunding appeal related to this litigation, but it would not be reasonable of us to ask our member organisations to contribute financially to campaigning costs, when many of them run their own support services on tight budgets, and have little or no 'campaigning' budget themselves. It would feel an inappropriate to ask given the work they do and our established relationship of shared aims and values as to financial backing. Even asking may well put our relationship with our members at risk.

12. It should also be noted that we publicised our Crowdjustice fund extensively to our supporters and they were therefore aware of the need and able to contribute what they could via the Crowdjustice website.

EVAW's sources of income, budgeting and liabilities

13. I have also been asked to address here EVAW's sources of income from our funders.

14. EVAW's income, which is available to read through in our published charity accounts on the Charity Commission website, is predominantly from grant-making trusts and foundations, and lately also from a small number of private individuals/philanthropists. The grants from these trusts (and indeed the gifts from the private individuals) tend to be tied to grant applications which specify what work will

be delivered over a given timetable and to a set budget. Some of the trusts do fund proportions of our core costs, which covers office rent and facilities and proportions of the small number of core workers' salaries; while others have us set out aims, objectives and deliverables against specific campaign areas (eg our work on education policy and school curriculum and safeguarding practice in relation to abuse). We report back on these grants and need to show they were spent as agreed.

15. As explained in my first Witness Statement, it has been possible to budget £15,000 towards possible costs for this case in our 2019/20 budget, an unusual and new budget line for us. As explained above, we have also undertaken significant crowdfunding.

16. Sadly, we do not have a further 'pot' of money which can be just switched to this litigation, and are obliged to be sensible with our reserves and our broader income.

17. As to the question of whether or not we could seek further income from our existing funders, the only way of which I am aware to do this would be to appeal to one of the trusts or foundations that funds us for what they sometimes term "emergency grants" to us as an existing fundee. These additional grants are rarely above the sum of £10,000 and therefore are unlikely to cover likely costs, which as yet are unknown. In any event, such grants are usually only authorised on an emergency basis for one-off projects where it is clear how much costs are involved, and what the outcome/benefit will be, like a programme of training or development. An application for emergency litigation funding – with all of the risks involved – is not likely to be successful, in my view; let alone an application for unlimited funding to cover the as yet unknown costs of litigation. Trusts/foundations will not make unlimited grants where the costs needed are not clear.

18. We are more than happy to provide more detail and documentation about our income and funding at any time.

Statement of truth

I believe that the facts stated in this witness statement are true.

Signed

Dated 10 December 2019

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End Violence Against Women Coalition Membership

About EVAW Coalition

EVAW is a UK-wide coalition campaigning for strategic approaches to all forms of violence against women and girls in the UK. Our vision is a world free from the threat and reality of violence against women and girls.

EVAW's values

EVAW works to the UN definition of violence against women and girls (VAWG) as "violence directed at a woman because she is a woman or acts of violence which are suffered disproportionately by women."

EVAW uses a feminist analysis that understands VAWG as an issue of gender equality, perpetrated mainly by men and boys against women and girls, and as both a cause and consequence of women's inequality. EVAW recognises that that inequality manifests, and is experienced, in different ways; and that gender inequality can intersect with other forms of oppression (such as racism, homophobia, ableism and ageism). This can affect women and girls' experiences of violence and their access to rights, justice and support.

EVAW works within a human rights framework that recognises VAWG as a fundamental violation of women's human rights, both in the UK and globally.

EVAW is an independent, feminist, secular space.

EVAW's governance and membership structure

EVAW's Board of Trustees is elected or co-opted from across EVAW's formal and informal membership. The Board is the governing body that is responsible for EVAW as a company and a charity, as well as its property and funds. EVAW Trustees have the legal rights and responsibilities of charity Trustees and as 'Directors' as laid out in EVAW's Memorandum and Articles of Association in addition to their membership status.

EVAW has two types of membership.

Formal Members: EVAW relies on a strong, feminist evidence base to further our strategic work to eliminate VAWG. In practice this means that we are committed to ensuring that our work is rooted in, and connected to, the diverse experiences and perspectives of survivors of VAWG. We also integrate the different analyses offered by feminist academics who hold expertise in VAWG and/other related issues. Formal members are therefore organisations and individuals with unique practice-based or research-based knowledge who work primarily on addressing violence against women and girls. Only formal members have the legal rights of company members as laid out in EVAW's Memorandum and Articles of Association.

Informal Members: EVAW values and welcomes wider contribution and support from organisations and individuals to fulfil the aims of the Coalition. Informal members are organisations and individuals whose work is compatible with ending violence against women and girls. Informal members do not have the legal rights of company members as laid out in EVAW's Memorandum and Articles of Association.

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EVAW Membership Criteria

Membership of EVAW is open to any organisation or individual who fulfils the Membership Criteria and is invited by the Board of Trustees to become a member.

- All members (both formal and informal) must fully subscribe to the values of the EVAW Coalition.

- Formal members must work primarily on addressing violence against women and girls and be able to demonstrate unique practice-based or research-based knowledge (for example, through providing women-led VAWG support services or undertaking dedicated research).

- Informal members must work primarily on a cause compatible with ending violence against women and girls (such as human rights, or gender inequality).

- EVAW expects all members to be able to contribute to the work of the Coalition through:
  - Actively and positively supporting EVAW's work (where resources allow) by attending meetings, responding to consultations, and supporting and publicising EVAW policy positions and campaign goals;
  - Working in a collaborative way according to feminist principles of respect, inclusion and finding common ground;
  - Respecting confidential information and media embargoes;
  - Acknowledging membership on their website and other relevant materials, including press releases (where appropriate);
  - Sharing information on upcoming media stories, contacts, policy development and involving their membership/supporters in campaigns (where appropriate).

Membership may be terminated if the member concerned: gives written notice of resignation to EVAW; is an organisation that ceases to exist; is removed from the membership by agreement of the Directors on the grounds that they are no longer able to fulfil the Membership Criteria (and following the procedure laid out in EVAW's Memorandum and Articles of Association).

EVAW membership is not transferable.

Benefits of EVAW Coalition membership

EVAW formal membership provides:

- Legal rights and responsibilities as company members of EVAW (see below);
- Opportunities to advise the Board on strategic direction and priorities for policy and campaigning;
- Participation in consultations, policy development and campaigns;
- Regular email bulletins;
- One-to-one advice and support (where resources allow);
- Invitation to EVAW workshops, roundtables and events.

EVAW informal membership provides:

- Regular email bulletins;
- Participation in consultations, policy development and campaigns (where appropriate);
- Invitation to EVAW workshops, roundtables and events (where appropriate).

Rights and responsibilities of EVAW Coalition formal members

Members are entitled to attend AGMs by authorized representative or by proxy. At an AGM, members may: receive EVAW's accounts for the previous financial year; receive the Trustees' report on EVAW's activities since the previous AGM; accept the retirement of Trustees who wish to retire or who are retiring by rotation; confirm the appointment of any newly elected or co-opted Trustees; appoint auditors; confer on any individual (with his or her consent) the honorary title of Patron, President or Vice-President of the Company; discuss and determine any issues of policy or deal with any other business put before them by the Trustees.

EVAW members undertake a liability limited to £1 to contribute to the assets of EVAW in the event of its being dissolved while they are a member or within one year after they cease to be a member.

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EVAW Membership Application

Please select from the membership options below

◯ I/we wish to become formal members of the EVAW Coalition and work primarily on addressing violence against women and girls.

◯ I/we wish to become informal members of EVAW and work on a purpose compatible with ending violence against women.

Please state the nature of your work

Declarations

Please tick to agree to the declarations

☐ I/we fully subscribe fully to the values of the EVAW Coalition;

☐ I am/we are able to positively contribute to the work of EVAW;

☐ I/we understand and accept the relative rights, roles and responsibilities of being a formal or informal member of the EVAW Coalition.

Details

Please provide your details below

◯ I am applying on behalf of an organisation.

◯ I am applying as an individual.

Name of organisation / individual

Organisation's named representative*

Postal address

Telephone number

Email address

Website

Thank you for providing us with this information. We will use it for EVAW purposes only and to contact you. We comply with the Data Protection Act 1998 and will not pass your personal data on to third parties.

Please return this completed form to admin@evaw.org.uk

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* Organisations should nominate a named representative to act as the main link between EVAW and the organisation. We would expect that this would normally be a woman. She should have the authority within her organisation to make decisions on behalf of the organisation and effect action on EVAW matters. She is responsible for: attending relevant events; representing the interests, concerns and relevant knowledge base of their organisation to EVAW; reporting back to their organisation on the work of EVAW; and undertaking necessary work to secure support of EVAW work from their organisation. Member organisations must ensure new representatives are thoroughly briefed and that EVAW is informed of any changes.

THE COMPANIES ACT 2006
WRITTEN RESOLUTION
of the
End Violence Against Women (EVAW) Coalition
company Number 07317881
CHANGE OF OBJECTS

In accordance with the Companies Act 2006 which is incorporated in the company's articles of association we the undersigned, being all the members of the company who at the date of this resolution are entitled to attend and vote at general meetings of the company, hereby unanimously resolve upon the following resolution and agree that it shall be as valid and effective as if it had been passed as a special resolution at a general meeting of the company duly convened and held

That the objects as set out in the attached document be approved and adopted as the new objects of the company in place of all existing objects and the memorandum of association be updated accordingly

Date: 18 /03/ 2015

Signed.

Liz Kelly (Liz Kelly)

E McKean (Liz McKean)

J Vertch (Janet Vertch)

868k

Company no 7317881

COMPANIES ACTS 1985 TO 2006

COMPANY LIMITED BY GUARANTEE AND

NOT HAVING A SHARE CAPITAL

MEMORANDUM AND ARTICLES OF ASSOCIATION OF END VIOLENCE AGAINST WOMEN COALITION LTD

A04 *A452DS8R* 10/04/2015 COMPANIES HOUSE #128

Companies Acts 1985 to 2006

Company Limited by Guarantee and not having a share capital

Memorandum of Association of the End Violence Against Women Coalition Ltd

COMPANY NOT HAVING A SHARE CAPITAL

Memorandum of association of End Violence against Women Coalition

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company

Name of each subscriber	*Authentication by each subscriber*
LIZ KELLY	Liz Kelly
JANET VEITCH	Janet Veitch
ELIZABETH MCKENN	E. McKenn

Dated 27/10/2010

868m

Companies Acts 1985 to 2006

Company Limited by Guarantee

ARTICLES OF ASSOCIATION OF THE

END VIOLENCE AGAINST WOMEN COALITION LTD

INDEX TO THE ARTICLES

1. . NAME

The name of the Company is the **End Violence Against Women Coalition Ltd**

2. REGISTERED OFFICE

The registered office of the Company is in England

3. OBJECTS

The objects are

3 1 To promote human rights (as set out in the Universal Declaration of Human Rights and subsequent United Nations conventions and declarations), and in particular the rights of women and girls to be free from violence, throughout the world, including by all or any of the following means

a Monitoring abuses of human rights,
b Obtaining redress for the victims of human rights abuse,
c Relieving need among the victims of human rights abuse,
d Research into human rights issues,
e Providing technical advice to government and others on human rights matters,
f Contributing to the sound administration of human rights law,
g Commenting on proposed human rights legislation,
h Raising awareness of human rights issues,
i Promoting public support for human rights,
j Promoting respect for human rights among individuals and corporations,
k International advocacy of human rights,
l Eliminating infringements of human rights

In furtherance of that object but not otherwise, the trustees shall have power

To engage in political activity provided that the trustees are satisfied that the proposed activities will further the purposes of the charity to an extent justified by the resources committed and the activity is not the dominant means by which the charity carried out its objects

4. MEMBERSHIP

4 1 The Company must maintain a register of Members

4 2 Membership of the Company is open to any individual or organisation who fulfils the Membership Criteria and is invited by the Directors to become a member

4 3 The Directors may establish different classes of membership (including informal membership), prescribe their respective privileges and duties and set the amounts of any subscriptions

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4 4. Membership is terminated if the member concerned

4 4 1 gives written notice of resignation to the Company

4 4 2 is an organisation that ceases to exist

4 4 3 is more than six months in arrears in paying the relevant subscription, if any (but in such a case the member may be reinstated on payment of the amount due) or

4 4 4 is removed from membership by agreement of the Directors on the grounds that they are no longer able to fulfil Membership Criteria The Directors may only pass such a resolution after notifying the member in writing and considering the matter in the light of any written representations which the member concerned puts forward within 14 clear days after receiving notice

4 5 Membership of the Company is not transferable

5. GENERAL MEETINGS

5 1 Members are entitled to attend general meetings by an authorised representative or by proxy Proxy forms must obtained from the Secretary and delivered to her at least 24 hours before the meeting General meetings are called on at least 21 clear days' written notice specifying the business to be discussed

5 2 Members are entitled to vote by post or electronic means and should obtain postal voting forms from the Secretary

5 3 There is a quorum at a general meeting if the number of members or authorised representatives present in person or by proxy is at least three (or one-quarter of the members if greater)

5 4 The Co-Chairs or (if the Co-Chairs are unable or unwilling to do so) some other member elected by those present presides at a general meeting

5 5 Except where otherwise provided by the Articles of the Companies Act, every issue is decided by a majority of the votes cast

5 6 Except for the Co-Chairs of the meeting, who have a second or casting vote, every member through an authorised representative or by proxy has one vote on each issue

5 7 A written resolution signed in accordance with the Companies Act 2006 by those entitled to vote at a general meeting is as valid as a resolution actually passed at a general meeting For this purpose the written resolution may be set out in more than one document and will be treated as passed on the date of the last signature

5 8 The Company may hold an AGM in every year

5 9 At an AGM the members may

5 9 1 receive the accounts of the Company for the previous financial year

5 9 2 receive the Directors' report on the Company's activities since the previous AGM

5 9 3 accept the retirement of those Directors who wish to retire or who are retiring by rotation

5 9 4 confirm the appointment of any newly elected or co-opted Directors to fill the vacancies arising

5 9 5 appoint auditors for the Company

5 9 6 confer on any individual (with his or her consent) the honorary title of Patron, President or Vice-President of the Company

5 9 7 discuss and determine any issues of policy or deal with any other business put before them by the Directors

5 10 An EGM may be called at any time by the Directors and must be called within 28 clear days on a written request from at least 10% of members

6. THE DIRECTORS

6 1 The Directors have control of the Company and its property and funds

6 2 The Directors when complete consist of at least three and not more than twelve individuals, all of whom must be EVAW members or Trustees or staff of member organisations Of these, eight Director posts will normally be elected from among the membership and up to four Directors may be co-opted

6 3 Every Director after appointment or reappointment must sign a declaration of willingness to act as a Company Director, Code of Conduct and Conflict of Interest policy

6 4 Directors will usually retire at the end of their three-year term of office

6 5 A retiring Director who remains qualified may be reappointed for further terms of office See Directors' policies on retirement

6 6 A Director's term of office automatically terminates if she

6 6 1 is disqualified under the Companies Acts from acting as a Director

6 6 2 is incapable, whether mentally or physically, of managing her own affairs

6 6 3 is absent without notice from three consecutive meetings of the Directors and is asked by a majority of the other Directors to resign

6 6 4 ceases to be a member, be employed by or be a trustee of a member organisation

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6 6 5 resigns by written notice to the Directors (but only if at least two Directors will remain in office)

6 6 6 is removed by resolution of the members present and voting at a general meeting after the meeting has invited the views of the Director concerned and considered the matter in the light of any such views

6 7 The Directors may at any time co-opt any individual from the membership who is qualified to be appointed as a Director to fill a vacancy in their number or as an additional Director, but a co-opted Director holds office only until the next AGM, when they may be co-opted again by the Directors

6 8 A technical defect in the appointment of a Director of which the Directors are unaware at the time does not invalidate decisions taken at a meeting

7. DIRECTORS' REMUNERATION AND EXPENSES

7 1 Directors are not entitled to remuneration for their services to the Company as Directors

7 2 If Directors are remunerated for any other service they undertake for the Company this must be in accordance with the Conflict of Interest policy

7 3 The Company may pay any reasonable expenses which the Directors properly incur in connection with their attendance at meetings as requested by the Co-Chairs

8. DIRECTORS' PROCEEDINGS

8 1 The Directors must hold at least two meetings a year

8 2 A quorum at a meeting of the Directors is three Directors

8 3 A meeting of the Directors may be held either in person or by suitable electronic means agreed by the Directors in which all participants may communicate with all the other participants

8 4 The Co-Chairs or (if the Co-Chairs are unable or unwilling to do so) some other Director chosen by the Directors present presides at each meeting

8 5 Every issue may be determined by a simple majority of the votes cast at a meeting, but a written resolution signed in accordance with the Companies Act by the Directors is as valid as a resolution passed at a meeting For this purpose the resolution may be contained in more than one document and will be treated as passed on the date of the last signature

8 6 Except for the Co-Chairs of the meeting, who have a second or casting vote, every Director has one vote on each issue

8 7 A procedural defect of which the Directors are unaware at the time does not invalidate decisions taken at a meeting

9 CALLING A DIRECTORS' MEETING

9 1 Any Director may call a Director's meeting by giving notice of the meeting to the Directors or by authorising the Secretary (if any) to give such notice

9 2 Notice of any Directors' meeting must indicate its proposed date and time, where it is to take place and if it is anticipated that Directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting

9 3 Notice of a Directors' meeting must be given to each Director but need not be in writing

10. DIRECTORS' POWERS

The Directors have the following powers in the administration of the Company

10 1 To appoint (and remove) any member (who may be a Director) to act as Secretary in accordance with the Companies Act

10 2 To appoint a Chair or Co-Chairs, Treasurer and other honorary officers from among their number

10 3 To delegate any of their functions to committees consisting of two or more individuals appointed by them At least one member of every committee must be Directors and all proceedings of committees must be reported promptly to Directors

10 4 To make standing orders consistent with the Memorandum, the Articles and the Companies Act to govern proceedings at general meetings and to prescribe a form of proxy

10 5 To make rules consistent with the Memorandum, the Articles and the Companies Act to govern their proceedings and proceedings of the committees

10 6 To make regulations consistent with the Memorandum, the Articles and the Companies Act to govern the administration of the Company and the use of its seal (if any)

10 7 To establish procedures to assist the resolution of disputes or differences within the Company

10 8 To exercise any powers of the Company which are not reserved to a general meetings

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11. RECORDS AND ACCOUNTS

11 1 The Directors must comply with the requirements of the Companies Act as to keeping financial records, the audit of accounts and the preparation and transmission to the Registrar of Companies of

11 1 1 annual returns

11 1 2 annual reports and

11 1 3 annual statements of account

11 2 The Directors must keep proper records of

11 2 1 all proceedings at general meetings

11 2 2 all proceedings at meetings of the Directors

11 2 3 all reports of committees and

11 2 4 all professional advice obtained

11 3 Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a member

12. NOTICES

12 1 Notices under the Articles may be sent by hand, by post or by suitable electronic means

12 2 The only address at which a member is entitled to receive notices sent by post is an address in the UK shown in the register of members

12 3 Any notice given in accordance with these Articles is to be treated for all purposes as having been received

12 3 1 24 hours after being sent by electronic means or delivered by hand to the relevant address

12 3 2 two clear days after being sent by first class post to that address

12 3 3 three clear days after being sent by second class or overseas post to that address

12 3 4 on being handed to the member (or in the case of a member organisation, its authorised representative) personally, or, if earlier,

12 3 5 as soon as the member acknowledges actual receipt

12 4 A technical defect in the giving of notice of which the Directors are unaware at the time does not invalidate decisions taken at a meeting

13. DISSOLUTION

13 1 The liability of each member is limited to £1, being the amount that each member undertakes to contribute to the assets of the company in the event of its being dissolved while she is a member or within one year after she ceases to be a member, for—

(a) payment of the company's debts and liabilities contracted before she ceases to be a member,

(b) payment of the costs, charges and expenses of winding up, and

(c) adjustment of the rights of the contributories among themselves

14.INTERPRETATION

In the articles, unless the context requires otherwise—

"AGM" stands for Annual General Meeting,

"articles" means the company's articles of association,

"chair" means the Chair of the Directors, appointed in accordance with article 8 2 or any person who serves in that role for a board meeting,

"Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company,

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called,

"document" includes, unless otherwise specified, any document sent or supplied in electronic form,

"EGM" stands for Extraordinary General Meeting,

"electronic form" has the meaning given in section 1168 of the Companies Act 2006,

"member" has the meaning given in section 112 of the Companies Act 2006,

"ordinary resolution" has the meaning given in section 282 of the Companies Act 2006,

"participate", in relation to a directors' meeting, has the meaning given in article 7 3,

"proxy notice" has the meaning given in article 5 1,

"special resolution" has the meaning given in section 283 of the Companies Act 2006,

"subsidiary" has the meaning given in section 1159 of the Companies Act 2006, and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise

Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company

IN THE HIGH COURT OF JUSTICE CO/3753/2019

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

END VIOLENCE AGAINST WOMEN COALITION

Claimant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

UPDATED NOTE OF THE DEFENDANT TO ASSIST THE COURT

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1. In light of the service by the Claimant of their 'Short Response to the Summary Grounds of Resistance' and in order to ensure that any decisions made by the Court on the issues of permission and costs capping are based on **all** material facts the Defendant wishes the Court to be aware of a significant recent development.

2. Yesterday HM Crown Prosecution Service Inspectorate, which is independent of both the Crown Prosecution Service and the Defendant, published 'A thematic review of rape cases.' The potential relevance and importance of this review was referred to and foreshadowed in our Summary Grounds (see paragraph 19) and in Gregor McGill's witness statement (see paragraphs 63 - 66). In particular paragraph 66 which stated in relation to the Inspectorate's review: *"It will provide a detailed and evidence-based analysis of whether there has been any change in approach of prosecutors to decision making in rape cases"*.

3. The Inspectorate's review[1] is 193 pages in length. It can be found on the Inspectorate's website at www.justiceinspectorates.gov.uk/hmcpsi/

4. The findings and conclusions of the Inspectorate's review are clear and, it is submitted, support the Defendant's defence to the entirety of the claim. That is why we are providing them to the Court at this stage and as a matter of urgency. Those findings and conclusions are inconsistent with (and to be contrasted with) the anonymous hearsay evidence of XX and the other (anecdotal) evidence relied upon by the Claimant.

5. Accompanying the publication of the review HM Chief Inspector, Kevin McGinty said:

> *"Since 2016 there has been a substantial increase in rape allegations, while the number of rape prosecutions has fallen significantly – which indicates there is a serious problem.*
>
> *The CPS has been accused of only choosing easy cases to prosecute, but we found no evidence of that in our report. While the CPS needs to improve the way it works with the police, the CPS is only a small part of a larger systemic problem in the criminal justice process in dealing with complex cases.*
>
> *More work is needed to investigate the discrepancy between the number of cases reported and the number of cases prosecuted by the CPS. This is a matter for the Government to consider in its Violence against Women and Girls (VAWG) strategy."*

6. In order to assist the Court the Defendant has set out below the paragraphs of the Inspectorate's review which are pertinent to the issues in the claim (with emphasis added):

> ***Is the CPS risk averse?***
> ***1.27.*** *One of the criticisms of the CPS is that it is increasingly risk averse when deciding which cases to prosecute. This is not easy to test or measure accurately.* ***Recent criticism of the use of levels of ambition or targets for rape conviction rates included assertions that the CPS was only charging easy cases where a***

[1] https://www.justiceinspectorates.gov.uk/hmcpsi/inspections/rape-inspection-on-report-december-2019/

conviction was more likely, rather than applying the test for prosecution contained in the Code for Crown Prosecutors. That view is not supported by the findings from this inspection. *As set out in paragraph 1.6, in 2016 we expressed concerns that the CPS was applying the Code incorrectly in 10.1% of rape cases. In this context, this means the decision was a wholly unreasonable one. In this inspection, of the 250 charge and NFA files we examined, there were five cases (2%) where we concluded that the decision was wholly unreasonable.* ***The fact that we found so few Code test failure cases, and that the mistakes went in both directions, both for and against a charge, is not supportive of the view that the CPS is only proceeding with strong cases.***

1.28. For the first time in an HMCPSI inspection, we asked the inspectors – who all have prosecutorial experience, some recent, some less so – if they would have made the same decision as the CPS on the basis of the available evidence. This is not the same as identifying wholly unreasonable decisions. The application of the Code is not scientific. It is a decision based on judgement and experience. It follows that different prosecutors may consider the same evidence and reach different conclusions, which is why the CPS and Inspectorate alike have quality assurance processes that help ensure consistency. **There were 13 cases (5.2%) where the inspector would have made a different decision to the CPS. Seven of these 13 cases were charged and six NFA, which tends to show that, rather than the CPS being risk averse, these decisions are often finely balanced, with many difficult matters to weigh up in the evidence. Inspectors found nothing to suggest that any charging decision made by the CPS was influenced by a desire to meet a target or achieve a higher conviction rate.**

2.40. *We reported in February 2016 on our review of RASSO units, and said of the merits based approach that: "There is evidence from a limited number of Areas that some lawyers apply the merits based approach far too vigorously and cases are charged that do not have a realistic prospect of conviction. Inspectors were also made aware of times when the merits based approach has been viewed as separate to the Code for Crown Prosecutors rather than an integral part of it; this can result in poor decision-making, an increase in unsuccessful outcomes and ultimately a poor service to complainants." We found that prosecutors had failed to apply the Code correctly at charge in 10.1% of cases.*

2.41. ***We recommended that all RASSO lawyers should "undergo refresher training, including the role of the merits based approach in the context of the Code for Crown Prosecutors." Later that year and in 2017, the Director of Legal Services and the DPP's legal advisor visited all 14 Areas to deliver that refresher.***

2.42. *Lawyers and managers we spoke to in* ***this*** *inspection did not have a consistent understanding of the merits based approach, what it meant for Code decisions, and the*

messages from CPS Headquarters. Most reported that the Code was always paramount, but there was a minority who felt that the merits based approach had represented a change of tack, or had not been implemented as intended, and that it had led to cases that ought not to have been prosecuted reaching the courts. The refresher presentations in 2016–17 were seen variously as a simple repetition of the need to apply the Code, or as a necessary recalibration or shift of focus back onto the Code.

2.43. *All our focus groups contained lawyers who had joined their RASSO unit a matter of months or a year ago as a result of the CPS's rotation policy. The newer joiners tended to be clearer than longer-standing RASSO team members that the message from CPS Headquarters was the primacy of the Code.*

5.32. ***Our focus groups were consistent on the primacy of the Code in making decisions about charge. Focus group lawyers did not tell us there was pressure to charge more or only the strongest cases, and some said precisely the opposite. There were some doubts about whether the merits based approach had been properly understood or was helpful, but the lawyers we spoke to were clear about taking decisions based on the Code. The file sample contained five cases where CPS lawyers had not succeeded in doing that, but in none of them did we see evidence that pressure to secure convictions or risk aversion was the cause of a flawed decision.***

5.33. *We examined 250 cases which led to a decision to charge or NFA, of which 40 dated from 2015, and the rest from 2018–19. Of the 250 cases, there were five (2%) which featured a wholly unreasonable decision,* ***so the Code was applied correctly in 98% of cases.***

5.34. *One of the cases with a wholly unreasonable decision dated from 2015 and the rest from 2018–19. Our inspection of RASSO units in 2015 (on which we reported in February 2016) found five out of 61 relevant rape cases featured a wholly unreasonable decision. To those cases, we added the one wholly unreasonable decision out of our sample of 40 cases from 2015 in this inspection to give an overall 2015 Code compliance rate of 94.1%.* ***The Code compliance for the 210 cases from 2018–19 (206/210) was 98.1%, so there has been a clear improvement.***

7. It follows that the clear findings by the Inspectorate based on a detailed review of a total of 250 case files (as opposed to the 20 summaries of cases presented by the Claimant in their Confidential Annex) are that:

(a) the Code was properly applied in 98.1% of recent rape cases and, in particular, following the Gregor McGill Roadshows which focussed on a proper application of the Full Code Test and the removal of the merits based assessment guidance;

(b) there is now greater compliance with the Full Code Test following the Gregor McGill Roadshows and the removal of the merits based assessment guidance than there was before, and this amounts to a *"clear improvement"*

(c) there is no evidence of (i) risk aversion by the CPS in the prosecution of rape cases (ii) pressure to prosecute only strong rape cases or (iii) pressure being applied to improve the conviction rate in rape cases.

8. It follows that if there has been a *"clear improvement"* in the proper application of the Code that not only is the bookmaker's test not being applied by the Defendant but there is no risk of it being applied either, as is clearly evidenced by the Inspectorate's review. Indeed the findings of the Inspectorate support the very decision making of the DPP that is under review in this claim.

9. It is therefore submitted that when the findings of the Inspectorate's review are considered in conjunction with our Summary Grounds that they are a total answer to this claim. Accordingly the Court is invited to refuse permission to the Claimant to bring this claim and further to order the Claimant to pay the Defendant's costs in the sum previously sought.

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18th December 2019

HMCPSI
HM Crown Prosecution Service Inspectorate

2019 rape inspection

A thematic review of rape cases by HM Crown Prosecution Service Inspectorate

December 2019

If you ask us, we can provide this report in Braille, large print or in languages other than English.

For information or for more copies of this report, please contact us on 020 7210 1160, or go to our website: justiceinspectorates.gov.uk/hmcpsi

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Who we are

HM Crown Prosecution Service Inspectorate inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

We have a statutory duty to inspect the work of the Crown Prosecution Service and Serious Fraud Office. By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

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Chief Inspector's foreword

If 58,657 allegations of rape were made in the year ending March 2019 but only 1,925 successful prosecutions for the offence followed, something must be wrong. The National Criminal Justice Board has commissioned work to determine where exactly the justice system is failing victims.

This inspection looks at one small part of the overall picture. It examines whether the Crown Prosecution Service (CPS) is part of the problem. Has the CPS changed the test it applies when deciding whether to prosecute? Is the CPS demanding unnecessary further investigations be carried out before being prepared to reach a decision? Is the CPS risk averse? The three questions are interlinked and our conclusions are set out in the report that follows, as well as in the underlying data published on our website.

What we found is a complex series of issues that cannot be answered with a 'yes' or 'no', although we have tried to simplify them in the summary that follows. The first is that the criminal justice system is itself complex and not always understood. After all, if a complainant provides an honest and credible account of being raped, why should a prosecution not follow? In part, the answer turns on the position of the suspect in the system. A suspect is innocent until proved otherwise. A suspect can only be convicted if the jury is satisfied so that it is sure, on the evidence put before it, of guilt. Rape often occurs in circumstances that result in a jury being asked to try and assess, as best they can, what was going on in the minds of the participants. The complainant and the suspect may know each other. They may be in a relationship in which consensual sexual activity has taken place. What may start as consensual may quickly turn non-consensual. Alcohol may cloud memories. And finally, even if consent was refused, did the suspect have a reasonable belief that it had been given? Because if so, that is a defence.

Add to that the fact that the CPS applies the test for prosecution set out in the Code for Crown Prosecutors when deciding whether or not to prosecute. That test is whether, on the basis of the totality of the admissible evidence, there is a realistic prospect of conviction and, if there is, whether a prosecution is in the public interest. Assessing evidence to determine whether there is a realistic prospect of a jury being satisfied so that they are sure of guilt is not easy. It is not a scientific process with a right or wrong answer; rather, it is an exercise of judgement and experience by the prosecutor. It is also the case that two

similarly experienced prosecutors may assess the same evidence and reach different conclusions.

In every inspection in which we examine cases, we identify Code test failures. These are decisions prosecutors have made that are clearly wrong, wholly unreasonable decisions. We identified a few in this inspection. But unusually, I also asked my inspectors – all of whom have prosecutorial experience, some recent, some less so – to indicate whether they would have made a different decision to that made by the CPS. These are honest assessments reaching different conclusions. In remarkably few cases did my inspectors disagree with the decision of the CPS lawyer. And the differences were fairly balanced between bringing and not bringing prosecution.

The CPS uses specialist rape lawyers working in special units called Rape and Serious Sexual Offences (RASSO) units. In carrying out this inspection, we found areas where the CPS could improve and have identified some areas of concern. What we unfailingly found was the commitment and determination of individual RASSO lawyers to do the best they can for both complainant and accused in circumstances where their workload is often unreasonable. There can only be an effective criminal justice system – and one in which the public can have confidence – if it is properly resourced. The one we have has been under-resourced so that it is close to breaking point. In the case of the police, it may have gone beyond that, and while that is for others to assess, the number of rape allegations lost in the investigative process is damning.

Rape is a crime that is committed primarily by men against women. However, it is also perpetrated against men and boys, so in this report we refer to the complainant and the suspect as 'them' or 'they', because penetrative offences are gender neutral. I recognise that there have been discussions over the use of 'complainant', 'victim' and 'survivor' and of 'suspect', 'accused' and 'defendant'. We have used 'complainant' and 'suspect' throughout. If we have erred, it is not through disrespect.

I am grateful to HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) for their assistance in this inspection, which has allowed us to look at a small number of police files. It allows us to recommend that further work through joint inspection would provide a greater understanding of why so few rape allegations make it to trial.

1. Summary

What this report is about

1.1. This inspection came about at the Attorney General's request for independent evidence to support a review, commissioned by the National Criminal Justice Board (NCJB), of the criminal justice system's response to adult rape and serious sexual offences.

1.2. This NCJB review was commissioned because of concern that, while the number of rape allegations being reported to the police was increasing, there was a clear fall in the volume of police referrals to the Crown Prosecution Service (CPS) and a decrease in the number of charges of, and prosecutions and convictions for, rape.

1.3. The review identified four priorities, of which one (priority 3) related to the CPS. Originally, the CPS was to carry out its own internal review, but concerns about the CPS 'marking its own homework' led to requests that an external, independent assessment be carried out by HM Crown Prosecution Service Inspectorate (HMCPSI). We agreed to do so following our usual methodology and processes as an independent and experienced assessor of the quality of CPS casework. The four priorities focused on possible causes for the decline in rape referrals and prosecutions, with priority 3 considering: "Changes in CPS charging outcomes, particularly the decline in charge rate for rape-only flagged cases". In this section, we set out some of the issues that our inspection activity has highlighted in answer to the question raised by priority 3.

1.4. Rape cases are probably the most difficult cases in the criminal justice system to deal with, and often present evidential challenges that rarely arise with such frequency in other types of offending. Rape often takes place in private and without witnesses. The psychological impact on complainants may present as shame, reluctance to report it to the police or talk about it to others, or fear that they somehow brought it on themselves. This is something that complainants in many other crimes do not experience.

1.5. In rape cases involving adults, the issue is frequently consent. Did the complainant consent? If not, did the suspect reasonably believe they did? In this respect, too, rapes and sexual assaults are unlike almost every other crime. Historically, the successful prosecution of rape cases has been hampered by myths and stereotypes, typically focused on perceptions relating to the complainant's behaviour, such as how much they had drunk, what they were wearing, or whether they engaged in some form of sexual activity short of intercourse.

1.6. In 2016, HMCPSI carried out an inspection of CPS Rape and Serious Sexual Offences (RASSO) units[1]. As well as looking at how the newly formed units were operating, we assessed the standard of casework being carried out in the units. Our 2016 findings highlighted that at the stage of charge, in 10.1% of cases prosecutors were not correctly applying the Code for Crown Prosecutors. In many of the cases, we were concerned that some lawyers had misunderstood the application of the merits based approach and viewed it as outweighing the Code for Crown Prosecutors.

1.7. The CPS keeps cases under review up to and including trial, and is supposed to identify cases that have been charged incorrectly or where the Code test is no longer met. In the 2016 report, we found that in 13.6% of cases the CPS was failing to do so. In many of these cases, prosecutors failed to weigh correctly the evidential and public interest tests in line with the Code. We recommended: "All RASSO lawyers to undergo refresher training".

1.8. Since the 2016 report was published, there has been a 42.5%[2] rise in the report of rape allegations to the police and a 22.6%[3] decline in the number of rape cases charged by the CPS. Over the same period there have also been a number of high-profile cases which have called into question how the CPS is handling and assessing evidential and unused material in rape cases.

1.9. The environment of the criminal justice system has also changed since we examined the cases that formed the basis of the 2016 inspection. The police and CPS have seen significant reductions in their resources. A number of non-recent high-profile sex cases have raised the profile of this kind of offending and have resulted in more complainants being prepared to come forward. Cases have also increased in complexity because of the passage of time in non-recent cases and the increase in the evidential importance of digital media. There has been increased public and media scrutiny of how the criminal justice system is dealing with sexual offending, and a growing narrative of failure that does not always take into account the difficulties of investigating and prosecuting the most emotive and finely balanced cases that can come into the criminal justice system.

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[1] *CPS rape and serious sexual offences (RASSO) units*; HMCPSI; February 2016 www.justiceinspectorates.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units

[2] Full year figures year ending March 2017 compared to year ending March 2019.

[3] Ibid

1.10. This inspection provides a number of insights and findings that, while not conclusive, do highlight themes and issues and provide evidence which should help contextualise some of the current debate about why the number of cases being charged is decreasing.

Is the CPS charging fewer cases?

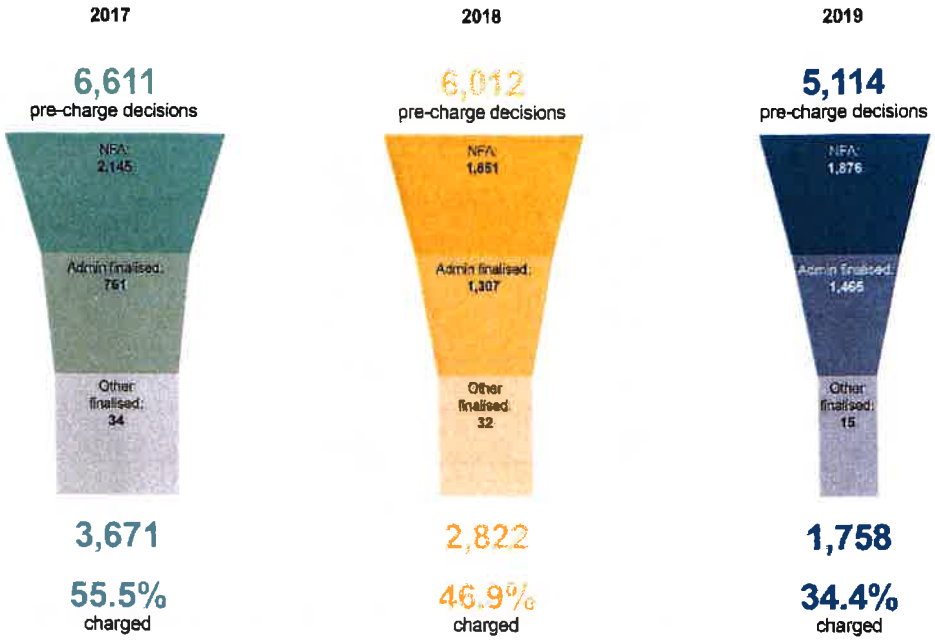
1.11. Yes. The inspection highlights a number of factors which may be causes of this but, equally, the relatively narrow scope of the inspection means that a number of assumptions have been made. This topic should be subject to further inspection.

1.12. There is no doubt that the number of RASSO cases being referred by the police to the CPS is declining. Of those referred, the CPS has charged a falling proportion of cases across the three years 2016–19. In rape-flagged cases, the number of receipts has decreased from 6,611 in the year ending March 2017 to 5,114 in the year ending March 2019 – a 22.6% decrease. Of those cases received from the police, the number of cases the CPS charges – that is, which proceed to prosecution – has decreased from 3,671 to 1,758 (a 52.1% decrease). This would seem to indicate a trend to prosecute fewer cases, but it is not as straightforward as it may appear.

1.13. The number of cases that the CPS lawyer, having considered the evidence provided by the police, decides do not pass the Code test (categorised as 'NFA' – cases where no further action will take place) decreased by 12.5% between 2017 and 2019, and by 1.3% between 2018 and 2019. In the vast majority of cases in our inspection where the CPS decided not to charge (NFA), HMCPSI inspectors agreed with the decision. Therefore, the inspection has found no evidence that the CPS is inappropriately refusing to charge.

1.14. Cases which are considered by the CPS will, with very few exceptions, result in a charge, a decision to take NFA or a third eventuality: admin finalisation. Charge and NFA are self-explanatory, as set out above; admin finalisation, much less so.

Figure 1: Cases charged as a percentage of the pre-charge decisions referred from the police

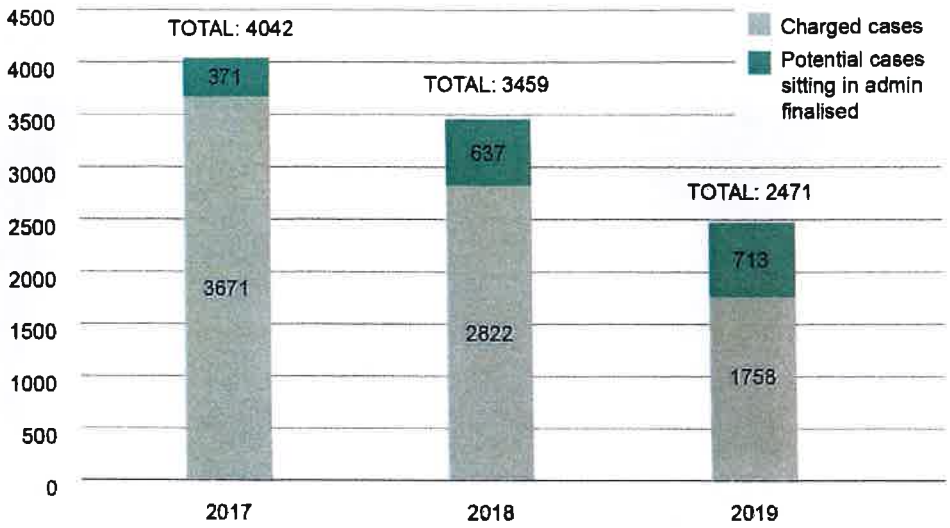


Admin finalisation

1.15. 'Admin finalised' is a misleading term because it suggests the case has been concluded. This is not so, and many cases which have been admin finalised are, in fact, still under investigation. This administrative holding of cases in abeyance allows the CPS to manage cases on the case management system in a more effective way, and reflects the CPS workload more accurately. Admin finalised cases would be better named 'with the police, awaiting further action', a phrase that reflects the true position.

1.16. For a number of reasons (see paragraph 1.20), the numbers of rape cases that are shown as admin finalised substantially increased between 2017 and 2019. In 2018–19, admin finalisations accounted for 28.6% of outcomes of cases that the CPS reviewed pre-charge – a 17.1% increase from 11.5% in 2016–17. In our inspection of 200 admin finalised cases, 18% had been reactivated (returned to the CPS by the police) by the time we came to examine them. In 80 admin finalised cases from one police force, which we examined in more detail, 48.7% were still active and being investigated by the police. These findings point to the fact that a considerable number of admin finalised cases are being worked on by the police, will come back to the CPS and may result in a charge.

Figure 2: Number of potential cases when admin finalised cases that are still under investigation are included



1.17. The misunderstanding of the meaning of admin finalised cases is negatively affecting public understanding of the actual decrease in the number of cases being charged. If the proportion of admin finalised cases that are still active, using our data (48.7%), is added to the charged numbers, then the 52.1% decrease set out in paragraph 1.12 becomes 38.9% (Figure 2).

1.18. Cases usually come to be categorised as admin finalised in the following way: if the police submit a case to the CPS that is missing any of the agreed list of items that should be submitted, an administrator will reject the submission and ask the police to supply the missing items. Alternatively, if the file does not contain all the evidence that is needed for a properly informed charging decision, the prosecutor will draft an action plan which sets out what further work needs to be done. This is then returned to the police to action. If no response to the administrator's or lawyer's request is received within 90 days, the case is admin finalised, which simply means that it is still a live case but not actively under consideration by the CPS.

1.19. There are many reasons why the police might not be able to respond in 90 days, including awaiting results from forensics, receipt of third-party material, or for a suspect to be located and arrested or extradited. In 54.4% of the cases we looked at, the initial police file submitted to the CPS for a charging decision did not comply with the expected standards. Many of these cases were returned to the police with an action plan but received no response from the police within 90 days, and so became admin finalised.

1.20. The number of cases not being progressed in a timely way has increased significantly. In many instances, this can be the result of limited resources. In the inspection, we saw requests for forensic examination of phones taking up to 11 months to complete, and securing third-party material taking an inordinate amount of time. In many cases, we could find no explanation recorded in the case files for police delays in completing the CPS action plan. This would benefit from further inspection work, since it is clear that delays affect the likelihood of a prosecution and, quite separately, have a significant negative impact on the complainant and the suspect.

Delay

1.21. In our sample of cases that were charged or ended with advice for no further action, an average of 237 days elapsed between the first report of the offence to the police and the police's first submission of the file to the CPS for a charging decision. In the admin finalised cases, the average was 200 days. As outlined in paragraph 1.19, contributing factors include a shortage of resources in the police and backlogs in forensic labs responsible for recovering and analysing DNA or other crime scene evidence, or examining digital devices. We would suggest that some further inspection activity is required to understand the reasons for these delays. HMICFRS file examination, along with work carried out by inspectors from both Inspectorates, also highlighted that, in a number of cases, delays were caused by the lead officer being abstracted for leave, training or other absences, during which time nothing would be done on the case. There was also evidence of a lack of grip on progressing some cases. Most of the admin finalised cases from the one force that we examined had investigative plans, but very few had deadlines for completion.

1.22. Once a file arrives with the CPS for a charging decision, unless the suspect is in custody, the file is subject to administrative triage, and will then be allocated to a lawyer to review. In our file sample, the charging decision took an average of 17 days, but this was from the final submission of an acceptable police file to the final consultation at which the charging decision was made. The case is often sent back from the CPS to the police when it fails a triage or with a lawyer's action plan requiring further investigative work to be done. If it is not admin finalised, it will then be returned to the CPS with additional material. Where the police dripfeed the answers to actions to the CPS, this adds to the delay. When we assessed how long it took, including admin actions and all the consultations, we found that only just over half of the charging decisions

were timely. The CPS data shows a decline in timeliness over the past year, and it is not meeting its own target for the number of days taken.

1.23. The evidence from CPS staff and our file examination shows that delays do have an impact on the outcome. Delays in the police investigation affected the outcome in 6.4% of our charged or NFA cases. Only one complainant cited delay as the reason for withdrawing their support for a prosecution, but there are many others where the reason for the withdrawal was not known, or where delay may have played a part – for example, when a complainant says they want to move on. In one case involving a very young complainant, the delay in recording the video evidence was such that they struggled to remember the incident clearly enough to provide any effective evidence by the time they were interviewed.

1.24. We also found that there is a real need for communication between the police and CPS to improve across a range of interactions, including what enquiries are required and why, appropriate timescales, and providing feedback to one another. The present situation is not conducive to effective case progression.

1.25. The inspection evidence is that delay is more than likely a contributing factor to attrition in the cases in the system. There was some evidence that in cases which had been delayed, the complainant withdrew their support and the police categorised the cases NFA without coming to the CPS for a charging decision. It can be assumed that there are a number of cases reported to the police where the complainant withdraws support. A report compiled by the London Victims' Commissioner and MOPAC, *The London rape review: a review of cases from 2016*[4], found that 58% of victims withdrew their allegation prior to the police submitting the case to the CPS. The report found that this was not because victims did not want to continue with the investigation, but because they did not feel that they could. Research by the London team showed that the most common reasons given for withdrawal were stress and trauma due to lack of police contact, lack of information or updates, or the sheer length of time it took for investigations to progress.

1.26. What this inspection has not been able to assess is how many of the rape allegations reported to the police are still under investigation and may result in a case that will eventually be submitted to the CPS for a charging decision. The gap between the 58,657 cases reported and the

[4] *The London rape review: a review of cases from 2016*; Mayor's Office for Policing and Crime and University of West London; July 2019
www.london.gov.uk/sites/default/files/london_rape_review_final_report_31.7.19.pdf

5,114 cases where the CPS are requested to make a charging decision does not form part of the priority 3 question. However, there is evidence that there are changes in the landscape of how rape cases are dealt with by the criminal justice system, under-resourcing and communication between the police and CPS. These changes would benefit from further investigation or inspection.

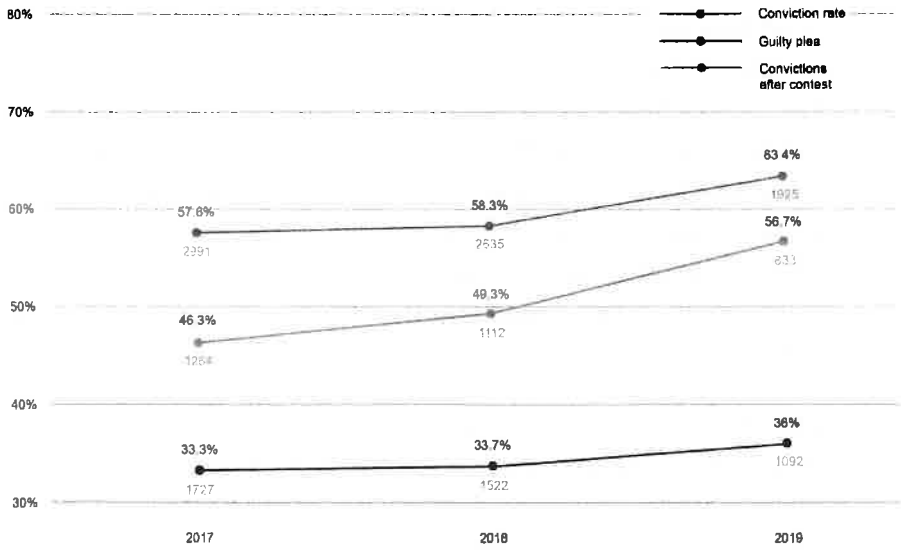
Is the CPS risk averse?

