



**CPS**

# The Code

for Crown Prosecutors

January 2013

## Table of Contents

Introduction .....	2
General Principles .....	3
The Decision Whether to Prosecute.....	4
The Full Code Test.....	6
The Evidential Stage.....	6
The Public Interest Stage.....	7
The Threshold Test.....	11
When the Threshold Test may be applied .....	11
The first part of the Threshold Test – is there reasonable suspicion?.....	11
The second part of the Threshold Test – can further evidence be gathered to provide a realistic prospect of conviction? .....	12
Reviewing the Threshold Test .....	12
Selection of Charges .....	13
Out-of-Court Disposals.....	14
Mode of Trial .....	15
Venue for trial in cases involving youths.....	15
Accepting Guilty Pleas .....	16
Reconsidering a Prosecution Decision.....	17

## Introduction

- 1.1 The Code for Crown Prosecutors (the Code) is issued by the Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985. This is the seventh edition of the Code and replaces all earlier versions.
- 1.2 The DPP is the head of the Crown Prosecution Service (CPS), which is the principal public prosecution service for England and Wales. The DPP operates independently, under the superintendence of the Attorney General who is accountable to Parliament for the work of the CPS.
- 1.3 The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. The Code is issued primarily for prosecutors in the CPS, but other prosecutors follow the Code either through convention or because they are required to do so by law.
- 1.4 In this Code, the term "suspect" is used to describe a person who is not yet the subject of formal criminal proceedings; the term "defendant" is used to describe a person who has been charged or summonsed; and the term "offender" is used to describe a person who has admitted his or her guilt to a police officer or other investigator or prosecutor, or who has been found guilty in a court of law.

## General Principles

- 2.1 The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care.
- 2.2 It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to secure justice for victims, witnesses, defendants and the public. Prosecutors must ensure that the law is properly applied; that relevant evidence is put before the court; and that obligations of disclosure are complied with.
- 2.3 Although each case must be considered on its own facts and on its own merits, there are general principles that apply in every case.
- 2.4 Prosecutors must be fair, independent and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness influence their decisions. Neither must prosecutors be affected by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.5 The CPS is a public authority for the purposes of current, relevant equality legislation. Prosecutors are bound by the duties set out in this legislation.
- 2.6 Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case. Prosecutors must also comply with any guidelines issued by the Attorney General; with the Criminal Procedure Rules currently in force; and have regard to the obligations arising from international conventions. They must follow the policies and guidance of the CPS issued on behalf of the DPP and available for the public to view on the CPS website at [www.cps.gov.uk](http://www.cps.gov.uk)

## The Decision Whether to Prosecute

- 3.1 In more serious or complex cases, prosecutors decide whether a person should be charged with a criminal offence and, if so, what that offence should be. They make their decisions in accordance with this Code and the DPP's Guidance on Charging. The police apply the same principles in deciding whether to start criminal proceedings against a person in those cases for which they are responsible.
- 3.2 The police and other investigators are responsible for conducting enquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation. Prosecutors often advise the police and other investigators about possible lines of inquiry and evidential requirements, and assist with pre-charge procedures. In large scale investigations the prosecutor may be asked to advise on the overall investigation strategy, including decisions to refine or narrow the scope of the criminal conduct and the number of suspects under investigation. This is to assist the police and other investigators to complete the investigation within a reasonable period of time and to build the most effective prosecution case. However, prosecutors cannot direct the police or other investigators.
- 3.3 Prosecutors should identify and, where possible, seek to rectify evidential weaknesses, but, subject to the Threshold Test (see section 5), they should swiftly stop cases which do not meet the evidential stage of the Full Code Test (see section 4) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution (see section 4). Although prosecutors primarily consider the evidence and information supplied by the police and other investigators, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the police or other investigators, prior to charge, to help inform the prosecutor's decision.
- 3.4 Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test (see section 4). The exception is when the Threshold Test (see section 5) may be applied where it is proposed to apply to the court to keep the suspect in custody after charge, and the evidence required to apply the Full Code Test is not yet available.
- 3.5 Prosecutors should not start or