1.27. One of the criticisms of the CPS is that it is increasingly risk averse when deciding which cases to prosecute. This is not easy to test or measure accurately. Recent criticism of the use of levels of ambition or targets for rape conviction rates included assertions that the CPS was only charging easy cases where a conviction was more likely, rather than applying the test for prosecution contained in the Code for Crown Prosecutors. That view is not supported by the findings from this inspection. As set out in paragraph 1.6, in 2016 we expressed concerns that the CPS was applying the Code incorrectly in 10.1% of rape cases. In this context, this means the decision was a wholly unreasonable one. In this inspection, of the 250 charge and NFA files we examined, there were five cases (2%) where we concluded that the decision was wholly unreasonable. The fact that we found so few Code test failure cases, and that the mistakes went in both directions, both for and against a charge, is not supportive of the view that the CPS is only proceeding with strong cases.

1.28. For the first time in an HMCPSI inspection, we asked the inspectors – who all have prosecutorial experience, some recent, some less so – if they would have made the same decision as the CPS on the basis of the available evidence. This is not the same as identifying wholly unreasonable decisions. The application of the Code is not scientific. It is a decision based on judgement and experience. It follows that different prosecutors may consider the same evidence and reach different conclusions, which is why the CPS and Inspectorate alike have quality assurance processes that help ensure consistency. There were 13 cases (5.2%) where the inspector would have made a different decision to the CPS. Seven of these 13 cases were charged and six NFA, which tends to show that, rather than the CPS being risk averse, these decisions are often finely balanced, with many difficult matters to weigh up in the evidence. Inspectors found nothing to suggest that any charging decision made by the CPS was influenced by a desire to meet a target or achieve a higher conviction rate.

1.29. In trying to assess whether the CPS is risk averse, there are two relatively blunt measures that can be used to look at the data. One is the balance between charged, NFA and admin finalised cases. The largest shift in the data in the past three years is toward admin finalised, which would suggest that the police and lawyers are working to build cases and looking for evidence to determine the right decision. Another broad measure is the rate of conviction. Many suspects plead guilty, but the CPS also measures the conviction rate that follows a contested trial. If the CPS was being risk averse, this might show a rise in the conviction rate after a contested trial, although there would be other possible reasons for this, too. The conviction rate after contest has risen from 46.3% in 2016–17 to 56.7% in 2018–19.

Figure 3: Broad measures related to potential risk aversion



1.30. Conviction rates rise if only the strongest cases are charged. However, they also rise if weaker cases are built to make them stronger before charge. Systemic changes have been made since 2015 with the CPS and Association of Chief Police Officers (ACPO) agreeing a protocol for handling rape cases, and changes to the handling of digital evidence after the Allan case in late 2017. This has meant a great deal more work is undertaken pre-charge, and those cases where there is cogent undermining material are, or should be, removed from the system before they reach a court. The extra work involved in examining digital devices or obtaining third-party material has also generated more material for the officer in the case and the lawyer to evaluate, which can make the delicate balancing exercise even harder.

1.31. This inspection was never going to provide all the answers to what might lie behind the decrease in rape cases being charged by the CPS. The report by the London Victims' Commissioner and MOPAC, published in July 2019, sets out in great detail the proportion of cases that fall out of the system before the police are in a position to seek charging advice from the CPS. This report outlines in detail some of the concerns that we have about the interface between the police and CPS, and how delays, resources and a lack of effective communication may hinder the effective progression and handling of cases received by the CPS.

1.32. While this inspection provides some evidence for what happens once the CPS receives the case, it does not provide any view of the gap between the allegations of rape and cases charged. This is something that the Government may want to consider as part of the wider review under the direction of the National Criminal Justice Board.

Recommendations, issues to address and strengths

Recommendations
HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services should carry out a joint inspection of the Crown Prosecution Service and police response to rape, and include within it consideration of areas of potential concern identified in this inspection (paragraph 2.7).
Crown Prosecution Service Headquarters should consider the variations in Area conviction rates, particularly after trial, to ensure that decision-making is sound and that cases are being progressed effectively (paragraph 4.8).
Crown Prosecution Service Headquarters should work with the police to develop a more effective system for monitoring rape and serious sexual offences cases that have been returned to the police for any reason pre-charge. The system should involve structured communication between Areas and their local police forces so that the Area is made aware of likely timescales for the file to return to them, and when cases have been concluded with a no further action decision by the police. The national process should incorporate clear timelines and escalations, with monitoring of compliance at a senior level (paragraph 4.24).
Areas should work with their local police partners to improve communication and reinforce the need for appropriate challenge by both parties at an operational level. This should be with the aim of achieving more effective case progression, and should include better understanding and communication of timescales for common investigative steps so that realistic targets for actions can be set, and unnecessary escalations avoided (paragraph 4.42).
The revised Director's Guidance on Charging should: • focus on the types of rape cases where early investigative advice will bring most benefit • mandate timescales for submission of a request for early investigative advice that take into account what can be achieved in that time for the types of cases that require early investigative advice • set expectations for the papers to be submitted with a request for early investigative advice require compliance with the Director's Guidance in all police forces (paragraph 5.10).

Crown Prosecution Service Headquarters should provide national information on what data can be obtained from social media platforms, and Areas should tailor the national information to include what methods are used by their local forces, what they deliver and in what timeframe for different digital devices (paragraph 5.52).
Crown Prosecution Service Areas should work with their local police forces to make better use of the many avenues for feedback between them, including providing accurate information on the quality of service each supplies, making robust challenges and seeking appropriate and timely information (paragraph 5.62).
Crown Prosecution Service Areas should engage with their local police forces to identify key specific priorities for focused improvement activity, which should align with the targets for Crown Prosecution Service and police internal assurance work (paragraph 6.20).
Crown Prosecution Service Areas should take urgent steps to ensure that, in rape and serious sexual offences cases, compliance with the timescales set out in the Victim Communication and Liaison scheme and the standard of letters sent improve significantly (paragraph 7.5).

Issues to address
The Crown Prosecution Service policy document should be updated to reflect the removal of the mandatory second opinion for cases where no further action is advised, and promulgated to Areas (paragraph 2.34).
Crown Prosecution Service Headquarters should engage with police partners to develop a National File Standard for the first submission of a rape case for a full Code test charging decision (paragraph 5.23).
Area managers should ensure that they instruct counsel to give advice before charge only in those cases where it is justified by the complexity or seriousness of the case (paragraph 5.38).

Strengths
Rape and serious sexual offences lawyers are maintaining a professional focus, achieving a high level of Code compliance and delivering high quality casework while struggling with heavier workloads from more complex cases. They and their managers build cohesive, supportive and committed teams (paragraph 2.50).
Crown Prosecution Service lawyers are correctly applying the revised threshold test for charging, and challenging the police when they do not agree with the police's proposal to withhold bail at the point of charge (paragraph 5.39).

2. Context and background

Background to the inspection

2.1. As part of a cross-departmental violence against women and girls (VAWG) strategy, the VAWG inter-ministerial group and the National Criminal Justice Board (NCJB) commissioned a review into the criminal justice response to adult rape and serious sexual offences across England and Wales. Announced in March 2019, it was in response to "concerning outcomes for complainants, including the observed rise in police recording against falls in the volume of police referrals to the Crown Prosecution Service (CPS), charges, prosecutions and convictions for adult rape and serious sexual offences…"

2.2. A report by MOPAC and the Victims' Commissioner for London[5] published in July 2019 provides a very useful insight into the data trends that caused these concerns and the factors that have an impact on rape cases as they reach various stages in the criminal justice system. Key headline findings, from a sample of 501 rapes from April 2016, included:

- 84% of allegations reported to the police were classified as a crime by the police
- 86% of rapes reported to the police did not get referred to the CPS
- only 9% were charged by the CPS, 6% proceeded to trial and 3% resulted in a conviction
- complainant withdrawal was the most common form of attrition in the sample of classified cases (58%), followed by no further action by police (29%)
- the average length of time from the date of reporting to the trial outcome was 18 months.

2.3. The findings of this report clearly set out some of the challenges that face the criminal justice system, and the landscape that this inspection has had to navigate. We are grateful to the London Victims' Commissioner and MOPAC for allowing us to use the data in this report.

2.4. The Government review is guided by a sub-group of the NCJB, formed of senior officials representing all parts of the criminal justice system. A stakeholder reference group, comprising representatives of

[5] *The London rape review: a review of cases from 2016*; Mayor's Office for Policing and Crime and University of West London; July 2019
www.london.gov.uk/sites/default/files/london_rape_review_final_report_31.7.19.pdf

third sector organisations, was also convened to inform and assist the review process. The planned completion date of the review is Spring 2020, with recommendations to be cleared by the NCJB and the VAWG inter-ministerial group.

2.5. The first phase of the review identified four priority areas.

- Priority 1: Increase in 'evidential difficulties, suspect identified – complainant does not support prosecution' outcome (led by the Home Office).
- Priority 2: Variation in referral to charge volumes by police force area and CPS regions (led by the Home Office).
- Priority 3: Changes in CPS charging outcomes, particularly the decline in charge rate for rape-only flagged cases (initially proposed to be led by the CPS).
- Priority 4: Why do a lower proportion of rape-only prosecutions result in conviction? (Led by the Ministry of Justice.)

2.6. The third priority was initially allocated to the CPS, who planned to investigate charged and NFA cases, the overall time taken to reach a charging decision, cases where the police did not respond to an action plan and those where responses took an excessive amount of time. These were sound proposals, but strong opposition based on a perceived lack of objectivity led the Director of Public Prosecutions (DPP) to request that the Attorney General ask HMCPSI's Chief Inspector to conduct an inspection. This was supported by the parties on the working group as it would bring independence to the evidence for priority 3.

2.7. The inspection has used our established methodology, which we explain further from paragraph 3.3 and in Annex A. To support our understanding of the police service's impact on the CPS, we engaged the support of inspectors from HMICFRS to conduct a small, focused file review in one police force. This file review was not statistically significant or geographically representative, but aimed to provide some extra details about what happened to some admin finalised cases on the policing side. We have had to expedite the inspection to ensure that the report could be published in time to inform the Government review, and this has meant that we have not been able to expand the inspection to cover ground that we feel needs further work. We therefore recommend that we and HMICFRS revisit this topic next year.

Recommendation

HM Crown Prosecution Services Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services should carry out a joint inspection of the Crown Prosecution Service and police response to rape, and include within it consideration of areas of potential concern identified in this inspection.

Our 2016 report

2.8. Our inspection of rape and serious sexual offences (RASSO) units[6], which we published in February 2016, showed that in 10.1% of cases, the Code for Crown Prosecutors[7] (the Code) was not applied correctly at the charging stage. All but one of these were flawed decisions to charge. At later review, the Code was not applied correctly in 13.6% of relevant cases. Inspectors were concerned that some lawyers had misunderstood the application of the "merits based" approach (which we discuss from paragraph 2.34) and viewed it as outweighing the Code. Inspectors recommended that all RASSO lawyers undergo refresher training, including the role of the merits based approach in the context of the Code.

2.9. In the 2016 report, we found that lack of time was an issue for almost all rape specialists, and in many Areas the time taken for a charging decision was measured in months, with an average of 53 days to charge against a target of 28 days. We also reported on the impact of the quality of the police file on the timeliness of decision-making, and observed that poor file quality was the biggest contributing factor to duplication and re-work on a case.

Changes since late 2017

2.10. In November 2017, the jury in the trial of Mr Liam Allan on 12 counts of rape and sexual assault was discharged after three days. This was to allow the defence team time to review a disc containing about 4,000 texts and social media messages from the complainant's phone, which included some sent by the complainant to Mr Allan and to the complainant's friends. The messages, which should have been revealed by the police to the prosecution and by the prosecution to the defence much earlier, wholly undermined the complainant's allegations, and meant there was not a realistic prospect of conviction. In December 2017,

[6] *CPS rape and serious sexual offences (RASSO) units*; HMCPSI; February 2016 www.justiceinspectorates.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units/

[7] *The Code for crown prosecutors*; CPS; October 2018 www.cps.gov.uk/publication/code-crown-prosecutors

the prosecution offered no evidence, and Mr Allan was acquitted. Had the messages been disclosed before the CPS reviewed the case for the first time, Mr Allan would almost certainly not have been charged.

2.11. This was not the only rape case with similar failings, but Mr Allan's experience was probably the most high-profile and best remembered. It prompted a review by the Metropolitan Police Service and CPS, which identified a number of failings in the police and the CPS handling of the case. The review led, in turn, to a National Disclosure Improvement Plan (NDIP), training and the appointment of disclosure champions. The CPS also reviewed all live rape cases in England and Wales – a huge piece of work which inevitably diverted resources away from progressing new allegations.

2.12. In line with all cases, rape cases now have to be front-loaded, which is shorthand for ensuring that all the relevant information is discussed by the police and CPS, with the possible sources of evidence and unused material followed up before a charging decision is taken. In practice, this means that reasonable lines of enquiry – such as examining phones and other digital devices, and exploring third-party material such as education, medical or Social Service records – are investigated much sooner. Where the CPS identifies enquiries that the police have not carried out, and which may have an impact on the charging decision, it should set an action plan, and not charge until those actions have been satisfactorily completed.

Requests for more evidence

2.13. The extent of the work that is now being carried out on a rape or serious sexual offences investigation, and the quantity of material that now needs to be reviewed pre-charge, has led to much more work on each case. While that is work that ought to have been done in any event, it is apparent that it was not happening in all cases, and certainly not at the right stage. There is a need to address that, while also recognising that it is important to devote time and care to ensuring that the right cases proceed on the right evidence and with the right disclosure made to the defence. If this takes more time, as long as the time is not wasted, then it is inevitable and right that it should do so.

2.14. Our survey of managers and lawyers (see paragraph 3.7) confirmed that there is more work to do on most cases, partly because of the challenges presented by digital devices, and partly because more lines of enquiry are being explored, especially in relation to unused and third-party material. We asked whether requests for digital evidence had increased since January 2018, when the NDIP was introduced (Table 1). The comments we received made frequent reference to the Allan case and the focus on reasonable lines of enquiry as central to this shift.

Table 1: Have requests for digital evidence increased since the NDIP was introduced?

	Lawyers	Managers
Pre-charge, in rape cases, are lawyers making more frequent requests of the police since January 2018 for evidence relating to phones, other digital devices and social media information?		
Yes, more frequently	70.5%	78%
No, about the same frequency	29.5%	20%
No, less frequently	0%	2%
Total	100%	100%

2.15. Two of the biggest challenges for the police and CPS now are:

- to ensure that the enquiries are proportionate, so that complainants are not subjected to any more intrusion than is necessary in the circumstances of their particular case
- to ensure that people are not deterred from reporting sexual offences to the police for fear that irrelevant details of their private life will be exposed to the suspect.

2.16. To address these challenges, the DPP published *Guidelines on communication evidence* in January 2018[8] and *A guide to "reasonable lines of enquiry" and communications evidence* in July 2018[9]. This guidance has subsequently been endorsed by the Court of Appeal[10].

[8] *Guidelines on communication evidence*; CPS; January 2018 www.cps.gov.uk/legal-guidance/disclosure-guidelines-communications-evidence
[9] *A guide to "reasonable lines of enquiry" and communications evidence*; CPS; July 2018 www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence
[10] R v E [2018] EWCA 2426 (Crim)

Performance data

2.17. The CPS captures data from its case management system, management information system, budgeting and resource tools, and quality assurance work. It also accesses performance information from the police and HM Courts and Tribunals Service (HMCTS). The data gathered is intended to be used at a national level to hold Area managers to account for their performance and locally to identify good practice and where improvement is required.

2.18. The wealth of data available is such that the CPS has chosen some of the data for more scrutiny than others. At different times, the most important aspects have been set out as targets or priority measures (which the CPS calls high weighted measures), and the latter have had attached to them high performing benchmarks or levels of ambition.

2.19. Over the years since the CPS was created, there have been different measures and targets. These have changed as criminal justice system or Government priorities and initiatives have been introduced, such as in 2002–03, when public service agreements were introduced for the criminal justice system with the aim of narrowing the justice gap. This included shared targets for offences brought to justice (OBTJ), ineffective trials and public confidence. However, OBTJ created conflicting targets, with the police looking to increase solved crimes (called sanction detections, which included diversions from charge such as cautions or penalty notices) and the CPS targeting conviction rates. This encouraged perverse behaviours, and after a significant increase in out of court disposals, the target was revised in 2008 to focus on more serious offences.

2.20. In 2005–06, for the first time, the CPS set targets for attrition rates in the magistrates' courts and Crown Court in CPS-charged cases, and for unsuccessful outcomes in hate crime cases (domestic abuse, homophobic offending, and racially and religiously aggravated offences).

2.21. In 2007–08, the CPS added a target for conviction rates for rape. In 2008–09, domestic abuse, rape and sexual offences were assessed against three targets for attrition, with an internal framework that began to monitor Area performance against these targets.

2.22. By 2010–11, specific targets for casework had ceased, and performance in Areas was measured over time and against the national average. This continued until 2013–14, when the CPS set levels of ambition for various priority aspects of performance: the high weighted

measures. The levels of ambition for outcomes included one for convictions in all cases of VAWG: that is, domestic abuse, rape, and sexual offences. In 2015–16, the level of ambition for VAWG was split into separate levels for rape and domestic abuse.

2.23. Our report on CPS RASSO units, published in February 2016, highlighted concerns about how well Areas captured data and ensured it was accurate, and about the finalisation of cases where the police had sought early investigative advice. The team had examined cases from 2014–15 and analysed data up to June 2015, so the report did not refer to the (then recently introduced) level of ambition for rape. We did, however, make a number of recommendations regarding how the CPS should record cases, and the need to improve its quality assurance of data.

2.24. In 2018–19, the CPS removed the levels of ambition for rape, domestic abuse, hate crime and other conviction rates, but retained high weighted measures for some aspects of delivery. The CPS continues to monitor and assess Area and national performance against its high weighted measures.

2.25. In the Inspectorate, we use much of the CPS, police and HMCTS data, combined with our own evidence-gathering, to assess not only the performance levels themselves, but also how well the CPS is managing its service delivery. For example, in our Area Assurance Programme of inspections, published between June 2016 and May 2019, we referred to the levels of ambition, mainly those the CPS attached to conviction rates.

2.26. It is essential that there should be some way for the CPS to assess performance and identify whether there are issues either nationally or at Area level. However, we have always used conviction rates as but one of a parcel of key performance indicators, since the CPS has only partial influence over conviction rates. Decisions made by other parties – including out of court disposals, for example – and the contributions to effectiveness and efficiency made by the police and courts will influence the criminal justice system whatever the CPS does.

2.27. We share the widespread view that the criminal justice system ought not to be judged solely by the rate of convictions; the system works as intended when difficult cases are left to the court or jury to decide, whether that results in a finding of guilty or not guilty. Inspectors fully understand that decisions not to charge or to stop a case where more information emerges, or cases that result in an acquittal, demonstrate that the system is working effectively. A conviction rate of 25% would cause concern, but one of 100% would be equally indicative of systemic flaws.

2.28. In our inspection, we have not found evidence that targets or levels of ambition for conviction affect the quality of decision-making. Indeed, in one Area, we saw evidence of managers expressing concerns that their conviction rate had increased, and that "sustained performance above the national average could be indicative of a quality imbalance in our charge vs NFA decision making".

2.29. In this report, we discuss the five charged or NFA cases where we determine that the decision was not in accordance with the Code for Crown Prosecutors. Three of those were decisions to advise no further action (of which one was charged by the CPS after the complainant asked for a review) and two were decisions to charge which were flawed. There were also 13 cases, seven charged and six NFA, where the inspector would have made a different decision to the CPS lawyer. Our findings do not indicate a pattern of charging only the strongest cases, or of Code decisions being driven by an imperative to increase the conviction rate. Rather, they speak to a tranche of casework that is difficult, relating as it often does to incidents where consent is central, which take place in private with no witnesses, and where decisions are finely balanced.

CPS policy and guidance

Policy

2.30. The CPS's current policy for prosecuting rape cases[11] was published in 2012 with the aims of explaining the way that the CPS deals with such cases and ensuring the delivery of high quality casework. It covers various aspects, including bail, helping complainants and witnesses to give evidence, accepting pleas, keeping complainants informed, and sentencing.

2.31. It also sets out how prosecutors make decisions about whether to prosecute, highlighting that decisions must comply with the two-stage test laid down in the Code for Crown Prosecutors. This means that a case should only proceed where there is a realistic prospect of conviction and it is in the public interest to do so. In respect of the second stage, the policy states: "If the evidential test is passed, we believe that rape is so serious that a prosecution is almost certainly required in the public interest."

[11] *Prosecuting rape: CPS policy*; CPS; 2012
www.cps.gov.uk/legal-guidance/prosecuting-rape-cps-policy

Second opinions

2.32. CPS policy requires that a decision by a rape specialist prosecutor to advise NFA must be confirmed by a second specialist prosecutor. This requirement was introduced in response to the HMCPSI and HM Inspectorate of Constabulary (as it was then) joint review *Without consent*[12], published in 2007, which also led to the introduction of the first national rape protocol.

2.33. In 2014, the CPS carried out an internal review of RASSO cases which found that they were being prosecuted entirely by specialist units with a performance regime that was sufficiently robust, when complemented by the Victims' Right to Review scheme, to capture any significant issues in the quality of decision-making. The review found little evidence that the mandatory second opinion was adding value and recommended it be removed.

2.34. CPS Headquarters agreed to remove the mandatory element, but also determined that RASSO unit heads should have discretion to use second opinions as a development or performance management tool. In July 2015, all Deputy Chief Crown Prosecutors and RASSO unit heads were notified of this change of policy. The notification was sent by email, and the published policy was not, and has not been, revised to reflect this change in approach. It is not surprising, therefore, that there is inconsistent awareness and/or approaches in Areas. In our survey of lawyers and managers, some managers reported that NFA decisions were all quality-assured by either a second opinion or a local case management panel, and 37.3% of lawyer respondents seek a second opinion in all cases.

Issue to address
The Crown Prosecution Service policy document should be updated to reflect the removal of the mandatory second opinion for cases where no further action is advised, and promulgated to Areas.

Legal guidance

2.35. The CPS publishes legal guidance[13] designed to guide prosecutors through every stage of a rape prosecution from pre-charge early consultation to sentencing. As with the rape policy, there is emphasis on

[12] *Without consent: a report on the joint review of the investigation and prosecution of rape offences*; CJJI; January 2007
www.justiceinspectorates.gov.uk/hmicfrs/media/without-consent-20061231.pdf
[13] www.cps.gov.uk/prosecution-guidance

the need for the Code test to be satisfied before a prosecution can take place.

2.36. In 2009, the then-DPP, Keir Starmer QC, instructed all Chief Crown Prosecutors to ensure that all those reviewing rape cases understood how prosecutors should reach Code decisions. In his note, the DPP emphasised that the approach described by the Divisional Court in 2009 (R (on the application of B) v DPP[14]) – a purely predictive approach or "bookmaker's approach", based on past experience in similar cases – would be wrong. The judgement in that case explained: "There are some types of case where it is notorious that convictions are hard to obtain, even though the officer in the case and the crown prosecutor may believe that the complainant is truthful and reliable. So-called "date rape" cases are an obvious example. If the crown prosecutor were to apply a purely predictive approach based on past experience of similar cases (the bookmaker's approach), he might well feel unable to conclude that a jury was more likely than not to convict the suspect."

2.37. The court coined the expression "merits-based approach" to explain how the prosecutor "should imagine himself to be the fact finder and ask himself whether, on balance, the evidence was sufficient to merit a conviction taking into account what he knew about the defence case." The DPP reinforced that this was the right route to decisions on the Code.

2.38. In 2010–11, the DPP's principal legal advisor held a series of roadshows to advise rape prosecutors about the merits based approach. The note about their presentation says: "...the Rape Policy does not supersede the Code for Crown Prosecutors. In other words, the test for rape prosecutions is the same as for any other offence: it must still be more likely than not that there will be a conviction ... the prosecutor should proceed on the basis of a notional jury which is wholly unaffected by any myths or stereotypes of the type which, sadly, still have a degree of prevalence in some quarters ... the merits-based approach simply reminds prosecutors of how to approach the evidential stage of the Full Code Test in tricky cases. It does not establish a different standard for sexual offences."

2.39. The CPS launched legal guidance on the merits based approach in March 2016. The guidance advised that the use of the word "approach" did not indicate any change to what is required when applying the Code for Crown Prosecutors. The guidance on the merits based approach was

[14] www.bailii.org/ew/cases/EWHC/Admin/2009/106.html

removed in November 2017, although we note that there remains a brief reference to it in chapter 1 of the current guidance.

2.40. We reported in February 2016 on our review of RASSO units, and said of the merits based approach that: "There is evidence from a limited number of Areas that some lawyers apply the merits based approach far too vigorously and cases are charged that do not have a realistic prospect of conviction. Inspectors were also made aware of times when the merits based approach has been viewed as separate to the Code for Crown Prosecutors rather than an integral part of it; this can result in poor decision-making, an increase in unsuccessful outcomes and ultimately a poor service to complainants." We found that prosecutors had failed to apply the Code correctly at charge in 10.1% of cases.

2.41. We recommended that all RASSO lawyers should "undergo refresher training, including the role of the merits based approach in the context of the Code for Crown Prosecutors." Later that year and in 2017, the Director of Legal Services and the DPP's legal advisor visited all 14 Areas to deliver that refresher.

2.42. Lawyers and managers we spoke to in this inspection did not have a consistent understanding of the merits based approach, what it meant for Code decisions, and the messages from CPS Headquarters. Most reported that the Code was always paramount, but there was a minority who felt that the merits based approach had represented a change of tack, or had not been implemented as intended, and that it had led to cases that ought not to have been prosecuted reaching the courts. The refresher presentations in 2016–17 were seen variously as a simple repetition of the need to apply the Code, or as a necessary recalibration or shift of focus back onto the Code.

2.43. All our focus groups contained lawyers who had joined their RASSO unit a matter of months or a year ago as a result of the CPS's rotation policy. The newer joiners tended to be clearer than longer-standing RASSO team members that the message from CPS Headquarters was the primacy of the Code.

Joint protocol

2.44. In 2015, the Association of Chief Police Officers (as it was then) and the CPS agreed a revised joint protocol for investigating and prosecuting rape offences and all other penetrative offences. The objectives of the protocol are:

- to reflect national police and CPS policy
- to achieve improved and consistent performance in the investigation and prosecution of rape
- to improve the service to complainants of rape and increase public confidence in the police's and CPS's response to rape.

2.45. The protocol sets out the framework within which the police and CPS can work in partnership to build effective cases. This revision to the earlier 2008 protocol recognised developments in this area, including the rollout from 2013 of dedicated CPS RASSO units.

Caseloads and resourcing

2.46. We have commented in previous inspections about the impact that under-resourcing can have on casework, and it is apparent that is also the case here.

2.47. CPS caseloads have fallen from 5,190 rape cases in 2016–17 to 3,034 in 2018–19, a decline of 34%. However rape cases are front-loaded now (see paragraph 2.12), with vastly more digital and third-party material obtained and evaluated during an investigation and decision to charge or take NFA.

2.48. Lawyers in RASSO units are undoubtedly stretched. In our survey, 51% of managers said that their unit was not staffed to the level set by the CPS resourcing model. In 39.2% of survey responses, lawyers felt their caseload was heavy but manageable, but more (39.9%) felt it was heavy and unmanageable. In one Area we visited, lawyers had worked many hours' overtime at weekends in an effort to reduce the backlog in charging decisions. Managers told us that they keep a close eye on their teams' caseloads, and lawyers confirmed that work will be redistributed when colleagues are particularly under pressure, but where all lawyers are very busy, the scope for moving the load around is limited. Despite this pressure, lawyers in our focus groups were universally committed and professional.

2.49. For the most part, lawyers report they have received the right training (79.9%) and are supported by their managers and/or colleagues (93%), and the CPS provides access to formal counselling through its workplace wellness provision. Notwithstanding these measures, the lawyers we interviewed were feeling the pressures of the need to make right and fair decisions for the complainant and suspect, and the ever-increasing and intense public scrutiny of their work. They would welcome greater understanding by the media and the public of how nuanced and difficult the cases are.

2.50. We noted how dispiriting RASSO teams found current media reporting, and that they would welcome more publicly supportive communication from CPS Headquarters about their role. Nevertheless, the teams remain cohesive, supportive, and passionate about providing a quality service.

Strength
Rape and serious sexual offences lawyers are maintaining a professional focus, achieving a high level of Code compliance and delivering high quality casework while struggling with heavier workloads from more complex cases. They and their managers build cohesive, supportive and committed teams.

3. Framework and methodology

Inspection framework

3.1. The framework for this inspection consisted of an overarching inspection question and nine sub-questions. The inspection question was: "What level of confidence can the public have in the CPS to deliver fair and successful outcomes in the most efficient and effective way through the provision of high-quality decision-making by specially trained and experienced prosecutors in rape cases?"

3.2. The nine sub-questions can be found in annex A, which also contains a fuller explanation of the methodology.

Methodology

3.3. Inspection requires skill and experience in inspection techniques, methodology and how to achieve a fair and independent review, as well as a thorough understanding of how those being inspected operate. It is advantageous if some of the inspectors involved in the inspection have recent expertise in the subject matter. In general terms, HMCPSI achieves this balance by having a staffing model that consists of a proportion of permanent staff and staff on loan, usually from the CPS. Those on loan often come to the Inspectorate for two- to three-year postings, although for specific inspections we may use seconded staff or associate inspectors as part of the inspection team.

3.4. Inspection needs to be informed but it also needs to be independent and objective in its findings. We do that in a number of ways. All inspectors' work is subject to dip-sampling and quality assurance, and we also conduct regular consistency exercises, where all inspectors examine, then discuss, the same files. Annex A provides a more detailed explanation of our methodology.

3.5. HMCPSI inspectors examined 200 rape-flagged cases which had been recorded on the CPS case management system as admin finalised. The term is unhelpful because the cases may not actually be concluded at the point they are shown as being admin finalised, as explained from paragraph 1.15.

3.6. In our file examination, we had the benefit of HMICFRS inspectors' assessment of the police files in 80 admin finalised cases from one police force, which, as mentioned in paragraph 2.7, was not geographically or statistically representative. We also examined 250 rape-flagged cases where the CPS lawyer had advised charge or NFA. The sample included

40 charged cases that received a pre-charge decision in 2014–15, to supplement the findings for rape cases from our inspection of RASSO units, on which we reported in February 2016. We assess and report on compliance with the Code for Crown Prosecutors and other significant elements of casework and, as in Area Assurance inspections, we use ratings of excellent, good, fair or poor where appropriate.

3.7. Other evidence-gathering included interviews with legal managers, focus groups with RASSO lawyers, surveys of lawyers and managers, reviews of documents and information provided by the CPS and analysis of performance data.

3.8. We use a raft of measures, and our own extensive file examination and other evidence-gathering, to give a rounded view of CPS delivery, and also to identify risks and areas where future inspection activity may be beneficial. We assess the strength of partnership-working as a key part of most Area and thematic inspections, and evaluate casework against a wide range of measures. These include conviction rates, but also the quality of legal decision-making, charging advice, case progression, complainant and witness care, and protecting the public.

3.9. Where we give percentages, they may not total 100% because of rounding to one decimal place.

3.10. Because the focus of this report is pre-charge decision-making, we have used the legal terminology for all parties prior to a case entering the court process: 'complainant' for a person who is said to have been the subject of a sexual assault and 'suspect' for the person against whom the allegation has been made. The choice of this terminology is in no way intended to deflect from the impact of rape on survivors, but merely to reflect the fact that we were considering these cases at the earliest stages in the criminal justice process.

Cases examined

Reported by

3.11. Just over half our sample of 450 cases (53.3%) were reported to the police by the complainant or, in the case of recent cases involving children, by a parent, guardian or foster parent. Other main sources of reporting were friends or the family of adult complainants (14.2%), or professionals such as GPs, teachers, social workers and sexual assault referral centre teams (11.1%). We could not identify the source in 5.6% of cases. The rest (13.3%) were identified by police officers when investigating other offences, or reported by a wide range of people, such as hotel or hostel staff, security officers at entertainment venues, work colleagues, members of the public and, in one case, the suspect themselves.

3.12. The split between complainant reports (53.3%) and non-complainant reports (46.7%) is similar to that found by MOPAC and the London Victims' Commissioner in a sample of cases from 2016 (58% and 42% respectively).

Recent and non-recent

3.13. A fifth of the charged or NFA allegations were non-recent incidents. For the cases examined from 2018–19, we recorded as non-recent any occurring before 5 June 2013, which is the date used by the CPS national child sexual abuse referral panel. For the 40 cases that we looked at from 2014–15, we used the same date four years earlier (5 June 2009). Non-recent allegations led to a decision to charge less often than recent incidents (38% compared to 53%).

Types of offences

3.14. Rape or attempted rape of an adult or child accounted for 86.4% of our sample. There were 31 allegations of offences against children, 20 of which (64.5%) resulted in a charge and 11 (35.5%) in NFA. For offences against adults, 52.1% resulted in a charge and 47.9% in NFA. The disparity is likely to be related, at least in part, to the role that consent plays in offences against adults. We refer to the full file sample as 'rapes' for the purposes of simplicity.

3.15. Our sample consisted of cases that were all flagged as rape, albeit not all correctly. It included 112 cases also flagged as domestic abuse (24.9%) and 146 also flagged as child abuse (32.4%). There were 32 cases (7.1%) that carried both additional flags.

Suspect characteristics

3.16. The suspect was an adult (when the offending was alleged to have taken place) in 82% of our 450 cases and a child in 16.2%. The allegations spanned their 18th birthday in the remaining 1.8%. All but six of the suspects were male, with the remaining suspects either female (five) or non-binary (one).

Complainant characteristics

3.17. The complainant was an adult (when the offending was alleged to have taken place) in 60.9% of our 450 cases and a child in 38.7%. The offence spanned their 18th birthday in the remaining 0.4%.

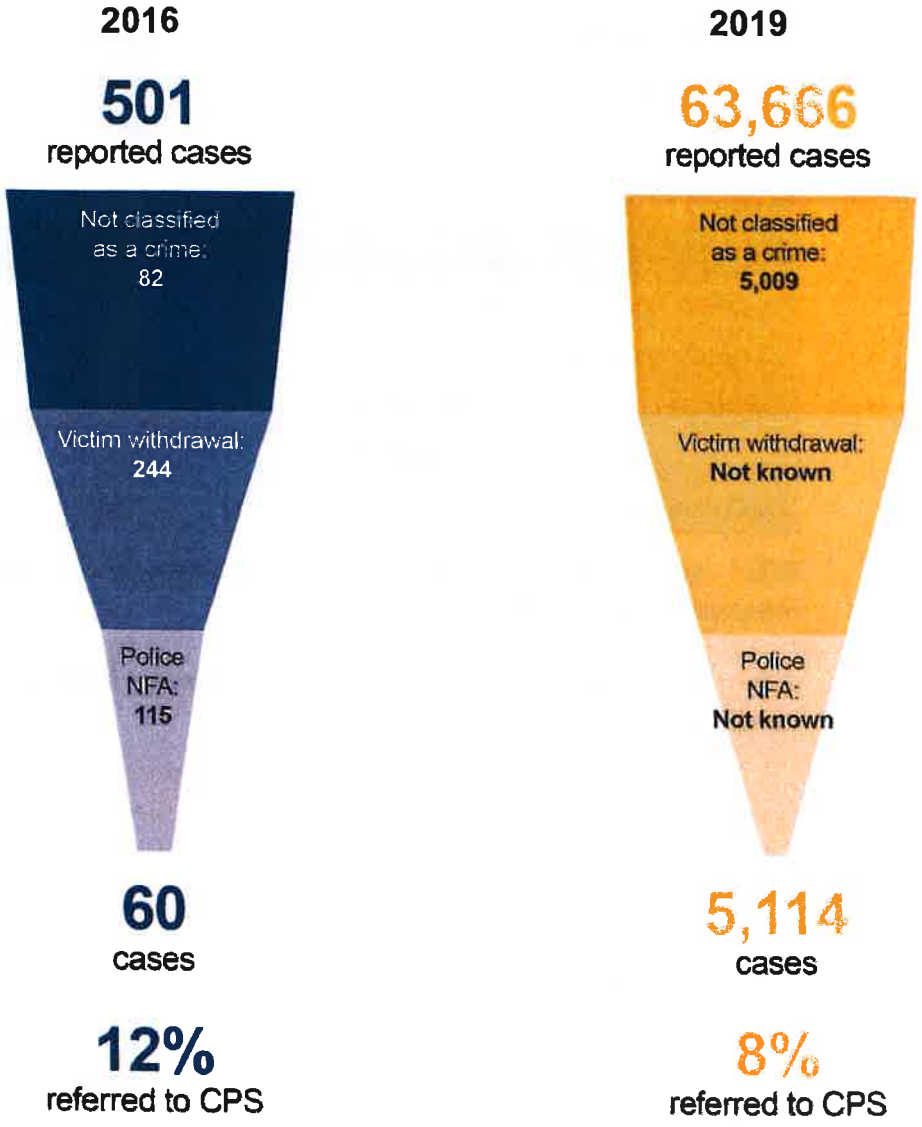
3.18. A total of 214 complainants in our file sample were vulnerable at the point when we considered the case: 52.8% were children, 27.1% had mental health issues, 11.2% were vulnerable in another way (such as being elderly or disabled), 5.1% had learning difficulties, and the rest (3.7%) had more than one vulnerability.

4. Attrition

Victims' Commissioner for London data

4.1. The Victims' Commissioner for London and the Mayor of London's Office for Policing and Crime (MOPAC) published a report in July 2019, which analysed key characteristics and outcomes for 501 rapes reported to the police in April 2016.

Figure 4: Cases reported and referred to the CPS



4.2. In all, 12% of the cases reported to the police were referred to the CPS. Using the most recent Home Office recorded crime data (2019), the downward trend in referrals to the CPS of rape offences for charging can be seen. Figure 4 shows that the 12% figure in 2016 from the MOPAC data has now decreased to 8%.

Police and CPS data

Table 2: CPS pre-charge decisions 2018–19

	# of cases	%
Referred to CPS	3,375	
Pre-charge decisions by CPS	5,114[15]	100%
Charged	1,758	34.4%
No further action (NFA)	1,876	36.7%
Admin finalised	1,465	28.6%
Other	15	0.3%

Table 3: Outcomes of charged cases 2018–19

		# of cases	%
Total charged cases finalised		3,034	100%
Contested cases		1,468	48.4%
Of which:	Convicted	833	27.5%
	Acquitted	635	20.9%
Guilty pleas		1,092	36%

4.3. Key aspects from the CPS charging data and high-weighted measures dashboard are set out below.

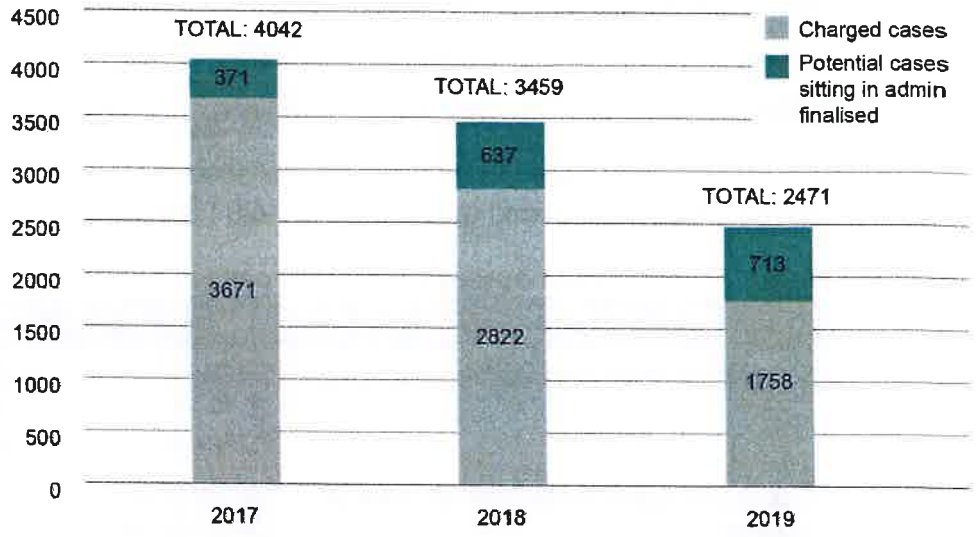
4.4. Referrals from the police have consistently fallen over the past three years (Table 4).

[15] This figure includes pre-charge decisions on cases referred by the police to the CPS before 2018–19 as well as referrals in 2017–18 or earlier, which is why it is larger than the volume of pre-charge receipts within the same time period.

Table 4: Rape receipts

	Year	Volume
National data for rape cases received by the CPS from the police	2016–17	4,595
	2017–18	4,370
	2018–19	3,375
	12 months to Sept 2019	2,889

Figure 5: Number of potential cases when admin finalised cases still under investigation are included



4.5. The rate of charge (including and excluding admin finalised cases) has declined between 2016–17 and 2018–19, but the 12-month period to September 2019 shows a small increase (Table 5).

Table 5: Charge rate in rape cases

	Year	% charged
National data including admin finalised	2016–17	55.6%
	2017–18	46.9%
	2018–19	34.4%
	12 months to Sept 2019	36.6%
National data excluding admin finalised	2016–17	62.8%
	2017–18	59.9%
	2018–19	48.1%
	12 months to Sept 2019	51.8%

4.6. The proportion of admin finalised cases has fallen since the third quarter of 2018–19, but still accounts for more than a quarter (26.2%) of charging outcomes (Table 6).

Table 6: Charging outcomes in RASSO cases

	Q3 18–19	Q4 18–19	Q1 19–20	Q2 19–20
Charged	27.9%	34.3%	41.1%	43.5%
No further action	33.2%	36.0%	33.8%	29.3%
Admin finalised	37.9%	29.0%	24.4%	26.2%
Other[16]	0.9%	0.7%	0.7%	1.0%
Total	100%	100%	100%	100%

4.7. Conviction rates in rape cases have increased by 5.8% between 2016–17 and the second quarter of 2019–20 (Table 7).

Table 7: Successful outcomes in rape cases

	Year	% charged
Conviction rate since 2016-17 by year	2016–17 2017–18 2018–19	57.6% 58.3% 63.4%
Conviction rate in the year to date by quarter	Q3 2018–19 Q4 2018–19 Q1 2019–20 Q2 2019–20	61.4% 63.4% 63.8% 65.7%
Conviction after trial	2016–17 2017–18 2018–19	46.3% 49.3% 56.7%

4.8. As Table 7 shows, the conviction after trial rate has increased from 46.3% in 2016–17 to 56.7% in 2018–19. More recent data shows a continued increase. As we explain in paragraph 2.26, convictions are not the only indicator of successful decision-making. However, in a number of Areas recently, there appears to be a significant rise in the rate of convictions after trial. This is to be expected as the CPS continues to build stronger cases with partners. However, this trend may need further analysis, particularly where Areas are far apart.

[16] These account for a small number of cases. For example, if two defendants were referred to the CPS for a charging decision, one was charged and the other was not subject to charge or NFA, then when the case was finalised, the uncharged defendant would come within 'other'.

Recommendation

Crown Prosecution Service Headquarters should consider the variations in Area conviction rates, particularly after trial, to ensure that decision-making is sound and that cases are being progressed effectively.

Reporting to the police

4.9. Just over half our sample of 450 cases (53.3%) was reported to the police by the complainant or, in the case of recent cases involving children, by a parent, guardian or foster parent.

4.10. There was no significant difference in the decision to charge or take NFA between when the rape was reported by the complainant or by some other party. Eight of the nine cases where the main reason for an NFA decision was the complainant withdrawing support had originally been reported directly to the police by the complainant. In one other such case, the complainant told the police about it while being taken through a domestic abuse risk assessment.

Admin finalised cases

4.11. Our file sample included 200 rape-flagged cases that had been recorded on the CPS case management system (CMS) as admin finalised. As we explain in paragraph 1.15, the term is unhelpful because the cases are often not over at the point they are shown as being admin finalised.

4.12. Cases are admin finalised across a wide range of offences, not just RASSO, and in various circumstances, not all of which involve the case being concluded. The reasons include, but are not limited to:

- where a file submission has been rejected at triage because items are missing, and the police have been asked to supply the additional material and have not responded to chase-ups
- where the lawyer has set actions for the police to carry out, and the police have not responded to the action plan or to chase-ups
- where the case has been returned to the police, with or without a lawyer's advice and/or actions, and the police decide to take no further action on the allegation

- where the actions set by the lawyer will take some time to carry out, or there is some other reason why the case will not be back with the CPS soon (for example, because extradition of the suspect is necessary).

4.13. In our sample, 36 (18%) of the cases that were admin finalised had been reactivated on the CMS before we came to examine them, and it is likely that more have been reactivated since.

4.14. Admin finalisation serves a useful purpose. It removes cases that are in abeyance for some reason from the list of open cases. There is a process for checking and chasing up responses where required, which was set up because the CPS recognised that, in the past, there had been little communication from the police on progress. The process sets out that the action plan should be chased after 30 days (the first chaser) and again after 60 days (the second chaser) if there has been no response from the police. If the police reply and say they need more time, or the lawyer has set action dates beyond the 30 or 60 days, the dates for the first and second chasers can be postponed. If longer periods had been set or agreed, we used those to assess timeliness rather than the standard 30 days.

4.15. If there is no reply to the first or second chaser 90 days after the actions were tasked, the case should be admin finalised. The police then have to ask the CPS to reactivate it on the CMS before any new material can be submitted.

4.16. We found that there was very patchy compliance with the process that the CPS has in place. 21.2% of the first chasers were sent at 30 days, with 6.5% sent early, 50% sent late, and 22.4% not at all. Of the second chasers, 22.7% were sent at 60 days, 6.7% were early, 44% were late, and 26.7% were not done at all.

4.17. There was no response from the police to 68.2% of first chasers or to 54.5% of second chasers. In many cases, therefore, it was impossible for us to determine whether the case was still being investigated, what stage enquiries had reached, or when the police expected to be resubmitting the file. When the police decided to take NFA in a case rather than carrying out the requested actions, they often did not explain their reasoning to the CPS.

4.18. In one Area, the performance manager produced lists of cases that had been back with the police for more than 90 and more than 180 days. The District Crown Prosecutors (DCPs) then contacted the local police forces to establish what was happening with the cases, and whether they

were likely to be built to the point where they could be charged. The DCPs now check all cases at the 90-day stage before admin finalisation and, if there is no response, they check again and escalate, if need be, at the 120-day point. This is a recent innovation, so has yet to show impact.

4.19. Of the 80 admin finalised cases examined by HMICFRS inspectors, 40 (50%) were no longer under investigation. In cases where the police decided to take NFA, they had communicated this to the CPS in just over half (22 out of 40, or 55%). If those rates (which we recognise are only an indicator because they are based on a file sample of 80 cases) were replicated across all forces in our sample, that would mean a total of 100 cases that were concluded, and 55 where the police had told the CPS they had decided to take NFA. That would leave 100 cases still being investigated.

4.20. When it came to administrative finalisations, again, reality did not match the CPS process, with 11% admin finalised at the 90-day point. Of those that were not finalised at 90 days, 36.5% were finalised before 90 days and 63.5% after (Table 8). The correct finalisation code was used in 64.5% of the 200 cases. Nearly a quarter of cases (23.6%) were finalised at or after 180 days from the actions being set (or extended timelines where set).

Table 8: Days until admin finalisation

	1–89	91–179	180+	Total
If not admin finalised at 90 days, how many days were there until finalisation?				
2018	27.7%	31.0%	11.9%	25.3%
Q1 2019	33.8%	21.1%	11.9%	23.6%
Q2 2019	16.9%	23.9%	21.4%	20.8%
Q3 2019	21.5%	22.5%	54.8%	29.8%
Q4 2019 (Oct only)	0.0%	1.4%	0.0%	0.6%
Total	100%	100%	100%	100%

Table 9: Reasons for admin finalisation

Reason for admin finalisation	# of cases	%
No response from the police to the charging action plan set by the CPS	27	13.7%
No response from the police to the early investigative advice action plan or no resubmission of the case by the police after they received this plan	54	27.4%
Police file submission was not accepted and not submitted again	2	1%
Police notified the CPS that the police had decided to take no further action	53	26.9%
Police notified CPS that they would not be ready to respond for some time	6	3%
The response from the police to the action plan was inadequate and the file was not resubmitted thereafter	8	4.1%
Other	47	23.9%
Total	197[17]	100%

[17] The sample of 200 cases included three 'not applicable' responses.

4.21. The 'other' reasons in Table 9 included cases where:

- the lawyer administratively finalised the case at the same time as setting an action plan (12 cases)
- the lawyer suggested the police ought to make the decision to take NFA (nine cases)
- the case was concluded without charge or requesting charging authority (eight cases)
- the police resubmitted the case on a new unique reference number (three cases)
- the case was transferred to the Services Prosecuting Authority (two cases).

4.22. The process for dealing with cases awaiting a response to an action plan, or the outcome of further investigative activity, is clearly not working. There is a process for the CPS to chase the police, which is not being applied properly and is draining valuable resources. It is assurance work that, perhaps, should properly be undertaken by the police, but it is also part of a joint commitment by the prosecution team.

4.23. HMCPSI's position is that, until the police take responsibility for responding to action plans, the CPS should do what it reasonably can to help them deliver a quality product. The CPS accepts this and carries out such work when, for example, it reports back on police file quality or delivers feedback on police compliance on disclosure.

4.24. In admin finalised cases where the CPS and police are not communicating effectively, and neither agency really knows which cases may eventually lead to a charge, the system is failing. Bearing the impact of the delay and uncertainty on their emotions, wellbeing and daily lives, it is the complainant and suspect who suffer the consequences.

Recommendation

Crown Prosecution Service Headquarters should work with the police to develop a more effective system for monitoring rape and serious sexual offences cases that have been returned to the police for any reason pre-charge. The system should involve structured communications between Areas and their local police forces so that the Area is made aware of likely timescales for the file to return to them, and when cases have been concluded in a no further action decision by the police. The national process should incorporate clear timelines and escalations, with monitoring of compliance at a senior level.

Delay

Police

4.25. In our sample of charged or NFA cases, an average of 237 days elapsed between the first report of the allegation to the police and the first submission for a charging decision – nearly eight months. In admin finalised cases, the average was 200 days.

4.26. In the charged or NFA sample, the longest delay between report and submission for which we could not find an adequate explanation recorded on the file was 751 days. For admin finalised cases, it was 741 days. There were four cases which took longer, but for each, there was a satisfactory reason.

1. The complainant reported a rape to her support worker, who contacted the police. The complainant was unwilling to provide a statement or video-recorded account until a year later, and the suspect, who was wanted for failing to surrender to a court, was then not located and arrested for another nine months.

2. A third-party reported allegations of the rape of two children, but then would not assist the investigation. One of the complainants denied anything had happened, and the other could not be identified and traced. Fresh allegations against the same suspect two years later provided further information enabling the police to locate the second complainant.

3. The suspect was unknown until he committed a theft five years later, leading to a DNA match to the sample left during the rape.

4. The complainant reported the rape, then decided not to proceed, but reported it again 11 years later.

4.27. In our survey of CPS lawyers, 19.1% reported that there were delays in all cases before submission to the Area, or after an action plan had been set. Another 56.7% of respondents reported that there were delays most of the time and 24.2% said there were delays some of the time. Managers cited delays most of the time in 62.7% of investigations before submission and 51% after an action plan has been set.

4.28. Over two thirds (68.8%) of the lawyers' and managers' survey responses reported that, some of the time, delays in rape cases appeared to be warranted by the complexity of the case, the type of evidence that needed to be gathered or other features of the investigation. Another 14.9% of respondents thought delays were warranted most of the time, but 14.9% said they were rarely warranted. In interviews with CPS staff, we were told of officers reporting that their cases had not been covered by someone else while they were on maternity, sick or other leave, or on training courses. Where officers had moved on, CPS staff reported that cases were not reallocated in a timely manner. The examination of police files by HMICFRS confirms that there was drift in some cases because of sickness or late reallocation, that there were numerous changes of officers, and that the police's grip on some cases needed to improve. While we only looked in detail at one force, interviews with CPS staff and managers would indicate that this drift is common in other forces. This merits further joint inspection.

4.29. CPS lawyers and managers we spoke to suggested that police inexperience and lack of resources are also problematic, and delays in obtaining digital, forensic and third-party material are also having an effect. In several Areas, the CPS is kept up-to-date with likely timescales for downloading and analysing the contents of a phone. At the time of our inspection, one force gave the likely timescale as 11 months for a level 2 analysis (partway between the least and most detailed examinations). We were told in another force, it was 15 weeks, and one of the police files showed delays of seven months for forensics results. In one Area, a local council had nobody in place to deal with third-party material, which had hindered the police carrying out that part of their investigation.

4.30. Most of the 80 admin finalised cases examined in one police force had an investigative plan, but only five included deadlines for actions, and HMICFRS inspectors thought two of those were unrealistic.

4.31. As we discuss from paragraph 5.49, we saw cases where the Area lawyer had set an unrealistic target date for actions or had not been specific about the nature of the action required, such as the parameters or

level for a phone examination. This hampers the ability of the officer in the case to prioritise and plan their next steps to best effect.

Crown Prosecution Service

4.32. The target for most rape decisions where the suspect is not in custody is 28 days, but some police forces and their related CPS Areas are taking part in a charging pilot, which reduces the target to 21 days.

4.33. In our charged or NFA sample, the average time between an acceptable file submission and the CPS decision to charge or take NFA was 17 days. In 65% of cases, the charge or NFA decision was made in 0–21 days, and the longest wait was 82 days. In the 2014–15 cases we examined in this inspection, and for our earlier inspection of RASSO units, 45.8% of cases were charged within 21 days, and the longest wait was 207 days, so there has been a clear improvement.

4.34. We also assessed the overall timeliness of charging – which took into account all consultations, not just the final one – and any delays in administrative actions. On this basis, 56% of charge or NFA decisions were timely, which has improved from 47.5% in the sample of 2014–15 cases, but still shows room for improvement.

4.35. The CPS data for the average time for a RASSO charge in the second quarter of 2019–20 is 37.1 days. This, too, takes into account all consultations in a case, not just the time from the final acceptable submission. It shows a decline in timeliness from the average of 32.6 days in the third quarter of 2018–19.

4.36. We saw too many instances where cases drifted without recorded explanation between receipt of a police submission and it being reviewed, and too few instances of the police chasing late advices – another symptom of poor communication between police and Areas.

4.37. Delays also arise when an action plan does not identify all the necessary enquiries, so that the file needs to be returned for further work, or does not set parameters, so that the police take longer than necessary.

Case study
One case had four consultations with actions set each time, all of which could have been requested at the outset. In each review, the lawyer noted that they had spoken to a manager to discuss the progression of the case. After the fourth action plan, the police decided to take NFA in the case and it was admin finalised.

Young witnesses

4.38. In the case of very young complainants and witnesses (under ten years old), there is a protocol agreed between the police, courts and CPS[18] which calls for all parties to expedite the case, including a requirement that the CPS provides charging advice within seven days. The need for urgency reflects the fact that very young children may not be able to recall events as clearly, after a relatively short interval, as an older child or adult could.

4.39. Our evidence makes it apparent that these very sensitive cases are not being treated as such. We saw instances where a video-recorded interview with a child as young as four or five was recorded several weeks after the incident was reported to the police and, in one case, the child was not able to recall anything clearly enough to provide effective evidence by the time they were interviewed. We also heard frequent reports that the police did not expedite their investigation, even when reminded by the CPS of the protocol, and saw cases where the CPS had not expedited their review.

4.40. We did not record timeliness specifically for complainants or witnesses under ten, but we did note whether the complainant was a child at the time of the investigation. The average time taken by the police to submit a file to the CPS from the date of report was 258.2 days where the complainant was not a child, and 238.9 days where they were. The average time taken by the CPS to provide a charging decision from receipt of an acceptable file submission was 17.5 days where the complainant was not a child, and 17.1 days where they were. So the police and CPS handled cases where the complainant was a child more quickly, but not by so much as to assure the public that young complainants are being progressed quickly enough.

Impact

4.41. We concluded that there were 16 cases in the charged or NFA sample (6.4%) where the time taken by the police to investigate the allegation, submit it for a charging decision and carry out actions had an impact on the outcome. In the charged or NFA cases, delay was cited by one complainant as their reason for withdrawing their participation, and we were told of other such cases by interviewees. We were also given other examples of the impact of delay, including cases involving youth

[18] *A protocol between NPCC, CPS and HMCTS to expedite cases involving witnesses under 10 years*; Courts and Tribunals Judiciary; July 2018 www.judiciary.uk/publications/judicial-protocol-expedition-of-cases-involving-witnesses-under-10-years/

suspects that were stopped because of the time taken to reach the point of charge. In surveys, we asked lawyers and managers for their views on the impact of delays (Table 10).

Table 10: Survey results about the impact of delays

Question	Answer	All cases[19]
Lawyers' survey responses		
Has police delay in the **police investigation** in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time Most of the time Some of the time Rarely Never Unable to tell	0% 3.8% 54.5% 30.8% 3.2% 7.7%
Has delay in the **police responses to action plans** in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time Most of the time Some of the time Rarely Never Unable to tell	0.6% 0.6% 50% 36.5% 3.8% 8.3%
Managers' survey responses		
Has police delay in the **police investigation** in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time Most of the time Some of the time Rarely Never	0% 11.8% 58.8% 29.4% 0%
Has delay in the **police responses to action plans** in rape cases impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely?	All of the time Most of the time Some of the time Rarely Never	0% 13.7% 54.9% 29.4% 2%

[19] Rounding to one decimal point means that the total is not always 100%.

4.42. Interviewees told us that judges would ask about delay where it was apparently unwarranted, and that to be able to answer this, or to consider a possible abuse-of-process argument, some lawyers would ask the police about the time taken to investigate. We saw instances of this in the cases we examined, and also of the police volunteering an explanation or chronology. However, there were still many files where we were unable to establish why there had been a delay by the police or CPS, so we could not determine for ourselves whether it was warranted.

Recommendation
Areas should work with their local police partners to improve communication and reinforce the need for appropriate challenge by both parties at an operational level. This should be with the aim of achieving more effective case progression, and should include better understanding and communication of timescales for common investigative steps so that realistic targets for actions can be set, and unnecessary escalations avoided.

5. Casework quality

Early investigative advice

5.1. The Director's Guidance on Charging[20] requires the police to refer to the CPS all cases involving rape and serious sexual offences (RASSO) "as early as possible and in any case once a suspect has been identified and it appears that continuing investigation will provide evidence upon which a charging decision may be made. Wherever practicable, this should take place within 24 hours in cases where the suspect is being detained in custody or within 7 days where released on bail".

5.2. This early investigative advice (EIA) is an opportunity for the CPS to help the police "determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court". Identification at this early stage of the strengths and weaknesses of the case, and of reasonable lines of enquiry for the police to pursue, can build stronger cases and avoid unnecessary work on cases that are not going to satisfy the test for prosecution.

5.3. We identified in our inspection of RASSO units (on which we reported in February 2016) that EIA was under-used and not effective. We recommended better guidance on its use. It was apparent from our file examination, interviews and surveys for this inspection that EIA is still not being used as anticipated. Of the cases where the decision to charge or take no further action (NFA) was made by the Areas, 64.9% did not have EIA. EIA was even less likely to be sought in cases that featured sexual offences against children or domestic abuse.

5.4. Many of the cases submitted by the police for EIA were well along the investigative path, and several months after the suspect had been identified. Comparing the results for the 2014–15 cases from this and the previous inspection with the findings for the 2018–19 cases in this sample, EIAs have declined in timeliness from 85.7% to 62%. This, too, echoes the finding from our 2016 report that EIA was being confused with gatekeeping and police supervision. We discuss the quality of the police file further from paragraph 5.11.

5.5. Our interviews confirmed that there was a widespread belief that the police did not understand the purpose of EIA. We were told of one

[20] *Charging (the Director's guidance) 2013 – fifth edition*; CPS; May 2013 www.cps.gov.uk/legal-guidance/charging-directors-guidance-2013-fifth-edition-may-2013-revised-arrangements

police force that has decided not to seek EIA any longer, because they concluded that it does not add value.

5.6. One Area we visited had very recently begun an EIA surgery, where managers were making themselves available to the police to deal with very early questions. The police are expected to provide a detailed summary of the case, but need not open it on the CPS case management system (CMS). Managers are discussing how to ensure their advice is captured, so that it is available if and when the case is submitted for advice. We agree this is an important part of the audit trail. Managers in the Area are also checking the standard of formal EIA submissions and rejecting them if it is clear that the police should decide to take NFA. It is too early to say whether these steps will help officers build cases and seek formal EIA in a more appropriate and timely manner.

5.7. In two other Areas, lawyers give EIA on a set day each week, and the police are told which day their file will be reviewed. This makes it easier for the officer and lawyer to have a phone discussion about the case.

5.8. In our sample of charged or NFA cases, fewer than half the EIA responses by the CPS added value, with 45.6% assessed as fully meeting the expected standard. This was often because of the lack of sufficient timeliness, and/or lack of specificity in either the police request or the lawyer's response. Another 40.5% of EIA responses added some value and 13.9% added no value.

Table 11: Effectiveness of early investigative advice

	Answer	All responses
Is early investigative advice (EIA) in rape cases being used effectively by the police and CPS?		
Lawyers' survey responses	All the time	1.3%
	Most of the time	18.8%
	Some of the time	39.6%
	Rarely	37.7%
	Never	2.6%

5.9. We did see cases where the police put very specific and tailored requests for early advice to the CPS. These often led to more value in the advice the lawyer supplied in return.

Case study
In a difficult case, where the complainant's recollection of events was impaired, the police submitted a comprehensive and thorough request for EIA 12 days after the incident. The CPS lawyer demonstrated a strong grip on the case from this early stage and built the case well. The lawyer was assisted by a proactive approach to case-building by the police. Both the officer and the lawyer were alert from the outset to the need to identify what was evidence and what was unused material that may assist or undermine. The case is now set down for trial.

5.10. The sixth edition of the Director's Guidance on Charging is in draft as we write. We anticipate it will make EIA discretionary in rape cases and give guidance on the circumstances where it ought to be sought. We raised concerns in our 2016 report about the issues with EIA, and we note that these remain unresolved.

Recommendation

The revised Director's Guidance should:

- focus on the types of rape cases where early investigative advice will bring most benefit
- mandate timescales for submission of a request for early investigative advice that take into account what can be achieved in that time for the types of cases that require early investigative advice
- set expectations for the papers to be submitted with a request for early investigative advice
- require compliance with the Director's Guidance in all police forces.

Police file quality

5.11. There is clearly much work to do to bring the quality of police files up to an acceptable level. In our file sample, the police submission for a charging decision met the required standard around half the time: 51.6% in cases resulting in a charge or NFA and 49.1% in admin finalised cases. There was a significant variation between the standard of files received by Areas. For example, one Area's first police submissions were compliant in 20% of charged or NFA cases, whereas another's met the agreed standard in 60.5% of cases.

5.12. In some police forces, there are gatekeepers who assess the quality of the file before it goes to the CPS, either for all cases or specifically for RASSO work, and a number of forces have embedded an

officer or officers in their local CPS RASSO unit to address concerns over police file quality. Our file sample contained only a small number of cases for most forces, but did not show a clear impact on file quality from the existence of a gatekeeper or embedded officer – although Area lawyers and managers told us that both do improve file standards. One force has employed an ex-CPS lawyer to act as a gatekeeper, and the Area reported to us that they were seeing fewer cases rejected at triage as a result.

5.13. The police supervisor should assess whether the case contains sufficient evidence to merit a referral to the CPS and, if it does not, the police should make the decision to take no further action. CPS staff in focus groups told us that in some instances, police referred cases that should not have been. In some instances, those we spoke to thought the police wanted the CPS to ratify and make decisions in these difficult cases that should not have been referred. Our file sample bore this out – for example, there were nine cases that were admin finalised because the CPS lawyer had sent it back to the police to NFA.

5.14. Areas expressed concern about the impact on police standards of having inexperienced officers dealing with these specialist cases, and cited examples of lack of understanding of investigative roles and duties, such as those related to unused material. Where forces do not have specialist units, officers may not build up the same level of experience, or find themselves abstracted for non-RASSO duties, both of which hamper effective investigation and file preparation. Lawyers also reported that they find it harder to get hold of officers and supervisors when they are in non-specialist teams.

5.15. More than half the charged or NFA cases in our file sample did not meet the expected file submission standard. In these cases, the failure was fatal to the lawyer's ability to review the case. This was usually because the police had not supplied the complainant's video-recorded interview, also known as the achieving best evidence (ABE) interview, which happened in over a third of the sub-standard charged or NFA cases (35.5%) and nearly half (45.2%) of the relevant admin finalised cases. Other deficiencies in both types of cases included an inadequate summary of the case and investigation (as recorded on the Manual of Guidance Form 3), no supervisor's certificate or file contents checklist, or missing key statements.

Case study
In one case, where the victim reported a rape, the officer in the case investigated thoroughly and promptly, including tracing and speaking to a number of witnesses and obtaining a great deal of third-party material. The file submission passed the first triage, and the high standard of the file, including the detailed summary of the unused material, enabled the lawyer to make a decision without the need for further enquiries.

5.16. We discuss the quality of the ABE interview in chapter 7, The service to complainants, witnesses and the public.

5.17. Our file sample of 250 cases highlights that the police were generally not very good at accurately identifying the strengths and weaknesses of the case they were submitting, only doing so fully in 49% of charged or NFA cases, and partially in another 38.5% of those cases. This left 12.6% of cases where the analysis was very weak or missing.

5.18. Relevant unused material, or an adequate report on it, was supplied in 81.3% of relevant charged or NFA cases. The standard file submission for RASSO cases does not have to include unused material schedules, except where local agreement mandates them. About a third of police submissions in charged or NFA cases included schedules, but only 34.9% of them were satisfactory. Missing items from a schedule was the most common error, but listing things on the wrong schedule and poor descriptions also featured, and interviewees expressed concerns that officers did not understand their duties or the concept of relevance in relation to unused material. If the schedules or summaries of unused material are deficient, either they are sent back to the police, causing delay, or the lawyer proceeds on the basis of incomplete or inaccurate information, which carries a risk that relevant undermining material is overlooked.

5.19. The examination of 80 admin finalised police files in one force showed that nearly all the cases had been dealt with by specialist officers, with adequate supervisory involvement in the setting of an investigation plan, and with 80% of the initial actions undertaken in a timely manner. In 97.4% of cases, there was evidence of supervision before submission to the CPS. Despite that, the force's initial file submissions were noted to be missing key elements in 13.8% of cases.

5.20. In our overall sample, the force's response to actions tasked by the CPS also showed room for improvement, with no response in nearly a quarter (23.4%) and only a partial response in over a third (36.4%). Responses were timely in just under two-thirds (64.4%). This supports interviewees' accounts that material is drip-fed to them by the police, which hampers their ability to assess cases thoroughly and efficiently. In our admin finalised sample as a whole, 30% of action plans met with a proper response.

Phones and other digital devices

5.21. In the 80 police admin finalised cases we examined with HMICFRS inspectors, there were 58 where the complainant's phone and/or other digital devices may have been relevant as part of the police investigation. In 52 of those (89.7%), appropriate requests were made by the police, but in all but one of the remaining six cases, the police did not request devices when they should have. In 86.9% of relevant cases, the suspect's phone or other devices were seized by the police appropriately. The information resulting from digital communication devices in the force's admin finalised cases was reviewed by the officer in good time in 56.9% of cases, reviewed late in 15.7%, and not reviewed in 25.5%. In the final case (2%), we could not tell from the police force's systems whether it had been reviewed or not.

5.22. In the majority of relevant cases (60.9%), both admin finalised and charged or NFA, the lawyer properly identified where an action did or did not need to be raised for a complainant's phone or other digital devices, and set out a proportionate request where it did. This means that in nearly four out of ten cases, they did not, causing additional work for the police and producing more material to be evaluated. We discuss this further from paragraph 5.50.

Administrative triage

5.23. The CPS undertakes administrative (or admin) triage to assess whether the police file submission complies with the agreed standard. We have been told that the cost of administrative triage to the CPS amounts to £1.7 million a year. The fact that the agreed file standard, which is set nationally and agreed with senior police partners, is often subject to local variation is unhelpful, especially for a national organisation with standard operating practices. This local variation means that administrative staff (and inspectors) can find themselves weighing different police forces' work against differing standards.

Issue to address

Crown Prosecution Service Headquarters should engage with police partners to develop a National File Standard for the first submission of a rape case for a full Code test charging decision.

5.24. The administrator conducting the triage will check for the presence or otherwise of the required material, not the contents, although we did see administrative staff rejecting Manual of Guidance Form 3s (MG3s) for being formatted in a way that made them hard to read.

5.25. In our sample of charged or NFA cases, there were a number (15.5%) where admin triages did not take place on the initial file submission. This did not have an impact on the time taken to reach a charging decision or the number of consultations. Where admin triages took place on charged, NFA and admin finalised cases, they correctly identified the acceptability or otherwise of the police file most of the time (80.7%). The most common error was accepting an unsatisfactory submission (11.8%). Subsequent triages recognised whether the police's later submissions were satisfactory or not in 70.5% of cases, and said they were acceptable when they were not in 10.4%.

5.26. CPS data for the 12 months to September 2019 shows that 46.2% of admin triages accepted the first police submission. Our equivalent data shows acceptance in 36.8%.

5.27. There was an average of 1.9 triages per case in our sample of 450 cases. 77.7% had one or two triages, and 13.1% had three, but the rest (9.1%) had four or more, which is indicative of lack of efficient joint work to drive timely charging decisions. Police drip-feeding their responses to action plans also increase the number of triages and rejections.

5.28. Admin triages are meant to be carried out within 48 hours of the file being received from the police. In our 450 cases, the first triage was timely 60.2% of the time, and later triages were within 48 hours in 76.2% of relevant cases.

5.29. In one Area, a system of lawyer triages had been introduced. This was resource-intensive and has now ceased.

Legal decision-making

Wholly unreasonable decisions

5.30. As with almost all other casework-based inspections, we assessed whether the Code for Crown Prosecutors[21] was applied correctly at the point of charge. Unusually, in this inspection we also looked at cases where the CPS advice was for NFA.

5.31. If a wholly unreasonable decision is taken at this key point, it can lead the complainant or witnesses either to be disappointed (if there is to be NFA) or to have unrealistic expectations (if there is a charge). It can also mean that a suspect has a prosecution hanging over them when there is no realistic prospect of conviction, or that a suspect has not been brought to justice. In these serious cases, the impact is likely to be significant and long-lasting.

5.32. Our focus groups were consistent on the primacy of the Code in making decisions about charge. Focus group lawyers did not tell us there was pressure to charge more or only the strongest cases, and some said precisely the opposite. There were some doubts about whether the merits based approach had been properly understood or was helpful, but the lawyers we spoke to were clear about taking decisions based on the Code. The file sample contained five cases where CPS lawyers had not succeeded in doing that, but in none of them did we see evidence that pressure to secure convictions or risk aversion was the cause of a flawed decision.

5.33. We examined 250 cases which led to a decision to charge or NFA, of which 40 dated from 2015, and the rest from 2018–19. Of the 250 cases, there were five (2%) which featured a wholly unreasonable decision, so the Code was applied correctly in 98% of cases.

5.34. One of the cases with a wholly unreasonable decision dated from 2015 and the rest from 2018–19. Our inspection of RASSO units in 2015 (on which we reported in February 2016) found five out of 61 relevant rape cases featured a wholly unreasonable decision. To those cases, we added the one wholly unreasonable decision out of our sample of 40 cases from 2015 in this inspection to give an overall 2015 Code compliance rate of 94.1%. The Code compliance for the 210 cases from 2018–19 (206/210) was 98.1%, so there has been a clear improvement.

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[21] *The Code for Crown Prosecutors*; CPS; October 2018
www.cps.gov.uk/publication/code-crown-prosecutors

5.35. Of the five cases in this inspection which featured a wholly unreasonable decision, two were decisions to charge and three were decisions for NFA. Both decisions to charge were overturned later when more information came to light. In both cases, the information ought to have been provided by the police and evaluated by the CPS pre-charge. Of the three NFA decisions, two were subject to a Victims' Right to Review scheme request. The first was overturned following that review, and the suspect charged with rape and attempted rape. They have since pleaded guilty to the rape and are awaiting sentence (see case study below). The second request under the Victims' Right to Review scheme involved considerable additional work by the police at the CPS's behest – work which should have been done before the NFA decision, and which confirmed that NFA was the appropriate outcome. The third NFA decision was also a very premature decision, but it is not possible to say whether that case was capable of being built sufficiently to provide a realistic prospect of conviction.

5.36. The mix of flawed NFA and flawed charge decisions, and the nature and outcome of those decisions, tell against there being a policy to take forward only cases that are strong. If the correct decisions had been taken at the outset, and based on all the right information, the result would probably have been four NFAs and one charge.

Case study
The offence in this case had been reported 11 years earlier by the complainant, who at that point decided not to pursue the complaint. However, more recently, the complainant asked that the case be reopened and investigated further.

The complainant was intoxicated by drink and had possibly been surreptitiously drugged. They and the suspect had consensual sex at the suspect's home, a short part of which was filmed by another person present. Afterwards, the complainant became unconscious, and while in this condition, the suspect used their phone to film themselves raping the complainant.

The suspect's partner found the footage and reported the incident to the police. The complainant, when shown the footage, did not recall the events, but was sure they would not have consented to having sex while being filmed in the earlier part of the evening. The footage did not support this.

The charging lawyer's thinking became bogged down in issues of consent relating to that part of the case, without properly analysing what happened later, which led to them deciding there should be no further action on the whole case. The decision not to charge in relation to the rape that took place while the complainant was unconscious was flawed.

The decision was overturned when the complainant exercised their right to ask for reconsideration under the Victims' Right to Review scheme, and the suspect has since pleaded guilty. They are awaiting sentence.

5.37. Three of the five cases with wholly unreasonable decisions demonstrated the need to undertake careful enquiries pre-charge, and the fourth (see case study below) demonstrated the need for accurate information to be supplied by the police.

Case study
The police sought a threshold test decision from CPS Direct (CPSD), because they planned to ask the court to remand the suspect into custody. CPSD lawyers are not expected to view a complainant's video-recorded evidence, given the time it can take and the fact that not all forces can make it available in a viewable format, so they are reliant on an accurate summary from the police of what a complainant says.

In this case, the summary omitted the information that the complainant had consented to vaginal intercourse. The complainant also feared they had been raped orally, to which they could not consent because they had been asleep, but the evidence to show oral penetration had taken place was merely speculative. CPSD charged oral and vaginal rape.

Both were discontinued promptly once an Area lawyer reviewed the complainant's interview.

Use of counsel

5.38. There were 13 cases out of our full sample of 250 in which counsel was instructed to give charging advice, none of which were serious, sensitive or complex enough to merit such a step. The benefit of instructing counsel pre-charge comes from their early engagement in a difficult or complex case that they will then see through at court, with the trial strategy set from the outset. It does not absolve the CPS lawyer, to whom is delegated the power to make the decision to charge, from reviewing the evidence and circumstances to determine for themselves whether the Code is met. It is therefore of limited use as a time-saving device, as we said in our 2016 report on our inspection of RASSO units. This time, nine of the 13 advices by counsel were not properly ratified by the CPS lawyer by way of a full review.

Issue to address

Area managers should ensure that they instruct counsel to give advice before charge only in those cases where it is justified by the complexity or seriousness of the case.

Use of CPS Direct

5.39. Since CPS Direct (CPSD) lawyers cannot view a complainant's video-recorded interview, it is important that rape cases are only sent to them when it is essential. Often, the police seek application of the threshold test because enquiries are still at an early stage. We found that prosecutors in CPSD usually set out their reasoning for each of the elements that need to be satisfied for a threshold test decision, and robustly applied them. There were a number of examples where CPSD lawyers declined to apply the threshold test because they did not think it was appropriate to seek to remand the suspect in custody, and where they tasked the police with seeking advice from their local Area. In CPSD and Areas, there were only four cases (two each) where the threshold test had been wrongly applied.

Strength

Crown Prosecution Service lawyers are correctly applying the revised threshold test for charging, and challenging the police when they do not agree with the police's proposal to withhold bail at the point of charge.

Reasons for NFA decisions

5.40. Undermining material accounted for nearly half of the 125 NFA decisions in our sample (61 cases or 48.8%). In 57 of those 61, the undermining material related to the complainant. 39 of those cases included the complainant giving inconsistent accounts in previous statements to the police or others, or being contradicted by other credible evidence. A lack of participation from the complainant (which we discuss further from paragraph 7.10), accounted for nine NFA decisions. There was insufficient evidence to prove the mental element of the offences in 18 cases, and this usually related to belief in consent. Other evidential reasons – which included a combination of factors (such as the two cited above), not being able to identify the suspect, or lack of clear evidence of part of the actus reus (for example, whether penetration had taken place) – accounted for 33 NFAs.

5.41. There were four cases where public interest was the reason that the case did not proceed. In two, the suspects were children, in one the suspect was receiving end-of-life hospice care, and in the fourth, the suspect died while the police were still carrying out the CPS action plan.

Our judgement

5.42. For the first time in an inspection, legal inspectors recorded whether they would have made the same decision as the CPS lawyer in the charged or NFA cases. This is not the same as finding that a decision was wholly unreasonable, but involves the inspectors substituting their judgement for that of the CPS lawyers. Of the 250 cases, inspectors would have made a different decision in 13 (5.2%), of which six were CPS decisions to NFA, and seven were charged cases. In other words, inspectors would have charged one fewer case than the CPS lawyers did. This undermines the suggestion that lawyers are charging only the strongest cases in an effort to increase conviction rates.

The standard of charging advice

5.43. There was proper case analysis and strategy in more than half the charged or NFA cases (54.4%), and partial analysis in another 31.2%, but no proper strategy in 14.4%. Flaws included poor assessment of the weaknesses and strengths or how to build a stronger case, and lack of a trial presentation plan. This was one of the most common reasons for marking down the overall standard of the MG3. CPSD's advice was generally stronger than that produced by Areas.

Table 12: Overall standard of the charging advice, including action plan

	Answer	All cases[22]
All 250 cases 2018–19	Fully met	33.2%
	Partially met	52.0%
	Not met	14.8%
	Total	100%
CPS Direct 2018–19	Fully met	35.7%
	Partially met	57.1%
	Not met	7.1%
	Total	99%
Areas 2018–19	Fully met	32.9%
	Partially met	51.4%
	Not met	15.8%
	Total	101%
2014–15 cases	Fully met	41.6%
	Partially met	42.6%
	Not met	15.8%
	Total	100%

5.44. The MG3 dealt with unused material fully in 64.5% of cases, and partially in 20.3%. The most common failing was not addressing the impact of disclosable unused material on the evidence. We also noted that in 12.3% of the cases with partial or no case analysis and strategy, the lawyer had over-emphasised the impact of undermining material in the complainant's account, background or other circumstances, and had under-emphasised it in 6.1% of such cases.

5.45. In our 2016 report on RASSO units, we examined disclosure throughout the case, rather than just pre-charge. With that caveat, we noted that the standard of handling of unused material appears to have improved (Table 13).

[22] Rounding to one decimal point means that the total is not always 100%

Table 13: The quality of handling of unused material by the CPS

	Answer	All cases[23]
2014–15 cases	Fully met	48%
	Partially met	21.3%
	Not met	30.7%
	Total	100%
2018–19 cases	Fully met or excellent plus good	68.8%
	Partially met or fair	22.1%
	Not met or poor	9%
	Total	99.9%

5.46. There was no disclosure document, or any action taken to commence one, in nearly a third (30.3%) of the cases that called for one.

5.47. The lawyer complied with CPS policy in 86.4% of cases, including viewing the complainants' and/or witnesses' video-recorded interviews in 89.5% of relevant cases, and choosing the right charges 93.6% of the time. There were nine cases in this inspection where the lawyer failed to identify rape myths and stereotypes and how to address them. Compliance with policy, choosing the right charges and the rate of viewing of the complainant's evidence have all improved since 2014–15.

5.48. The CPS action plan was assessed as fully meeting the required standard in just over a third (38.4%) of all charged, NFA and admin finalised cases, and as partially meeting it in nearly half (47.6%), leaving 14% where it did not meet the standard at all. In the 2014–15 cases we examined for this and the RASSO units inspection, the proportion of action plans that did not meet the required level was 22.6%, so there has been clear improvement.

5.49. One of the issues we identified was the lawyer not setting realistic dates for actions. In 32.2% of relevant cases, the timescales were not realistic. While some Areas are providing information about backlogs in forensic labs, there were still some lawyers in our focus groups who would find it helpful to have more information, for example about how data is recovered from phones and how long that usually takes in their police forces.

5.50. In the majority of relevant cases (60.9%), the lawyer properly identified where an action did or did not need to be raised for a complainant's phone or other digital devices, and set out a proportionate request where it did. For other information or evidence, 71.4% of requests were made or not made appropriately. Where there were issues, the most

[23] Rounding to one decimal point means that the total is not always 100%.

common were not setting out proper parameters for an action to get information from the complainant's digital devices, and making requests for third-party material (such as education, medical or Social Services records) that were not necessary. We also saw examples of action plans that consisted of a generic list of actions without any tailoring to the facts of the case. The recent training on the revised Code for Crown Prosecutors included reasonable lines of enquiry, but it is apparent there is an appetite and need for more. This may be addressed in some part by a new training programme on the use of disclosure management documents, including additional guidance on reasonable lines of enquiry, which is being delivered to all RASSO units and is planned to conclude in February 2020.

5.51. It is unhelpful if the lawyer does not explain to the officer in the case why a line of enquiry is reasonable and proportionate, because it feeds the perception in the police that the CPS asks for things that are not needed. It also misses an opportunity to give the officer, who may be quite inexperienced, some on-the-job learning.

5.52. Some prosecutors are still asking for a full download of a complainant's or suspect's phone. We think this may be because of a lack of awareness of the types of download that are available, and what they can provide. There are often changes to how digital devices and social media platforms operate – for example, how they store information or what can be retrieved after deletion. Some Areas do provide this information to prosecutors, but it would save duplication of effort and assist all Areas if CPS Headquarters marshalled this information at a national level and updated it where necessary. Areas need to ensure that their RASSO teams understand the various interrogation methods their local forces use, what they deliver and in what timeframes.

Recommendation
Crown Prosecution Service Headquarters should provide national information on what data can be obtained from social media platforms, and Areas should tailor the national information to include what methods are used by their local forces, what they deliver and in what timeframe for different digital devices.

5.53. We assessed the overall grip on cases shown by the lawyer and rest of the team. Our assessment includes many of the aspects highlighted above, but also the accuracy and timeliness of administrative actions, and any delay in providing charging advice that was attributable to the CPS. The level of grip is slightly better in the 2018–19 cases than it was in the 2014–15 cases.

Table 14: Overall grip on cases

	Answer[24]	All cases
The lawyer or team exercised sound judgement and grip throughout the case.		
Admin finalised cases	Excellent	0%
	Good	40.5%
	Fair	41.5%
	Poor	18.0%
	Total	100%
Charged or NFA decisions	Excellent	2.0%
	Good	43.2%
	Fair	40.4%
	Poor	14.4%
	Total	100%
All 2018–19 cases	Yes	46.2%
	No	53.8%
	Total	100%
2014–15 cases	Yes	45.3%
	No	54.7%
	Total	100%

Sharing feedback

5.54. As with many other inspections, we found that, while there are processes in place for performance management at more senior levels, the police and CPS are missing opportunities to provide feedback on individual cases.

[24] In the 2016 report, we marked grip as 'yes' or 'no'. For comparison purposes, we have treated excellent and good ratings as yes, and fair and poor as no.

Police challenge to the CPS

5.55. In the file examination, we reviewed how often the police challenged the proportionality of action plan requests and timescales, and how the CPS responded to those challenges. In the police files we reviewed from one force, there were very few instances of the police challenging CPS requests. Whether the police did or did not challenge, they were right in their approach most of the time (Table 13). However, the data shows there were still instances of the CPS setting actions and timescales that were not proportionate, and which went unchallenged, especially in those cases where the timescales set by the lawyer was wholly unreasonable. The CPS responded appropriately to a challenge in about seven in ten cases.

Table 15: Police challenge to the CPS

	Answer	Charged or NFA cases
Where the police challenged the proportionality of a CPS action plan request		
The police were right to challenge	Yes No	80% 20%
The CPS responded appropriately	Yes No No response	66.7% 20% 13.3%
Where the police did not challenge the proportionality of a CPS action plan request		
The police were right not to challenge	Yes No	81.6% 18.4%
Where the police challenged the timescales set in a CPS action plan		
The police were right to challenge	Yes No	80% 20%
The CPS responded appropriately	Yes No No response	70% 20% 10%
Where the police did not challenge the timescales set in a CPS action plan		
The police were right not to have challenged	Yes No	71.7% 28.3%

CPS challenge to the police

Administrative triage

5.56. The first opportunity for feedback to the police on their service is often the administrative triage, which we have discussed in more detail from paragraph 5.23.

5.57. Where they took place, initial admin triages in admin finalised cases correctly identified whether the police file was acceptable or not 76.7% of the time, but in the remaining 23.3% they did not. The corresponding figures for charged or NFA cases were 82.9% and 17.1%. Subsequent triages correctly accepted or rejected later submissions in similar proportions.

Lawyer review

5.58. The next and more important opportunity for feedback from the CPS comes when the lawyer reviews the submission and identifies what is and is not acceptable. Across the admin finalised and charged or NFA cases, lawyers identified and fed back failings to the police 74.1% of the time. The feedback was in the form of comments in the body of the MG3 43.3% of the time, but almost as often (42.6%) it took the form of actions in the action plan. This is less helpful, because it does not necessarily make clear to an officer that the action reflects a defect in the file they put together.

5.59. When we looked at 80 admin finalised files for one force, we found that the police had noted and taken action on the feedback in just over half the relevant cases (51.3%), and that the feedback had been noted but not actioned in 10.3%, and neither noted nor actioned in 38.5% of cases. This supports the concern that less direct feedback may well be missed.

Number of consultations

5.60. Cases may well have more than one consultation, but the more consultations there are, the less likely it is that the CPS and police are working effectively together to progress cases to charge.

5.61. CPS charging data for rape cases for the 12 months to September 2019 shows an average of 2.7 consultations per case. The period 2016–19 shows a trend of yearly increases.

5.62. In our charged or NFA sample, the average number of consultations per case was 1.9, and 31.2% of cases had only one consultation. There were two consultations in 34.4% of cases and three in

19.6%. There were 15 cases that had four consultations, seven that had five, and 15 that had six or more. In these cases, clearly, efficiency was not at the forefront of the CPS or the police approach.

Recommendation
Crown Prosecution Service Areas should work with their local police forces to make better use of the many avenues for feedback between them, including providing accurate information on the quality of service each supplies, making robust challenges and seeking appropriate and timely information.

6. Quality assurance and performance management

6.1. There are a number of quality assurance tools in use across the Areas we visited and the personnel we surveyed. Some of these are well established, such as individual quality assessments (IQAs) across all casework (not just rape and serious sexual offences cases) for checking the quality of legal decisions and other casework. All Areas carry out IQA with a disclosure theme, which should identify issues with reasonable lines of enquiry and pre-charge handling of unused material, and some Areas specifically target pre-charge rape cases for IQA. We have not assessed the application of IQA in this inspection, but in March 2018 we reported on the operation of IQA[25] and expressed concerns about the clarity of understanding and robustness with which it was applied.

6.2. Local case management panels are also standard across the CPS, although the types of cases called for panel review and who sits on the panel may vary. Since late 2018, all threshold charge cases are subject to local case management panel review. There are criteria for the most serious cases, when the panel should be chaired by the Chief Crown Prosecutor (CCP), and some Areas have chosen to supplement these. In one Area, for example, there are panels in all rape and serious sexual offences (RASSO) cases, led by the District Crown Prosecutor (DCP) for cases involving sexual touching over clothing, by the Senior District Crown Prosecutor (SDCP) for cases of sexual assaults which involve touching skin, and by leaders as senior as the Deputy Chief Crown Prosecutor (DCCP) and Chief Crown Prosecutor (CCP) for all rape cases. In our surveys, 76.6% of lawyers and 90% of managers reported that case management panels were held pre-charge in appropriate cases.

6.3. Some Areas still require a second opinion in rape cases where an NFA decision is made. More than a third of lawyer respondents to our survey seek a second opinion in all cases. One Area moved away from assuring all NFA decisions to assuring all charged cases before the decision were finalised. The process was intended to be light-touch, but became rather formal and time-consuming. The Area has now moved to reviewing reasonable lines of enquiry before the charge is confirmed. Scrutiny panels for violence against women and girls are held in all Areas, and in some, these are supplemented by Area involvement in police scrutiny panels, including, in one force, a panel specifically for RASSO NFA cases.

[25] *The operation of individual quality assessments in the CPS*; HMCPSI; March 2018 www.justiceinspectorates.gov.uk/hmcpsi/inspections/the-operation-of-individual-quality-assessments-in-the-cps-mar-18/

6.4. Casework quality boards or committees sit in all Areas, and consider themes emerging from IQAs, adverse cases and the other pieces of quality assurance work.

6.5. Areas have carried out dip-sampling on cases – for example, one SDCP checked all the NFA decisions in one month to assure themselves that the correct decision had been reached.

6.6. Other cases are quality-assured by managers as they pass across their desk for other reasons, such as where a lawyer asks for their input, the police have appealed a decision to refuse charge, the CPS has received a complaint or request for a review by a complainant, or there has been an adverse outcome.

6.7. In one Area we visited, the manager discusses every case with the lawyer before the latter finalises their charging decision, to assure themselves that all reasonable lines of enquiry have been explored. In the same Area, all cases charged by CPS Direct are reviewed once they reach the Area to ensure that reasonable lines of enquiry have been addressed.

6.8. Managers provide IQA results to individuals as they are completed and reported, feeding back to their teams on other quality assurance and performance data in team meetings, weekly or fortnightly team briefings, or other communications. Feedback from the appeals and review unit in CPS Headquarters, which carries out the second stage of decisions not to charge under the Victims' Right to Review scheme, is also shared with Areas, and from there with RASSO teams.

6.9. We asked lawyers about the feedback they get on their own cases, and on the team's work. Most thought they got the right amount of feedback and information, but more so for the former than the latter (Table 16).

Table 16: Feedback on cases and casework

	Answer	%
Do you get sufficient feedback from your managers on the decisions you are making and advice you are giving in rape pre-charge cases?		
Lawyers' survey responses	I get about the right amount of feedback	64%
	I get too little feedback	23%
	I get too much feedback	2%
	Other	11%
	Total	100%
Do you get sufficient information about good practice and lessons to be learned from the RASSO team's work on rape cases?		
Lawyers' survey responses	I get about the right amount of information	55.7%
	I get too little feedback	32.9%
	I get too much feedback	1.9%
	Other	9.5%
	Total	100%

6.10. Managers were familiar with their teams' casework. They were aware of, and eager to cite to us, examples of cases that their teams had handled well, as were the lawyers themselves. It is clear that successful outcomes in difficult cases do engender a sense of pride and achievement. It is also clear that the handling of rape cases is being assessed in many ways, both formally and informally, and that these systems are effective in ensuring a level of oversight which would identify any prosecutor who may demonstrate a misunderstanding of the CPS position on the Code test, or who may be chasing convictions. The evidence from the files we examined in this inspection shows that in general the level of assurance is effective.

Performance management

Internal

6.11. The Areas we visited and those we surveyed held regular internal performance meetings, including management and operational team meetings at various levels within the Areas, sometimes as frequently as daily, although these are informal. Casework committees also discuss performance, and there are regular discussions about charging levels and any backlogs between managers. Nationally, there has been a longstanding focus on rape performance through regular discussion at quarterly Area Performance Review meetings, where Area senior management teams are challenged on performance by the Directors of Legal Services and the Director of Business Services. One Area has

recently introduced a RASSO governance board (with police involved), and another has a RASSO action plan, but it is too soon to determine what improvements have resulted. In one region, the Areas' disclosure champions attended a disclosure conference focusing on reasonable lines of inquiry, digital evidence and disclosure. One Area has also asked another Area to peer-review some of its cases, to independently assess their quality. There was no evidence of any Area chasing a conviction target, although there was clear evidence that conviction rates were discussed as one of a series of measures of performance.

6.12. All the Areas we visited have processes for checking the timeliness of charging advice and monitoring the number of cases awaiting advice. The managers we interviewed have regular discussions about volumes outstanding and ensuring that backlogs are tackled. We were told that the recent summer holiday season had caused charging work to build up, and some cases to miss their timeliness target.

External

6.13. Externally, Areas are holding regular meetings with police colleagues at different levels across both organisations. These include local and Area prosecution team performance management meetings, usually between the SDCP and DCP grades from the CPS and Detective Chief Inspectors or Superintendents from the police. Performance data and other information are also shared and analysed at more senior levels, up to and including the DCCP, CCP, Deputy or Chief Constable and Local Criminal Justice Boards. These Boards' discussions will also involve other agencies and stakeholders, such as the Police and Crime Commissioner.

6.14. Specific examples of joint work include:

- Areas and forces working together to produce an agreed template for the police Manual of Guidance Form 3 (MG3) summary of the case
- a monthly meeting about police file quality, chaired by a very senior officer, at which the CPS is represented at DCCP level or by a deputising SDCP
- a project between one police force and the Area to examine action plans and ensure they were proportionate
- regular calls between a CPS manager and their local police specialist RASSO team to discuss what cases are shortly to be submitted to the Area, so that there is better planning of workstreams

- training on disclosure with the police
- a CPS–police conference, attended by police from two of the Area's forces and most of the RASSO lawyers, at which the delegates worked through a rape case study, discussing reasonable lines of enquiry and how to complete the disclosure management document.

Performance data

6.15. There is a wealth of data available to support performance discussions – and a risk that there is too much to allow for proper focus. One Area has introduced a bespoke charging data tool to give managers and police more accessible and understandable data. This has been well received.

6.16. We asked managers about the use of performance data at their meetings with police. About a quarter of managers (25.5%) reported that performance discussions with the police were supported by relevant performance data all the time, with another 52.9% reporting that was the case most of the time, and 17.6% some of the time. A very small number (3.9%) said relevant performance data was rarely used to support discussions.

Impact

6.17. There is considerable quality assurance and joint performance management being undertaken, but the evidence we gathered shows that it needs to be more robust to deliver more consistent improvement. Much of it has come about in the last two years, and in response to public concern about failed cases. Some is even more recent and has yet to show impact.

6.18. Managers responding to our survey agreed, both for internal and external work, that improvements did not necessarily follow from quality assurance and performance management work. Only 7.8% reported that internal performance discussions and quality assurance always led to improvements. Another 43.1% of managers reported that this work led to improvement most of the time, but the remaining 49% felt it did only some of the time.

6.19. We also asked managers about their discussions with their forces about the quality of the police service, and whether that engagement delivered improvement. Nearly three quarters (72.5%) reported that improvement resulted some of the time, and 15.7% said it did most of the

time, but over a tenth (11.8%) said their work rarely led to the police service becoming better.

6.20. The joint work being carried out is intensive and probably not sustainable at current levels with current resources. There is also a risk that lawyers in RASSO teams will become deskilled or feel disempowered. The CPS needs to identify and focus more on very specific areas of weakness, such as setting clear parameters for actions, communicating about timescales for actions with the police, or identifying what is happening with admin finalised cases, in order to deliver improvements.

Recommendation
Crown Prosecution Service Areas should engage with their local police forces to identify key specific priorities for focused improvement activity, which should align with the targets for Crown Prosecution Service and police internal assurance work.

7. The service to complainants, witnesses and the public

Police service

7.1. In our file examination, we rate the quality of the achieving best evidence (ABE) interview with the complainant and/or witnesses. This was of good quality in more than half the applicable cases (54.5%), and partially met expectations in another 34.8%. Technical issues, such as camera angle or sound quality, were responsible for nearly a fifth of the ABE interviews that were marked down. Flaws in the interviewing itself were also common, including overly long interviews, not eliciting sufficient detail about the allegation, asking leading questions or failing to deal with the difference between truth and lies for child witnesses. Better feedback to the police from CPS lawyers who have reviewed the ABE interview and can identify strengths and weaknesses and their impact on the case, would assist the police in improving their standard.

7.2. We considered that the complainant may have benefited from the use of an intermediary to assist them in giving their account in 19 cases, but in eight of those, no intermediary was used. There may be different reasons why intermediaries were not used and may not have been recorded. This merits further consideration.

CPS service

7.3. The CPS Victim Communication and Liaison (VCL) scheme requires letters to be sent to complainants or their families in certain circumstances, and within set timescales (one or five days, depending on whether the complainant is entitled to an enhanced service). Where there is a decision during a consultation between the police and CPS (digitally or otherwise) to take NFA and not charge, the responsibility for telling the complainant falls on the police, except in homicide cases. The policy says: "In other pre-charge scenarios, whether to send a VCL communication is a matter for individual Areas – however, it is good practice to do so in RASSO cases".

7.4. The expectation in all the Areas we visited is that it will be the CPS that tells the complainant about an NFA decision at the charging stage, and most managers we surveyed (from all 14 Areas) expect RASSO lawyers to write their own VCL letters rather than having them drafted by the Victim Liaison Unit. However, we noted that the reality in one Area did not match expectations, with no letter sent by the Area in 16 out of 20 applicable cases. Of those 16 cases, nine of the police Manual of Guidance Form 3s (MG3s) included a reminder for the police to tell the

complainant about their right to review, and two contained case-specific information for the police to pass on to the complainant about the reason the case was not proceeding.

7.5. In our file sample, 98 VCL letters were sent in cases with NFA decisions. Of those, 76 (77.6%) were sent on time. Just under half (45.9%) met the expected standard, which is particularly weak given that they are usually drafted by the lawyer who dealt with the case. Of those that did not meet the standard, nearly a quarter (24.5%) lacked clarity or sufficient information in the explanation of why there was to be no charge, and 10.2% did not display empathy. All the VCL letters in our sample referred to the Victims' Right to Review scheme where appropriate. There were no marked differences between the 2014–15 cases and those from 2018–19 in terms of timeliness or quality, but there has been a significant improvement in correct referrals to the Victims' Right to Review scheme – from 56.7% of letters in the 2014–15 cases to 100% of letters in our file sample for this inspection.

Recommendation
Crown Prosecution Service Areas should take urgent steps to ensure that, in rape and serious sexual offences cases, compliance with the timescales set out in the Victim Communication and Liaison scheme and the standard of letters sent improve significantly.

7.6. The use of an intermediary for a complainant or witness was considered in more than half the relevant cases (57.1%). Failure to consider special measures or orders on sentencing (such as restraining orders or sexual harm prevention orders) accounted for 81.3% of the 75 charged cases where the lawyer did not adequately consider applications and ancillary matters. The consideration of ancillary matters has worsened since 2014–15.

7.7. Pre-trial witness interviews are rarely held before charging decisions are made. Nearly all (96.1%) of the lawyer respondents in our survey reported holding none, and the rest had held only one or two in the past 12 months.

7.8. Two of the Areas we visited (following the lead of an Area we did not visit) were just beginning a scheme of writing to complainants, firstly at the point of charge to introduce the lawyer and signpost them to information on the CPS website, and secondly after a not guilty plea, to introduce the trial advocate and give information about special measures.

7.9. The lawyer considered public protection by the appropriate use of applications to remand in custody or for bail conditions fully or partially in 64.7% of the charged cases.

Complainant participation

7.10. In our sample of 450 cases, there were 37 where the complainant did not participate through to charge. Of these, 24 were admin finalised, nine were NFA decisions and four proceeded to charge. In 13 of these 37 cases (35.1%), the reason for the complainant's lack of participation or withdrawal was not apparent from the file because the police had not explained it. This is unhelpful, since it denies the CPS an opportunity to suggest measures which might re-engage the complainant.

7.11. Five cases showed that the complainant decided not to proceed against a partner or family member. In one case, the CPS was told that the complainant was intimidated and had withdrawn the case as a result. There was one instance where the prosecution's poor handling of a linked case in the magistrates' court caused the complainant to withdraw. Other reasons included the complainant wanting to move on or deciding that the case was having an impact on their health.

7.12. The lawyer considered appropriate ways to re-establish the complainant's participation, or proceed without it, in nearly two-thirds of relevant charged or NFA cases (63.6%). Police made efforts to re-engage the complainant in 85% of the 80 admin finalised files examined by HMICFRS, and offered support to reluctant witnesses and complainants in 91.8% of applicable cases. The police made referrals to support agencies 89.3% of the time.

7.13. Our sample of 250 charged or NFA files included 45 cases (18%) where the complainant had refused to allow the police access to their phone or other digital devices. The complainant was participating in other parts of the investigation in 41 of those cases. In 16 of the 45 cases, the complainant had also denied access to their social media accounts, and in 13 to third-party material, such as their medical records. The lack of consent for such material played a part in the decision to take NFA in

eight of the 45 cases (17.8%), in all of which the complainant was otherwise fully engaged.

7.14. In the admin finalised sample of 200 cases, there were 16 cases (8%) where the complainant did not consent to the police accessing their phone, social media or third-party material.

7.15. We also saw instances where text messages or other communication material appeared to have been deleted from the complainant's phone or other digital device before it was given to the police, which had the potential to undermine the strength of the case.

7.16. Nearly a third (29.1%) of the lawyers we surveyed said that since January 2018 (when the National Disclosure Improvement Plan was introduced), they had experienced more frequent refusals by the complainant to allow access to their phone, other digital devices and social media information. However, most (69.3%) felt that refusals were as frequent as before, and 1.6% thought the frequency of refusal had declined. Managers' responses were split evenly between more frequent and the same level of refusals. Lawyers' and managers' comments frequently referenced heightened concerns about privacy as causes for less co-operation, but also referenced misunderstandings about what would happen to the material, adverse media coverage, and CPS requests not restricting the request by the proper use of parameters.

7.17. We also asked lawyers how often, in the past 12 months, they had decided on NFA because of the complainant refusing access to digital material. Over three quarters (76%) had had no such cases, 23.3% had experienced one to five, and one person (0.7%) had had more than five. Many of the staff we spoke to were keen to explain that they look to digital devices in the hope that the information will strengthen the evidence, not only to assess whether there is any undermining material. Better communication with the police would help officers explain to complainants why their phone is needed.

7.18. In one Area, there was a conference scheduled for the CPS and independent sexual violence advisors. This was to build understanding of CPS work in RASSO cases, and to explain the role of digital devices in its decision-making, so as to help advisors provide good quality information to their clients. At the time of writing, the conference had not yet taken place, so we were unable to assess the impact and determine if it was good practice.

Annex A
Inspection framework and methodology

Inspection framework

The framework for this inspection consisted of an overarching inspection question and nine sub-questions.

Inspection question

What level of confidence can the public have in the CPS to deliver fair and successful outcomes in the most efficient and effective way through the provision of high-quality decision-making by specially trained and experienced prosecutors in rape cases?

Sub-questions

1. Has there been a change in approach in the CPS to the provision of rape charging and decision-making which is impacting the numbers of cases charged?

2. What is driving the change in the balance of decisions between those cases charged, recommended for no further action or administratively finalised (awaiting a response from the police)?

3. Does the timeliness of the decision to charge have an impact on the overall levels of cases progressing and cases charged?

4. Are there any trends in numbers of consultation per case that are driving a change in charge rate? Are consultations appropriate?

5. Are cases received from the police by the CPS for a charging decision or advice of such a quality to allow for efficient and effective case handling?

6. Are CPS action plans proportionate and are the requests being made of the police for any additional material proportionate?

7. Was the request for digital evidence prior to charge proportionate? Was any request specific to the facts of the case and a reasonable line of enquiry?

8. Is the police response to CPS action plans timely and appropriate?

9. Has the CPS Code compliance rate improved since the findings of the 2016 thematic review? Has the issue with the "merits based test" been addressed since the 2016 report?

Inspection methodology

Inspection explained

Inspection is a skill recognised by the Civil Service. Like the audit function that it resembles, effective inspection requires skill and experience in inspection techniques, methodology and how to achieve a fair and independent review. As well as inspection being a skill in its own right, effective inspection also requires a thorough understanding of how those being inspected operate. In the case of HMCPSI, this requires that inspectors have knowledge of the relevant law, practice and guidance under which the inspected body operates. It is also advantageous for some involved in the inspection to have recent expertise in the subject matter.

In general terms, HMCPSI achieves this balance by having a staffing model that consists of a proportion of permanent staff and staff on loan, usually from the CPS. Those on loan often come to the Inspectorate for two- to three-year postings, although for specific inspections we may use seconded staff or associate inspectors as part of the inspection team.

This knowledge and experience is essential for the inspection report to be accepted as informed and as showing an understanding of the work of the body being inspected. Only then can reports have the traction to drive improvement in the inspected organisation.

Legal file examination plays a key role in the majority of inspections we carry out. HMCPSI has direct access to the CPS case management system. This gives HMCPSI the ability to examine case files without the need to have paper files sent to us. In all inspections where there is a file examination element, each case is examined against a set of questions specifically formulated for the inspection. These questions provide the framework that allows individual inspectors to achieve a consistent approach to file examination, and ensures that all aspects set out in the inspection framework are covered. Inspection frameworks are shared with the inspected body in line with the ten principles of inspection[26].

Inspection needs to be informed, but it also needs to be independent and objective in its findings. We ensure that in a number of ways. All inspectors' work is subject to dip-sampling and quality assurance, and no inspection is conducted by one inspector working alone. There is also an established methodology. This includes the use of consistency exercises.

[26] *The ten principles*; CJJI; July 2003
www.justiceinspectorates.gov.uk/cjji/about-cjji/how-we-inspect/the-ten-principles/

The basis of a consistency exercise is that all inspectors examine the same files against the file examination guidance and note their answers to all of the questions posed in respect of each case. A meeting is then held at which every inspector involved in the inspection sets out their judgement and answers in respect of each file examined. In this way, we can make sure the approach and the standards being applied are consistent, and we can discuss any misinterpretation of the inspection question or the associated guidance. If, as a result of the quality assurance, any inspector is identified as being regularly inconsistent, that inspector can be more closely supervised. In line with our inspection methodology, we carry out consistency exercises throughout the period of the file examination.

File examination

In this inspection, we chose to examine cases that were flagged as rape on the CPS case management system (CMS). The cases may also have had other flags, such as domestic or child abuse or disability hate crime, but we did not select specifically for those other categories. Cases were originally chosen from the five CPS Areas we planned to visit (East Midlands, East of England, London North, London South and Wessex), but a lack of sufficient recent cases meant that we added cases from CPS Thames Chiltern and CPS North West.

Admin finalised cases

HMCPSI inspectors examined 200 cases that had been recorded on CMS with a pre-charge event between October 2018 and August 2019 and which were shown as having been admin finalised. The term is unhelpful because the cases may not actually be concluded at the point they are shown as being admin finalised. Indeed, 36 of the cases in our sample (18%) had been reactivated on CMS before we came to examine them, and more may well have been reactivated since.

Cases across a range of offences are administratively finalised on CMS in various circumstances, not all of which involve the case being concluded. The reasons include, but are not limited to:

- where a file submission has been rejected at triage because items are missing, and the police have been asked to supply the additional material and have not responded to chase-ups
- where the lawyer has set actions for the police to carry out, and the police have not responded to the action plan or to chase-ups

- where the case has been returned to the police, with or without a lawyer's advice and/or actions, and the police decide to take no further action on the allegation
- where the actions set by the lawyer will take some time to carry out, or there is some other reason why the case will not be back with the CPS soon (for example, because extradition of the suspect is necessary).

We assessed the 200 admin finalised cases against a set of 71 questions, which can be found in annex B with the file examination results. The sample included 80 cases from one force, and these were assessed by HMICFRS inspectors on the force's systems, against a set of 73 questions.

Charged and NFA cases

We examined 250 cases where the CPS lawyer had advised charge or no further action. The sample was split evenly between these two outcomes, and assessed against a set of 105 questions, some of which were the same as in the admin finalised question set.

The sample included 40 charged cases that received a pre-charge decision in the 2015 calendar year, and which were concluded in the same year. We used this data to supplement the findings for rape cases from our inspection of RASSO units, on which we reported in February 2016[27]. The remaining 210 cases received a charging decision in 2018 or 2019.

Other evidence-gathering

Surveys

We surveyed RASSO lawyers and legal managers across all 14 CPS Areas. We had 158 responses from lawyers and 51 from managers. The survey results can be found in Annex C.

[27] *CPS rape and serious sexual offences (RASSO) units*; HMCPSI; February 2016 www.justiceinspectorates.gov.uk/hmcpsi/inspections/thematic-review-of-the-cps-rape-and-serious-sexual-offences-units/

Data and documents

We were provided with relevant material by CPS Areas and Headquarters, and we accessed and analysed CPS and police performance data. The information we sought from CPS Areas was:

1. Minutes or meeting notes for discussions with police from the past six months on rape charging performance measures (such as police file quality, number of triages and/or consultations, charges, length of time taken for advice, police responses to action plans, complainant withdrawal rates)

2. Minutes or meeting notes for any Area reviews of rape charging performance measures from the past six months.

3. Any themes identified by individual quality assessments, Victims' Right to Review scheme outcomes, case management panels, violence against women and girls scrutiny panels or other quality assurance in relation to:

   a. timeliness of charging advice

   b. quality of charging advice

   c. proportionality of action plans

   d. quality of police service

4. Action plan(s) or other improvement measures put in place to tackle any issues identified by actions under 1, 2 and 3 above in relation to rape charging performance, and details of how often the plan/measure is reviewed

5. Template or example of a police Manual of Guidance Form 3 (MG3)[28] disclosure management document insert from the force(s) in your Area that are using one.

[28] Used by the police to request advice from the CPS, and by the CPS to record that advice and any charging decision.

6. What training has been carried out in the Area in 2018–19 and 2019–20 on the following topics (please supply course outline and/or agenda if it was not a national training package)

   a. RASSO

   b. disclosure

   c. reasonable lines of enquiry

   d. digital devices

7. How are requests for early investigative advice and charging decisions allocated?

8. Current average caseload per RASSO lawyer for:

   a. charging advices

   b. charged cases

9. Are RASSO lawyers expected to write their own Victim Communication and Liaison scheme letter, and how is the Victim Liaison Unit involved, if at all?

10. How many pre-trial witness interviews (if any) have been held before charge in rape cases in 2018–19 and 2019–20?

11. Are no further action decisions at charge in rape cases reviewed by a second rape specialist, and if so, which role/grade carries out the second review?

On-site activity

We visited five CPS Areas (East of England, West Midlands, London North, London South and Wessex) where we interviewed legal managers and conducted focus groups of RASSO lawyers. In CPS Headquarters, we interviewed policy and inclusion leads, the Directors of Business and Legal Services and the Director of Public Prosecutions. During interviews and focus groups, we explored issues identified from the other evidence we had gathered (such as responses to surveys, the file examination and document and data analysis) on matters relevant to the framework. Staff were also offered the opportunity to cover any matter they considered pertinent.

Annex B
File examination question sets

- **Admin finalised**
- **Charged/NFA**

Admin finalised file examination question set

#	Question	Possible answers	Question type
Key dates			
1	Date of offence		Factual (F)
2	Offence reported to police		F
3	Arrest of lead D		F
4	Redundant		
5	Redundant		
6	First submission to CPS for charging decision		F
7	Final submission to CPS		F
8	Allocation to lawyer		F
9	Lawyer's first review with action plan		F
10	Lawyer's final review		F
11	Finalisation date		F
Charging data			
12	How many admin triages were there?	0/1/2/3/4/5/6+/NA	F
13	How many charging consultations were there?	0/1/2/3/4/5/6+/NA	F
14	Total number of days from report to arrest	3 minus 2	F
15	Total number of days between date of report to request for advice	6 minus 2	F
17	Total number of days from acceptable police submission for advice to finalisation	11 minus 7	F

#	Question	Possible answers	Question type
Case information			
18	How did the allegation come to police attention?	Victim reported Friend or family reported (adult) Parent/guardian/foster parent reported (child) Teacher reported Social worker reported GP, counsellor or other medical Sexual assault referral centre (SARC) Identified during DASH assessment CCTV Other (please note) Not able to determine from file	F
19	Was the case properly flagged?	Yes, has rape flag correctly No, has rape flag incorrectly NA	Judgement on CPS service (CPS)
20	Are the allegations recent?	Yes No NA	F
21	Was the action plan responded to by the police?	Yes No NA	F
22	If yes to Q21, was this response admin triaged?	Yes No NA	F
Admin triage: first triage			
23	Did the first admin triage accurately identify the standard of the initial police file submission?	Yes, identified it was acceptable Yes, identified it was not acceptable No, identified as acceptable when it was not No, identified as not acceptable when it was	CPS

#	Question	Possible answers	Question type
		No, admin triage did not take place No, other (please note) NA	
24	If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS Unused material Other (please note) NA	Judgement on police service (P)
25	Was the admin triage on first receipt timely?	Yes No NA	CPS
26	Did the police supply missing items that had been identified in the first triage rejection?	Yes No NA	P
27	Did they do so in a timely manner?	Yes No NA	P
28	Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes No NA	P

#	Question	Possible answers	Question type
29	If yes to either Q26 or Q28, was there appropriate action taken on the response from the police to the first triage rejection?	Yes No, no action taken No, action was taken only when something else came in/happened on file No, other NA	CPS
Admin triage: final admin triage			
30	Did later admin triages accurately identify the standard of further submissions of material from the police?	Yes, identified they were acceptable Yes, identified they were not acceptable No, identified as acceptable when they were not No, identified as not acceptable when they were No, admin triage did not take place No, other (please note) NA	CPS
31	Did the later admin triage accurately identify the standard of further submissions of material from the police?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS Unused material	P

#	Question	Possible answers	Question type
		Other (please note) NA	
32	Were admin triages on later police submissions timely?	Yes No NA	CPS
33	Did the police supply missing items that had been identified in later triage rejections?	Yes No NA	P
34	Did they do so in a timely manner?	Yes No NA	P
35	Did the police indicate that they were not going to provide the items identified in later triage rejections?	Yes No NA	P
36	If yes to either Q33 or Q35, was there appropriate action taken on the response(s) from the police to later triages?	Yes No, no action taken No, action was taken only when something else came in/happened on file No, other NA	CPS
Admin finalisation			
37	Was the action plan (or the last one, if more than one) chased at the 1-month stage?	Yes No, done early No, done late No, not done NA	CPS
38	Was there any response to the 1-month chase from the police?	Yes No NA	P
39	Was the action plan (or the last one, if more than one) chased at the 2-month stage?	Yes No, done early No, done late No, not done NA	CPS
40	Was there any response to the 2-	Yes No	P

#	Question	Possible answers	Question type
	month chase from the police?	NA	
41	Was administrative action taken to finalise the case at the expiry of 90 days?	Yes No NA	CPS
42	Was the case finalised at the 90 day point?	Yes No NA	F
43	If Q42 is no, how many days until finalisation?	1-30 31-60 61-90 91 -120 121-150 151-180 over 180 days NA	CPS
44	Was there a reason noted for the admin finalisation?	Yes No NA	CPS
45	If Yes to Q44, what was the recorded reason?	No response to EIA action plan from police or resubmission of case after EIA advice provided No response from police to PCD action plan set Response from police to action plan inadequate, not accepted and no further response thereafter Police notify CPS they have decided to NFA at the police stage. Police tell CPS they will not be ready to respond for some time. Charged but awaiting extradition or re-entry to the country to charge the suspect Other (Please note) N/A	F

#	Question	Possible answers	Question type
46	Was the correct finalisation code used?	Yes No NA	CPS
Lawyer actions			
47	The action plan met a satisfactory standard	Fully met Partially met Not met NA	CPS
48	Were the lawyer's request(s) for the victim's phone and any other digital devices to be searched or downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	Yes No, requests made re V's devices that were not needed No, requests not made re V's devices that were needed No, requests made at charge re V's devices that should have been made pre charge No, did not set proper parameters for the request(s) No, other (please note) Not known NA	CPS
49	Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes No, requested items that were not needed No, did not request items that were needed No, requested at charge material that should have been requested pre charge No, did not set proper parameters for the material requested No, other (please note) Not able to determine from file NA	CPS
50	What was the most significant of the material and/or further	Previous incidents involving V	F

#	Question	Possible answers	Question type
	enquiries referenced in Q49?	Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices Identification CCTV BWV 999 Comms Social media Crime scene or forensic Sexual assault referral centre records Other medical or psychiatric Social Services Family court Education Other third party/expert Other (please note) NA	
51	What was the next most significant of the material and/or further enquiries referenced in Q49?	Previous incidents involving V Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices Identification CCTV BWV 999 Comms Social media Crime scene or forensic Sexual assault referral centre records Other medical or psychiatric Social Services Family court Education	F

#	Question	Possible answers	Question type
		Other third party/expert Other (please note) NA	
52	Did the police challenge the proportionality of CPS requests?	Yes No NA	P
53	Were the police right to challenge or not challenge?	Yes No NA	P
54	If Q52 is Y, did the CPS respond appropriately?	Yes, withdrew a disproportionate request Yes, amended to make the request more proportionate Yes, explained why the request was proportionate Yes, other No, did not withdraw or amend a disproportionate request No, did not explain why the request was proportionate No, did not respond at all. No, other NA	CPS
55	Did the lawyer set realistic timescales for material and further enquiries requested in the action plan?	Yes No Not able to determine from file NA	CPS
56	Did the police challenge the timescales set in the action plan?	Yes No NA	P
57	Were the police right to challenge or not challenge?	Yes No NA	P
58	If Q56 is Y, did the CPS respond appropriately?	Yes, amended to make the timescale more realistic Yes, explained why the timescale was realistic Yes, other	CPS

#	Question	Possible answers	Question type
		No, did not amend an unrealistic timescale No, did not explain why the timescale was realistic No, did not respond at all No, other NA	
59	Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes, identified and fed back No, identified but not fed back No, not identified and not fed back NA	CPS
60	What form did the feedback take?	NFQ assessment on CMS Action plan Highlighted in the body of the charging advice but not in action plan Email Other NA	CPS
Victims and witnesses			
61	Did the victim participate in the investigation?	Yes, through to charge No, never supported a prosecution No, withdrew after report but before the police requested charging advice No, withdrew after an action plan was given to police but before charging decision made No, other NA	F
62	What was the primary reason given for the V not participating?	V decided not to prosecute partner/family member in a DA context V intimidated or in fear V health impacted The time taken to investigate and/or reach charging decision	F

#	Question	Possible answers	Question type
		Request for V's phone or other electronic devices Request for an additional ABE Other Not able to determine from file NA	
63	Did a refusal by the victim to allow the police access to their phone play any part in the admin finalisation?	Yes No Not able to determine from file NA	F
64	Did the refusal by the victim to allow the police access to social media accounts play any part in the admin finalisation?	Yes No Not able to determine from file NA	F
65	Did the refusal by the victim to provide consent to third party material play any part in the admin finalisation?	Yes No Not able to determine from file NA	F
66	Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes No NA	F
Reactivation			
67	Was the case reactivated after being admin finalised?	Yes, further request for advice Yes, D has been charged by police Yes, D has now been located or returned to England/Wales Yes, other No NA	F
68	Number of days between admin	1-30 31-60	F

#	Question	Possible answers	Question type
	finalisation and reactivation	61-90 91 -120 121-150 151-180 over 180 days NA	
Overall quality			
69	The lawyer or team exercised sound judgement and grip throughout the case.	Excellent Good Fair Poor NA	CPS
70	The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met NA	CPS

Charged/NFA file examination question set

#	Question	Possible answers	Question type
BMI questions: key dates			
1	Date of offence		Factual (F)
2	Offence reported to police		F
3	Arrest of lead D		F
4	Redundant		
5	Redundant		
6	First submission to CPS for charging decision		F
7	Final submission to CPS		F
8	Allocation to lawyer		F
9	Lawyer's first review with action plan		F
10	Lawyer's final review		F
11	Finalisation date		F
BMI questions: charging data			
12	How many admin triages were there?	0/1/2/3/4/5/6+/NA	F
13	How many charging consultations were there?	0/1/2/3/4/5/6+/NA	F
14	Total number of days from report to arrest	3 minus 2	F
15	Total number of days between date of report to request for advice	6 minus 2	F
16	Total number of days from acceptable police submission to final advice	10 minus 7	F
Case information			
18	How did the allegation come to police attention?	Victim reported Friend or family reported (adult) Parent/guardian/ foster parent reported (child)	F

#	Question	Possible answers	Question type
		Teacher reported Social worker reported GP, counsellor or other medical Sexual assault referral centre (SARC) Identified during DASH assessment CCTV Other (please note) Not able to determine from file	
19	Was the case properly flagged?	Yes, has rape flag correctly No, has rape flag incorrectly NA	Judgement on CPS service (CPS)
20	Are the allegations recent?	Yes No NA	F
21	What decision did the charging lawyer make?	Charge No further action (NFA) NA	F
22	What was the main offence charged, or considered in No further action (NFA)?	Rape (SOA 2003 or pre-2003) Pre-SOA 2003 sexual offences other than rape S.2 SOA assault by penetration S.3 sexual assault S.5 rape of child under 13 S.6 assault of child under 13 by penetration	F

#	Question	Possible answers	Question type
		S.7 sexual assault of child under 13 S.30(3) penetrative sexual assault with person with mental disorder impeding choice Other sexual offence involving adult Other sexual offence involving child Other (please note) NA	
23	What was the reason for NFA?	V not participating Identification Other essential element of actus reus missing Mens rea not capable of proof Undermining or assisting material Evidential other PI other disposal PI age/illness of D PI other NA	F
24	Where there was communication evidence or information, what was the most impactful?	Direct contact between D and V (text, letter, phone call or in person) Social media contact between D and V Direct contact between D and a W	F

#	Question	Possible answers	Question type
		Social media contact between D and a W Contact between D and another Contact between V and another Other contact (please note) NA	
25	Where there was undermining or assisting material, what was the most impactful?	Victim credibility Witness credibility Witness account(s) Contact between D and V, W or others Social media Crime scene or forensic Counselling Sexual assault referral centre records Other medical Psychiatric Social Services Family court Education Other third party/expert Identification Other (please note) NA	F
26	Where there was undermining or assisting material, what was the next most impactful?	Victim credibility Witness credibility Witness account(s) Contact between D and V, W or others Social media	F

#	Question	Possible answers	Question type
		Crime scene or forensic Counselling Sexual assault referral centre records Other medical Psychiatric Social Services Family court Education Other third party/expert Identification Other (please note) NA	
27	Where there were issues with the victim's credibility, what was the most impactful?	Victim has disclosable previous convictions Victim has made previous inconsistent statements during this case Victim's evidence is contradicted by other cogent evidence Victim has capacity, mental health or other issues that may impact on their ability to give cogent evidence Victim has made previous allegations (sexual or other offences) that are proved or believed to be false	F

#	Question	Possible answers	Question type
		Other (please note) NA	
28	For NFA decisions, was the correct finalisation code used?	Yes No NA	CPS
29	For NFA decisions, was the correct disclosure finalisation code used?	Yes No NA	CPS
Police service pre-charge			
30	Did the first submission comply with expected standards?	Yes No NA	Judgement on police service (P)
31	If Q30 is no, was the failure fatal to the lawyer being able to review the case?	Yes No NA	P
32	If Q30 is no, what was not provided or inadequate (excluding unused material)?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre (SARC) records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS	P

#	Question	Possible answers	Question type
		Other (please note) NA	
33	Did the police supply the MG6 series at charge?	Yes No NA	F
34	If supplied, were the MG6 schedules satisfactory?	Yes No, item(s) missed off an SDC or MG6C No, item(s) missed off an MG6D No, items missed off an MG6E No, item(s) listed on MG6C in error No, item(s) listed on MG6D in error No, item(s) description inadequate No, irrelevant material was included No, evidential material was included Other (please note) NA	P
35	Was the unused material supplied or an adequate report provided?	Yes, the material was supplied Yes, an adequate report was provided No, the material was not supplied and the report was inadequate No, there was no material or report supplied NA	P

#	Question	Possible answers	Question type
36	Did the police accurately identify the strengths and weaknesses of the case?	Fully met Partially met Not met NA	P
37	Were any ABEs of good quality?	Fully met Partially met Not met Not able to determine from file NA	P
38	If Q37 is PM or NM, what is the most impactful failing?	Questions do not elicit sufficient information about the allegation The interview is poorly structured or not properly focused Covers irrelevant material or another investigation Asks leading questions Interview is too long Camera angle or sound impact on clarity of evidence Other (please note) NA	P
39	If Q37 is PM or NM, did the charging lawyer ask for a further interview with the victim or witness to address the failing(s)?	Yes Time does not allow Not appropriate (V/W) Not appropriate (other) No NA	CPS

#	Question	Possible answers	Question type
40	Was the police use of an intermediary appropriate to take evidence from the victim?	Yes, used and was indicated/ needed Yes, not used and not indicated/ needed No, used but not indicated/needed No, not used but was indicated/ needed Insufficient information provided by the police about the victim's circumstances to assess NA	P
Administrative actions: first triage			
41	Did the first admin triage accurately identify the standard of the initial police file submission?	Yes, identified it was acceptable Yes, identified it was not acceptable No, identified as acceptable when it was not No, identified as not acceptable when it was No, admin triage did not take place No, other (please note) NA	CPS
42	If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement	P

#	Question	Possible answers	Question type
		Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information Summary of third party material Summary of RLE VPS MG6 series Other (please note) NA	
43	Was the admin triage on first receipt timely?	Yes No NA	CPS
44	Did the police supply missing items that had been identified in the first triage rejection?	Yes No NA	P
45	Did they do so in a timely manner?	Yes No NA	P
46	Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes No NA	P
47	If yes to either Q44 or Q46, was there appropriate action taken on the response from the police to the first triage rejection?	Yes No, no action taken No, action was taken only when something else came in/ happened on file	CPS

#	Question	Possible answers	Question type
		No, other (please note) NA	
Administrative actions: final admin triage			
48	Did the later admin triage accurately identify the standard of further submissions of material from the police?	Yes, identified they were acceptable Yes, identified they were not acceptable No, identified as acceptable when they were not No, identified as not acceptable when they were No, admin triage did not take place No, other (please note) NA	CPS
49	If the police file submission was rejected during the later admin triage, what was the most significant thing that was not provided or inadequate?	Checklist MG3 ABE Key statement(s) 999 call CCTV Forensic SFR or statement Medical evidence or information including counselling Sexual assault referral centre records Identification evidence Communications evidence or information Social media evidence or information	P

#	Question	Possible answers	Question type
		Summary of third party material Summary of RLE VPS MG6 series Other (please note) NA	
50	Was admin triage on later police submissions timely?	Yes No NA	CPS
51	Did the police supply missing items that had been identified in later triage rejection?	Yes No NA	P
52	Did they do so in a timely manner?	Yes No NA	P
53	Did the police indicate that they were not going to provide the items identified in later triage rejection?	Yes No NA	P
54	If yes to either Q51 or Q53, was there appropriate action taken on the response(s) from the police to later triage?	Yes No, no action taken No, action was taken only when something else came in/ happened on file No, other (please note) NA	CPS
Pre-charge decision by CPS			
55	Was there an early consultation/EIA?	Yes No	F
56	Was the EIA timely?	Yes No	CPS
57	Did the EIA add value?	Fully met Partially met Not met NA	CPS

#	Question	Possible answers	Question type
58	Was Counsel instructed to provide advice on charge?	Yes No	F
59	If Q58 is yes, was that warranted by the complexity, seriousness or sensitivity of the case?	Yes No NA	CPS
60	Was Counsel's advice adopted properly?	Yes after full review by CPS lawyer of the advice and evidence No, adopted but without review of evidence by CPS lawyer No, nothing to suggest it was properly considered No, other (please note) NA	CPS
61	Did the charging decision apply the right test?	Yes, FCT correct Yes, THT correct No, FCT should have been THT No, THT should have been FCT NA	CPS
62	Was there evidence that any ABEs were viewed before the pre-charge decision was made?	Yes No NA	CPS
63	The CPS decision to charge was compliant with the Code Test.	Yes No NA	CPS
64	Was the decision to charge or NFA timely?	Yes No NA	CPS
65	Were the most appropriate charges chosen?	Yes No NA	CPS

#	Question	Possible answers	Question type
66	Did the advice comply with CPS policy on rape and serious sexual offences?	Yes No NA	CPS
67	The CPS MG3 included proper case analysis and case strategy.	Fully met Partially met Not met NA	CPS
68	If Q67 is PM or NM, what was the most impactful failing?	Poor assessment of strengths and weaknesses of the case Over-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances Under-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances Did not identify relevant rape myths and stereotypes and how to address them Did not adequately address how the case could be built Other (please note) NA	CPS
69	Was the merits-based approach said to be applied in the pre-charge decision?	Yes No NA	CPS

#	Question	Possible answers	Question type
70	The CPS MG3 dealt appropriately with unused material (UM).	Fully met Partially met Not met NA	CPS
71	If Q70 is PM or NM, what was the main or most significant failing with unused material?	Did not address unused material at all Did not address the impact of disclosable unused on the evidence Did not discuss any sensitivity of unused Did not set appropriate actions in the action plan in relation to unused material Other (please note) NA	CPS
72	Was there a disclosure management document where required?	Yes No NA	CPS
73	If Q72 is yes, did the police and CPS comply with the requirements for a DMD at the pre-charge stage?	Both complied Police supplied info and CPS did not need to do DMD Police supplied info but CPS did not complete a DMD Police did not supply info but CPS completed DMD Neither complied NA	P + CPS

#	Question	Possible answers	Question type
74	The CPS MG3 made reference to all relevant applications and ancillary matters.	Yes No NA	CPS
75	If Q74 is no, what was the most impactful aspect that the lawyer failed to consider adequately?	Bad character Hearsay Special measures Restraining order Other preventative orders (eg SHPO) Other (please note) NA	CPS
76	Did the charging advice consider the need for an intermediary where appropriate?	Yes No NA	CPS
77	The action plan met a satisfactory standard.	Fully met Partially met Not met NA	CPS
78	Were the lawyer's request(s) for the victim's phone and any other digital devices to be searched or downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	Yes, correct request made re V's devices Yes, request correctly not made re V's devices No, requests made re V's devices that were not needed No, requests not made re V's devices that were needed No, requests made at charge re V's devices that should have been made pre charge	CPS

#	Question	Possible answers	Question type
		No, did not set proper parameters for the request(s) No, other (please note) NA	
79	Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes, correct request made re other items Yes, request correctly not made re other items No, requested items that were not needed No, did not request items that were needed No, requested at charge material that should have been requested pre charge No, did not set proper parameters for the material requested No, other (please note) NA	CPS
80	What was the most significant of the material and/or further enquiries referenced in Q79?	Previous incidents involving V Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices	F

#	Question	Possible answers	Question type
		Identification CCTV BWV 999 Comms Social media Crime scene or forensic Sexual assault referral centre records Other medical or psychiatric Social Services Family court Education Other third party/expert Other (please note) NA	
81	What was the next most significant of the material and/or further enquiries referenced in Q79?	Previous incidents involving V Previous incidents involving D Victim credibility Possible witnesses D's phone or other digital devices Identification CCTV BWV 999 Comms Social media Crime scene or forensic Sexual assault referral centre records	F

#	Question	Possible answers	Question type
		Other medical or psychiatric Social Services Family court Education Other third party/expert Other (please note) NA	
82	Did the police challenge the proportionality of CPS requests?	Yes No NA	P
83	Were the police right to challenge or not challenge?	Yes No NA	P
84	If Q82 is Y, did the CPS respond appropriately?	Yes, withdrew a disproportionate request Yes, amended to make the request more proportionate Yes, explained why the request was proportionate Yes, other No, did not withdraw or amend a disproportionate request No, did not explain why the request was proportionate No, did not respond at all. No, other NA	CPS
85	Did the lawyer set realistic timescales for material and further enquiries?	Yes No NA	CPS

#	Question	Possible answers	Question type
86	Did the police challenge the timescales set in the action plan?	Yes No NA	P
87	Were the police right to challenge or not challenge?	Yes No NA	P
88	If the police did challenge appropriately, did the CPS respond appropriately?	Yes, amended to make the timescale more realistic Yes, explained why the timescale was realistic Yes, other No, did not amend an unrealistic timescale No, did not explain why the timescale was realistic No, did not respond at all. No, other NA	CPS
89	Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes identified and fed back No, identified but not fed back No, not identified and not fed back NA	CPS
90	What form did the feedback take?	NFQ assessment on CMS Action plan Highlighted in the body of the charging advice but not in action plan Email Other (please note)	CPS

#	Question	Possible answers	Question type
		NA	
91	For CPS charged cases rate the overall quality of the MG3 including action plan.	Fully met Partially met Not met NA	CPS
Victims and witnesses			
92	Did the victim participate in the investigation?	Yes, through to charge No, never supported a prosecution No, withdrew after report but before the police requested charging advice No, withdrew after an action plan was given to police but before charging decision made No, other (please note) NA	F
93	What was the primary reason given for the V not participating?	V decided not to prosecute partner/family member in a DA context V intimidated or in fear V health impacted The time taken to investigate and/or reach charging decision Request for V's phone or other electronic devices Request for an additional ABE	F

#	Question	Possible answers	Question type
		Other (please note) Not known NA	
94	Did a refusal by the victim to allow the police access to their phone or other digital devices play any part in the decision to NFA?	Yes No Not able to determine from file NA	F
95	Did the refusal by the victim to allow the police access to social media accounts play any part in the decision to NFA?	Yes No Not able to determine from file NA	F
96	Did the refusal by the victim to provide consent to third party material play any part in the decision to NFA?	Yes No Not able to determine from file NA	F
97	Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes No NA	
98	The needs and interests of the public were protected through custody and bail decisions, and proper monitoring of CTLs.	Fully met Partially met Not met NA	CPS
99	There was a timely VCL when required.	Yes No, not done No, not done on time NA	CPS
100	The VCL was of a high standard.	Yes No, inaccurate No, lack of empathy No, lack of clarity in explanation	CPS

#	Question	Possible answers	Question type
		No, insufficient information No, used jargon No, spelling or grammar errors No, other (please note) NA	
101	Did the VCL refer to the victim's right to review where appropriate?	Yes No NA	CPS
Overall quality			
102	Has the time taken by the police to investigate, submit for a charging decision and carry out actions had an impact on the outcome?	Yes No Not able to determine from file NA	P
103	The lawyer or team exercised sound judgement and grip throughout the case.	Excellent Good Fair Poor NA	CPS
104	The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	Fully met Partially met Not met NA	CPS
105	Would the inspector have made the same decision on charge or NFA as the charging lawyer?	Yes No NA	F

Annex C
File outputs

- **Admin finalised**
- **Charged/NFA**

File outputs: Admin finalised

Question	Answers	Results All cases
Case information		
How many admin triages were there?	0	51.0%
	1	34.0%
	2	11.0%
	3	1.5%
	4	1.5%
	5	0.5%
	6+	0.5%
	Total	**100.0%**
How many consultations were there?	0	0.5%
	1	80.0%
	2	12.5%
	3	4.5%
	4	1.0%
	5	1.5%
	6+	0.0%
	Total	**100.0%**
Number of days between date reported to police and arrest of lead defendant	0-30	73.9%
	31-60	8.5%
	61-90	4.8%
	91-120	4.2%
	121-160	1.8%
	161-199	0.6%
	200+	6.1%
	Not able to determine from file	
	Total	**100.0%**
Number of days between date reported to police and request to CPS for advice	0-30	33.1%
	31-60	8.0%
	61-90	7.4%
	91-120	5.7%
	121-160	10.3%
	161-199	6.3%
	200+	29.1%
	Not able to determine from file	
	Total	**100.0%**
Number of days between police final submission and finalisation	0-30	15.2%
	31-60	12.6%
	61-90	24.7%

Question	Answers	Results All cases
	91-120	12.6%
	121-160	14.1%
	161-199	8.6%
	200+	12.1%
	Not able to determine from file	
	Total	**100.0%**
How did the allegation come to police attention?	Friend or family reported (Adult)	14.0%
	GP/counsellor or other medical	2.2%
	Identified during DASH assessment	2.2%
	Parent/guardian/foster parent reported (child)	8.4%
	Sexual assault referral centre (SARC)	0.6%
	Social worker reported	3.4%
	Teacher reported	3.4%
	Victim reported	51.4%
	Other	14.5%
	Not able to determine from file	
	Total	**100.0%**
Was the case properly flagged?	Yes, has rape flag correctly	96.0%
	No, has rape flag incorrectly	4.0%
	Total	**100.0%**
Are the allegations recent?	Yes	84.0%
	No	16.0%
	Total	**100.0%**
Was the action plan responded to by the police?	Yes	30.0%
	No	70.0%
	NA	
	Total	**100.0%**
If the action plan was responded to by the police, was this response admin triaged?	Yes	50.0%
	No	50.0%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
First admin triage		
Did the first admin triage accurately identify the standard of the initial police file submission?	Yes - identified it was not acceptable	30.3%
	Yes - identified it was acceptable	50.6%
	No - admin triage did not take place	
	No - identified as acceptable when it was not	15.7%
	No - identified as not acceptable when it was	3.4%
	No - other	0.0%
	NA	
	Total	**100.0%**
If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	ABE	43.3%
	Checklist	10.0%
	MG3	16.7%
	Other	26.7%
	Summary of third party material	3.3%
	NA	
	Total	**100.0%**
Was the admin triage on first receipt timely?	Yes	72.2%
	No	27.8%
	NA	
	Total	**100.0%**
Did the police supply missing items that had been identified in the first triage rejection?	Yes	64.5%
	No	35.5%
	NA	
	Total	**100%**
Did they do so in a timely manner?	Yes	65.0%
	No	35.0%
	NA	
	Total	**100.0%**
Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes	3.2%
	No	96.8%
	NA	
	Total	**100.0%**
If police did supply missing items or indicated that they were not going to, was there appropriate	Yes	85.0%
	No - action was taken only when something	5.0%

Question	Answers	Results All cases
action taken on the response from the police to the first triage rejection?	else came in/happened on file	
	No - no action taken	5.0%
	No - other	5.0%
	NA	
	Total	**100.0%**
Later admin triages		
Did later admin triages accurately identify the standard of further submissions of material from the police?	Yes - identified they were not acceptable	34.4%
	Yes - identified they were acceptable	43.8%
	No - identified as acceptable when they were not	9.4%
	No - identified as not acceptable when they were	6.3%
	No - other (please note)	6.3%
	No - admin triage did not take place	
	NA	
	Total	**100.0%**
If the police file submission was rejected during later admin triages, what was the most significant thing that was not provided or inadequate?	ABE	25.0%
	Checklist	25.0%
	Key statement(s)	8.3%
	Other (please note)	16.7%
	Unused material	8.3%
	MG3	16.7%
	NA	
	Total	**100.0%**
Were admin triages on later police submissions timely?	Yes	81.3%
	No	18.8%
	NA	
	Total	**100.0%**
Did the police supply missing items that had been identified in later triage rejections?	Yes	8.3%
	No	91.7%
	NA	
	Total	**100.0%**
Did they do so in a timely manner?	Yes	0.0%
	No	100.0%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
Did the police indicate that they were not going to provide the items identified in later triage rejections?	Yes No NA **Total**	25.0% 75.0% **100.0%**
If police supplied missing items or indicated they were not going to, was there appropriate action taken on the response(s) from the police to later triages?	Yes No - no action taken No - other (please note) NA **Total**	25.0% 25.0% 50.0% **100.0%**
Admin finalisation		
Was the action plan (or the last one, if more than one) chased at the 1-month stage?	Yes No - Done early No - Done late No - Not done NA **Total**	21.2% 6.5% 50.0% 22.4% **100.0%**
Was there any response to the 1-month chase from the police?	Yes No NA **Total**	31.8% 68.2% **100.0%**
Was the action plan (or the last one, if more than one) chased at the 2-month stage?	Yes No - done early No - done late No - not done NA **Total**	22.7% 6.7% 44.0% 26.7% **100.0%**
Was there any response to the 2-month chase from the police?	Yes No NA **Total**	45.5% 54.5% **100.0%**
Was administrative action taken to finalise the case at the expiry of 90 days?	Yes No NA **Total**	43.0% 57.0% **100.0%**
Was the case finalised at the 90 day point?	Yes No NA **Total**	11.0% 89.0% **100.0%**
If the case was not finalised at the 90 day point, how many days until finalisation?	1-30 31-60 61-89	17.4% 11.2% 7.9%

Question	Answers	Results All cases
	91-120	17.4%
	121-150	12.9%
	151-180	9.6%
	over 180 days	23.6%
	NA	
	Total	**100.0%**
Was there a reason noted for the admin finalisation?	Yes	98.5%
	No	1.5%
	NA	
	Total	**100.0%**
If there was a reason noted for the admin finalisation, what was the recorded reason?	No response from police to PCD action plan set	13.7%
	No response to EIA action plan from police or resubmission of case after EIA advice provided	27.4%
	Not accepted and no further response thereafter	1.0%
	Police notify CPS they have decided to NFA at the police stage	26.9%
	Police tell CPS they will not be ready to respond for some time	3.0%
	Response from police to action plan inadequate	4.1%
	Other	23.9%
	NA	
	Total	**100.0%**
Was the correct finalisation code used?	Yes	64.5%
	No	35.5%
	NA	
	Total	**100.0%**
Lawyer actions		
The action plan met a satisfactory standard	FM	47.2%
	PM	36.7%
	NM	16.1%
	NA	
	Total	**100.0%**
Were the lawyer's request(s) for the victim's phone and any other	Yes	56.1%

Question	Answers	Results All cases
digital devices to be searched or downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	No - did not set proper parameters for the request(s)	25.4%
	No - other	6.1%
	No - requests made re V's devices that were not needed	8.8%
	No - requests not made re V's devices that were needed	3.5%
	Not able to determine from file	
	NA	
	Total	**100.0%**
Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes	67.8%
	No - did not request items that were needed	2.3%
	No - did not set proper parameters for the material requested	8.6%
	No - other	3.4%
	No - requested items that were not needed	17.8%
	Not able to determine from file	
	NA	
	Total	**100.0%**
What was the most significant of the material and/or further enquiries referenced in the previous question?	999	1.1%
	BWV	0.6%
	CCTV	1.7%
	Comms	2.9%
	Crime scene or forensic	6.9%
	D's phone or other digital devices	12.6%
	Education	4.0%
	Family court	1.1%
	Other (please note)	14.9%
	Other medical or psychiatric	12.0%
	Other third party/expert	2.3%
	Possible witnesses	15.4%
	Previous incidents involving D	1.7%

Question	Answers	Results All cases
	Previous incidents involving V	3.4%
	Sexual assault referral centre records	1.1%
	Social media	4.6%
	Social Services	6.3%
	Victim credibility	7.4%
	NA	
	Total	**100.0%**
What was the next most significant of the material and/or further enquiries referenced in Q49?	999	2.0%
	CCTV	2.0%
	Comms	4.0%
	Crime scene or forensic	4.6%
	D's phone or other digital devices	9.3%
	Education	4.0%
	Family court	2.0%
	Identification	0.7%
	Other (please note)	4.6%
	Other medical or psychiatric	13.2%
	Other third party/expert	2.0%
	Possible witnesses	18.5%
	Previous incidents involving D	4.0%
	Previous incidents involving V	5.3%
	Sexual assault referral centre records	2.6%
	Social media	6.0%
	Social Services	9.3%
	Victim credibility	6.0%
	NA	
	Total	**100.0%**
Did the police challenge the proportionality of CPS requests?	Yes	3.4%
	No	96.6%
	NA	
	Total	**100.0%**
Were the police right to challenge or not challenge proportionality?	Yes	69.1%
	No	30.9%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
If police did challenge the proportionality of CPS requests, did the CPS respond appropriately?	Yes - amended to make the request more proportionate	16.7%
	Yes - explained why the request was proportionate	50.0%
	No - did not respond at all	33.3%
	NA	
	Total	**100.0%**
Did the lawyer set realistic timescales for material and further enquiries requested in the action plan?	Yes	50.3%
	No	49.7%
	NA	
	Total	**100.0%**
Did the police challenge the timescales set in the action plan?	Yes	3.4%
	No	96.6%
	NA	
	Total	**100.0%**
Were the police right to challenge or not challenge timescales?	Yes	58.6%
	No	41.4%
	NA	
	Total	**100.0%**
If the police did challenge timescales, did the CPS respond appropriately?	No - did not amend an unrealistic timescale	16.7%
	No - did not respond at all	16.7%
	Yes - amended to make the timescale more realistic	66.7%
	NA	
	Total	**100.0%**
Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes - identified and fed back	81.8%
	No - identified but not fed back	2.3%
	No - not identified and not fed back	15.9%
	NA	
	Total	**100.0%**
What form did the feedback take?	Action plan	25.0%
	Email	13.9%
	Highlighted in the body of the charging advice but not in action plan	52.8%

Question	Answers	Results All cases
	NFQ assessment on CMS	2.8%
	Other	5.6%
	NA	
	Total	**100.0%**
Victims and witnesses		
Did the victim participate in the investigation?	Yes - through to charge	88.0%
	No - never supported a prosecution	1.0%
	No - other (please note)	3.0%
	No - withdrew after an action plan was given to police but before charging decision made	5.0%
	No - withdrew after report but before the police requested charging advice	3.0%
	NA	
	Total	**100.0%**
What was the primary reason given for the V not participating?	V decided not to prosecute partner/family member in a DA context	13.0%
	V intimidated or in fear	4.3%
	Other	34.8%
	Not able to determine from the file	47.8%
	NA	
	Total	**100.0%**
Did a refusal by the victim to allow the police access to their phone play any part in the admin finalisation?	Yes	6.7%
	No	93.3%
	NA	
	Total	**100.0%**
Did the refusal by the victim to allow the police access to social media accounts play any part in the admin finalisation?	Yes	0.0%
	No	100.0%
	NA	
	Total	**100.0%**
Did the refusal by the victim to provide consent to third party material play any part in the admin finalisation?	Yes	0.0%
	No	100.0%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes No NA **Total**	46.7% 53.3% **100.0%**
Reactivation		
Was the case reactivated after being admin finalised?	Yes - further request for advice Yes - other Yes - D has been charged by police No **Total**	15.0% 2.0% 1.0% 82.0% **100.0%**
Number of days between admin finalisation and reactivation	1-30 31-60 61-90 91-120 121-150 151-180 over 180 days **Total**	19.4% 25.0% 25.0% 2.8% 5.6% 5.6% 16.7% **100.0%**
The lawyer or team exercised sound judgement and grip throughout the case.	Excellent Good Fair Poor **Total**	0.0% 40.5% 41.5% 18.0% **100.0%**
The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	FM PM NM **Total**	69.0% 27.5% 3.5% **100.0%**

File outputs: Charged/NFA

Question	Answers	Results All cases
Case information		
How many admin triages were there?	0	29.6%
	1	22.8%
	2	26.4%
	3	13.2%
	4	4.8%
	5	1.6%
	6+	1.6%
	Total	**100.0%**
How many consultations were there?	0	0.0%
	1	31.2%
	2	34.4%
	3	19.6%
	4	6.0%
	5	2.8%
	6+	6.0%
	Total	**100.0%**
Number of days between date reported to police and arrest of lead defendant	0-30	76.3%
	31-60	6.4%
	61-90	3.4%
	91-120	5.1%
	121-160	2.1%
	161-199	2.1%
	200+	4.7%
	Not able to determine from file	
	Total	**100.0%**
Number of days between date reported to police and request to CPS for advice	0-30	21.5%
	31-60	5.0%
	61-90	3.3%
	91-120	5.0%
	121-160	7.9%
	161-199	6.2%
	200+	51.2%
	Not able to determine from file	
	Total	**100.0%**
Number of days between police final submission and CPS advice provided	0-7	34.7%
	8-14	13.7%
	15-21	16.1%
	22-31	17.3%

Question	Answers	Results All cases
	32-49	14.1%
	50+	4.0%
	Not able to determine from file	
	Total	**100.0%**
How did the allegation come to police attention?	Friend or family reported (Adult)	15.9%
	GP/counsellor or other medical	4.5%
	Identified during DASH assessment	2.8%
	Parent/guardian/foster parent reported (child)	7.7%
	Sexual assault referral centre (SARC)	0.8%
	Social worker reported	3.7%
	Teacher reported	4.5%
	Victim reported	46.3%
	Other	13.8%
	Not able to determine from file	
	Total	**100.0%**
Was the case properly flagged?	Yes, has rape flag correctly	89.6%
	No, has rape flag incorrectly	10.4%
	Total	**100.0%**
Are the allegations recent?	Yes	80.0%
	No	20.0%
	Total	**100.0%**
What decision did the charging lawyer make?	Charge	50.0%
	NFA	50.0%
	Total	**100.0%**
What was the main offence charged, or considered, in NFA?	Other	1.6%
	Other sexual offence involving child	2.8%
	Pre-SOA 2003 sexual offences other than rape	1.6%
	Rape (SOA 2003 or pre-2003)	81.6%
	S.2 SOA assault by penetration	2.4%
	S.3 sexual assault	1.2%

Question	Answers	Results All cases
	S.5 rape of child under 13	7.6%
	S.6 assault of child under 13 by penetration	0.4%
	S.7 sexual assault of child under 13	0.4%
	Other sexual offence involving adult	0.4%
	Total	**100.0%**
What was the reason for NFA?	Evidential other	23.2%
	Identification	1.6%
	Mens rea not capable of proof	15.2%
	PI other	2.4%
	Undermining or assisting material	48.0%
	V not participating	7.2%
	PI age/illness of D	0.8%
	Other essential element of actus reus missing	1.6%
	NA	
	Total	**100.0%**
Where there was communication evidence or information, what was the most impactful?	Contact between D and another	8.3%
	Contact between V and another	18.2%
	Direct contact between D and a W	4.1%
	Direct contact between D and V (text, letter, phone call or in person)	49.6%
	Other contact (please note)	9.1%
	Social media contact between D and a W	3.3%
	Social media contact between D and V	7.4%
	NA	
	Total	**100.0%**
Where there was undermining or assisting material, what was the most impactful?	Contact between D and V	6.2%
	Counselling	2.1%
	Crime scene or forensic	3.1%
	Education	1.0%
	Identification	2.6%
	Other (please note)	8.2%

Question	Answers	Results All cases
	Other medical	1.5%
	Social media	0.5%
	Social Services	1.5%
	Victim credibility	56.7%
	Witness account(s)	14.4%
	Witness credibility	1.5%
	Psychiatric	0.5%
	NA	
	Total	**100.0%**
Where there was undermining or assisting material, what was the next most impactful?	Contact between D and V	8.3%
	Counselling	0.8%
	Crime scene or forensic	4.5%
	Education	3.0%
	Identification	1.5%
	Other (please note)	9.1%
	Other medical	6.8%
	Other third party/expert	0.8%
	Sexual assault referral centre records	2.3%
	Social media	2.3%
	Social Services	12.1%
	Victim credibility	16.7%
	W or others	6.1%
	Witness account(s)	21.2%
	Witness credibility	3.8%
	Psychiatric	0.8%
	NA	
	Total	**100.0%**
Where there were issues with the victim's credibility, what was the most impactful?	Mental health or other issues that may impact on their ability to give cogent evidence	7.6%
	Victim has capacity	0.6%
	Victim has disclosable previous convictions	5.3%
	Victim has made previous allegations (sexual or other offences) that are proved or believed to be false	5.3%
	Victim has made previous inconsistent statements during this case	34.5%

Question	Answers	Results All cases
	Victim's evidence is contradicted by other cogent evidence	18.7%
	Other	28.1%
	NA	
	Total	**100.0%**
For NFA decisions, was the correct finalisation code used?	Yes	78.4%
	No	21.6%
	NA	
	Total	**100.0%**
For NFA decisions, was the correct disclosure finalisation code used?	Yes	81.6%
	No	18.4%
	NA	
	Total	**100.0%**
Police Service		
Did the first submission comply with expected standards?	Yes	45.6%
	No	54.4%
	Total	**100.0%**
If first submission did not comply with expected standards, was the failure fatal to the lawyer being able to review the case?	Yes	58.8%
	No	41.2%
	NA	
	Total	**100.0%**
If first submission did not comply with expected standards, what was not provided or inadequate (excluding unused material)?	ABE	34.6%
	CCTV	0.7%
	Checklist	14.0%
	Communications evidence or information	3.7%
	Key statement(s)	7.4%
	Medical evidence or information including counselling	2.2%
	MG3	7.4%
	Other	22.8%
	Summary of RLE	3.7%
	Summary of third party material	2.9%
	Forensic SFR or statement	0.7%
	NA	
	Total	**100.0%**
Did the police supply the MG6 series at charge?	Yes	30.4%
	No	69.6%

Question	Answers	Results All cases
	NA	
	Total	**100.0%**
If supplied, were the MG6 schedules satisfactory?	Yes	34.9%
	No - item(s) description inadequate	6.3%
	No - item(s) listed on MG6C in error	4.8%
	No - item(s) listed on MG6D in error	7.9%
	No - item(s) missed off an MG6 D	1.6%
	No - item(s) missed off an SDC or MG6C	22.2%
	No - items missed off an MG6E	4.8%
	Other	17.5%
	NA	
	Total	**100.0%**
Was the unused material supplied or an adequate report provided?	Yes - the material was supplied	30.9%
	Yes - an adequate report was provided	50.4%
	No - the material was not supplied and the report was inadequate	10.4%
	No - there was no material or report supplied	8.3%
	NA	
	Total	**100.0%**
Did the police accurately identify the strengths and weaknesses of the case?	FM	49.0%
	PM	38.5%
	NM	12.6%
	NA	
	Total	**100.0%**
Were any ABEs of good quality?	FM	57.7%
	PM	36.9%
	NM	5.4%
	Unable to determine	
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
If the ABE quality is Partially or Not Met, what is the most impactful failing?	Asks leading questions	5.6%
	Camera angle or sound impact on clarity of evidence	23.9%
	Interview is too long	19.7%
	Questions do not elicit sufficient information about the allegation	22.5%
	The interview is poorly structured or not properly focused	23.9%
	Other	0.0%
	Covers irrelevant material or another investigation	4.2%
	NA	
	Total	**100.0%**
If the ABE quality is Partially or Not Met, did the charging lawyer ask for a further interview with the victim or witness to address the failing(s)?	Yes	11.3%
	No	14.1%
	Not appropriate (V/W)	54.9%
	Not appropriate (other)	19.7%
	NA	
	Total	**100.0%**
Was the police use of an intermediary appropriate to take evidence from the victim?	Yes - used and was indicated/needed	16.9%
	Yes - not used and not indicated/needed	63.6%
	No - not used but was indicated/needed	13.0%
	Insufficient information provided by the police about the victim's circumstances to assess	6.5%
	NA	
	Total	**100.0%**
First admin triage		
Did the first admin triage accurately identify the standard of the initial police file submission?	Yes - identified it was not acceptable	40.7%
	Yes - identified it was acceptable	29.4%
	No - admin triage did not take place	15.5%

Question	Answers	Results All cases
	No - identified as acceptable when it was not	8.2%
	No - identified as not acceptable when it was	2.1%
	No - other (please note)	4.1%
	NA	
	Total	**100.0%**
If the initial police file submission was rejected during the first admin triage, what was the most significant thing that was not provided or inadequate?	ABE	46.4%
	Checklist	8.3%
	Communications evidence or information	3.6%
	Forensic SFR or statement	1.2%
	Key statement(s)	6.0%
	Medical evidence or information including counselling	2.4%
	MG3	7.1%
	MG6 series	3.6%
	Summary of third party material	4.8%
	Other	11.9%
	Summary of RLE	4.8%
	NA	
	Total	**100.0%**
Was the admin triage on first receipt timely?	Yes	53.7%
	No	46.3%
	NA	
	Total	**100.0%**
Did the police supply missing items that had been identified in the first triage rejection?	Yes	96.5%
	No	3.5%
	NA	
	Total	**100.0%**
Did they do so in a timely manner?	Yes	65.9%
	No	34.1%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
Did the police indicate that they were not going to provide the items identified in the first triage rejection?	Yes	0.0%
	No	100.0%
	NA	
	Total	**100.0%**
If yes to either 'did police supply missing items' or 'did police indicate they would not supply missing items', was there appropriate action taken on the response from the police to the first triage rejection?	Yes	89.0%
	No - action was taken only when something else came in/happened on file	3.7%
	No - no action taken	1.2%
	No - other (please note)	6.1%
	NA	
	Total	**100.0%**
Later admin triage		
Did the later admin triage accurately identify the standard of further submissions of material from the police?	Yes - identified they were acceptable	35.9%
	Yes - identified they were not acceptable	21.2%
	No - admin triage did not take place	32.4%
	No - identified as acceptable when they were not	8.8%
	No - identified as not acceptable when they were	0.6%
	No - other	1.2%
	NA	
	Total	**100.0%**
If the police file submission was rejected during the later admin triage, what was the most significant thing that was not provided or inadequate?	ABE	16.2%
	CCTV	2.7%
	Checklist	2.7%
	Communications evidence or information	2.7%
	Key statement(s)	18.9%
	MG3	5.4%
	MG6 series	10.8%
	Summary of RLE	2.7%
	Summary of third party material	5.4%
	Other (please note)	29.7%
	Forensic SFR or statement	2.7%

Question	Answers	Results All cases
	NA	
	Total	**100.0%**
Was admin triage on later police submissions timely?	Yes	74.8%
	No	25.2%
	NA	
	Total	**100.0%**
Did the police supply missing items that had been identified in later triage rejection?	Yes	97.3%
	No	2.7%
	NA	
	Total	**100.0%**
Did they do so in a timely manner?	Yes	70.3%
	No	29.7%
	NA	
	Total	**100.0%**
Did the police indicate that they were not going to provide the items identified in later triage rejection?	Yes	2.7%
	No	97.3%
	NA	
	Total	**100.0%**
If police did supply missing items or indicated they were not going to, was there appropriate action taken on the response(s) from the police to later triage?	Yes	89.2%
	No - action was taken only when something else came in/happened on file	2.7%
	No - no action taken	2.7%
	No - other	5.4%
	NA	
	Total	**100.0%**
PCD by CPS		
Was there an early consultation/EIA?	Yes	31.6%
	No	68.4%
	Total	**100.0%**
Was the EIA timely?	Yes	63.3%
	No	36.7%
	NA	
	Total	**100.0%**
Did the EIA add value?	FM	45.6%
	PM	40.5%
	NM	13.9%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
Was Counsel instructed to provide advice on charge?	Yes	5.2%
	No	94.8%
	Total	**100.0%**
If Counsel was instructed, was that warranted by the complexity, seriousness or sensitivity of the case?	Yes	0.0%
	No	100.0%
	NA	
	Total	**100.0%**
Was Counsel's advice adopted properly?	Yes - after full review by CPS lawyer of the advice and evidence	30.8%
	No - adopted but without review of evidence by CPS lawyer	53.8%
	No - other	7.7%
	No - nothing to suggest it was properly considered	7.7%
	NA	
	Total	**100.0%**
Did the charging decision apply the right test?	Yes - FCT correct	84.8%
	Yes - THT correct	13.6%
	No - THT should have been FCT	1.6%
	Total	**100.0%**
Was there evidence that any ABEs were viewed before the pre charge decision was made?	Yes	89.5%
	No	10.5%
	NA	
	Total	**100.0%**
The CPS decision to charge was compliant with the Code Test.	Yes	98.0%
	No	2.0%
	NA	
	Total	**100.0%**
Was the decision to charge or NFA timely?	Yes	57.4%
	No	42.6%
	NA	
	Total	**100.0%**
Were the most appropriate charges chosen?	Yes	93.6%
	No	6.4%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
Did the advice comply with CPS policy on rape and serious sexual offences?	Yes No **Total**	86.4% 13.6% **100.0%**
The CPS MG3 included proper case analysis and case strategy.	FM PM NM **Total**	54.4% 30.8% 14.8% **100.0%**
If MG3 case analysis and strategy is PM or NM, what was the most impactful failing?	Did not adequately address how the case could be built Did not identify relevant rape myths and stereotypes and how to address them Over-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances Poor assessment of strengths and weaknesses of the case Under-emphasised the impact of possible weaknesses or inconsistencies in the victim's account and circumstances Other (please note) NA **Total**	17.5% 7.9% 12.3% 17.5% 6.1% 38.6% **100.0%**
Was the merits based approach said to be applied in the pre-charge decision?	Yes No **Total**	4.0% 96.0% **100.0%**
The CPS MG3 dealt appropriately with unused material (UM).	FM PM NM NA **Total**	64.4% 21.3% 14.2% **100.0%**

Question	Answers	Results All cases
If CPS MG3 handling of UM is PM or NM, what was the main or most significant failing with unused material?	Did not address the impact of disclosable unused on the evidence	34.1%
	Did not address unused material at all	23.5%
	Did not discuss any sensitivity of unused	3.5%
	Did not set appropriate actions in the action plan in relation to unused material	17.6%
	Other (please note)	21.2%
	NA	
	Total	**100.0%**
Was there a disclosure management document (DMD) where required?	Yes	69.7%
	No	30.3%
	NA	
	Total	**100.0%**
If there was a DMD, did the police and CPS comply with the requirements for a DMD at the pre-charge stage?	Both complied	25.0%
	Neither complied	5.3%
	Police did not supply info but CPS completed DMD	1.3%
	Police supplied info and CPS did not need to do DMD	47.4%
	Police supplied info but CPS did not complete a DMD	21.1%
	NA	
	Total	**100.0%**
The CPS MG3 made reference to all relevant applications and ancillary matters.	Yes	43.6%
	No	56.4%
	NA	
	Total	**100.0%**
If CPS MG3 did not make reference to all relevant applications and ancillary matters, what was the most impactful aspect that the lawyer failed to consider adequately?	Bad character	10.7%
	Hearsay	1.3%
	Restraining order	8.0%
	Special measures	38.7%
	Other preventative orders (eg SHPO)	34.7%
	Other (please note)	6.7%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
Did the charging advice consider the need for an intermediary where appropriate?	Yes	60.0%
	No	40.0%
	NA	
	Total	**100.0%**
The action plan met a satisfactory standard.	FM	30.5%
	PM	58.2%
	NM	11.3%
	NA	
	Total	**100.0%**
Were the lawyer's request(s) for the victim's phone and any other digital devices to be searched or downloaded (or other enquiries made of the victim's phone) necessary and proportionate?	Yes - correct request made re V's devices	40.3%
	Yes - request correctly not made re V's devices	25.2%
	No - did not set proper parameters for the request(s)	18.7%
	No - requests made at charge re V's devices that should have been made pre charge	0.7%
	No - requests made re V's devices that were not needed	5.0%
	No - requests not made re V's devices that were needed	5.8%
	No - other	4.3%
	NA	
	Total	**100.0%**
Were the lawyer's request(s) for other material and further enquiries necessary and proportionate?	Yes - correct request made re other items	75.1%
	Yes - request correctly not made re other items	0.5%
	No - did not request items that were needed	2.8%
	No - did not set proper parameters for the material requested	7.0%
	No - other (please note)	3.3%
	No - requested at charge material that should have been requested pre charge	0.5%

Question	Answers	Results All cases
	No - requested items that were not needed	10.8%
	NA	
	Total	**100.0%**
What was the most significant of the material and/or further enquiries referenced in the previous question?	BWV	0.5%
	CCTV	2.8%
	Comms	5.2%
	Crime scene or forensic	7.5%
	D's phone or other digital devices	8.5%
	Education	1.9%
	Family court	1.4%
	Identification	2.8%
	Other (please note)	12.7%
	Other medical or psychiatric	8.9%
	Other third party/expert	2.3%
	Possible witnesses	15.0%
	Previous incidents involving D	4.7%
	Previous incidents involving V	5.2%
	Sexual assault referral centre records	2.3%
	Social media	2.8%
	Social Services	9.9%
	Victim credibility	5.6%
	NA	
	Total	**100.0%**
What was the next most significant of the material and/or further enquiries referenced?	999	1.0%
	BWV	1.6%
	CCTV	5.8%
	Comms	1.6%
	Crime scene or forensic	6.3%
	D's phone or other digital devices	5.2%
	Education	8.4%
	Family court	0.5%
	Identification	2.1%
	Other (please note)	12.0%
	Other medical or psychiatric	15.2%
	Other third party/expert	0.5%
	Possible witnesses	11.0%

Question	Answers	Results All cases
	Previous incidents involving D	4.7%
	Previous incidents involving V	4.7%
	Sexual assault referral centre records	2.1%
	Social media	2.1%
	Social Services	9.4%
	Victim credibility	5.8%
	NA	
	Total	**100.0%**
Did the police challenge the proportionality of CPS requests?	Yes	7.1%
	No	92.9%
	NA	
	Total	**100.0%**
Were the police right to challenge or not challenge CPS proportionality?	Yes	81.5%
	No	18.5%
	NA	
	Total	**100.0%**
If the police did challenge CPS proportionality, did the CPS respond appropriately?	Yes - withdrew a disproportionate request	26.7%
	Yes - explained why the request was proportionate	40.0%
	No - did not respond at all	13.3%
	No - did not withdraw or amend a disproportionate request	20.0%
	NA	
	Total	**100.0%**
Did the lawyer set realistic timescales for material and further enquiries?	Yes	67.8%
	No	32.2%
	NA	
	Total	**100.0%**
Did the police challenge the timescales set in the action plan?	Yes	4.8%
	No	95.2%
	NA	
	Total	**100.0%**
Were the police right to challenge or not challenge the timescales?	Yes	72.1%
	No	27.9%
	NA	
	Total	**100.0%**

Question	Answers	Results All cases
If the police did challenge timescales appropriately, did the CPS respond appropriately?	Yes - amended to make the timescale more realistic	40.0%
	Yes - explained why the timescale was realistic	20.0%
	No - did not explain why the timescale was realistic	10.0%
	No - other	10.0%
	Yes - other	10.0%
	No - did not respond at all	10.0%
	NA	
	Total	**100.0%**
Did the charging lawyer identify and feedback to the police any failings with the police file submission that had not already been addressed in triage?	Yes - identified and fed back	71.5%
	No - identified but not fed back	1.5%
	No - not identified and not fed back	26.9%
	NA	
	Total	**100.0%**
What form did the feedback take?	Action plan	49.5%
	Email	6.5%
	Highlighted in the body of the charging advice but not in action plan	39.8%
	NFQ assessment on CMS	4.3%
	NA	
	Total	**100.0%**
For CPS charged cases rate the overall quality of the MG3 including action plan.	FM	33.2%
	PM	52.0%
	NM	14.8%
	Total	**100.0%**
Victims and witnesses		
Did the victim participate in the investigation?	Yes - through to charge	94.7%
	No - never supported a prosecution	1.2%
	No - withdrew after an action plan was given to police but before charging decision made	3.2%
	No - other	0.4%

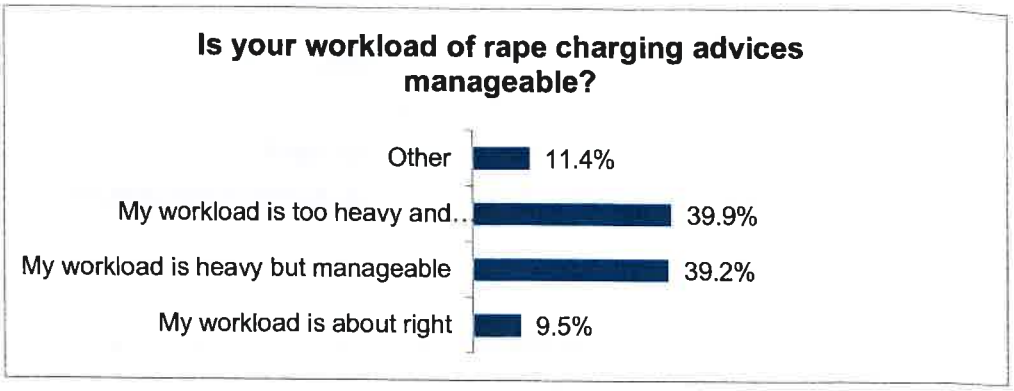
Question	Answers	Results All cases
	No - withdrew after report but before the police requested charging advice	0.4%
	NA	
	Total	**100.0%**
What was the primary reason given for the victim not participating?	The time taken to investigate and/or reach charging decision	9.1%
	V decided not to prosecute partner/family member in a DA context	18.2%
	V health impacted	27.3%
	Other	45.5%
	Unable to determine from file	
	NA	
	Total	**100.0%**
Did a refusal by the victim to allow the police access to their phone or other digital devices play any part in the decision to NFA?	Yes	17.8%
	No	82.2%
	NA	
	Total	**100.0%**
Did the refusal by the victim to allow the police access to social media accounts play any part in the decision to NFA?	Yes	18.8%
	No	81.3%
	NA	
	Total	**100.0%**
Did the refusal by the victim to provide consent to third party material play any part in the decision to NFA?	Yes	8.3%
	No	91.7%
	Unable to determine from file	
	NA	
	Total	**100.0%**
Did the reviewing lawyer consider appropriate ways to re-establish the victim's participation or to proceed without it?	Yes	63.6%
	No	36.4%
	NA	
	Total	**100.0%**
The needs and interests of the public were protected through custody and bail decisions, and proper monitoring of CTLs.	FM	54.7%
	PM	10.0%
	NM	35.3%
	NA	
	Total	**100.0%**

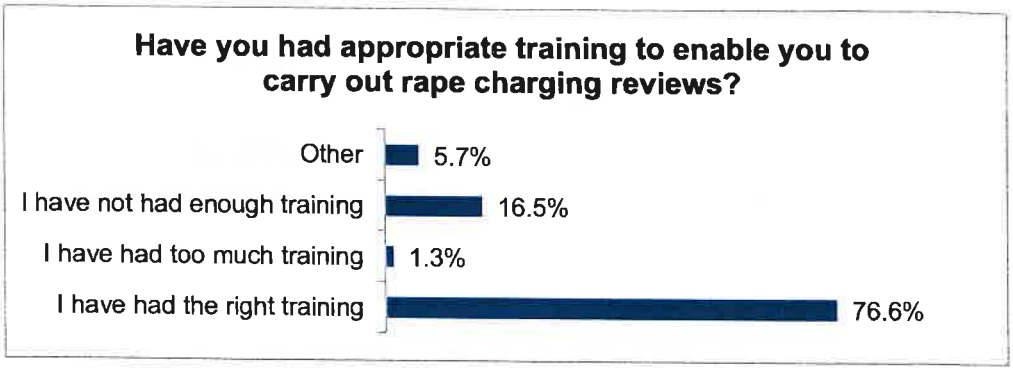
Question	Answers	Results All cases
There was a timely VCL when required.	Yes	62.8%
	No - not done	19.0%
	No - not done on time	18.2%
	NA	
	Total	**100.0%**
The VCL was of a high standard.	Yes	45.9%
	No - inaccurate	2.0%
	No - insufficient information	12.2%
	No - lack of clarity in explanation	12.2%
	No - lack of empathy	10.2%
	No - other (please note)	10.2%
	No - spelling or grammar errors	2.0%
	No - used jargon	5.1%
	NA	
	Total	**100.0%**
Did the VCL refer to the victim's right to review where appropriate?	Yes	100.0%
	No	0.0%
	NA	
	Total	**100.0%**
Overall quality		
Has the time taken by the police to investigate, submit for a charging decision and carry out actions has an impact on the outcome?	Yes	6.7%
	No	93.3%
	Unable to determine from file	
	Total	**100.0%**
The lawyer or team exercised sound judgement and grip throughout the case.	Excellent	2.0%
	Good	43.2%
	Fair	40.4%
	Poor	14.4%
	Total	**100.0%**
The file examination has been made possible by a clear audit trail on CMS of key events, decisions and actions, with correct labelling of documents and appropriate use of notes.	FM	68.4%
	PM	24.8%
	NM	6.8%
	Total	**100.0%**
Would the inspector have made the same decision on charge or NFA as the charging lawyer?	Yes	94.8%
	No	5.2%
	Total	**100.0%**

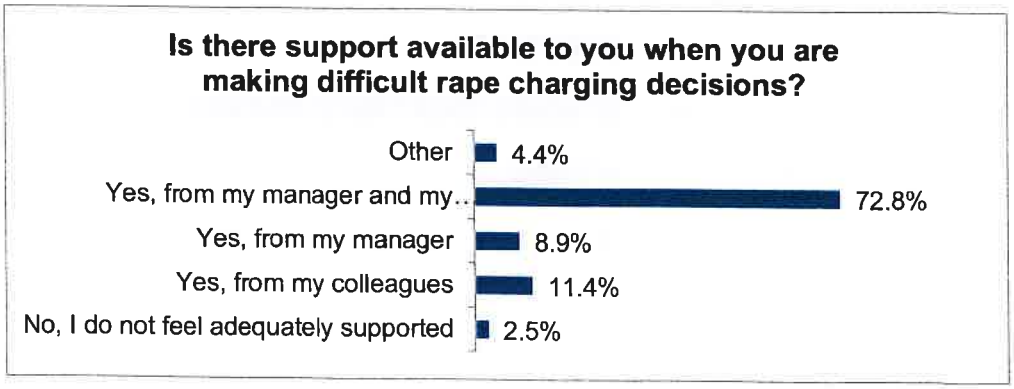
Annex D
Survey results

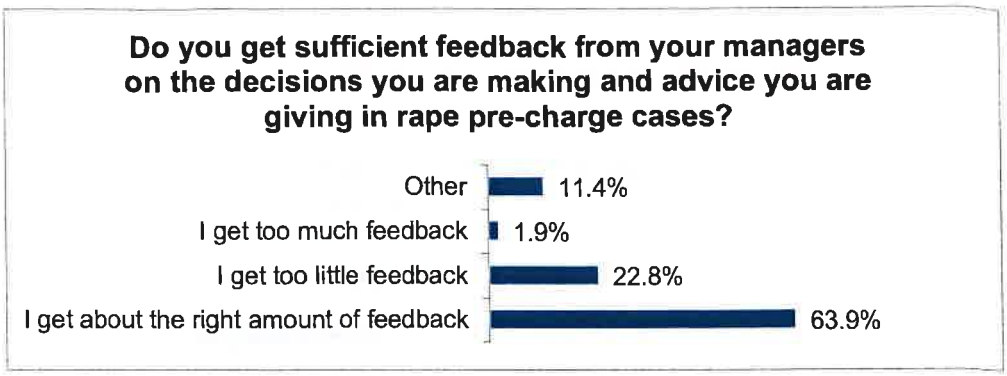
- Lawyers
- Managers

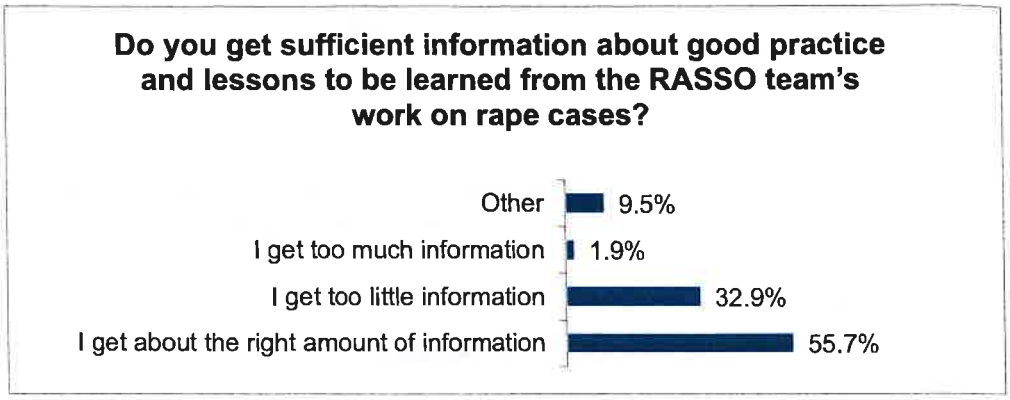
Lawyers' survey results

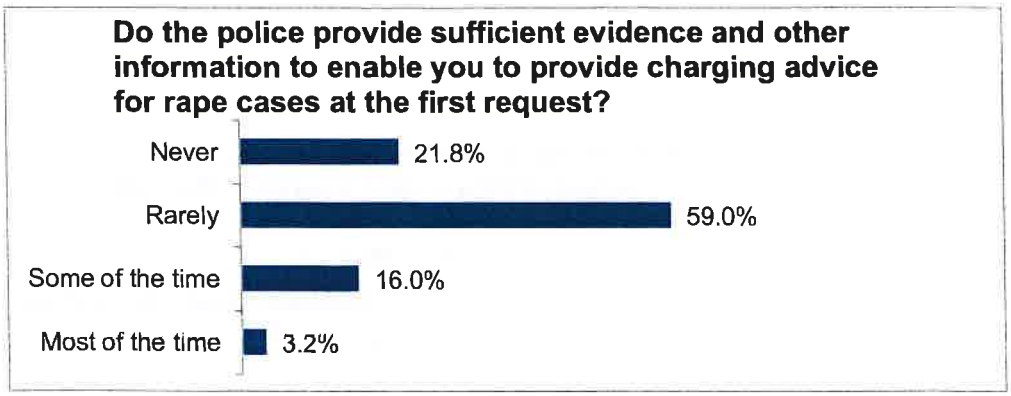


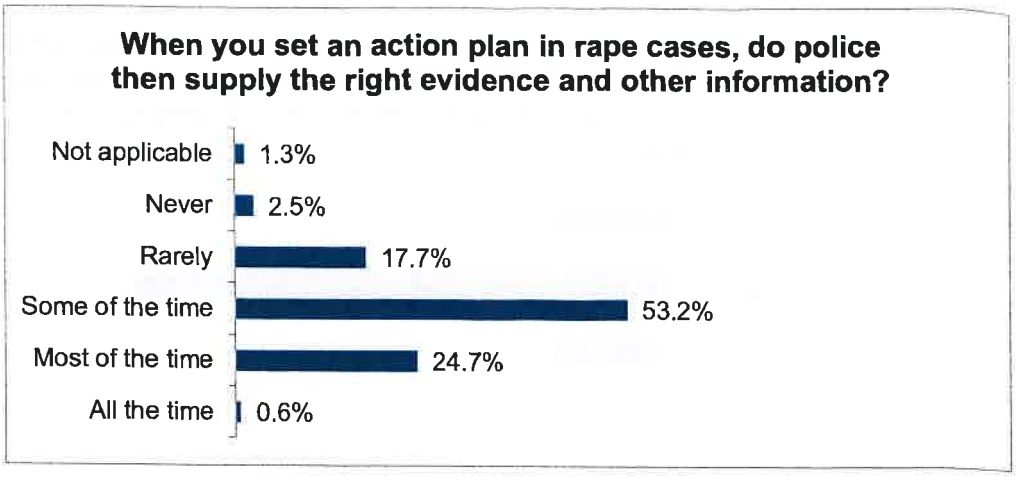


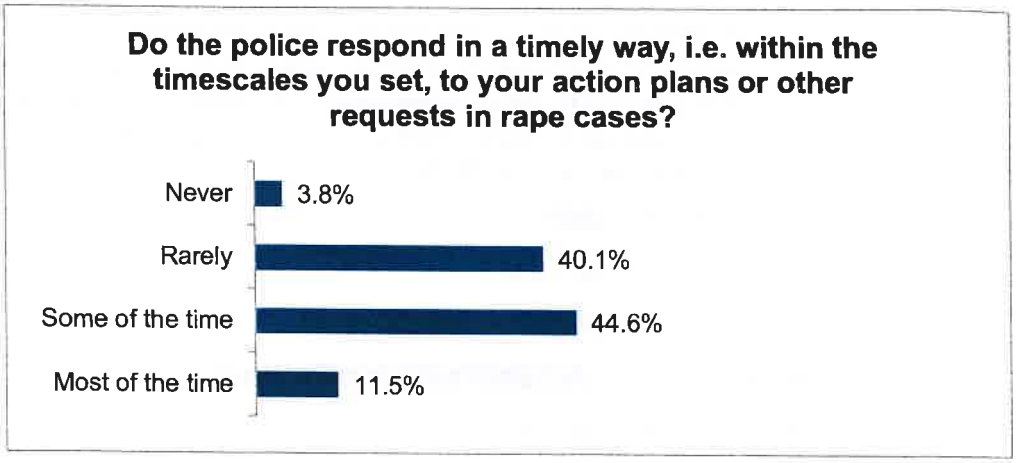


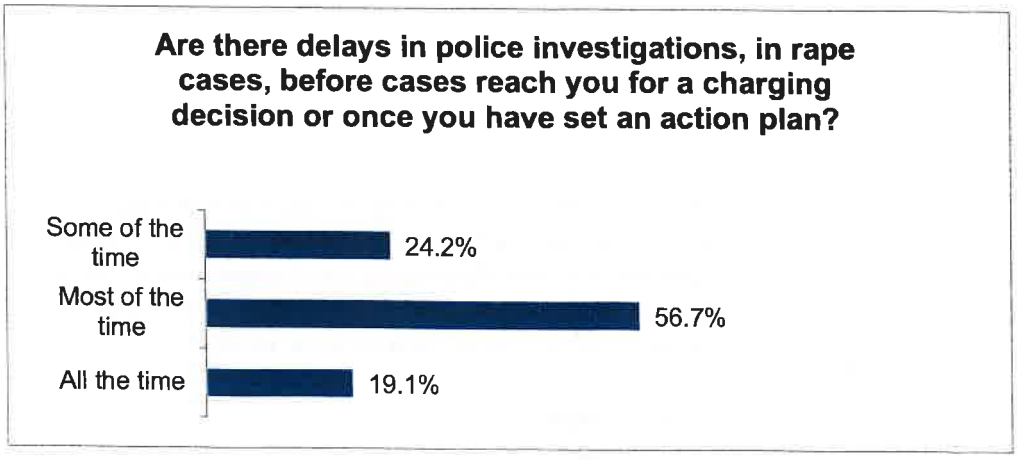

Do you get sufficient feedback from your managers on the decisions you are making and advice you are giving in rape pre-charge cases?
Other
11.4%
I get too much feedback
1.9%
I get too little feedback
22.8%
I get about the right amount of feedback
63.9%


Do you get sufficient information about good practice and lessons to be learned from the RASSO team's work on rape cases?
Other
9.5%
I get too much information
1.9%
I get too little information
32.9%
I get about the right amount of information
55.7%


Do the police provide sufficient evidence and other information to enable you to provide charging advice for rape cases at the first request?
Never
21.8%
Rarely
59.0%
Some of the time
16.0%
Most of the time
3.2%

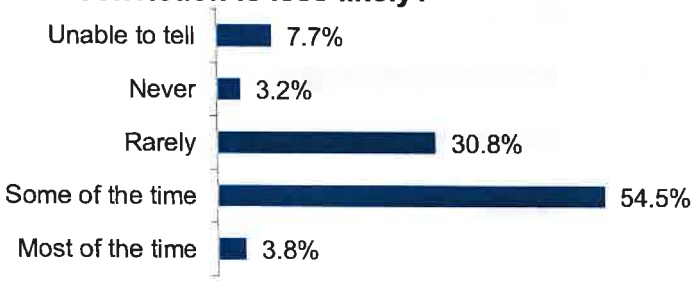

When you set an action plan in rape cases, do police then supply the right evidence and other information?
Not applicable
1.3%
Never
2.5%
Rarely
17.7%
Some of the time
53.2%
Most of the time
24.7%
All the time
0.6%


Do the police respond in a timely way, i.e. within the timescales you set, to your action plans or other requests in rape cases?
Never
3.8%
Rarely
40.1%
Some of the time
44.6%
Most of the time
11.5%

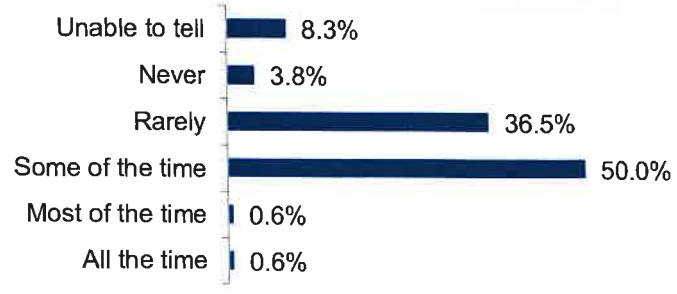

Are there delays in police investigations, in rape cases, before cases reach you for a charging decision or once you have set an action plan?
Some of the time
24.2%
Most of the time
56.7%
All the time
19.1%

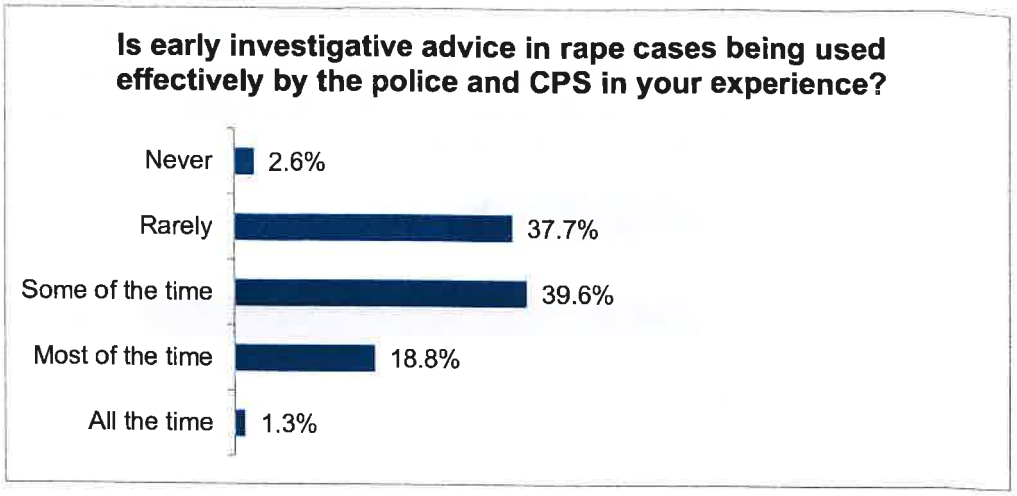
Do any delays in rape cases appear to be warranted by the complexity of the case, the type of evidence that needs to be gathered or other features of the investigation?

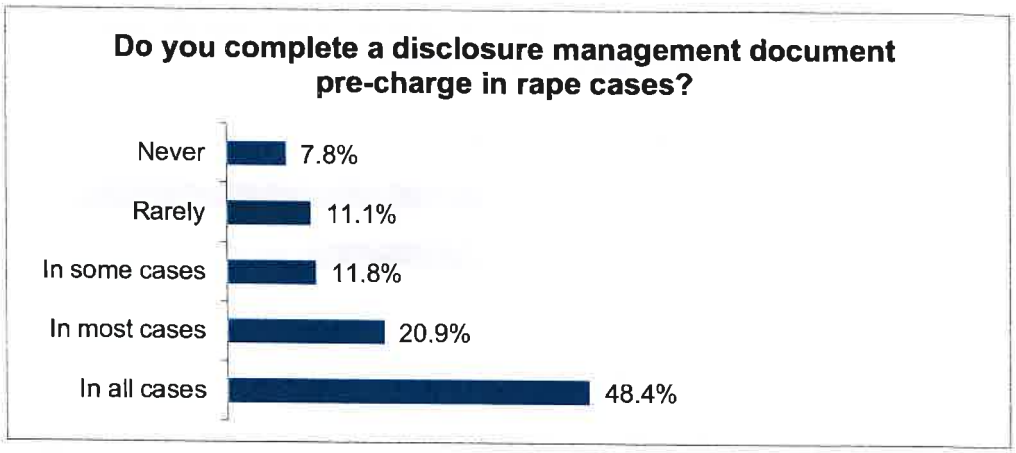
In those cases, where there has been delay in the police investigation in rape cases, has it impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of a conviction is less likely?

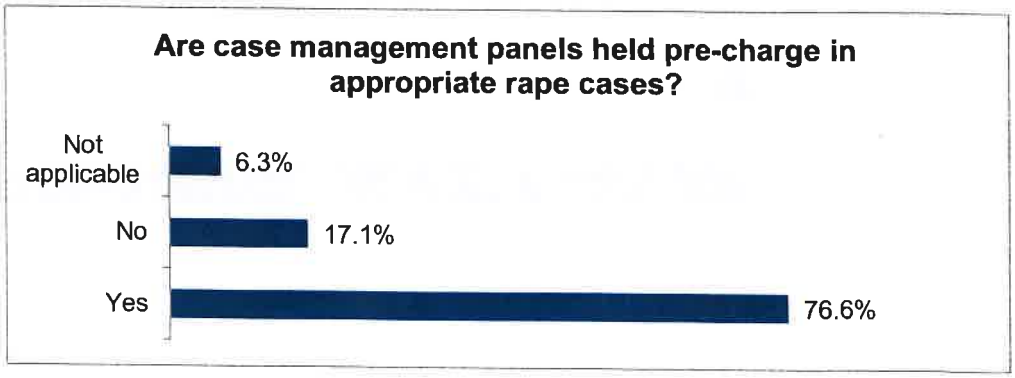


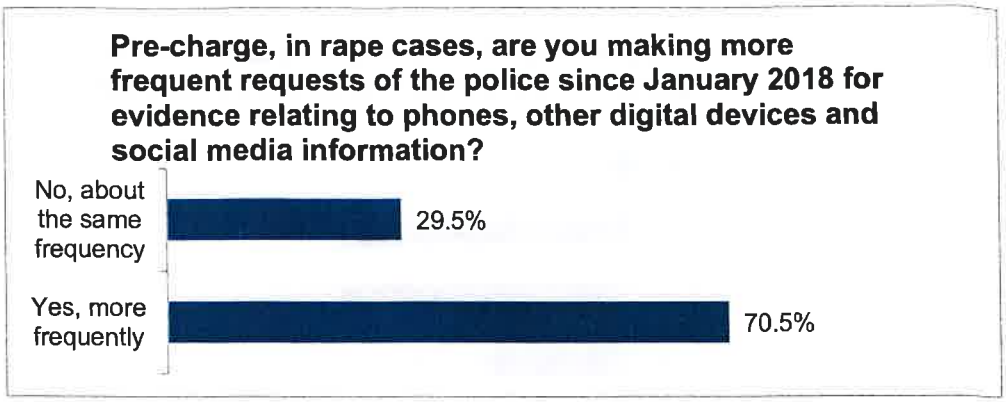
In those cases, where there has been delay in the police responses to action plans in rape cases, has it impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of a conviction is less likely?

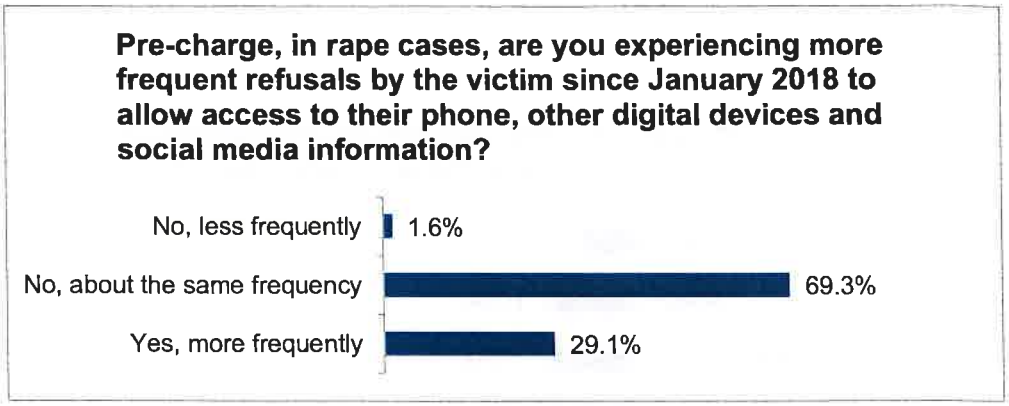


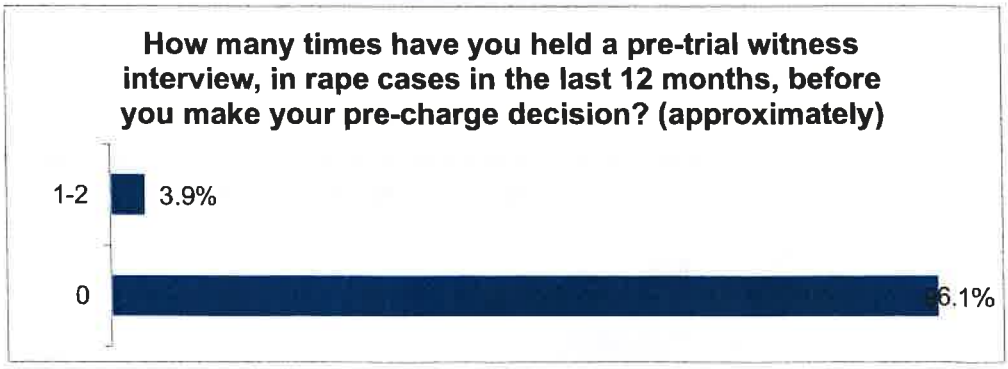

Is early investigative advice in rape cases being used effectively by the police and CPS in your experience?
Never
2.6%
Rarely
37.7%
Some of the time
39.6%
Most of the time
18.8%
All the time
1.3%

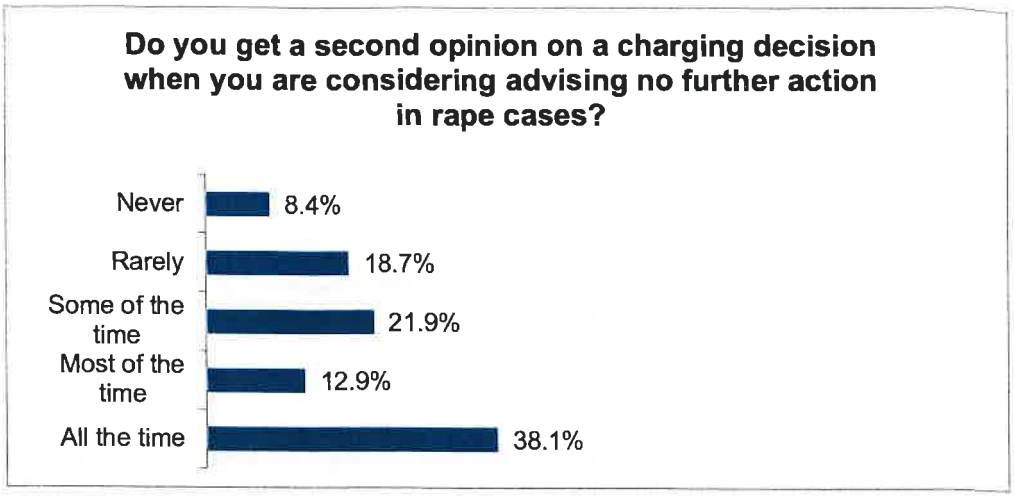

Do you complete a disclosure management document pre-charge in rape cases?
Never
7.8%
Rarely
11.1%
In some cases
11.8%
In most cases
20.9%
In all cases
48.4%

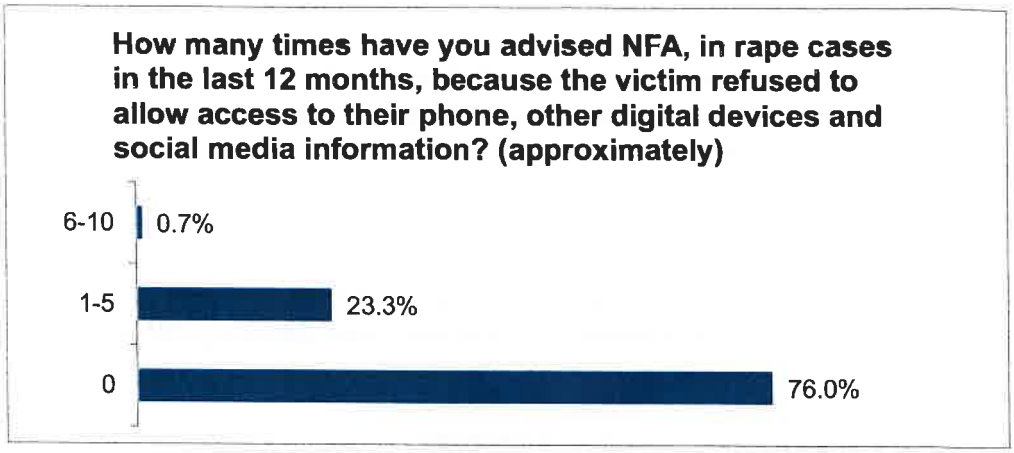

Are case management panels held pre-charge in appropriate rape cases?
Not applicable
6.3%
No
17.1%
Yes
76.6%

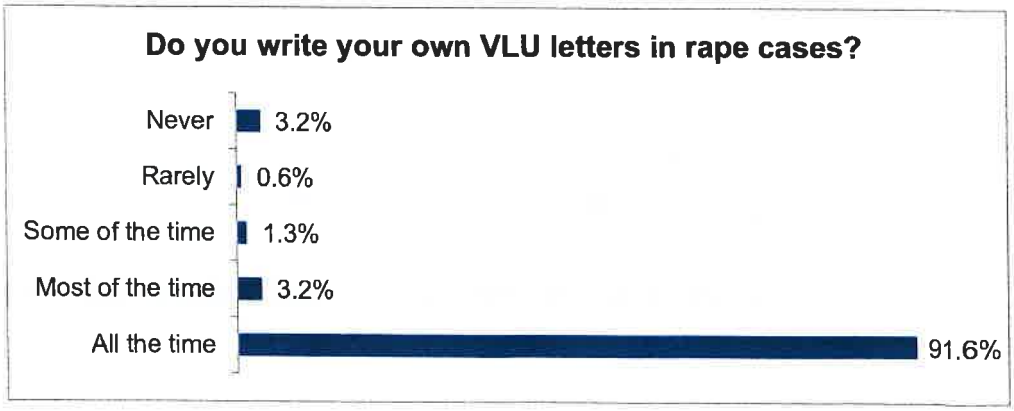

Pre-charge, in rape cases, are you making more frequent requests of the police since January 2018 for evidence relating to phones, other digital devices and social media information?
No, about the same frequency
29.5%
Yes, more frequently
70.5%


Pre-charge, in rape cases, are you experiencing more frequent refusals by the victim since January 2018 to allow access to their phone, other digital devices and social media information?
No, less frequently
1.6%
No, about the same frequency
69.3%
Yes, more frequently
29.1%

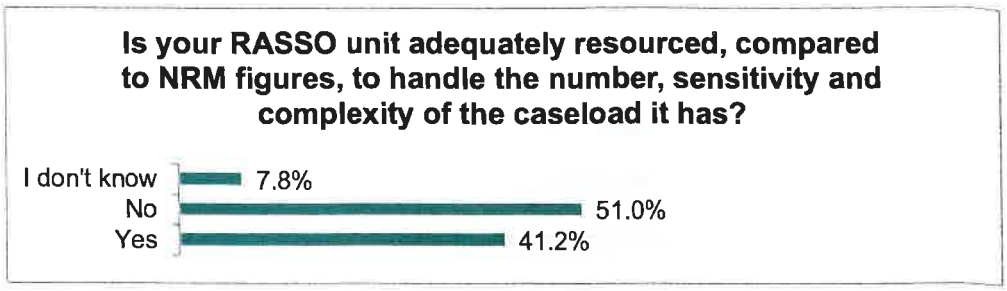

How many times have you held a pre-trial witness interview, in rape cases in the last 12 months, before you make your pre-charge decision? (approximately)
1-2
3.9%
0
6.1%

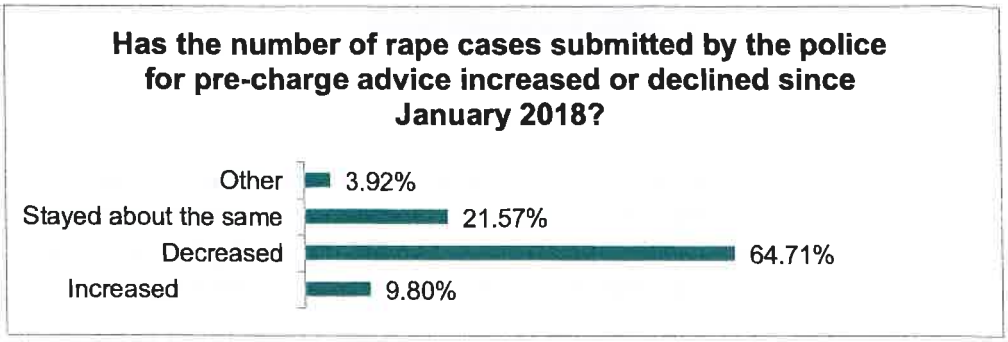

Do you get a second opinion on a charging decision when you are considering advising no further action in rape cases?
Never
8.4%
Rarely
18.7%
Some of the time
21.9%
Most of the time
12.9%
All the time
38.1%

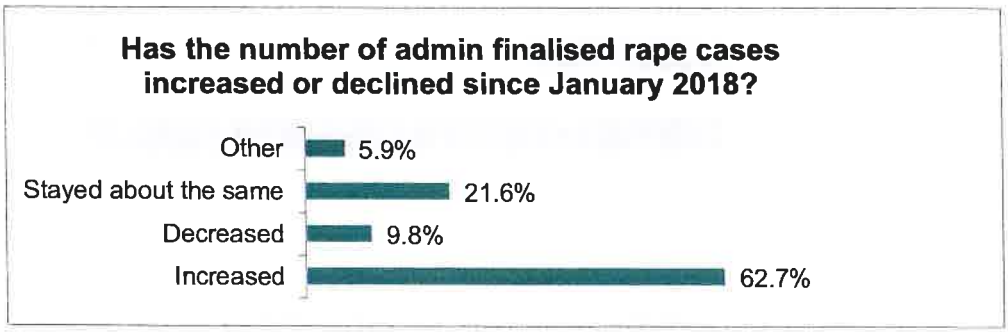

How many times have you advised NFA, in rape cases in the last 12 months, because the victim refused to allow access to their phone, other digital devices and social media information? (approximately)
6-10
0.7%
1-5
23.3%
0
76.0%

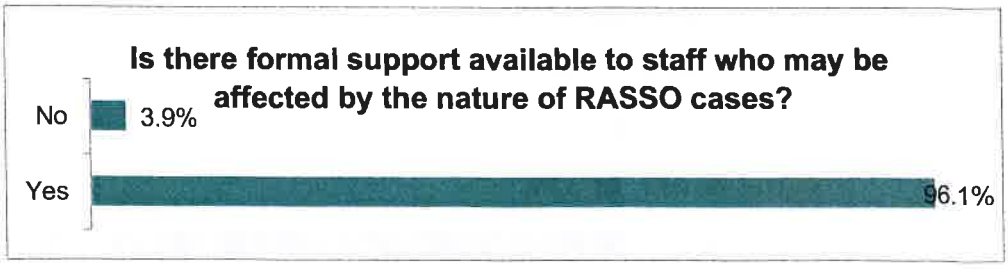

Do you write your own VLU letters in rape cases?
Never
3.2%
Rarely
0.6%
Some of the time
1.3%
Most of the time
3.2%
All the time
91.6%

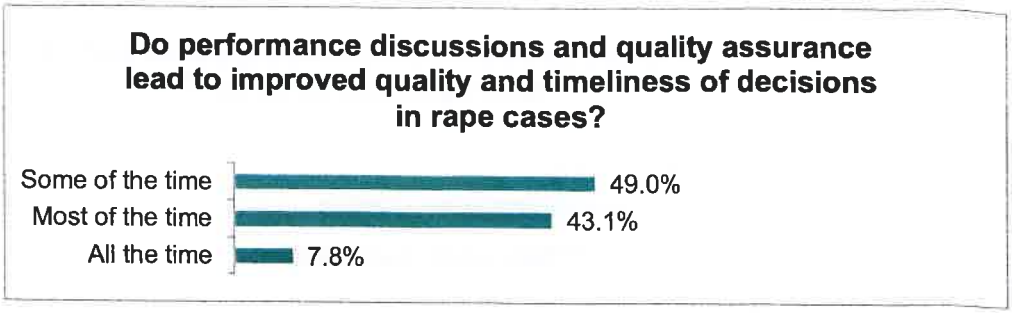
Managers' survey results

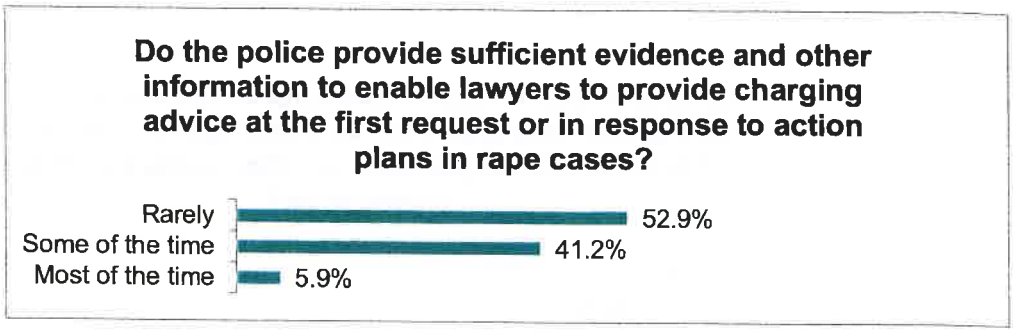


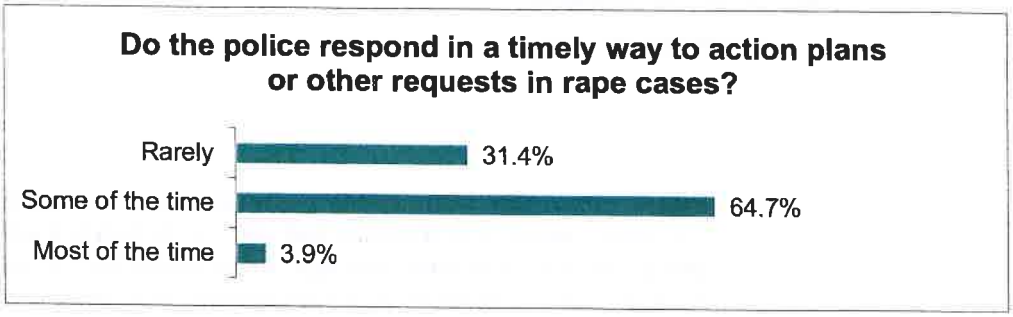


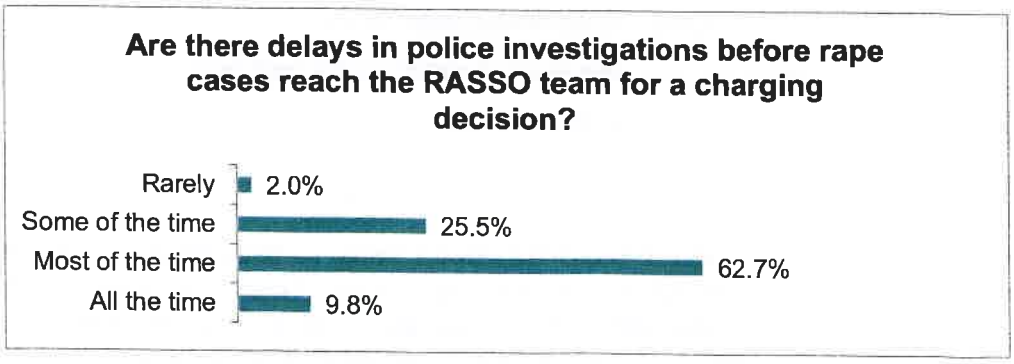


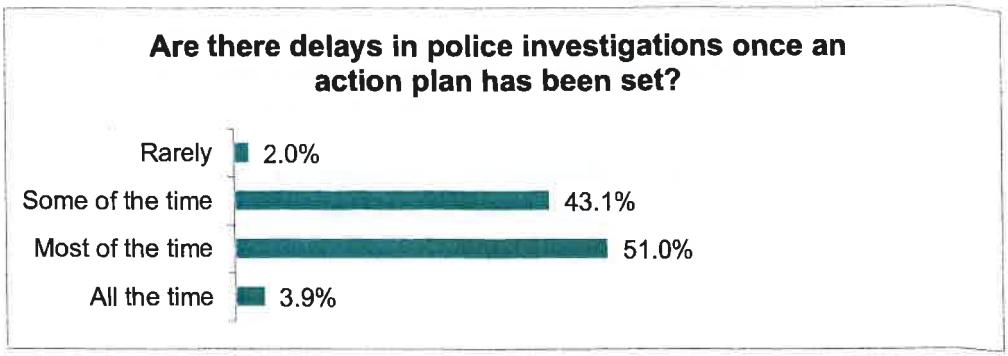


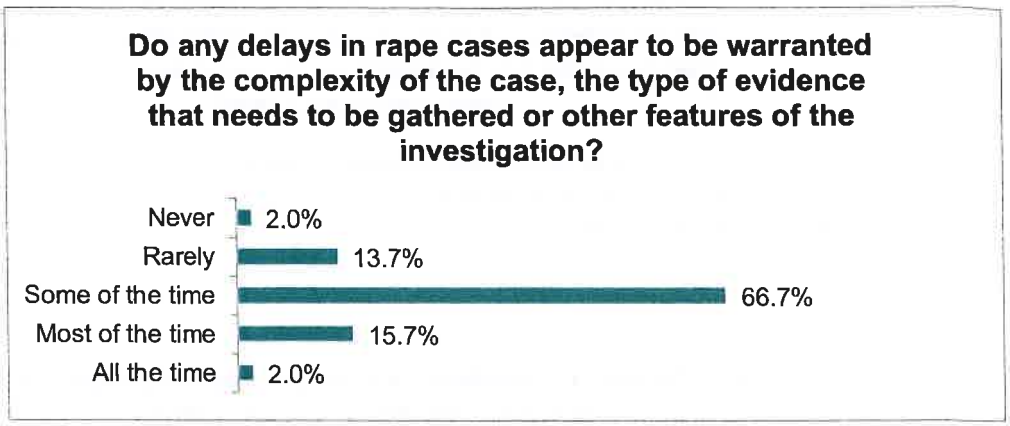

Do performance discussions and quality assurance lead to improved quality and timeliness of decisions in rape cases?
Some of the time
49.0%
Most of the time
43.1%
All the time
7.8%

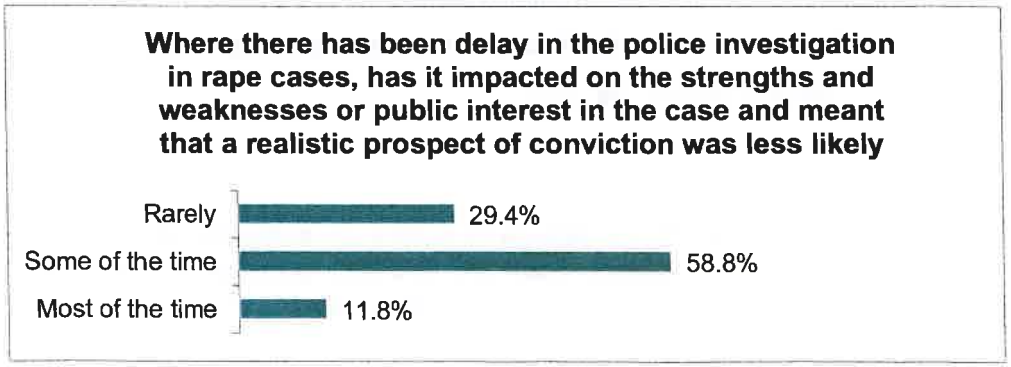

Do the police provide sufficient evidence and other information to enable lawyers to provide charging advice at the first request or in response to action plans in rape cases?
Rarely
52.9%
Some of the time
41.2%
Most of the time
5.9%

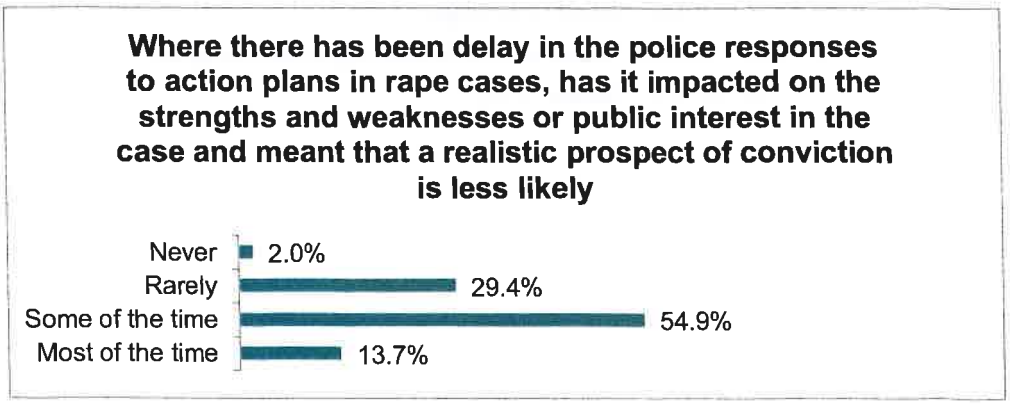

Do the police respond in a timely way to action plans or other requests in rape cases?
Rarely
31.4%
Some of the time
64.7%
Most of the time
3.9%

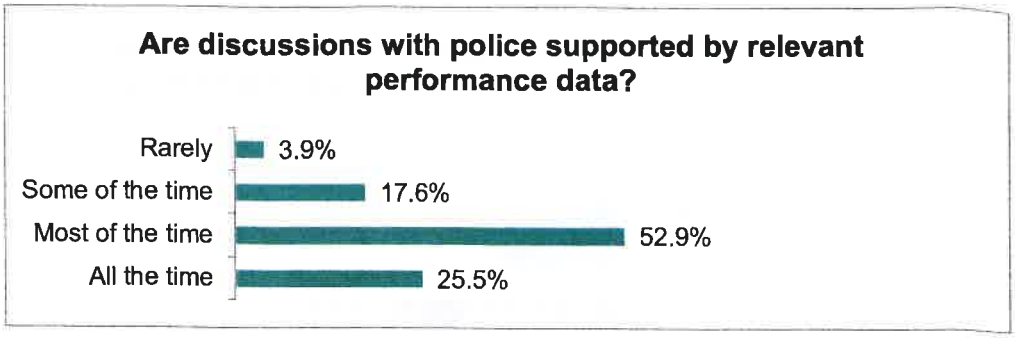

Are there delays in police investigations before rape cases reach the RASSO team for a charging decision?
Rarely
2.0%
Some of the time
25.5%
Most of the time
62.7%
All the time
9.8%

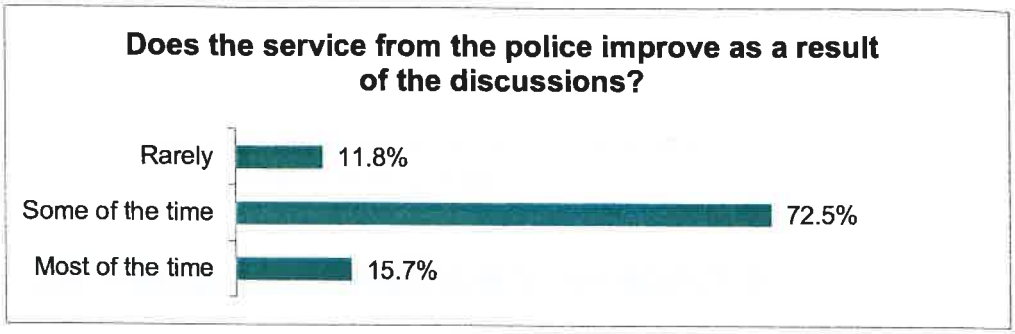

Are there delays in police investigations once an action plan has been set?
Rarely
2.0%
Some of the time
43.1%
Most of the time
51.0%
All the time
3.9%

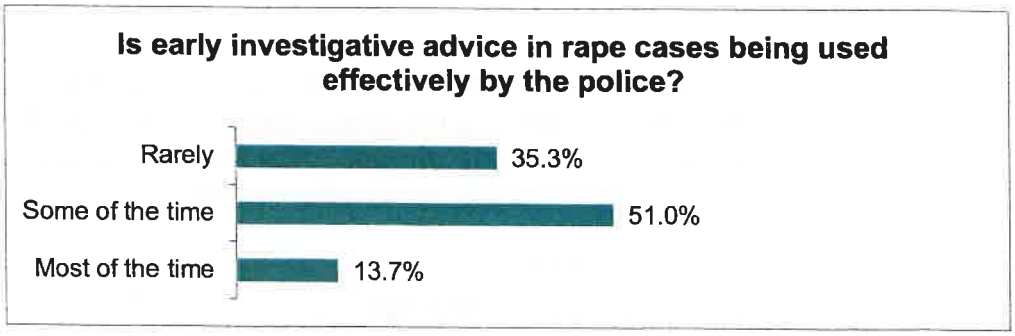

Do any delays in rape cases appear to be warranted by the complexity of the case, the type of evidence that needs to be gathered or other features of the investigation?
Never
2.0%
Rarely
13.7%
Some of the time
66.7%
Most of the time
15.7%
All the time
2.0%

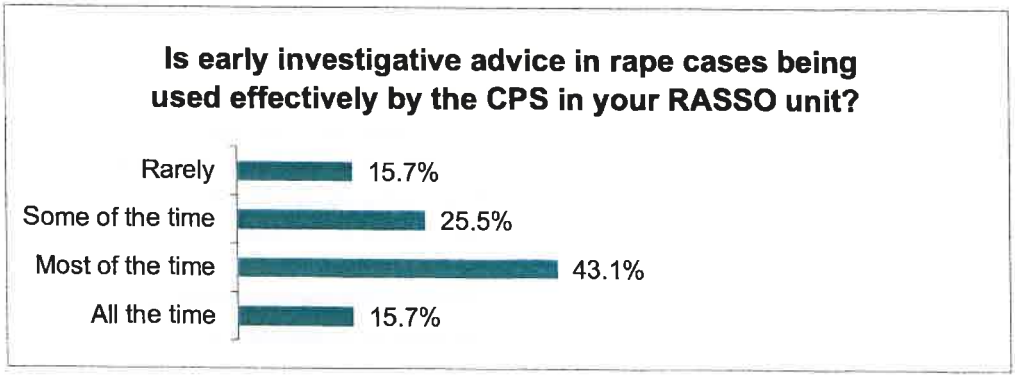

Where there has been delay in the police investigation in rape cases, has it impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction was less likely
Rarely
29.4%
Some of the time
58.8%
Most of the time
11.8%

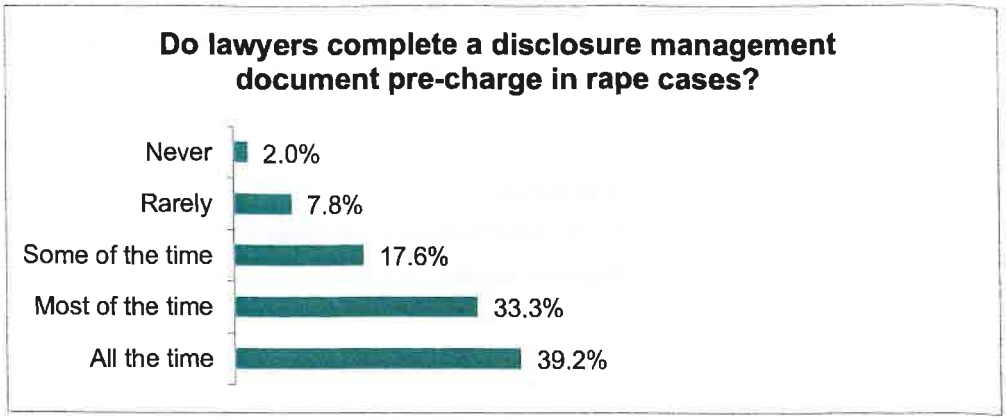

Where there has been delay in the police responses to action plans in rape cases, has it impacted on the strengths and weaknesses or public interest in the case and meant that a realistic prospect of conviction is less likely
Never
2.0%
Rarely
29.4%
Some of the time
54.9%
Most of the time
13.7%

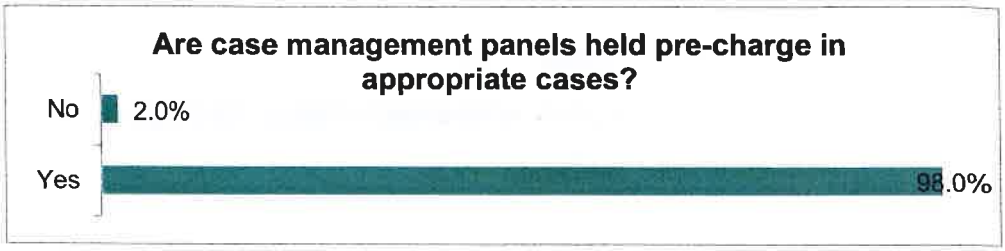

Are discussions with police supported by relevant performance data?
Rarely
3.9%
Some of the time
17.6%
Most of the time
52.9%
All the time
25.5%

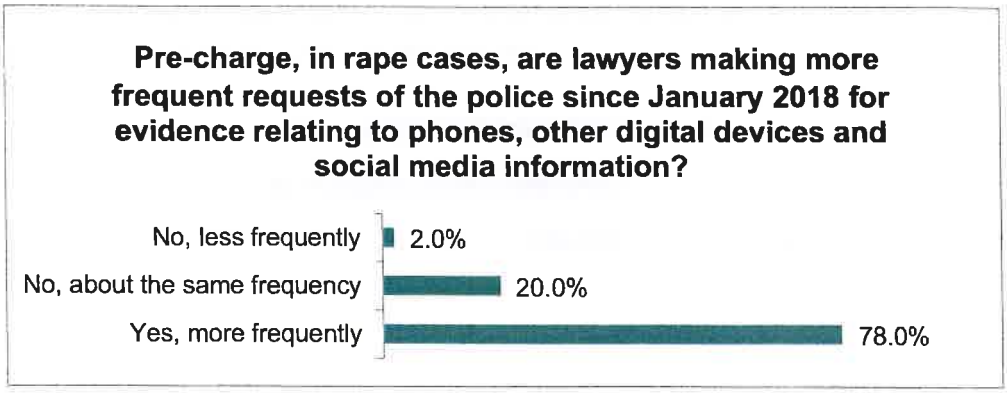

Does the service from the police improve as a result of the discussions?
Rarely
11.8%
Some of the time
72.5%
Most of the time
15.7%

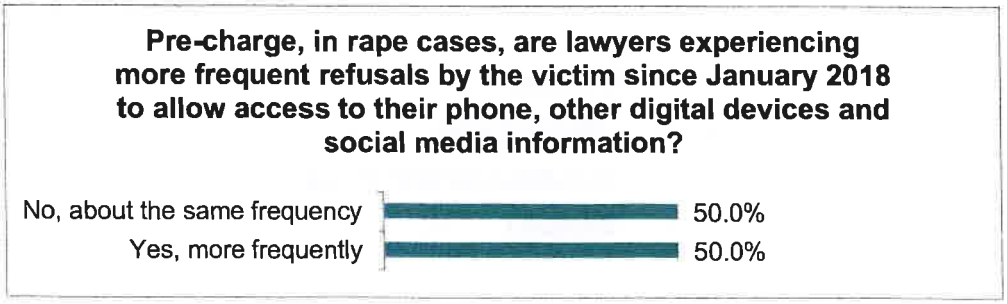

Is early investigative advice in rape cases being used effectively by the police?
Rarely
35.3%
Some of the time
51.0%
Most of the time
13.7%

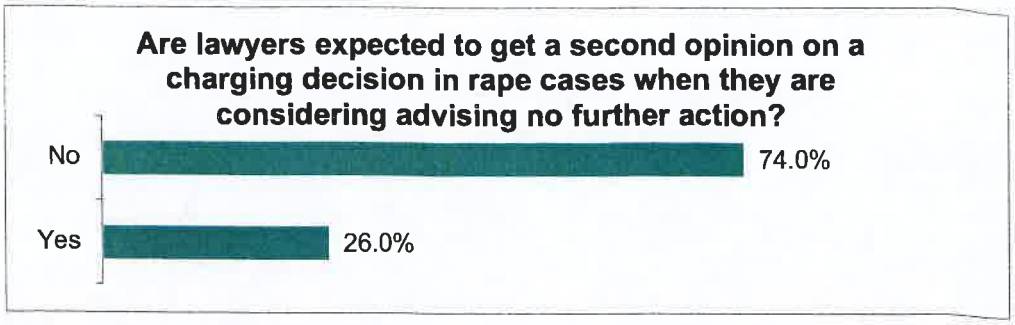

Is early investigative advice in rape cases being used effectively by the CPS in your RASSO unit?
Rarely
15.7%
Some of the time
25.5%
Most of the time
43.1%
All the time
15.7%

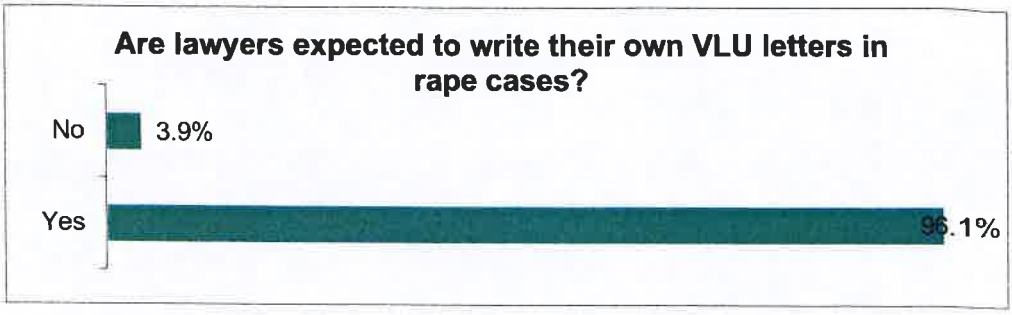

Do lawyers complete a disclosure management document pre-charge in rape cases?
Never
2.0%
Rarely
7.8%
Some of the time
17.6%
Most of the time
33.3%
All the time
39.2%


Are case management panels held pre-charge in appropriate cases?
No
2.0%
Yes
98.0%


Pre-charge, in rape cases, are lawyers making more frequent requests of the police since January 2018 for evidence relating to phones, other digital devices and social media information?
No, less frequently
2.0%
No, about the same frequency
20.0%
Yes, more frequently
78.0%


Pre-charge, in rape cases, are lawyers experiencing more frequent refusals by the victim since January 2018 to allow access to their phone, other digital devices and social media information?
No, about the same frequency
50.0%
Yes, more frequently
50.0%


Are lawyers expected to get a second opinion on a charging decision in rape cases when they are considering advising no further action?
No
74.0%
Yes
26.0%


Are lawyers expected to write their own VLU letters in rape cases?
No
3.9%
Yes
96.1%

Annex E
CPS performance data

England and Wales, police recorded rapes

	Year ending March 2019	Year ending March 2018	Year ending March 2017
Offences initially recorded	63,666	57,938	43,741
Transferred or cancelled records[29]	5,009	3,961	2,591
Offences recorded	58,657	53,977	41,150
Total transferred or cancelled records as % of offences initially recorded	8%	7%	6%

Source: Home Office, Crime Outcomes reports for years ending March 2017, 2018 and 2019

[29] Transferred or cancelled records were previously referred to as "no crime".

England and Wales, police rape referrals to CPS for charging decision

	Year ending March 2019	Year ending March 2018	Year ending March 2017
Total pre-charge receipts from police	3,375	4,370	4,595
Total legal pre-charge decisions by CPS[30]	5,114	6,012	6,611
Proceeded to prosecution (charged)	1,758	2,822	3,671
No further action (NFA)	1,876	1,851	2,145
Admin finalised[31]	1,465	1,307	761
Other finalisation	15	32	34

Source: CPS

[30] Pre-charge decisions completed by the CPS will be a total of those referred by the police (flagged by the police and CPS at registration) together with any flagged by CPS prosecutors and administrators at a later date, but before the final pre-charge decision is completed. The total pre-charge decisions data will be based on the date the charging advice was completed and provided to the police. Therefore, 2018–19 data may include pre-charge decisions on cases referred by the police to the CPS in 2018–19, 2017–18 or earlier. This explains why the volumes of pre-charge decisions are larger than the volume of pre-charge receipts, within the same time period.

[31] Cases are administratively finalised where the police have not responded to an action plan or where the police have decided not to pursue the investigation following early advice from prosecutors. A case which is administratively finalised will not always be at an end. An administratively finalised case which has not been categorised as "no further action" by the police could be reopened by the CPS if the police provided a response to the action plan.

England and Wales, CPS rape outcomes[32]

	Year ending March 2019	Year ending March 2018	Year ending March 2017
Post-charge finalisations (caseload)	3,034	4,517	5,190
Convictions	1,925 (63.4%)	2,635 (58.3%)	2,991 (57.6%)
Cases which were contested	1,468	2,255	2,731
Convictions after contest	833 (56.7%)	1,112 (49.3%)	1,264 (46.3%)
Acquittals/dismissed after trial	635	1,143	1,467
Prosecutions dropped	426	659	642
Guilty pleas	1,092 (36.0%)	1,522 (33.7%)	1,727 (33.3%)

Source: CPS

[32] Number of cases which were contested and number of non convictions after contest exclude any cases which were mixed pleas. Number of guilty pleas includes mixed plea cases. The remaining cases which make up the total number of post-charge finalisations (caseload) are cases which have been admin finalised. Post-charge administratively finalised cases are those where a prosecution cannot proceed because a defendant has failed to appear at court and a bench warrant has been issued for their arrest; or the defendant has died, or is found unfit to plead; or where proceedings are adjourned indefinitely. If a bench warrant is executed the case may be reopened.

Annex F
Glossary

Achieving Best Evidence (ABE)

Ministry of Justice guidance issued in 2011 for how to interview victims and witnesses and make use of special measures in place to help a witness at court. The acronym ABE is now commonly used to refer to the video-recorded interview of the complainant.

Action plan

A list of actions that the CPS lawyer has asked the police to complete before the lawyer can make a decision about whether to advise charging the suspect. Examples of frequently occurring actions include obtaining a statement from a witness, obtaining medical records, or providing a list of previous convictions for a witness.

Actus reus and mens rea

To prove a crime, the prosecution needs to prove all the actions, conduct, consequences or circumstances of an offence (the actus reus) and the guilty mind (mens rea). For example, for the prosecution to prove an offence of actual bodily harm (committed when a person intentionally or recklessly assaults another, thereby causing actual bodily harm), they must prove that there was an assault of another and that actual bodily harm was caused (the actus reus) and that the person assaulting the other was doing so intentionally or recklessly (mens rea).

Admin finalised

Describes cases that have had an administrative step taken to put them into abeyance on the CPS case management system. This is a misleading term because it suggests the cases have been concluded. Many cases that have been admin finalised are in fact still under investigation but awaiting some further evidence or information from the police, or for something else to happen, such as the suspect being located and arrested. Admin finalised cases would be better described as 'police awaiting further action'.

Adverse case

Where a case ends in the CPS dropping the charges, or the court orders that it cannot continue.

Applications or ancillary matters

Matters about which the prosecution can ask the court to make orders – for example, to admit a piece of evidence that would otherwise not be allowed, to allow a witness to give their evidence from a different venue

by video-link, or to make orders at sentencing preventing the defendant from contacting the victim.

Area Assurance Programme (AAP)

A series of inspections of all 14 Areas of the CPS, which HMCPSI carried out between 2016 and 2019. The reports are available from our website[33].

Attorney General

The chief legal advisor to the Government, who also oversees the Crown Prosecution Service, the Serious Fraud Office, HMCPSI and the Government Legal Department.

Attrition

The number of cases that fall out of the system between two set points in the process, such as between a report being made to the police and the police referring a case to the CPS, or between charge and conviction.

Case management panel (CMP)

A discussion held between the lawyer and their manager(s), or between managers, to discuss progress on a case and determine what other work needs to be undertaken. The panel may review whether the decision to charge was correct or, if there has been a significant change in the case, whether it still ought to proceed.

Case management system (CMS)

An IT system for case management used by the CPS, which records most of the details of cases and provides management information and data. Through links with police systems, the case management system receives electronic case material. Such material is intended to progressively replace paper files.

Charge

The process by which the allegation is put to a suspect by the police at the police station, and also the formal record of the allegation. The charge is then sent to the court, which sets the first hearing date for the case. Another common way of notifying the defendant that they are being accused of a criminal offence is by a summons, which is usually sent through the post.

[33] www.justiceinspectorates.gov.uk/hmcpsi/

Chief Crown Prosecutor (CCP), Deputy Chief Crown Prosecutor (DCCP), Senior District Crown Prosecutor (SDCP), District Crown Prosecutor (DCP)

Management roles in the CPS in descending order of seniority. The Chief Crown Prosecutor is the legal head of a CPS Area.

Code for Crown Prosecutors

A public document, issued by the Director of Public Prosecutions, which sets out the general principles CPS lawyers should follow when they make decisions on cases. It contains a test for establishing whether a prosecution should take place, which has two stages: evidential and public interest. This means that a case should only proceed where there is sufficient evidence to provide a realistic prospect of conviction and it is in the public interest to prosecute the suspect.

Consent

Permission for something to happen or agreement to do something. Often in sexual offences, consent to the activity means that the suspect is not acting unlawfully. Consent in sexual offences is complicated. The CPS has published information on consent on its website.[34]

Consultation

When the police ask the CPS to give advice about whether there is enough evidence to prosecute and whether a prosecution is in the public interest. Consultations may be by phone, in person or by the police sending the papers electronically and the CPS lawyer reviewing them.

Conviction rate

The proportion of the cases charged by the CPS resulting in the defendant pleading or being found guilty.

Counsel

A barrister who has been asked to advise on a case and/or present it at court.

CPS Direct (CPSD)

The CPS Area that provides charging decisions on priority cases, mostly out of office hours. It enables the CPS to provide charging decisions at any time of the day or night, all year round.

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[34] *What is consent?*; CPS www.cps.gov.uk/sites/default/files/documents/publications/what_is_consent_v2.pdf

Crown Prosecution Service (CPS)

The main public agency for conducting criminal cases in England and Wales, responsible for: prosecuting criminal cases investigated by the police and other investigating bodies; advising the police on cases for possible prosecution; reviewing cases submitted by the police; determining any charges in more serious or complex cases; preparing cases for court; and presenting cases at court. It has been operating since 1998 and is headed by the Director of Public Prosecutions.

Director of Public Prosecutions (DPP)

The head of the CPS, with personal responsibility for its staff and the prosecutions it undertakes every year. The role was created in 1879, and the current holder is Max Hill QC.

Director's Guidance on Charging

Guidance issued by the Director of Public Prosecutions to the CPS and police. It sets out the arrangements for the joint working of police officers and prosecutors during the investigation and prosecution of criminal cases.

Disclosure

The criminal law (Criminal Procedure and Investigations Act 1996) lays down specific steps the police must take to retain and record information, documents or other material that is relevant to an investigation but which is not going to be part of the prosecution case (which is collectively called the 'unused material'). The police must reveal relevant unused material to the CPS, who then have to disclose to the defence anything that undermines the prosecution case or assists the defence.

Disclosure champion

A person in each CPS Area nominated to lead on matters relating to disclosure, including giving help and support to colleagues.

Domestic abuse and domestic violence

Domestic abuse is abuse that occurs in relationships or between family members. Domestic violence is one type of domestic abuse, but domestic abuse also includes other types, such as emotional abuse (like controlling behaviour, isolating and belittling) or threats and intimidation.

Drip-feed

In the context of this report, when the CPS lawyer sets a number of actions for the police to carry out, and the police send back the results as

they become available rather than waiting until everything is complete. It could also be where the CPS lawyer sets actions for the police, and gets the results, then sets more actions that could have been set at the outset.

Early investigative advice (EIA)

Where a CPS lawyer provides guidance and advice in serious, sensitive or complex cases, or any case where a police supervisor considers it would be of assistance. The advice is meant to be given at a very early stage, to help decide what evidence will be required to support a prosecution or to decide if a case can proceed to court.

Finalisation code

Where a case is complete, it has to be marked as finished on the CPS case management system with a finalisation code, which indicates how it came to end. For example, there is a code for where a witness failed to attend court and the case could not proceed without them, or where the CPS has decided not to proceed because the defendant has pleaded guilty to other matters and the pleas are acceptable.

Flagged and rape-only flagged

Cases on the CPS case management system have notifications (called flags) to indicate a particular feature of the case, such as rape, racially aggravated offences or media interest. A rape-only flagged case is one that only has a flag for rape and does not also have flags for child abuse or domestic abuse.

Full Code test and threshold test

Two types of test for determining whether a case should proceed, as set out in the Code for Crown Prosecutors. The full Code test should be applied where the suspect is not in police custody. The threshold test is used where the suspect is in custody and enquiries are not complete, but the police will be asking the court to hold the suspect in custody after charge.

Gatekeeper

Someone in a police force who checks the documents prepared by the case officer and makes sure they are all there and meet the standard required for them to be submitted to the CPS. Not all police forces have gatekeepers.

Grip

What needs to happen on a case for it to be managed effectively and efficiently. It includes, but is not limited to:

- making sound decisions at the right stages in the case
- building a strong case by working with the police to get the right evidence
- weighing up the impact of any unused material (see *Disclosure*)
- taking account of victims' and witnesses' needs
- preparing the prosecution case and sending it to the court and defence in good time for them to play their part.

Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI)

Set up in 2000, HMCPSI inspects the work carried out by the CPS and other prosecuting agencies. The purpose of our work is to enhance the quality of justice and make an assessment of prosecution services that enables or leads to improvement in their efficiency, effectiveness and fairness.

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)

Established in 1856, HMIC (as it was then) oversees, inspects and reports upon the efficiency and effectiveness of all Home Office police forces, as well as other forces and agencies by invitation. From 2017, it extended its responsibility to the inspection of fire and rescue services in England, and became HMICFRS.

High-weighted measures

The data the CPS thinks is most important when analysing its own performance. The high-weighted measures currently in use include, for example, the number of cases dropped at third or subsequent hearings and the number of guilty pleas at first hearing.

Independent sexual violence advisor

A person who is trained to provide emotional and practical support to survivors of rape, sexual abuse and sexual assault who have reported to the police or are considering reporting to the police.

Individual quality assessment (IQA)

The process the CPS uses to assess casework done by a prosecutor on a case or the advocate at court. This is a set of questions, which the manager goes through, covering the full range of work that might need to be done. The process calls for feedback to be provided to the prosecutor

or advocate, and for themes identified by managers to feed into improvement work across the Area.

Intermediary

An independent communication specialist who assists children and vulnerable adults at police interviews and trials, helping to improve the quality of their evidence.

Level of ambition

The level of performance the CPS would like to reach in some of its performance measures (see *High-weighted measures*).

Manual of Guidance Forms (MG3, MG6)

Standard forms included in the police and CPS manual of guidance for how the police should build a file to send to the CPS. The MG3 is for the police to summarise the case, and for the CPS to record its charging decision. The MG6 series of forms relates to unused material (see *Disclosure*).

Mayor of London's Office for Policing and Crime (MOPAC)

Established in 2012 to oversee the Metropolitan Police. MOPAC and the London Victims' Commissioner published a report in July 2019 which analysed key characteristics and outcomes for 501 rapes reported to the police in April 2016. We have used some of this data with the kind permission of the London Victims' Commissioner and MOPAC.

Merits based approach

The Divisional Court coined this phrase when considering what approach the prosecutor should take in deciding if there were a realistic prospect of conviction. The court said the prosecutor "should imagine himself to be the fact-finder and ask himself whether, on balance, the evidence was sufficient to merit a conviction taking into account what he knew about the defence case".

Myths and stereotypes

A myth is a commonly held belief, idea or explanation that is not true, and a stereotype is a widely held, but fixed and oversimplified, image or idea of a particular type of person or thing. Historically, the successful prosecution of rape cases has been hampered by myths and stereotypes, such as "it can't be rape if the victim didn't fight back", "it's not rape if the

victim didn't report it immediately", or "sex workers can't be raped". The CPS has guidance on common myths on its website[35].

Narrowing the justice gap (NTJG)

A Government initiative of public service agreements introduced in 2002–03 aimed at narrowing the justice gap – in other words, reducing the difference between the number of offences recorded by the police and the number of offences resulting in a caution, conviction or other successful disposal.

National Criminal Justice Board (NCJB)

Brings together senior leaders from across the criminal justice system, including the police, CPS, courts service, judiciary, prisons and probation. The Board works to set cross-system priorities and ensure these are understood and implemented[36].

National Disclosure Improvement Plan (NDIP)

A plan released in January 2018 by the CPS, the National Police Chiefs' Council and the College of Policing. It set out the actions the three organisations planned to take to improve how the criminal justice system deals with disclosure. Phase two was published in November 2018, with the purpose of embedding the improvement measures introduced under Phase 1 and ensuring that the changes were having the intended effect in the police and CPS.

No further action (NFA)

When a criminal allegation has been reported to the police, the police may decide at any stage during an investigation that there is insufficient evidence to proceed, so they will take no further action. Alternatively, they may refer a case to the CPS who may advise the police that no further action should be taken, either because there is not enough evidence or because a prosecution is not in the public interest.

Non-recent allegations

Allegations of criminal offending that occurred some time ago. For the purposes of this report, we used 5 June 2013 as the date before which offences were non-recent for cases in our sample from 2018–19, and 5 June 2009 for cases we examined from 2014–15.

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[35] *Rape and sexual offences – chapter 21: societal myths*; CPS www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-21-societal-myths

[36] For more information about the National Criminal Justice Board, see www.gov.uk/government/groups/criminal-justice-board

Offences brought to justice (OBTJ)

The total number of convictions, cautions and other disposals, such as where the court takes an offence into account when sentencing for another, usually more serious, matter. Targets for OBTG were set by the Government under its narrowing the justice gap initiative.

Out of court disposals

Diversions from charge such as cautions, penalty notices, youth reprimands or warnings.

Police file submission

When the police send a set of papers to the CPS to consider charge, or after charge, for the trial.

Pre-trial witness interview

An interview with a witness conducted by a prosecutor before the trial. It was introduced first in December 2007 in pilot Areas, and the national Code of Practice was signed by the Director in February 2008. The guidance sets out that the purpose of a pre-trial witness interview is threefold: to allow the prosecutor to assess the reliability of the witness; to assist the prosecutor in understanding complex evidence, and to explain the criminal process.

Rape

Rape is a crime under section 1 or section 5 of the Sexual Offences Act 2003.

Section 1: A person (A) commits an offence if—

a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,

b) B does not consent to the penetration, and

c) A does not reasonably believe that B consents.

Section 5: A person commits an offence if—

a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and

b) the other person is under 13.

Rape and serious sexual offences (RASSO) units

Units composed of specialist rape prosecutors and other members of the team, organised by the CPS to build and share experience.

Reasonable lines of enquiry

When conducting an investigation, the Code of Practice on disclosure says that the police investigator "should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances". The CPS has issued guidance on reasonable lines of enquiry and communications evidence[37].

Rotation policy

A policy for moving people out of rape and serious sexual offences units after they had been in the unit for five years. This was to ensure that other prosecutors had a chance to join and build specialist skills, and to refresh the skills of prosecutors who had been in the unit for a long time and may have become stale at other aspects of CPS work. Five-year rotation is no longer mandatory.

Sanction detections

A sanction detection occurs when:

- a crime has been committed and reported to the police, who have recorded it
- a suspect has been identified and made aware of the fact
- the CPS evidential test is satisfied
- the victim has been informed that the offence has been detected
- the suspect has been charged or reported for summons, or the offence has been taken into consideration when an offender is sentenced, or the suspect has been dealt with by way of an out of court disposal.

Non-sanction detections are where offences are counted as cleared, but where no further action is taken (for example, where the CPS advises that a prosecution is not in the public interest).

[37] *A guide to "reasonable lines of enquiry" and communications evidence*; CPS; July 2018 www.cps.gov.uk/legal-guidance/disclosure-guide-reasonable-lines-enquiry-and-communications-evidence

Service Prosecuting Authority

Formed in 2009 by combining prosecuting agencies for the Army, Navy and Royal Air Force, the Service Prosecuting Authority initiates and conducts prosecutions in criminal cases and offences contrary to military discipline.

Sexual Offences Act 2003[38]

The Government's response to recommendations made by two review teams and a subsequent public consultation for reforms to the law on sexual offences, and for strengthening measures to protect the public from sexual offending.

Successful outcome

Where a prosecution concludes in a guilty plea or conviction after trial.

Third-party material

Evidence or information relating to a crime, held by various agencies or organisations. For example, in an assault carried out in public, the local council may have CCTV footage and the local hospital may have an A&E record, both of which could be useful evidence. This is referred to as third-party material, especially when the information is not being used as part of the prosecution case (see *Disclosure*).

Third sector

A range of different organisations that are in neither the public sector (the state) nor the private sector (commercial enterprises). It includes charities, self-help organisations, faith and community groups and housing associations.

Threshold test

See *Full Code test*.

Triage

In the context of this report, triage is a check carried out by a member of CPS staff, usually an administrator, to make sure that what the police have sent to the CPS includes the right documents and other items. In this context, it is a check for the presence of the required material, not the quality of their contents.

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[38] *Sexual Offences Act 2003*; UK Government; 2003 www.legislation.gov.uk/ukpga/2003/42/notes/division/3

Unused material

See *Disclosure*.

Victim Communication and Liaison scheme (VCL) and enhanced service

A CPS scheme under which victims are informed of decisions to discontinue or alter substantially any charges. The CPS must notify the victim of a decision to drop or substantially alter a charge within one working day for vulnerable or intimidated victims (the enhanced service) and within five working days for all other victims. In some case categories, the victim will be offered a meeting to explain these decisions. Formerly known as Direct Communication with Victims (DCV). There is more information about the scheme on the CPS website[39].

Victim Liaison Unit (VLU)

A dedicated team of CPS staff in every Area, responsible for: all direct communication with victims; administering the Victims' Right to Review scheme; complaints; and overseeing the service to bereaved families.

Victims' Commissioner for England and Wales

The role of the Victims' Commissioner is to promote the interests of victims and witnesses of crime, encourage good practice in their treatment, and regularly review the Code of Practice for Victims, which sets out the services victims can expect to receive.

Victims' Right to Review scheme (VRR)

Under this scheme, victims can seek a review of CPS decisions: not to charge; to discontinue (or withdraw in the magistrates' courts) all charges, thereby ending all proceedings; and to offer no evidence in all proceedings.

Violence against women and girls

The umbrella under which rape and serious sexual offences sit for work undertaken internationally, across government, across the agencies and within the CPS.

[39] *Victim Communication and Liaison (VCL) scheme*; CPS; December 2019 www.cps.gov.uk/legal-guidance/victim-communication-and-liaison-vcl-scheme

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This document/publication is also available on our website at
justiceinspectorates.gov.uk/hmcpsi

IN THE HIGH COURT OF JUSTICE **CO/3753/2019**
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

THE QUEEN

(on the application of

END VIOLENCE AGAINST WOMEN COALITION)

Claimant

- and -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

SHORT RESPONSE TO THE DEFENDANT'S

NOTE OF 18 DECEMBER 2019

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1. This is a short response by the End Violence Against Women Coalition ("**EVAW**") to the Defendant's note of 18 December 2019 (the "**Note**").

2. The Note introduces into evidence a report of the HM Crown Prosecution Service Inspectorate ("**HMCPSI**") which was published on 17 December 2019 (the "**HMCPSI Report**"). The Defendant contends, in the Note, that the HMCPSI Report is a significant development (§1); and that the "*findings and conclusions of the Inspectorate's review are clear and ... support the Defendant's defence to the entirety of the claim*" (§4).

THE CLAIMANT'S RESPONSE TO THE HMCPSI REPORT

3. In EVAW's submission, the HMCPSI Report cannot possibly bear the weight placed on it by the Defendant, for the following key reasons.

4. **First**, and most fundamentally, as the report itself acknowledges, the exercise which HMCPSI has conducted is limited in scope and nature, and does not answer the key questions underlying this claim.

5. As the Report is at pains to make clear, only very limited conclusions can be drawn from the exercise which has been conducted. It is said it "*highlights a number of factors which may be causes ...but, equally, the relatively narrow scope of the inspection means that a number of assumptions have been made. This topic should be subject to further inspection*" (§1.11). Similarly, it is stated that "*whilst this inspection provides some evidence for what happens once the CPS receives the case, it does not provide any view of the gap between allegations of rape and cases charged*" (§1.32, emphasis added).

6. As such, despite accepting that there has been a very substantial drop in the CPS charging rate for rape-flagged offences (§1.11), the Report does not provide any substantive, let alone robust conclusions regarding the cause of that drop. Indeed, it wholly fails to engage with or answer perhaps the most important question as far as this claim is concerned, namely: "*has there been a change in approach in the CPS to the provision of rape charging and decision-making which is impacting the numbers of cases charged*" (see the inspection framework on p.91). Given this, the Report cannot and does not answer the issues entailed in EVAW's claim.

7. **Second**, and in any event, the evidence presented by the HMCPSI Report supports EVAW's claim. .

8. The Report finds, consistently with EVAW's case, that there has been: (1) a very substantial drop in the number of cases which the CPS is charging, coupled with (2) a substantial increase in the conviction rate after contest. Specifically, the HMCPSI report records that:

    a. There has been a **52.1% decrease** in the number of cases the CPS charges between the year ended March 2017 and the year ended March 2019 (see §1.12); and

    b. The conviction rate after contest has risen by over **10%**, from 46.3% in 2016-17 to 56.7% in 2018-19 (§1.29).

9. The report accepts, again consistently with EVAW's case, that the drop in charging volumes "*would seem to indicate a trend to prosecute fewer case*" (§1.12) whilst a rise in conviction rate after contest is acknowledged to be a possible indicator that the CPS is being more "*risk averse*" (§1.29).

10. Yet, HMCPSI appears to rebut the clear inferences that would ordinarily be drawn from those clear findings and does so on bases that are – at best – specious:

    a. As to the clear drop in cases charged:

        i. The Report suggests that a subset of those cases which have been classified as "administratively finalised" ought to be added to the proportion of cases which have been charged by the CPS (§1.17). That blunts (albeit to a limited degree) the otherwise precipitous decrease in charging volumes disclosed by the data.

        ii. This is justified on the basis that HMCPSI consider that certain cases in the administratively finalised category may be "*potentially*" charged in the future (§§1.16-1.17 and Figure 2 on p.14). However, even if some such cases may result in a charge at an undefined point in the future, it cannot justify equating all reactivated administratively finalised cases as decisions to charge. By definition, administratively finalised cases are cases which the CPS has previously considered and decided not to charge. It is fanciful to suggest, given the low charging rate generally, that it will charge all reactivated administratively finalised decisions.

        iii. Moreover, the figure of 48.7% of reactivated administratively finalised cases adopted by the HMCPSI Report was taken from just one police force's cases, rather than the 18% figure given in respect of a wider sample spanning multiple police forces (§§1.16-1.17). This is obviously wholly unjustifiable.

        iv. Furthermore, even if this analysis is taken at face value, it still leaves a very substantial decrease in the number of cases charged by the CPS between 2017 and 2019 of 38.9% (§1.17). The HMCPSI Report wholly fails to engage with or explain why that

should not be regarded as clearly evidence of a trend towards prosecuting fewer cases.

b. As for the rise in the conviction rate after contest, the Report having acknowledged that this is consistent with an increasingly risk averse approach nonetheless and without explanation or justification, rejects that explanation (which is also consistent with the other stark statistic, namely the drop in charging rates) and posits that this is because weaker cases have been built to make them stronger before charge (§1.30). However, this is contradicted by other data which the Report has ignored. For example, the CPS' most recent Violence Against Women and Girls Report for 2018-19 records (at Graph 23, on p.A22) that the percentage of prosecutions dropped after charge increased from 12.4% in 2016/17 to 14.6% in 2017-18 and 14% in 2018-19 [**Volume 3, Tab 37, p.1508**]. In short, on the issue that is central to the matters raised in this claim, the report rejects without justification the explanation put forward in this claim, an explanation that is consistent with other data cited in its Report and instead adopts an explanation that is inconsistent with other data to which it makes no reference.

11. **Third**, the analysis which has been undertaken is tainted by a serious factual inaccuracy, contrary to the evidence of both EVAW and the Defendant in this case, which goes to the heart of the issue between the parties because it provides an explanation why prosecutors may have become more risk averse. That leads to key evidence being left fundamentally unexplored.

12. In 2016, HMCPSI recommended all RASSO lawyers undergo refresher training including on the role of the merits based approach (see §2.41). The Report goes on to say that "*later that year and in 2017, the Director of Legal Services and the DPP's legal advisor visited all 14 areas to deliver that refresher*".

13. That description wrongly elides two distinct training programmes with one another: (1) the RASSO Refresher training, provided in 2016 after the HMCPSI report of that year, which extensively referenced the Merits-Based Approach (see the DSFG at §§25(3) and was aimed at addressing the criticisms in the HMCPSI 2016 report (f)); and (2) the subsequent RASSO Roadshows, delivered by the Director of Legal Services, Mr McGill, and the then Legal Advisor to the Defendant, Neil Moore. As

the Court will recall, the RASSO Roadshows are one of the key ways in which EVAW contends that prosecutors were retrained away from the Merits-Based Approach (see the DSFG, §§43(b) and 46-49). EVAW also argues (under ground 3) that the move away from the Merits-Based Approach was irrational precisely because the RASSO Refresher training had already achieved the task identified in the 2016 HMCPSI report. The distinction between the two sets of training, and the message that was disseminated during the Roadshows, is therefore fundamental to EVAW's case.

14. As a result of this error:

    a. From the Appendices to the Report, no questions appear to have been put to any CPS lawyers and managers regarding RASSO Refresher training and Roadshows, or any change of approach in the CPS. As such, no evidence was collected on that key point.

    b. It also means that the statements gathered from CPS lawyers and managers in relation to the training which took place in 2016/17 (for example to the effect that "*the refresher presentations in 2016-17 were seen variously as a simple repetition of the need to apply the Code, or as a necessary recalibration or shift of focus back onto the Code*", at §2.42) are inherently unreliable.

15. Moreover, not only was no evidence collected on the change of approach in respect of the Roadshows, it does not appear that any evidence was collected regarding the change of approach or the change in formal guidance at all. Nor was there any evidence, therefore, on whether or not any such change has affected prosecutors' decision-making.

16. Yet once again, the evidence that was collected would appear to support EVAW's case: for example on p154, it is made clear that the Merits Based Approach was not said to be applied in 96% of cases reviewed. Given that until the Roadshows took place, the application of the Merits Based Approach was mandatory, this does again appear to suggest a sea-change in prosecutorial decision-making.

17. **Fourth**, the thrust of the Defendant's reliance on the Report is on the analysis conducted by the HMCPSI that shows that the reviewers in question in large measure not only considered the decisions that were reviewed to have been reasonable, but

also that they would have made the same decision. That is the basis on which the Defendant contends that the Report is dispositive.

18. However, at no point does the Report explain the standard by which these cases were assessed. If the cases are being assessed without reference to the Merits-Based Approach, then it is unsurprising that few were considered to have been wrong. Indeed, such an approach could not possibly answer the question as to whether there has been a change.

19. As such, insofar as the Report puts forward any analysis at all (and certainly insofar as it is relied upon by the Defendant), it cannot tell the Court anything about the key questions at the heart of this case: whether the CPS has changed its approach in substance as well as in form (as the latter is accepted), and whether any such overarching change is lawful as a matter of public law.

20. **Finally**, the submission that the HMCPSI Report is wholly independent of the CPS and/or the Defendant should be treated with significant caution. As is detailed by Vera Baird, the Victims' Commissioner, in a letter of 30 January 2020 and attached at Annex B, in fact, there are very significant concerns as to the independence of those compiling the Report, concerns which are only amplified by HMCPSI's actions to, contrary to its usual practice, shut out all external stakeholder input into its review. This concern is compounded by the fact that no rape complainant, no third sector NGO, no police officer, nor indeed any person outside the CPS appears to have been spoken to in the writing of the report.

21. For all these reasons, EVAW submits that the analysis contained in the HMCPSI Report cannot possibly (and indeed does not purport to) provide an answer to the questions posed by EVAW's claim: if anything it only demonstrates the need for scrutiny of the CPS' actions. This is a view shared by a number of stakeholders. A large number of civil society and women's sector organisations have denounced the report since it was published (see the press statements provided as Annex A) and Vera Baird, the Victim's Commissioner, has also written publicly to the Attorney General to express her concern about its contents (see the letter provided as Annex B).

22. In the circumstances, EVAW continues to maintain that it should be granted permission to proceed with its proposed action for judicial review.

TRANSCRIPT OF MEETING BETWEEN A POLICE OFFICER AND VICTIM

23. EVAW also takes this opportunity, in line with both parties' efforts to ensure that all relevant evidence is put before the Court at this stage, to draw to the attention of the Court a number of comments made by a detective constable and police constable during a meeting on 15 January 2020 between a rape complainant and those police officers.

24. This meeting, and the relevant comments, are described in the short attached witness statement of Ms Kate Ellis. As she describes, the police officers in question made extensive reference to an unofficial standard recently applied by the CPS, such that the experience of police on the ground is that it is extremely rare for rape cases to be prosecuted. The police officers also describe the chilling effect on the police of the CPS's reluctance to pursue such prosecutions.

25. As such, EVAW maintains that the statistics can only provide one part of the picture. It is EVAW's submission that the type of informal discussion recorded in Ms Ellis's Witness Statements demonstrates the invidious effect that rape victims are seeing up and down the country. If permission to proceed with judicial review is granted, EVAW would propose to add Ms Ellis' witness statement to the claim bundle.

PHILLIPPA KAUFMANN Q.C.
Matrix Chambers

JENNIFER MacLEOD
EMMA MOCKFORD
Brick Court Chambers

3 February 2020

Annex A

News

All news (https://www.welshwomensaid.org.uk/what-we-do/news/)

17 December, 2019
Public (https://www.welshwomensaid.org.uk/category/public/)

Welsh Women's Aid response to HMCPSI Rape Inspection 2019 Report

The sharp decline in charges, prosecutions and convictions for rape since 2016, as evidenced by this report, clearly demonstrates there are significant failings in the system that means rape and sexual violence have not been treated with the seriousness they deserve.

Archive:

2020 (https://www.welshwomensa)

2019 (https://www.welshwomensa)

2018 (https://www.welshwomensa)

The HMCPSI Rape Inspection 2019 (https://www.justiceinspectorates.gov.uk/hmcpsi/inspections/rape-inspection-on-report-december-2019/) report shows what we already know from survivors, that there is a concerning and widespread practice of prosecutors making disproportionate, intrusive and unnecessary demands for mobile phone and medical records. Survivors in Wales have spoken to us about the re-traumatising experience of going through the investigation and court processes after reporting rape and sexual assault. That the criminal justice system also lacks the necessary resources to effectively investigate, charge, prosecute and bring perpetrators of rape and sexual violence to justice, is evident from the Inspectorate findings.

It is shocking that the HMCPSI are able to conclude that there is no issue with decision making by prosecutors when deciding whether or not to prosecute alleged rapists, when we have seen such a considerable disparity since 2016 between rape being reported and being prosecuted.

Survivors of rape and sexual violence deserve better. We support the urgent need for an independent review into the systemic failings in the criminal justice ystem that do such a disservice to survivors of abuse. We support the current judicial review (https://www.endviolenceagainstwomen.org.uk/womens-groups-commence-legal-proceedings-in-judicial-review-against-crown-prosecution-service-for-failure-to-prosecute-rape/) underway into the CPS failure to prosecute rape. Without fundamental reforms backed by resources to deliver, the state will continue to fail to create real and meaningful change to enable survivors to access the justice they deserve.

For further comment please contact press@welshwomensaid.org.uk

2017 (https://www.welshwomensa)

2016 (https://www.welshwomensa)

2015 (https://www.welshwomensa)

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2013 (https://www.welshwomensa)

2012 (https://www.welshwomensa)

2011 (https://www.welshwomensa)

All news (https://www.welshwomensaid.org.uk/news/)

Previous (https://www.welshwomensaid.org.uk/2019/12/the-swan-project-swansea-womens-aid/)

Next https://www.welshwomensaid.org.uk/2019/12/developing-appropriate-support-for-survivors-that-are-lgbt/)

Today is the start of Sexual Abuse & Sexual Violence Awareness Week 2020. Tomorrow we're holding #WeBelieveHer (https://twitter.com/search?q=%23WeBelieveHer&src=hash), Sexual Violence Seminar at Birchwood Room, Cardiff University CF23 5YB. We are committed to ending violence against women and girls. #ItsNotOk2020 (https://twitter.com/search?q=%23ItsNotOk2020&src=hash) pic.twitter.com/HcuXik077t (https://t.co/HcuXik077t)

About 7 hours ago (https://twitter.com/twitterapi/status/1224271359674671106) from WelshWomensAid's Twitter (https://twitter.com/intent/user?screen_name=WelshWomensAid)

What is domestic abuse? (https://www.welshwomensaid.org.uk/what-we-do/what-is-domestic-abuse-and-support/what-is-domestic-abuse/)

If you or a friend need help... (https://www.welshwomensaid.org.uk/what-we-do/information-and-support/i-need-help/)

Children and young people (https://www.welshwomensaid.org.uk/what-we-do/children-and-young-people/)

Specialist violence against women services in Wales (https://www.welshwomensaid.org.uk/what-we-do/find-your-local-service/)

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Welsh Women's Aid
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Registered Charity number 1140962

Women's Aid responds to joint report by HMCPSI and HMICFRS on evidence-led domestic abuse prosecutions

Susie Marwood, 23rd January 2020 (https://www.womensaid.org.uk/womens-aid-responds-to-joint-report-by-hmcpsi-and-hmicfrs-on-evidence-led-domestic-abuse-prosecutions/), Press releases, CPS, Domestic abuse, evidence, perpetrator, police, survivor

EXIT SITE (https://v

Women's Aid responds to joint report by HMCPSI and HMICFRS on evidence-led domestic abuse prosecutions

23rd January 2020

Responding to the report findings (https://www.justiceinspectorates.gov.uk/cjji/inspections/inspection-evidence-led-domestic-

abuse-prosecutions/), Adina Claire, Acting co-CEO of Women's Aid, said:

"More than half of domestic abuse cases failed to proceed last year due to evidential problems and the victim not supporting police action, so this report is important and welcome.

The criminal justice system can be a terrifying place for survivors of domestic abuse, who can often be at greater risk from their perpetrator once the police are involved. So it's vital that police forces and the CPS build the best possible case for every survivor, and don't rely on her to present in court. This includes co-operating with local specialist domestic abuse services, whose expertise is vital in ensuring that survivors are safe and supported to proceed with a criminal case against the perpetrator.

It's concerning that this report found that officers and prosecutors have no system to identify which cases can led by evidence and not a victim, and therefore no opportunity to learn lessons and share good practice. The report also found that uptake of training on domestic abuse is variable, even in instances where it is mandatory

(e.g. for Area prosecutors); police officers do not always properly risk assess victims and their families, and sometimes fail to pass this information to the CPS; and prosecutors could do more to enable cases to proceed on an evidence-led basis.

It's essential that the police and CPS are equipped with the tools they need to deliver evidence-led investigations. Proper use of 999 tapes, witness statements and photographs at the scene, effective use of body-worn police cameras and digital evidence (e.g. mobile phone records) can remove the reliance on survivor testimony. Women's Aid delivers the College of Policing Domestic Abuse Matters programme (https://www.womensaid.org.uk/what-we-do/training/police-training/) to police force areas, which equips front-line officers and police staff with a better understanding of domestic abuse. It sharpens their skills to identify the subtleties of coercive control for evidence gathering and successful prosecution."

If you are worried that your partner, or that of a friend or family member, is controlling and

abusive, you can go to www.womensaid.org.uk (https://www.womensaid.org.uk/) for support and information, including Live Chat, the Survivors' Forum, The Survivor's Handbook and the Domestic Abuse Directory.

For more information, please contact the Women's Aid press office: 020 7566 2511 /
press@womensaid.org.uk
(mailto:press@womensaid.org.uk)

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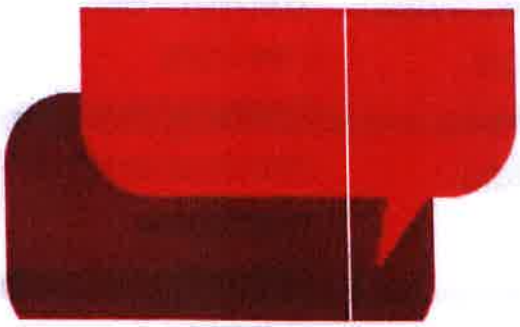

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Women's groups ask Attorney General to reject key rape inspection report

30 Jan 2020

Women's groups including Rape Crisis England & Wales have today (30th January 2020) written to the Attorney General expressing their serious concern about the findings of the recent HMCPSI (Her Majesty's Crown Prosecution Service Inspectorate) report examining the CPS handling of rape cases (published December 2019).

They urge him to reject the report and to look at alternative ways of conducting a satisfactory investigation.

Making clear they do not make criticism of an HM Inspectorate report lightly, the End Violence Against Women Coalition (EVAW), Rape Crisis England & Wales, Rights of Women, Women's Aid, Welsh Women's Aid and The Survivors Trust, refer to a short 'rebuttals' document enclosed with their letter, which critiques the HMCPSI report and argues that it has not answered the key question on whether rape charging policy and practice at the Crown Prosecution Service (CPS) has become more risk averse.

The HMCPSI report was commissioned to look into current CPS rape case responses as part of the ongoing Government 'end to end Rape Review,' which is examining why there are such poor justice outcomes for rape complainants from police report through to courtroom verdict. Close examination of policy and practice at each stage of a rape report is critical for understanding when and where 'attrition' occurs.

The women's organisations say to the Attorney General that the HMCPSI:

- Makes a 'poor and inconclusive examination of 'admin finalised' cases' - a relatively new designation by the CPS but one whose boundaries are not clear
- Contains serious error and inaccuracies in relation to what rape related training

has happened at the CPS
- Was not able to achieve a strong analysis given its poor methodology
- Includes significant generalised remarks about inevitable difficulties prosecuting rape which read as a lack of professional interest in what is actually happening when the high level Government data on rape shows enormously increased reporting at the same time as a collapsing charging rate.

The women's groups recommend the Attorney General 'reject the HMCPSI report as a satisfactory answer to the Rape Review...questions' and urgently examine alternative ways of investigating current CPS policy and practice involving external experts.

Katie Russell, national spokesperson for Rape Crisis England & Wales said:

"Rape Crisis England & Wales was extremely disappointed with this report when it was released in December.

'is part of the Government's rape review was intended to explore why the criminal justice system is currently failing rape victims and survivors. But the lack of independence in the way it was conducted undermined this purpose.

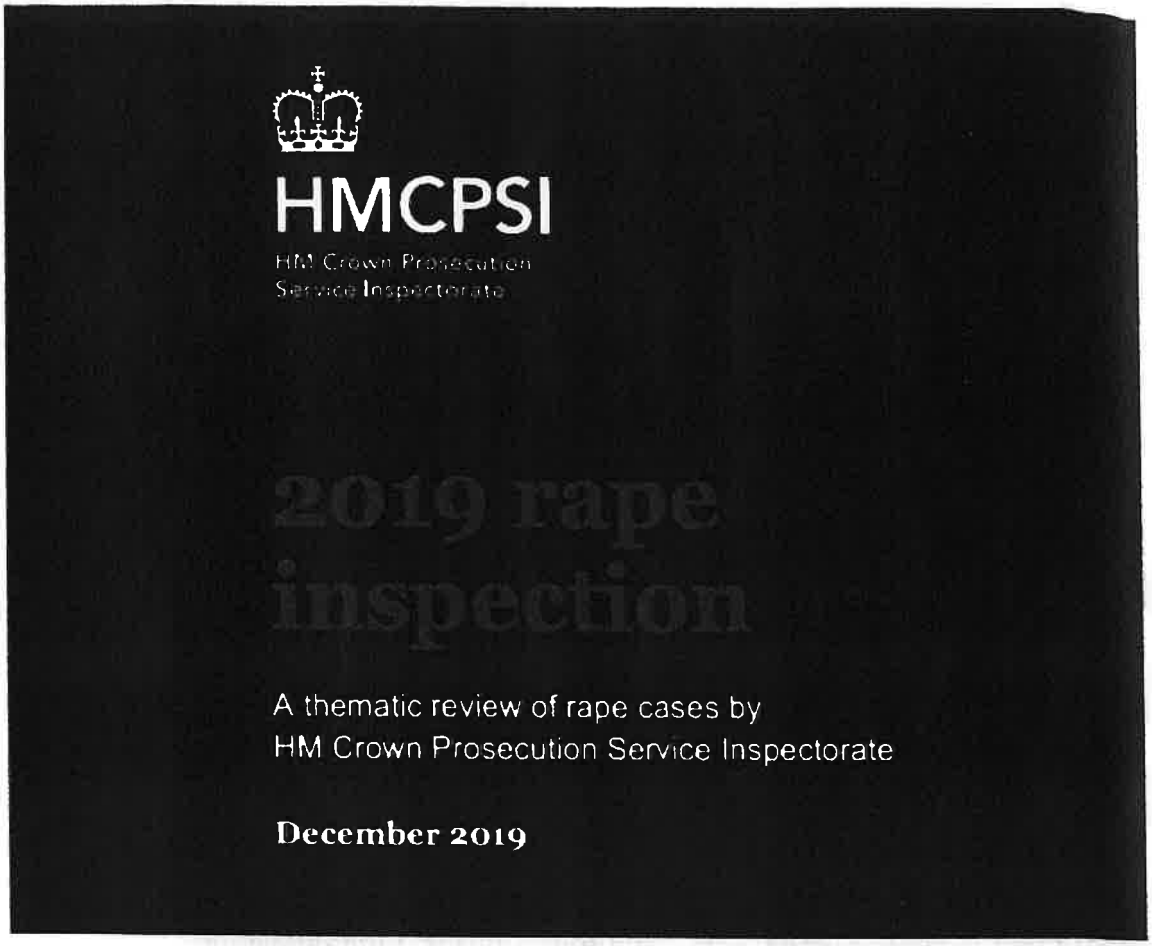
While there are undoubtedly a number of complex factors at play, with criminal justice outcomes for rape victims and survivors at unacceptably low levels, it is self-evident that CPS practice needs urgent reform.

The CPS must demonstrate some accountability if progress is to be made towards achieving justice for victims and survivors. Their apparent lack of interest in taking the opportunity to meaningfully address this problem is astonishing."

The End Violence Against Women Coalition is also bringing a judicial review against .the CPS which claims the CPS has changed the way it makes decisions in rape cases in a way which is unlawful and which discriminates against and harms women.

Women's groups ask Attorney General to reject key rape inspection report

EVAW and members critique HMCPSI report on CPS rape decisions



Letter to Attorney General

EVAW Coalition Briefing on HMCPSI rape inspection

Letter to the Attorney General includes "rebuttals" document and asks him to reject HMCPSI findings on CPS rape decision making as inadequate – as ongoing Rape Review proceeds

Women's groups have today (30 January) written to the Attorney General expressing their serious concern about the findings of the recent HMCPSI report examining the CPS' handling of rape cases (published December 2019), and urging him to reject it and to look at alternative ways of conducting a satisfactory investigation.

After setting out that they do not make criticism of a HM Inspectorate report lightly, the End Violence Against Women Coalition, Rape Crisis England and Wales, Rights of Women, Women's Aid, Welsh Women's Aid and Survivors Trust, refer to an 8pp short "rebuttals" document enclosed with their letter (1), which critiques the HMCPSI report and argues that it has not answered the key

question on whether rape charging policy and practice at the CPS has become more risk averse.

The HMCPSI report was commissioned to look into current CPS rape case responses as part of the ongoing Government 'end to end Rape Review,' which is examining why there are apparently such poor justice outcomes for rape complainants from police report through to courtroom verdict. Close examination of policy and practice at each stage of a rape report is critical for understanding when and where 'attrition' occurs.

The women's organisations say to the Attorney General that the HMCPSI:

- Makes a "poor and inconclusive examination of 'admin finalised' cases", a relatively new designation by the CPS but one whose boundaries are not clear to the women's groups as readers
- Contains serious error and inaccuracies in relation to what rape related training has happened at the CPS
- Was not able to achieve a strong analysis given its poor methodology
- Includes significant generalised remarks about inevitable difficulties prosecuting rape which read as a lack of professional curiosity as to what is actually happening when the high level Government data on rape shows enormously increased reporting at the same time as a collapsing charging rate.

The women's groups recommend that the Attorney General "reject the HMCPSI report as a satisfactory answer to the Rape Review...questions" and urgently examine alternative ways of investigating current CPS policy and practice involving external experts.

EVAW Coalition Director Sarah Green said:

"We do not criticise a significant Her Majesty's Inspectorate report lightly, but our concerns are so serious that we felt we needed to put them on record and alert those who are making decisions about the next steps of the Rape Review.

"The Rape Review was commissioned because of obvious, alarming changes in

the numbers of women and men seeking justice and actual outcomes. We need granular analysis of police and prosecutor practices in their routine handling of rape cases, and this report does not provide that. It does not help anyone who is interested – from survivors and women's groups to police, lawyers, judges and the wider community – really see what decision making is like in relation to this extremely high harm crime. We urge the Attorney General and other Criminal Justice Board members to start again on examining CPS decision making. This is critical if the whole Rape Review's eventual recommendations are to be sound."

The End Violence Against Women Coalition is also bringing a judicial review against the CPS which claims the CPS has changed the way it makes decisions in rape cases in a way which is unlawful and which discriminates against and harms women.

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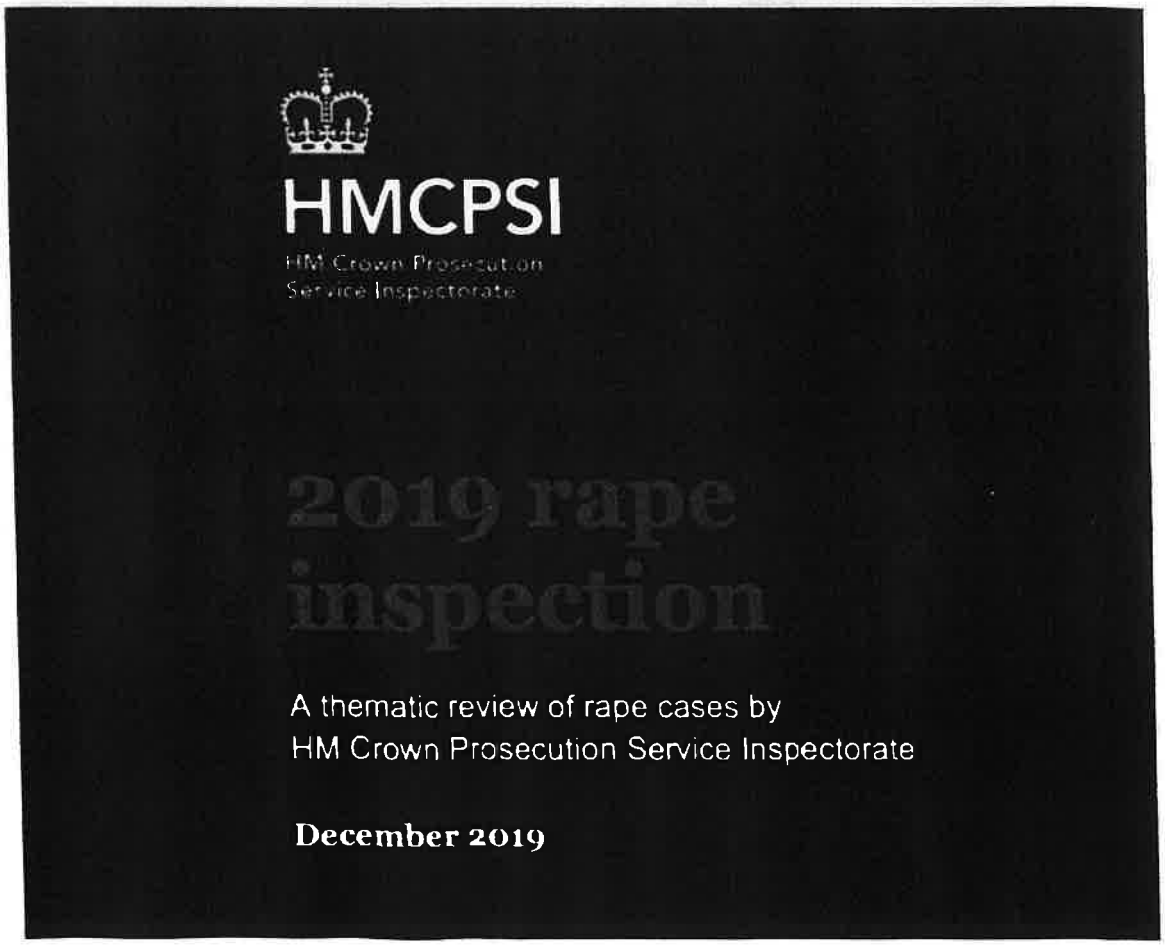

Annex B

Victims Commissioner

Dame Vera Baird QC
Victims' Commissioner for England and Wales

[redacted]

e: [redacted]

30 January 2020

Geoffrey Cox QC MP

Attorney General

Sent by email

Dear Attorney,

End to end review of rape

I am writing to you with regards to the crisis of confidence held by rape victims in the justice system. This crisis will no doubt be further exacerbated following the CPS publication earlier today of its latest prosecution data, which, whilst lacking clarity, shows a continuing decline in the already low level of rape prosecutions.

In particular, I write in relation to the report produced by HMCPSI in December 2019 which was intended to help "*...understand the factors driving falls in charging outcomes particularly with regard to rape only flagged prosecutions*" (Priority 3 of the End to End Rape Review).

Unfortunately, it would seem this report has done nothing to improve victims' confidence in the system. As I explain below: (i) the credibility of the report is undermined by the fact that it was neither conducted independently nor did it seek input from those from outside the CPS: (ii) the report fails to consider the full background; and (iii) fails to answer the questions which were asked of it (and insofar as it does, indicates that there remain significant concerns as to the CPS's approach to cases of rape).

In light of these serious concerns, I ask you to agree that a further inquiry needs to be commissioned so as to attempt to understand why the CPS charge rate in rape has fallen so precipitously in the past two years. In particular, it is imperative that this is a fully independent inquiry, based upon transparent criteria and with a requirement that it seek input from criminal justice partners and civil society.

One of the key issues the inquiry must be asked to examine is the role the CPS has played in the drop in the charge rate, so that we can fully understand how it has happened and the necessary changes identified and implemented.

The December 2019 Report

HMCPSI sought to answer the following question (a question which it has considered previously, and which was not specifically designed for priority 3):

"*What level of confidence can the public have in the CPS to deliver fair and successful outcomes in the most efficient and effective way through the provision of high-quality decision-making by specially trained and experienced prosecutors in rape cases?*"

In so doing, there were a number of sub-questions, including whether there has been a change in approach in the CPS impacting the numbers of cases charged, and what is driving the change in the balance of cases charged, recommended for no further action or administratively finalised (Annex A).

However, the December 2019 report fails to answer those questions. While the report makes clear the CPS is charging fewer cases, the analysis offers the reader no explanation as to why. Indeed, it appears the Chief Inspector himself accepts that: "*the relatively narrow scope of the inspection means that a number of assumptions have been made*" (1.11) and "*While this inspection provides some evidence for what happens once the CPS receives the case, it does not provide any view of the gap between the allegations of rape and cases charged*" (1.32). Even on its own face, therefore, it would appear that further work is urgently required.

Independence of the HMCPSI

A key question in this report is whether the CPS is being "*risk averse*" in charging rape cases. There are real concerns as to whether HMCPSI are best placed to provide an objective insight to this question.

The view of some external observers is that, until recently, HMCPSI itself appeared to be a contributing factor to the fall in prosecutions. This is because, in conducting its inspections, it had focused exclusively on conviction rates, criticising regions with low conviction rates and praising improvement in such rates even if the volume of convictions had fallen.

An example of this can be seen from CPS Mersey Cheshire. In April 2018 it was told that its declining conviction rate (54.6%) was "*the greatest risk to the area*" and "*the most significant performance issue*" (particularly when contrasted with the improving national performance from 56.1% to 57.7%). Mersey Cheshire responded by increasing the conviction rate the following year to 68% and this was praised by HMCPSI. But the praise ignored the fact that in 2017 Mersey Cheshire had achieved an increase in its volume of convictions from 96 to 138 (a 44% increase), whereas, in line with the direction by HMCPSI to improve its conviction *rates*, the number of convictions dropped in 2018 to 81 (its lowest for many years). In short, the HMCPSI drive to improve conviction rates led to a significant overall drop in convictions.

Furthermore, HMCPSI does not appear to realise the risk of such targets. HMCPSI's Chief Inspector refers to such targets as reflecting a "*level of ambition*" for conviction rates in rape (para 1.27). Yet the CPS has acknowledged that those "*levels of ambition*" were "*not appropriate as they may have been a perverse incentive*",[1] and were "*not an appropriate tool to measure our success in bringing the right cases to court*".[2]

HMCPSI were aware of and drove that target from 2016 to 2019, although the Chief Inspector, writing elsewhere, stated that "*Conviction rate is not, in my view, a very helpful measure when looking at whether the CPS is doing a good job or not*".[3]

I should add that these levels of ambition were not made known outside of the CPS until revealed in an article by the Law Society Gazette.

In light of all of this, I am not sure HMCPSI can be considered the appropriate organisation to carry out a review of the CPS' actions, in order to determine whether it has become more risk averse.

External Stakeholders

These concerns might have been ameliorated had external stakeholders been allowed to feed into the review. However, no criminal justice partners (such as third sector VAWG organisations, police, or criminal lawyers) were approached to contribute to the December 2019 report, nor were the National Rape Scrutiny Panel, area scrutiny panels or community accountability panels, all routinely used by the CPS as critical friends.

This omission of stakeholder engagement is of real concern. For example:

- Third sector VAWG organisations have expressed the view that the CPS has become increasingly risk averse in the last few years. Surely the evidence upon which their opinion is based needed to be considered as part of the report, yet it was not sought.
- Similarly, senior police partners are key CPS partners, and could have provided an informed view as to whether CPS prosecutors were becoming more risk averse. A letter from DCC Sarah Crew, National Lead on Adult Rape and Serious Sexual Offences, to Chief Constables and Force Rape and Serious Sexual Offence Leads, dated 13 June 2019, refers to a meeting with Max Hill to discuss the approach to charging in rape, and "*a move to a more risk averse approach*". The police might also have been able to provide specific information as to the increase in administratively finalised cases, an issue which is addressed only superficially in the report, but which is crucial to HMCPSI's findings. This is important, given that when the CPS did an internal audit into administratively finalised cases, it found that 40% of the requests made to the police, in cases returned by CPS, were disproportionate, with many of them indicative of an over intrusive approach to the complainant. Many police officers say privately that CPS send files back for unnecessary data and/or irrelevant actions, effectively disguising

[1] K McGinty says targets he drove may have been a perverse incentive
[2] CPS press statement on Law Society Gazette article
[3] Letter to EVAW

> what is in substance a decision to take no further action as an administratively finalised decision. Such claims are very serious and should have been explored.

This failure to consider the views of other stakeholders is not usual practice (as is suggested at 1.3). By way of contrast to this HMCPSI review, the 2016 review (which addressed the same question) sent out hundreds of electronic questionnaires to RASSO unit heads in all Areas, to specialist lawyers and crown advocates, to specialists from the independent Bar, to defence solicitors and to national and local third sector organisations. One hundred and seventeen responses were received from representatives within the criminal justice system and 26 responses were received from the third sector. HMCPSI additionally interviewed members of the judiciary and consulted officers from specialist police units and teams. It created a project reference group from members of the third sector 'to provide guidance to the thematic review team on the conduct of the review and the methodology employed, to use their experience of the topic to help identify key issues affecting the review and to comment at agreed intervals on inspection findings and judgements and on the draft report'.[4]

This is in sharp contrast to the 2019 review, in which HMCPSI declined to have any independent input into its inspections, even though encouraged to do so by Home Office officials and although it is considered good practice by the other criminal justice inspectorates. I also wrote to the Chief Inspector, urging him to bring in external academic oversight for the purpose of independence and rigour.

HMCPSI also declined to attend the oversight group for the End to End Rape Review and refused, save for responding to my correspondence, to engage with the stakeholder group of victims' representatives specifically set up for that Review.

To compound the problem, HMCPSI used former CPS staff to conduct the review. As letters from the chief inspector show and despite stakeholder concerns, one current senior CPS compliance and assurance official was also seconded onto the review. Indeed there is a suggestion that he may have acted as its head. Three permanent inspectors and one associate inspector were former RASSO lawyers. Thus, all of these inspectors had worked for months or years within a culture focussed on improving rape conviction rates, despite this resulting in a reduction in the number of cases prosecuted and convicted.

Fairly or unfairly, the question being asked is whose criteria these ex CPS RASSOs were using when conducting the review and whether their previous CPS role compromised their ability to provide a detached and objective assessment of CPS practices.

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[4] HMCPSI report on Rape February 2016 'methodology'

Problems with the analysis in the report: factual mistakes and failures to consider key questions

For many years, the CPS has followed the court-mandated "*merits-based approach*" to charging decisions. We now know, however, that this approach all but disappeared from CPS materials two years ago. The relevant chronology of that change is, as I understand it, as follows: that refresher training was delivered to RASSO prosecutors (by RASSO specialists) in the aftermath of a review of RASSO work by HMCPSI in 2016. The training was to promote "a consistent approach ...across the CPS ...in the application of the Code"[5] since the HMCPSI 2016 review found that in 10% of 90 sample cases the Code test had not been applied correctly. There then followed as series of 'roadshows' conducted by the Director of Legal Services (Mr McGill) and the former Principal Legal Adviser (Mr Moore) in which Mr McGill and Mr Moore sought to move prosecutors away from the merits-based approach.

However, this chronology is confused in the report. At para 2.31, it refers to the training delivered by the Director of Legal Services (Mr McGill) and the former Principal Legal Adviser in 2017. This is not correct. The refresher training was earlier and different, as I understand the Director of Legal Services has acknowledged.

It is surprising HMCPSI do not discuss, in any detail, the content of the roadshows conducted by Mr McGill in 2017, given that they were reported in the press. As I understand it, he is quoted[6] as advising that 'weak' cases should be 'taken out of the system' and only stronger cases taken to court, so as to achieve a better percentage conviction rate. He is alleged to have advised 'a touch on the tiller' to shed about 350 cases a year and win a conviction rate above 60%. One view is that this is exactly what happened and while the roadshows have been 'successful' the new practice has been catastrophic for many rape complainants. The numbers appear to support this view. Following the "touch on the tiller" in 2017, CPS charges have dropped from 3571 to 1758 and the conviction rate has increased from 57.6% to 63.4%. Yet because the report has failed properly to understand the true chronology, the nature of the roadshows and its consequences have not been considered at all.

Dozens of questions are asked of RASSO lawyers and their managers surveyed for this report but not a single question is asked about any past or ongoing impact of 'the levels of ambition' nor about the more recent roadshows conducted by Mr McGill which, like the predecessor 'levels of ambition' roadshows, was recorded nowhere and other than in the press. It raises the obvious question of why the inspectors did not ask the very people whose decisions are under scrutiny the reasons behind the fall in the number of cases charged and what were the influencing factors behind them. Instead, we are offered just opinion by a manager, at para 2.28, which seems to express concern.

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[5] Course materials CPS

[6] Guardian article September 2018 by Alexandra Topping

No answers given to the fundamental issues asked to address

The report accepts the CPS charge rate dropped by 52.1% in two years (para 1.12)[7] whilst finding that the CPS is not "risk averse" in charging rape. Yet it proffers no other answer as to why, if the CPS is not risk averse, the charge rate has dropped so dramatically.

It does attempt to consider a number of different explanations, but none of these stack up:

- The report notes the drop off in police referrals to the CPS as a potential reason for the drop in the charging rate, but CPS decisions to prosecute have fallen at almost double that rate (as para 1.12 acknowledges: by 52.1% rather than 22.6%).
- The report notes the length of time to make charging decisions. This may explain volume falls, in particular since it may, as the report says, be a reason why complainants withdraw. However, it doesn't explain why the proportion of cases charged has collapsed to lowest levels on record (34.4% compared to 55.5% in March 2017). When investigations are complete whatever the volume left, the simple fact is that the CPS are charging a much smaller proportion of those cases referred to them than previously was the case.
- It considers the 17.1% increase in 'administratively finalised' cases ('AF' cases) since 2017, noting that such cases may be returned to the CPS by the police at a later stage, leading to a charge. However, this is contradicted by HMCPSI's own findings. Of 80 AF cases in one police force HMCPSI report only 48.7% were still active. When looking at the whole 200 AF cases which HMCPSI inspected (which include the 80) only 18% were still active (para 1.16). Yet HMCPSI (at Fig 2 and para 1.17) add 48.7% more cases onto the 2019 national total of rape offences charged and say that if that percentage of AFs were still active in every force and all were charged the CPS charge rate would not have collapsed by 52.1% this year but only by 38.9% (para 1.17). It is hard to follow why the higher 'active' rate for AF files in one force is preferred to the lower rate in the other forces across a larger sample. Why is it appropriate to extrapolate from one force to national level. It is important to note that police resending an administratively finalised case to the CPS is far from it resulting in a charge. Even if this tortuous thinking were defensible it leaves no explanation for a drop in charging by CPS of 38.9%.
- There is also a suggestion that cases where a CPS lawyer has decided that no further action should be taken has decreased (see 1.13 and p13). However, this is a dubious conclusion at best. The End Violence Against Women Coalition's statistical expert has found from publicly available CPS data that the proportion of cases being 'no further actioned' by prosecutors is, in fact, increasing and not decreasing. (See appendix).

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[7] Note: this drop is to the charge rate of the volume of files sent to the CPS. it is not affected by the undoubted cut in police referrals which reduces the volume considered by CPS has no impact on the percentage CPS choose to charge. [7] There is also a serious concern that the HMCPSI figures appear to contradict the description of AF cases by the CPS in previous reports. The VAWG reports issued by the CPS describe AF cases as cases *"where the police do not respond to CPS requests for additional evidence or reasonable lines of enquiry within 3 months"*, yet it is apparent from paragraph 4.19 that this figure also includes decisions where the police have themselves decided to take no further action. This encompasses a substantial number of cases (26.9%, as appears from Table 8; and which may have been higher had evidence from police been sought). No assessment of this interaction has been undertaken by HMCPSI.

As such, not one of the other HMCPSI explanations is made good. In the absence of any credible alternative suggestion, the explanation offered by VAWG organisations, that there is an increasingly risk averse approach, remains, in my view, the most likely explanation.

In fact, the evidence in the report might appear to support the view that there has been a more risk averse approach to charging. At para 1.29 of their report HMCPSI acknowledge that "if the CPS was being risk averse this might show a rise in the conviction rate after a contested trial" (see also para 2.28). They further note that there was a 10.4% rise between 16/17 and 18/19. It is important to register that this represents a massive increase in conviction rate in the context of historical relative stability. Quarter by quarter charge and conviction after contest ('CAC') rate changes for the time period show that with the exception of one quarter the CAC rate was below 50% the entire time between Q1 16/17 and Q3 17/18). In Q4 17/18 it rose to 53.8% and since then it has always been well above 50% peaking at 59.6% in Q3 18/19. So there has indeed been an increase in the conviction rate after contested trials for HMCPSI to consider as potential evidence of a risk averse approach.

In para 1.30 and 4.8 HMCPSI suggest that the increase in the CAC rate could be down to successful efforts to turn weaker cases into stronger cases at the pre-charge stage e.g. through improved handling of evidence/disclosure or generally. The problem with this analysis is that in the time period in question the proportion of non-convictions which were cases dropped by CPS at the post charge stage increased from 12.4% in 16/17 to 14% in 18/19 as set out in the VAWG annual report for 2018/19 (graph 23 in rape data section at page A22) annexed. On that evidence the CPS seem have got worse not better at strengthening cases at the pre-charge stage. This assertion in the HMCPSI report is simply that: it is not supported by any evidence.

Conclusion

Overall, there is no explanation within the HMCPSI report for what is now accepted to be a substantial reduction in CPS charging of rape in recent years. The HMCPSI report has been widely greeted with dismay and, I am afraid, scepticism by external stakeholders. On this alone, it seems that the report has failed to deliver what was required of it. It is simply not an adequate inquiry. It was done in haste and offered nothing on which the End to End Review can rely to explain the recent and dramatic increase in the conviction rate and the catastrophic cut in charging decisions.

I therefore would ask you to consider indicating in strong terms that the December 2019 HMCSPI report is not the final investigation into this issue, and to seek a further, independent and properly resourced inquiry into the subject, which is of grave importance to victims of rape.

A copy of this letter is being sent to Victoria Atkins, the Minister responsible for overseeing the End to End Rape Review.

In line with my usual practice, a copy of this letter is being placed on my website.

Kind regards

Dame Vera Baird QC
Victims' Commissioner for England and Wales

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

In the matter of an application for Judicial Review

BETWEEN:

THE QUEEN
On the application of
END VIOLENCE AGAINST WOMEN COALITION

Claimant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

WITNESS STATEMENT OF KATE ELLIS

I, Kate Ellis, solicitor at the Centre for Women's Justice of Oxford House, Derbyshire Street, London E2 6HG, say as follows:

INTRODUCTION

1. I am a member of the legal team at the Centre for Women's Justice (the "Centre"), which is representing the End Violence against Women Coalition (hereafter "EVAW") in the present proceedings. In addition to acting for EVAW in connection with these proceedings, I act for a number of other clients of the Centre, including several women and girls who have sought legal advice in circumstances where they have complained to the police of a serious sexual offence or offences and been informed that a decision has been made not to bring charges.

2. I am conscious that the court has already been furnished with a significant volume of witness evidence in support of the claim and therefore do not intend to comment on any matters that I believe have already been adequately addressed elsewhere. Instead, I make this brief statement solely in order to make the court aware of a number of unsolicited comments recently made to me and a client by a detective constable specialising in the investigation of serious sexual offences, which – taken together – seem to me to be directly relevant to EVAW's case, and in particular to the question

of whether there has been a change of approach by the Crown Prosecution Service (the "CPS") to prosecuting rape offences.

3. The client in question is entitled to anonymity as a victim of rape, and therefore cannot be named in this statement. She is however aware of EVAW's claim and has authorised me to disclose these comments, and their context, to the court, provided that I am careful not to identify her or the police officers in question. I will therefore summarise, below, the context in which the comments were made, without reference to names or other potentially identifying factual details.

THE CASE

4. In brief, the client's case concerned an allegation that she had been raped in circumstances where she did not have capacity to consent, or even understand what was happening, due to extreme intoxication. The allegation had not been reported to the police immediately, which meant that toxicology results were not available. The client could not remember having sexual intercourse – although it was subsequently established that she had, prompting her to make a complaint to the police – and witnesses were then identified who could attest to concerns that they had had over a relevant time-period about the client's capacity and indeed safety. Some communications evidence was also available which could be said to support the client's account or undermine the suspect's account.

THE NFA DECISION AND MEETING IN JANUARY 2020

5. In January 2020, I accompanied the client to a meeting with the detective constable and police constable who had been responsible for investigating her complaint of rape. The meeting had been proposed by the detective constable to discuss a recent decision that had been reached by the police to take no further action against the suspect. This type of decision is commonly referred to by the police as a decision to "NFA".

6. The detective constable had already explained, prior to the meeting that the decision to NFA the investigation had been taken following early investigative advice from the CPS. In particular, he explained to me on a telephone call in the immediate aftermath of the NFA decision, that both he and his supervising detective inspector disagreed

with the advice received from the CPS, but that there was nothing they could do, as the prosecutors who considered it had indicated that no amount of further investigation could change their mind on the key evidential issues. He indicated that in his view and that of the detective inspector, there was in fact a realistic prospect that an objective jury would find the suspect guilty, based on independent evidence which tended to undermine the suspect's assertion as to the complainant's behaviour or capacity to consent, and indeed on the suspect himself having given a very problematic account. I know that at the Centre for Women's Justice we have received a significant number of referrals where this is the case: where a decision not to proceed is, somewhat misleadingly, categorised as a 'police NFA', even where it flows from negative early 'advice' received from the CPS.

7. At the NFA meeting itself, the detective constable present expanded on the reasons that they had been given by the CPS to close the investigation. I will not go into these reasons in detail, to avoid potentially identifying my client. The central point for present purposes is that the detective constable indicated that he felt that the CPS had imposed an extremely high evidential threshold which in practice would not be met by the majority of rape cases of this type. In discussion with my client, he agreed that there was nothing in law or policy suggesting that the Full Code Test could only be applied and/or met if certain specific forms of evidence were available, since the Full Code Test merely required that having regard to *all* of the evidence that was available, there was a realistic prospect of conviction. Having said this, the detective constable then began to discuss the ways in which – in his view – the approach that had been taken in my client's case was typical of the policy that is now commonly adopted by prosecutors making charging decisions in rape and serious sexual offence cases.

8. Specifically, he made the following comments, which I have done my best to reproduce *verbatim.* I can confirm that at no stage during the meeting did I invite the detective constable to tell me whether there had been a change in policy, practice or approach within the CPS, or a move away from the merits-based approach; nor did I refer to EVAW's legal challenge. While I have selected the comments made by the detective constable that seem to be most relevant to the matters in issue in these proceedings – and made sure to avoid quoting from discussions of the specific facts

of my client's case – I have taken care not to take any comments made out of context or to exclude comments which might present an alternative picture. All comments made were volunteered by way of explanation and apology for the NFA decision that had been taken in my client's case. For the avoidance of doubt, the emphasis in the quotations below is mine:

a. In answer to a question by my client as to why he thought the CPS was so reluctant to charge in cases where the complainant's capacity to consent is in issue, the detective constable stated: *'It's not that they 100% won't, but they are incredibly unwilling to go to trial on any capacity case where there isn't* ***some kind of massive smoking gun****, be it toxicology, I don't know, a witness inside who has heard shouting and screaming or has burst in and gone, "what's going on here";* ***a ridiculous, almost impossible piece of evidence to find.'***

b. The detective constable then explained: *'They don't* ***officially*** *have this standard in place.* ***There is no "standard", but there is, because you can see it when you are discussing cases which boil down to capacity to consent****, where the act isn't disputed, it's just whether there was or wasn't consent. Sometimes not even where there's capacity to consent – on cases where consent is the trial issue: the CPS –* ***unless there is a smoking gun piece of evidence or the bad character of the defendant is overwhelming****, where they've previously been prosecuted and convicted of similar offences – they will essentially tell us, "yeah, good luck"'.*

c. Still speaking about the CPS, the detective constable went on to state: *'****Unless it's a case where the person in custody has either refused to give any account whatsoever, has remained silent, has given such a ridiculous account that it's immediately disproven, or it is disproven*** *– they say for example "we got the train", and they didn't get the train –* ***they will ultimately not entertain it'****.*

d. My client then asked the detective constable why he thought the CPS were so reluctant to prosecute cases, including cases like hers where it seemed agreed that there was 'a catalogue of evidence' to support the fact that he had raped

her. The detective constable answered that in his purely personal opinion, the high costs of pursuing a rape trial, and the fact that prosecutors are measured by convictions, were factors in prosecutors' decision making, given how difficult rape cases are to prosecute. He went on to state: *'Although that's not an **official** policy I think that goes to what a lot of prosecutors are thinking at the time when they are making decisions. And in light of the one or two disclosure issues that you see on the news, which are one or two out of the hundreds or thousands of cases that are dealt with every year, they still, well you know ... "we don't want the bad publicity, we **don't want to take the risk".***

e. He then volunteered: *'And we see it on almost a daily basis, where those who do have the courage to report: we investigate – even in jobs where we go, "You know what, this will be difficult but I've seen cases prosecuted on less" – and the CPS will just look at you and go, "no". And for some reason, **as soon as you put the offence of rape in there they become a hundred times more timid than they would for any other case.** [...] On the evidence that we have now they would charge for robbery. They would go, "no, people remember if they've given you stuff". But because the word is rape rather than robbery on the charge sheet they're saying, "Oh no, it's not enough evidence". **They essentially want a cast-iron guarantee of a conviction'.***

f. When my client asked whether the police officer in question ever sees rapes prosecuted now that do not involve overt violence – for example where grievous bodily harm has been caused – the detective constable answered: *'Rarely. Very rarely.'* My client then asked whether that had changed. The detective constable replied: *'It's got worse over the years. I have seen cases whereby there is, I would consider, it's literally caught on CCTV in the street – the whole run-up is caught, and the person involved is quite clearly to anyone, not just limited capacity to consent; is unconscious. And I had a case, I've seen cases, where the CPS have gone, "No. He's said in interview it was consensual, how can you prove that no consent was given ten minutes before the footage started?"'.*

g. Referring to a particular recent case involving CCTV footage, the detective constable added: *'In this case the defence did run an argument, it was consent. It was a ridiculous argument because of the footage. But the CPS said, "well, you can't prove beyond a shadow of a doubt that she was unconscious". Correct, there wasn't a doctor in the street there and then to pronounce unconsciousness or to draw blood – but she is not moving, and she's unconscious and she's fallen over. And there's no interaction between the two of them before that point. And they've just gone, "No no no, he's given an account at interview". **They always use those words, "given an account at interview, you cannot disprove the account". Even if you can throw the account into doubt, often, most of the time, not good enough for them. You can shed a significant amount of doubt, well you know, it doesn't add up.'***

h. The detective constable later referred back to this case involving CCTV evidence and noted that the CCTV operator, who had actually reported the incident as it was happening, had used the exact words, ***'someone is being raped on the street'***, but that this had not been considered compelling by the CPS.

i. The detective constable estimated that the change in approach or culture that he was describing had taken place within ***'the last half a decade'***. He expressed concern that there are no consequences for the CPS of failing to charge cases, commenting that *'the CPS is investigated and held to account by the CPS'*. He expressed the view that the CPS was taking no responsibility for the drop in cases being charged, instead maintaining a false public line that the police simply are not referring them cases or are referring them cases in which there is insufficient evidence.

j. The detective constable also expressed concern that he was being asked by the CPS to '*look at*' the '*whole*' of complainants' phones as a matter of course – even when he could demonstrate that he had reviewed all of the evidence from relevant dates and undertaken key word searches – and that this was having an impact on case outcomes. He commented that when complainants then withdrew support for a prosecution because they were uncomfortable with the disproportionate amount of private information they were being asked to

provide, it was for the Crown Prosecution Service *'a really easy excuse'* to drop the case: *'it's not "their" fault, the victim's "unwilling".'* He added: *'I've been asked to get school reports and records from Australia from twenty years ago just to cover the fact that maybe there was some counselling involved in the school twenty years ago. And they go, we won't consider charging this case unless you can show me what happened at school twenty years ago.'*

k. Reflecting on current practices within the CPS, he volunteered: *'The CPS have* ***internal,*** *largely secretive, either beliefs, practices, or whatever they are;* ***in all cases they have what seems to be an arbitrary decision making procedure'.***

l. Explaining that the police in practice had little or no power to reject or overcome negative early investigative advice given by the CPS, the detective constable explained that this decision would be recorded as a police 'NFA' decision, despite the fact that it was opposed by the police. He added, ***'I don't think I've ever heard of a case where the CPS have agreed with an appeal*** *[by the police following a decision or negative advice from the CPS]. Even when we appeal – because we are allowed to appeal in certain cases, especially in custody cases, and an inspector or above has to do it – generally I think that even when the CPS say we're going to NFA this and an inspector or above phones up and goes no, I want someone more senior and I want someone else to look at it, and these are my concerns: I've never heard, or at least not that I'm aware of, of the CPS going, yep, you're right. On a VRR they'll go, no, we fully agree with [x].'*

9. Although the detective constable led the conversation, the police constable who was also present frequently nodded or made brief comments in agreement with the detective constable's comments.

10. The comments made by the detective constable during this meeting about his experiences of CPS decision-making in serious sexual offence cases are similar in many respects to comments that a number of other police officers have made to me directly, to clients, or to ISVAs within our network. A number of other police officers

have volunteered, for example, that they have found the CPS to be much more risk-averse in approach in recent years but without necessarily wishing to explain in greater deal what they mean by this. I therefore considered that it may assist the Court if I made a statement about this meeting specifically, because I found the detective constable in question to be particularly emphatic, and expansive, about his experiences of recent prosecutorial decision-making.

11. The detective constable's remarks also seem to me to be consistent with remarks made by Sarah Crew, the National Police Chiefs' Council Lead for Adult Sex Offences, in a widely circulated letter dated the 13th June 2019 which EVAW has already provided to the court in support of its claim; and indeed with the remarks made by the Assistant Chief Constable of Hampshire Police at a conference reported on by the *Independent* newspaper in November 2018, an article previously exhibited by my colleague Harriet Wistrich to her witness statement in these proceedings. From my own experience and conversations with police officers, there does appear to be a widespread, evidence based perception that the CPS are significantly more reluctant to bring charges in rape cases than they would be in any other type of case, and indeed a widespread perception that this is a relatively recent change from the culture that preceded it. It also seems apparent from such testimony that in practice, many cases which may be recorded by the CPS as a decision by the police to close or finalise an investigation will in fact have been closed only because early negative advice has been received from a prosecutor. This suggests that the true impact of CPS decision-making on early decisions to close cases may not be immediately apparent from publicly reported CPS statistics.

Statement of truth

I believe that the facts stated in this witness statement are true.

Signed .....

Dated 3/2/20

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

In the matter of an application for Judicial Review

BETWEEN:

THE QUEEN
On the application of
END VIOLENCE AGAINST WOMEN COALITION

Claimant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

SECOND WITNESS STATEMENT OF HARRIET WISTRICH

I, Harriet Wistrich, Director of the Centre for Women's Justice, say as follows:

1. I make this statement in support of the claim brought by the End Violence against Women Coalition ("EVAW"), and further to my previous statement in these proceedings.

2. The main purpose of this second statement is to assist the court in determining whether to admit the evidence of "XX", a whistleblower, whose first statement was exhibited to my previous statement in these proceedings as Exhibit HW/4.

3. To this end, I introduce two further statements by way of exhibits:

    a. a second statement of "XX", briefly addressing the Crown Prosecution Service ("CPS") Whistleblowing Policy and Procedure, and the culture and hierarchy within the CPS. I am introducing this statement because the information provided in it may assist the court in determining whether to admit XX's evidence. In particular, I note that the Director of Legal Services Greg McGill asserts in his statement that no one has brought to his attention any concerns about a dramatic change in the nature or quality of 'RASSO' prosecutors' decision-making. In this second statement, XX explains that it is in their view highly improbable that any RASSO staff member with concerns

about RASSO policy would feel able to report this to Mr McGill, based on the culture within the CPS and on Mr McGill's own role and reputation. I introduce this statement as **Exhibit HW/5**. I also confirm that prior to obtaining this second statement of XX, I discussed with them again, at length, the possibility of revealing their identity, but XX re-iterated that they are only prepared for their evidence to be admitted on the basis that their identity is not revealed, for the reasons that have been set out in their first statement and, in further detail, in their second statement;

b. the statement of a second whistleblower, "YY", which I believe may further assist the court in deciding whether to admit the first statement of XX, as it supports XX's account that the culture within the CPS is not conducive to whistleblowing about matters of policy and, in particular, regarding any change in approach to RASSO charging decisions. I introduce this statement as **Exhibit HW/6.**

4. As with XX's evidence, YY's name, and any and all identifying information has been redacted save to state that YY is employed by the CPS and has specialised in the prosecution of RASSO offences for a number of years.

5. I confirm that YY has spoken to my colleague Ms Ellis, who is also a solicitor and a member of the legal team representing EVAW in these proceedings, on a number of occasions, and that Ms Ellis has in turn reported back to me on the contents of the calls. I confirm that to the best of my knowledge and belief, YY is indeed employed by the CPS and is a RASSO specialist. I also confirm that Ms Ellis has discussed with YY the possibility of making a statement which would reveal YY's identity. YY has made clear, in paragraph 3 in particular of their statement, that YY is only prepared to make the statement on the condition that YY's identity is not revealed. I understand and respect that position, as it appears to me that there would indeed be a serious risk of repercussions if their identity were revealed. I therefore introduce YY's evidence to the Court by exhibiting it to my statement, and refer the Court to the statement in full, rather than repeat its contents here.

6. My team have only just been able to obtain these statements from XX and YY, and have not yet received signed copies in the post. I confirm however that the statements,

exactly in the form that they are exhibited, have been approved by XX and YY respectively, and that I have been authorised by each of them to exhibit the statements in unsigned form so that it is possible to serve them on the Defendant today. These unsigned exhibits will be replaced with signed copies for the court and the Defendant as soon as they are received.

Statement of truth

I believe that the facts stated in this witness statement are true.

Signed .....

Dated 11/3/20

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMININSTRATIVE COURT

BETWEEN:

R

(on the application of

END VIOLENCE AGAINST WOMEN COALITION)

Claimant

- v -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

SECOND WITNESS STATEMENT OF XX

I, XX, of the Crown Prosecution Service, state as follows:

1. I make this second statement in support of the judicial review brought by the End Violence against Women Coalition ("EVAW") and further to my previous statement in these proceedings.

2. My sole aim in providing this further brief witness statement is to respond to the comments that the Crown Prosecution Service's Director of Legal Services, Gregor McGill, has made at paragraphs 51 to 55 of his statement dated the 20th November 2019, which relate specifically to my statement, my wish to remain anonymous, and the availability of whistleblowing provisions to protect me. EVAW provided me with a copy of Mr McGill's statement after receiving the same in November and I have now read it in full. I have also been provided with a copy of the CPS' Whistleblowing Policy and Procedure on which Mr McGill relies. I have been asked in relation to this whether I have any comments I would like to make with regard to the CPS' policy,

and/or culture, with regard to 'whistleblowing' by CPS staff members concerned about a matter of policy or training.

3. I make this statement based on my own knowledge and belief, save where I have stated otherwise, in which case I believe the information contained in the witness statement to be true.

I Key points from Gregor McGill's response to my first witness statement

4. In my first witness statement, I have summarised my concerns regarding the contents of the "RASSO roadshows" delivered by Mr McGill and Mr Moore between 2016 and 2018, and indeed regarding subsequent changes made to guidance and instructions for RASSO prosecutors, which appeared consistent with the messaging at those roadshows. I have explained that during the roadshow session I attended, Mr McGill and Mr Moore appeared sceptical regarding the usefulness of the 'merits-based approach' ("MBA") to RASSO charging decisions and, instead, appeared to me to be clearly endorsing the 'bookmakers' approach'; an approach which I knew had previously been prohibited, since it results in a harmfully risk-averse attitude to the prosecution of serious sexual offences and has a particularly adverse impact on the most vulnerable of victims.

5. At paragraphs 50 to 52 of my first witness statement, I have proceeded to describe the reactions of others within the CPS to the roadshows. I have explained that after the roadshow session I attended, I spoke to a number of colleagues who were similarly shocked, and discovered that I was not alone in feeling taken aback by the clear endorsement of the 'bookmakers' approach'. I have also explained that there was a clear consensus among colleagues that the messaging at the training represented a significant departure as regards the approved approach to the evidential test within the Code for Crown Prosecutors – whether this was Mr McGill's intention or not – and indeed that I have since also seen first-hand from conversations with prosecutors that many are now positively embracing a much more risk-averse approach to charging, since they believe they are no longer required to consider the MBA. I have expressed concern that this is also likely to mean an increased risk that recognised jury 'myths and stereotypes' about rape and sexual offences play a part in prosecutorial decision-making.

6. In paragraphs 52 and 53 of Mr McGill's statement, Mr McGill responds to my account of the significant change in approach to RASSO decision-making, as demonstrated by conversations that I have had with colleagues. He states that he not *'recognise'* the adverse effect of his roadshows on prosecutorial decision-making, as I have described it, and that *'if it were the case I would have expected this to have been raised by RASSO prosecutors and experienced Unit Head* [sic] *across the organisation.'* He explains that Chief and Deputy Chief Crown Prosecutors have opportunities to identify case management issues, and concludes that *'If there had been the sea change in the approach to prosecuting serious sexual offences suggested by XX, then I have no doubt that this would have been brought to my attention and it has not been.'*

7. Mr McGill's first contention therefore, essentially, is that if there had been any marked change in the nature or quality of RASSO decision-making at a regional or national level, he would not expect it to have gone unnoticed or unresolved, because (i) concerns would no doubt have been raised by multiple RASSO prosecutors or local unit heads, and/or by Chief or Deputy Chief Crown Prosecutors overseeing case management panels at a regional level, and (ii) those issues would then either be resolved at the appropriate local level, or – if the problem really was widespread – raised with him personally as Director of Legal Services.

8. Mr McGill goes on to express surprise that I did not raise concerns myself through these well-established channels, and implicitly questions the need for my evidence to remain anonymous. To support his point, Mr McGill provides a copy of the CPS' Whistleblowing Policy and Procedure, and summarises a set of principles underlying it which purport to provide support and encouragement for any employees considering raising concerns about wrongdoing. Mr McGill acknowledges that the question of the proper approach to the Code for Crown Prosecutors *'is not the sort of subject, such as the disclosure of an unlawful act or of unethical behavior, that would ordinarily give rise to whistleblowing considerations'*, but asserts that I could nevertheless have attempted to avail myself of it if I believed that there was cause for serious concern.

9. In the sections that follow I will, in very brief terms, describe the culture and hierarchy within the CPS, from my own experience, and explain why I do not feel secure enough to provide the information that I set out in my first statement to my employer or indeed to the court directly. I will also explain why, given that hierarchy and culture, Mr McGill is incorrect to assume that any relevant concerns raised or complaints made by RASSO prosecutors would have been escalated to him.

II. The position of Mr McGill and the culture within the CPS

10. Mr McGill is regarded, I am aware, as an exceptionally powerful figure within the CPS whose influence over the CPS' corporate policy, the standards that are expected of prosecutors, and indeed the career paths of prosecutors within the organisation, is unique. The role of Director of Legal Services was created for him, as previously the Director of Public Prosecutions was assisted only by his Principal Legal Adviser, whose role was more limited. He answers only to the Director of Public Prosecutions, and indeed often makes managerial decisions on behalf of the Director of Public Prosecutions.

11. He is also responsible for senior prosecutors' career progression. He plays a crucial role, for example, in the appointment, and redeployment, of Chief and Deputy Crown Prosecutors.

12. I am also aware from discussions with colleagues that he is regarded on a personal level as a formidable individual, and there is a perception that he does not welcome being challenged on his decision-making. I do not say this because I have any experience of unacceptable victimisation by Mr McGill or simply because I am critical of him, but rather as relevant background to the likelihood of complaints being escalated to him.

13. For a number of years and certainly I think since Mr McGill has been in post as Director of Legal Services, there has been a culture which, I find, discourages concerns from being escalated up the chain of command, and very much encourages the 'toeing of the party line'. This is particularly so in relation to RASSO work, not least because it is an area of crime which has been reputationally sensitive for the CPS over the past few years.

14. Since the reporting by the *Guardian* newspaper in 2018, moreover, which attributed the fall in rape charging volumes to a secretive change in policy at the CPS and in particular to Mr McGill's roadshows, prosecutors have been given to understand repeatedly – whether by senior managers communicating down the chain of command, or by their immediate line managers – that the CPS is anxious to 'contain' any criticisms that there might be of its performance in RASSO cases, and indeed to reinforce the message (internally and externally) that there is no conflict between the approach Mr McGill and Mr Moore have endorsed and RASSO prosecutors' ability to make robust decisions. This has resulted in an ethos of discouraging and/or promptly 'shutting down' concerns raised by any RASSO staff member about the perceived change in approach that they are being encouraged to adopt and the impact that it is having on decision-making.

III. The likelihood of complaints being escalated to Mr McGill

15. The observation made by Mr McGill at paragraph 52 of his statement is that if any concerns had been raised about a *'sea-change'* in RASSO decision-making resulting from his roadshows, he is sure these would have been *'brought to [his] attention'*. Mr McGill may well believe this to be the case, but in my view he is mistaken that any such concerns raised by prosecutors 'on the ground' would have been escalated to him.

16. I have explained the current culture existing in the CPS above. In these circumstances, I firmly believe that any prosecutor who was considering complaining about the change in approach and its effect on their ability to make properly merits-based charging decisions would be very conscious that to do so, or certainly to try to escalate any such complaint beyond their immediate line manager, would be futile – and likely to be regarded unfavourably by their superiors – because there has already been such a concerted effort on the part of CPS' management to ensure that the question of the CPS' changing approach to the prosecution of serious sexual offences is not up for debate.

17. Moreover, Mr McGill's role in this issue is important to understand. Not only is he of fundamental importance to prosecutors' career progression, and a formidable individual in his own right, but the 'RASSO roadshows' were delivered by him

personally, in his capacity as Director of Legal Services, alongside Neil Moore, in his capacity as Legal Advisor to the Director of Public Prosecutions. Prior to the formation of the Central Legal Training Team (CLTT) in late 2018 RASSO training was typically delivered at a local level by RASSO Unit Heads working from materials produced by Learning and Development. Since the formation of the CLTT RASSO training is developed and delivered by former prosecutors working within the CLTT.

18. This is highly relevant because it is in my view particularly unlikely that prosecutors would feel able to voice their concerns about the RASSO roadshows, knowing that they had been – exceptionally – decided upon and personally delivered by two of the most senior members of senior management within the CPS. It is less likely still that any RASSO prosecutor in a managerial role – such as a RASSO unit head, or a Chief Crown Prosecutor – would feel able to support and escalate concerns that had been raised with them about the roadshows or the impact of the change in approach to Mr McGill. Any criticism of the RASSO roadshows would essentially be seen as a direct attack on the senior management of the CPS, or in other words, effectively, on Mr McGill and Mr Moore personally, since they delivered the roadshows.

19. Mr McGill asserts in his statement that the briefings that have been provided to prosecutors regarding the judicial review proceedings are intended to support prosecutors rather than to get them 'on message', but the point I wish to make is that in the present culture it is well understood by prosecutors what the corporate message is as regards RASSO policy, and it is hard to imagine many prosecutors wanting to risk their career progression by formally challenging their organisation on a matter of policy that: (a) is known to have been disseminated by senior management, (b) is known to be a sensitive issue for the CPS, given the mounting public concern, and (c) is unlikely to be something that they have the power to overturn by making an individual complaint.

20. In light of the culture and hierarchy I explain above, even if a RASSO prosecutor felt compelled to voice their concerns about the approach endorsed by Mr McGill with the head of their RASSO unit, it seems highly likely that the manager to whom the concerns had been reported would consider it preferable to 'contain' the complaint rather than escalating the negative feedback directly to Mr McGill. Even if concerns

were escalated to Chief Crown Prosecutor level, it seems likely to me that the outcome would be the same.

IV The Whistleblowing Policy

21. Against this background, the Whistleblowing Policy and Procedure, of which I was already aware and have read again before preparing this witness statement, gives me no comfort or reassurance that I would be protected from victimisation if I had sought at any stage to escalate to senior management my concerns about the concerted change in approach to RASSO prosecutions and the negative impact it is having on our ability to deliver justice.

22. In addition, and without doubt, the Policy and Procedure gives me no comfort that if I were to reveal my identity *now*, and agree to give evidence to the court directly, and/or resolve my concerns with my employer internally, I would be protected. I am certain that if I were to say anything in evidence that revealed my identity I would be subjected to victimisation, most likely including disciplinary action, demotion, or dismissal, on the basis that I have caused serious damage to the CPS' reputation. I strongly suspect that any other prosecutor considering making a formal complaint about the change in approach to RASSO prosecutions would feel the same way.

23. Moreover, against this background, even on its own terms, the Policy and Procedure does not expressly purport to protect individuals like me who have concerns regarding a matter of prosecutorial policy or training, the quality of decision-making or the effectiveness of service provision. As Mr McGill himself recognises the concerns I have raised are not of a nature which would normally attract whistleblowing protections, and I could not therefore be sure if I had sought to avail myself of this Policy and Procedure that I or any other prosecutor considering a complaint about related concerns would be considered within its scope.

V Conclusion

24. I wish to conclude this statement simply by confirming that there is no personal benefit to me in the success of EVAW's claim or in raising any of the other matters that I have raised in my evidence. The only interest that I have in with respect to this claim is as someone who works within RASSO at the CPS.

25. I have not taken the decision to provide witness evidence in support of the claim – or to ask that my evidence remains anonymous – lightly. I have devoted significant time, and thought, to the evidence that I have provided, and I believe that I have also done so at some personal risk. I have only done so because I believe that it is in the public interest for me to make this evidence available to the court. In particular, I have observed – both in the context of these proceedings, and in other respects – that there is a resistance to transparency and external scrutiny on the part of the CPS, which I believe is part and parcel of the corporate culture that I have described above, and I hope that by providing this statement to the Court I can provide the Court with further context (which I do not believe it would otherwise receive) in relation to the difficult issues at the heart of this claim.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed [redacted]

Dated 11/3/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMININSTRATIVE COURT

BETWEEN:

R
(on the application of
END VIOLENCE AGAINST WOMEN COALITION)

Claimant

- v -

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

WITNESS STATEMENT OF YY

I, YY, of the Crown Prosecution Service, state as follows:

I. Introduction

1. I am employed by the Crown Prosecution Service ("CPS"). For a number of years I have specialised in rape and serious sexual offences prosecutions.

2. I make the following statement based on my own knowledge and belief, save where I have stated otherwise, in which case I believe the information contained in the witness statement to be true.

II. Anonymity

3. I do not wish to be identified in these proceedings because I believe that, despite whistleblowing policies in the CPS, by revealing information in this statement, my identification could lead directly to victimisation at the very least, and possibly to the loss of my employment. This is particularly the case given the culture in the CPS, as I will explain below.

4. In the circumstances therefore I only feel able to make this statement on the condition that my identity is not revealed. For this reason I have sought to avoid providing any information in this statement that would lead me to be directly or indirectly identified. I have therefore in some respects been obliged to provide more general summaries of information – including information as to my role and experience – than I would otherwise have done.

III. EVAW's claim, CPS' whistleblowing policy and the culture at the CPS

5. I have been aware of EVAW's judicial review for some time. It is widely known about within the CPS because of the public attention it has received. I confirm that I have no personal connection to the claim, and that I am therefore impartial as regards the outcome other than that of course it may affect the work that I do in my professional role.

6. Specifically, I have been asked to comment in this Witness Statement on the CPS' policy, and/or culture, with regard to 'whistleblowing' by CPS staff members concerned about a matter of policy or training. I have been informed by EVAW that the Director of Legal Services, Gregor McGill, has stated in response to the judicial review claim that if any 'RASSO' staff member had concerns about the approach to the Code for Crown Prosecutors that had been endorsed at trainings or workshops organised by senior management, that would normally be a matter for *'professional discussion'*, and any disclosures they made would have been protected under the CPS' Whistleblowing Policy and Procedure.

7. I have been provided by EVAW with a copy of the CPS' Whistleblowing Policy and Procedure relied upon by Mr McGill. I am aware of the existence of this policy and procedure but I do not know whether other CPS staff members would be aware of it.

8. I do not have any confidence that the Whistleblowing Policy and Procedure would protect a CPS employee who raised a concern about a matter of RASSO policy or training, or that reading this Policy and Procedure would reassure a CPS employee who was considering raising such a concern. Further, I think it unlikely that other CPS staff members would feel reassured by the Policy and Procedure, for reasons which I have outlined below.

9. Firstly, as I read the Whistleblowing Policy and Procedure, it seems to me that it is guaranteed only to protect disclosures that relate to criminal or otherwise unlawful acts by fellow members of staff; serious wrongdoing; or safety concerns. I am not convinced that it could be successfully relied upon by CPS employees who disclose concerns about the indirect impact of policy decisions on defendants or victims of crime. While it may be arguable that policy decisions which give rise to concern are, in a sense, an issue of 'safety', in the sense that they could impact on the safety of defendants or victims affected by a crime or members of the public, I would certainly not feel confident, reading this Policy, that I would be protected from victimisation if I were to criticise decisions made by senior management with regard to policy or training.

10. Secondly, I find that the culture at the CPS at the moment positively discourages CPS staff members from challenging their superiors over changes in policy, especially related to RASSO issues, and think it unlikely that concerns of this nature raised would be formally recorded or escalated. The ethos within the CPS around 'rape' work in particular over the last few years, and in particular within the last year and a half, has been such that anyone who even starts a conversation with their superiors indicating that they share concerns about the change in approach that has been reported externally is challenged by line managers or by senior managers and their concern is shut down to ensure that everyone in the CPS re-iterates the public message that there has been 'no change in approach'.

11. I have, myself, raised concerns with a manager since 2017 relating to RASSO policy on more than one occasion,The message that I took away from the conversations I have had, when I have tried to raise any concerns, was that if I did not agree with the approach that the CPS had adopted internally I would

perhaps be better placed working within another area of crime. I was deterred from doing anything to escalate my complaint further because it appeared to me that I would be victimised (as I explain further below), and in any event that it would not be helpful to do so, because it would not be supported by senior managers.

12. The ethos as far as RASSO work within the CPS is concerned at present is such that if a staff member questions whether there has been a change of policy in this area, or raises concerns that there has been, they are seen as 'going against' their employer. The statements that are published to all RASSO staff on the intranet, or made at conferences, in relation to the drop in cases being charged all emphasise the institutional position that there has been *'no change in approach'*. As a result, I know that many prosecutors feel that there is a *'batten down the hatches'* atmosphere, where anyone who criticises the approach that is taken internally feels at risk of being ostracised, because they are seen as undermining the position that must be maintained publicly in order to ensure public confidence in the CPS. I do not know of anyone within the organisation who would not feel ostracised for speaking out about any concerns they had about the endorsed approach to the application of the Code for Crown Prosecutors at the moment, because there is so much sensitivity about this within the CPS in light of the press coverage and EVAW's judicial review claim.

13. For all the reasons I explain above, I have not felt able to give my name or any further identifying information in this statement.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed .....

Dated .....

Appendix 2: Letter from Kevin McGinty of the HMCPSI to Sarah Green of EVAW

HMCPSI
HM Crown Prosecution Service Inspectorate

[redacted]

[redacted]

26 February 2020

Dear Ms Green,

Thank you for copying to me your letter of 30th January addressed to the Attorney General together with EVAW comments in response to my report on rape. In advance of the meeting that has been arranged for 17th March, I thought it might assist to set out my response to the matters you raised.

May I begin by saying I regret that you and others are disappointed with the contents of the report. I note your concerns about the impact it may have on victims of these very traumatic offences, which I am sure we all hope will be misplaced. My inspectors set out with quite another aim in mind, and worked hard to deliver a high quality report. We were aware from the outset that the time and scope set by the Attorney General would not enable us to carry out as broad-ranging an inspection as we would have wished to undertake. Those restrictions, which underpin a number of my comments beneath, also led to our recommendation for further joint work. We have already begun to discuss what that joint work might look like, and to consider how best to engage stakeholders, and I hope you will offer us your full support in that process.

Turning to your letter, I adopt the headings used in the document you enclosed.

Entire matter of "Admin Finalised" cases in no way adequately examined

You are concerned that our examination of admin finalised cases was incomplete. You expressed misgivings about us looking at the police files in only one force and suggested closer investigation was needed as to the reasons why decisions were

taken to admin finalise and/or take no further action. I agree. We recognised in the report (para 2.7) that examining 80 cases from one police force "was not statistically significant or geographically representative" but that we were trying to "provide some extra details about what happened to some admin finalised cases on the policing side." We had to expedite the inspection to ensure that the report could be published in time to inform the Government review, so we were unable to explore matters arising as we went on, or to cover ground that we felt needed further work, not just in relation to admin finalised cases. It is for these reasons that we recommend further inspection work jointly with HMICFRS.

In the meantime, we have recommended that the CPS and police need to work more closely together (para 4.24). The recommendation reads: "Crown Prosecution Service Headquarters should work with the police to develop a more effective system for monitoring rape and serious sexual offences cases that have been returned to the police for any reason pre-charge. The system should involve structured communication between Areas and their local police forces so that the Area is made aware of likely timescales for the file to return to them, and when cases have been concluded with a no further action decision by the police. The national process should incorporate clear timelines and escalations, with monitoring of compliance at a senior level monitor any case that has been returned by the CPS to the police, and to communicate better."

You say we did not offer an explanation of how cases come to receive the admin finalised designation. I do not agree. We discussed what they are and what we found in some detail (paragraphs 1.15 to 1.20 and 4.11 to 4.24). In the text, and particularly in table 9 and paragraph 4.21, we set out most of the circumstances in which cases in our sample came to be admin finalised. I therefore do not agree with the assertion that we did not offer the reader a clear explanation of how cases come to be categorised as admin finalised. We do agree that there is much more work to do on admin finalised cases, and we recommended accordingly, as discussed above.

You cite the CPS VAWG report definition of admin finalised and comment on its inaccuracy. We did not use the CPS definition in the report; it is a matter for the CPS to address.

Training courses and chronology of events seriously inaccurate

It is suggested that we were inaccurate in what we said about the roadshows conducted by the Director of Legal Services (DLS) and the DPP's Principal Legal Adviser (PLA) were in 2017. What we said was that we published our report in 2016, and made a recommendation that all RASSO lawyers should "undergo refresher training, including the role of the merits based approach in the context of the Code for Crown Prosecutors." We went on to say: "Later that year and in 2017, the Director of Legal Services and the DPP's legal advisor visited all 14 Areas to deliver that refresher." The events by the DLS and PLA were undertaken from November 2016 to July 2017, so the report is accurate to that extent. However, I accept there was training in 2016 for new prosecutors and refresher training for existing RASSO lawyers, which we have conflated with the DLS and PLA events undertaken between November 2016 and July 2017. If we misled anyone in doing so, I apologise. We certainly did not intend to undermine the factual narrative which EVAW has relied on. Indeed, the inspection team was not privy to any of the case EVAW have put forward in support of its judicial review proceedings against CPS, so cannot have had that intention.

Cake and eat it: key indicator of risk aversion posited as evidence of better case building (without evidence)

You expressed concerns about our use of a "blunt measure" and our failure to explore a striking increase in the conviction rate after contest. We suggested two "relatively

blunt" measures of risk averseness, of which conviction rates was one. The word "blunt" shows that we recognise they have limitations. One of the things that would make a conviction more likely is making a weak case stronger, but conviction rates (and discontinuance rates) can be influenced by many other factors, for example, relating to the police, CPS, witnesses, the court or defence, or even societal factors influencing jury decisions. We were asked to review changes in CPS charging outcomes, so we did not examine cases beyond the point of charge, or look at the factors that influenced convictions in individual cases. It would not have been possible to review a meaningful number of cases from end to end within the time constraints imposed on us. We suggested several possible indicators of or reasons for attrition and recommended further work.

Methodology

You noted that we did not speak to a rape complainant as part of this inspection. I accept entirely that there was no external stakeholder involvement. We were tasked to address a limited part of the process within a tight timescale. We have recommended further work and would certainly want to engage complainants and/or victims' groups as part of that work, as we have done in the past.

You were also concerned that the surveys of managers and lawyers in RASSO teams did not ask about the key messages from CPS headquarters. We conducted interviews and focus groups with CPS staff, during which we asked a number of questions about what prosecutors perceived about training, the roadshows, and messages from managers. This gave us greater opportunity to probe and capture the range of views on what is a much more nuanced issue than could be encapsulated effectively with a survey question. I would like to add that a good proportion of those interviewed in RASSO units were not in post when the training and roadshows took place because of the CPS rotation policy and recent recruitment campaigns.

You said there was no good reason for the inclusion of child abuse cases in the admin finalised file sample when the focus was on rape-only cases. In the admin finalised file sample, there were 52 child abuse allegations, and also 55 allegations that were domestic abuse. Sixteen of the cases were both. In the charged cases, the figures were 94, 57 and 16. There does not seem to be a concern on your part to the inclusion of domestic abuse cases. We were asked to inspect the CPS charging in relation to priority 3: "Changes in CPS charging outcomes, particularly the decline in charge rate for rape-only flagged cases". I note that particularly does not mean exclusively. Excluding all allegations with other flags, such as child abuse or domestic abuse, when these are commonplace and often harder to prove, would have weakened the inspection. It would also have led to a larger number of older cases having to be selected, which would have given us a less up-to-date picture.

Misrepresentation of data including charging rates

You are concerned that the report "suggests/proposes" adding the admin finalised cases to the number that are charged. We referred (para 1.16) to the percentage of cases in our police sample of admin finalised cases which were still active. There is the potential therefore that some or all of these cases may result in a charge. At para 1.17 we showed the potential impact on the proportion of cases charged if that ultimately proved to be so. This was not a suggestion or proposal that this should automatically be done, but was to give an understanding that ultimately the charge rate may be different once a decision has been made whether to charge or not.

You also criticised us for saying that there has been a decrease in the number of no further action decisions (NFAs) between 2017 and 2019, when the CPS VAWG report showed an increase between 2018 and 2019. We are unclear about the reference to

the CPS VAWG report as all the figures quoted appear to come from our report. In fact, both are accurate, depending on the time frame used. No further action decisions have decreased between the year to March 2017 and the year to March 2019 by 12.5%. The same data for 2018 to 2019 shows an increase of 1.4%, but we routinely do not use just one year comparisons because they can present an incomplete or misleading picture when compared to longer trends. I am happy to acknowledge that we erred in saying that the change from 2018 to 2019 was a decrease, and we should have said increase. I also accept that the actual figure is 1.35% which should have been rounded up to 1.4%, not as we stated 1.3%. I apologise for any confusion caused, and will amend the report on the website.

'Rape is just so difficult' and a lack of professional curiosity

You said: "The HMCPSI report contains numerous thin remarks about rape being very difficult to prosecute and frequently having no witnesses." The report does not say "rape is just so difficult" nor do I recognise in the report anything that would justify such a loaded phrase. The report describes rape cases as difficult three times in the summary of the report, and a further four times across the body of the report (which runs to 89 pages excluding annexes). It also explains that rape cases often present evidential difficulties that rarely occur with such frequency in other types of offending, and talks about the impact on complainants being different. None of this is wrong, and it bears repeating for readers who have less knowledge of sexual offences or the criminal justice system, but are interested to learn.

You are concerned that the findings do not reflect what I was asked to inspect, and the heading of this section suggests you think this is at least in part due to lack of professional curiosity. I have already set out the limits within which and what I was asked to inspect; the report is in accordance with those. It will not surprise you to read that, given the constraints, I do not think criticisms of the team as lacking professional curiosity are warranted.

To conclude, I hope that I have allayed some of your concerns, and that when we meet in March we can find a constructive way to take forward the work that undoubtedly needs to be done.

Yours sincerely,

Kevin McGinty CBE
HM Chief Inspector

Appendix 3: Letter from Kevin McGinty of the HMCPSI to Vera Baird QC

HMCPSI
HM Crown Prosecution Service Inspectorate

[redacted]

[redacted]

26 February 2020

Dear Dame Vera,

As you know, I have had sight of your letter of 30 January 2020 to the Attorney General. In advance of the meeting arranged for 17 March, I thought it might assist to set out my response to the matters you raised.

May I begin by saying I regret that you and others are disappointed with the contents of the report? I recognise your fears for the impact it will have on victims of these very traumatic offences, which I am sure we all hope will be misplaced. My inspectors set out with quite another aim in mind, and worked hard to deliver a high quality report. We were aware from the outset that the time and scope set by the Criminal Justice Board and requested by the Attorney General would not enable us to carry out as broad-ranging an inspection as we would have wished to undertake. Those restrictions, which underpin a number of my comments beneath, also led to our recommendation for further joint work. We have already begun to discuss what that joint work might look like, and to consider how best to engage stakeholders, and I hope you will offer us your full support in that process.

Turning to your letter, I adopt the headings you used.

Independence of HMCPSI

You raised concerns about our ability to provide an objective insight into the question of whether the CPS was risk averse. You comment on us "focusing exclusively on conviction rates" and what you saw as HMCPSI driving that target from 2016 to 2019, although you acknowledged that elsewhere I had said: "Conviction rate is not, in my

Problems with the analysis in the report: factual mistakes and failures to consider key questions

Your comments fall broadly into two sections: the training on the merits-based approach, and our survey of lawyers and managers not asking about the impact of either the roadshows conducted by the CPS or their levels of ambition.

It is suggested that we made a factual error in saying that the roadshows conducted by the Director of Legal Services and the DPP's Principal Legal Adviser were in 2017. What we said was that we published our report in 2016, and made a recommendation that all RASSO lawyers should "undergo refresher training, including the role of the merits based approach in the context of the Code for Crown Prosecutors." We went on to say: "Later that year and in 2017, the Director of Legal Services and the DPP's legal advisor visited all 14 Areas to deliver that refresher." The refresher training was undertaken from November 2016 to July 2017, so the report is accurate.

You were also concerned that the surveys of managers and lawyers in RASSO teams did not ask about the roadshows or levels of ambition. We conducted interviews and focus groups with CPS staff, during which we asked a number of questions about what prosecutors perceived about training, the roadshows, and messages from managers. This gave us greater opportunity to probe and capture the range of views on what is a much more nuanced issue than could be captured effectively with a survey question. I would like to add that a good proportion of those interviewed in RASSO units were not in post when the roadshows took place because of the CPS rotation policy and recent recruitment campaigns. The roadshows took place well over 2 years ago and as such natural staff turnover means that not all lawyers in the unit will have been at the Director of Legal Services and Principal Legal Advisor's events.

No answers given to the fundamental issues asked to address

You were concerned that we had not answered why the CPS charge rate has dropped and why that is so if the CPS were not risk averse. You accept, though, that we did suggest possible indicators. Our file examination did not support the contention that there was a risk averse approach to charging. We had to report this, however unpalatable or unhelpful it might be. We were asked to review changes in CPS charging outcomes, so we did not examine cases beyond the point of charge, or look at the factors that influenced convictions in individual cases. It would not have been possible to review a meaningful number of cases from end to end within the time constraints imposed on us, which is why we recommended further work.

You commented: "When looking at the whole 200 AF cases which HMCPSI inspected (which include the 80) only 18 % were still active (para 1.16)." This is a misreading of the data, which we reported as showing that 18% of the 200 admin finalised cases had already been reactivated on the CPS system by the time we came to examine them. Other cases would still have been under investigation, and may have been reactivated since we examined them or will be in the future. We used the police data for the admin finalised files that HMICFRS colleagues had examined because it gave us a clearer picture as to what was happening on the police side for cases returned to them by the CPS. It was very difficult to tell from the CPS case management system what stage the investigation was at and not possible to identify cases where the police had decided to take no further action and not notify the CPS. This was one of the criticisms that led to our recommendation about communications between the police and CPS (para 4.24 of the report).

You challenged our finding that the decisions to take no further action have decreased, based on EVAW conclusions on publicly available data showing an increase. Both are accurate, depending on the time frame used. No further action decisions have

view, a very helpful measure when looking at whether the CPS is doing a good job or not".

I note this was not raised as a concern in advance of us being asked to carry out the 2019 rape inspection, and as you would expect, I do not agree that we lack objectivity. My letters to you of 5 and 19 November 2019 set out my response to your concerns about the composition, skills and experience of the team, and the steps we take to ensure consistency and sound judgements. As I said then, there are cogent operational reasons for the model of both seconded and permanent staff, and it is not uncommon in inspectorates. The member of the team who was seconded from the CPS compliance and assurance team was not head of the review. The review was led by the Head of Inspection and a senior inspector who last worked in the CPS twenty years ago.

Past HMCPSI reports have been critical of the bodies we inspect where we determine that there are aspects of work falling below the standard we and the public expect, as we did in this report, and we also highlight good practice or strengths when we find them. We report our evidence-based judgements fairly and without favour.

On conviction rates, our comments have appeared in reports over a number of years, although they have always been only a small part of the information we use to reach conclusions and report on the CPS. We have routinely used many of the same performance measures as are used by the CPS, courts, and police, including targets set by government (such as offences brought to justice) to assess CPS work and partnership effectiveness. Low conviction rates in one Area and high rates in another would be a matter of concern, rightly, to the CPS and public in those Areas. It would be wrong of us not to recognise and comment on the standards the CPS sets for itself, or which are set for it by others, whilst also applying our own expectations of what good performance looks like. In fact, rape conviction rates are frequently used by the media and other commentators to assess CPS performance, and thereby to inform the public.

External stakeholders

I accept entirely your remark about there being no external stakeholder involvement. You have compared the 2016 and 2019 reports but they were very different inspections for different purposes. The 2016 inspection looked at the operation of all the CPS units dealing with rape and serious sexual offences (RASSO) so had a wider remit, and a very different timeline. It was scoped in August 2014 and the report was published some 19 months later, compared to the 2019 inspection, which was scoped, undertaken and published in about 20 weeks, and dealt primarily with the standard of casework decisions.

I am firmly of the opinion that involving stakeholders in the scoping and development of inspection can be extremely helpful. In the case of the rape inspection if we had had more time I would have taken the opportunity to have involved stakeholders and certainly would have engaged before we published the report. The timescales imposed for the delivery of this inspection precluded any meaningful level of engagement with stakeholders.

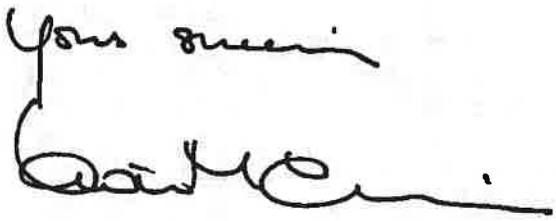
As I said at the outset, we were tasked to address a limited part of the process within a tight timescale. We have recommended further work and would certainly want to engage complainants, victims' groups, and/or other stakeholders as part of that work, as we have done in the past.

I have addressed above your remarks under this heading about the composition of the team.

decreased between the year to March 2017 and the year to March 2019 by 12.5%. The same data for 2018 to 2019 shows a small increase of 1.4%, but we routinely do not use just one year comparisons because they can present an incomplete or misleading picture when compared to longer trends. I am happy to acknowledge that we erred in saying that the change from 2018 to 2019 was a decrease, and we should have said increase. We also accept that the actual figure is 1.35% which should have been rounded up to 1.4%, not as we stated 1.3%. We apologise for any confusion caused, and will amend the report on the website.

Finally, you are concerned about the difference between the description we give and the CPS definition of admin finalised. Our report sets out clearly what admin finalised means, and most of the circumstances in which cases in our sample came to be admin finalised. The definition to be found in the CPS VAWG report definition was not used in the report; it is a matter for the CPS to address.

To conclude, I hope that I have allayed some of your concerns, and that when we meet in March we can find a constructive way to take forward the work that undoubtedly needs to be done.



Kevin McGinty CBE
HM Chief Inspector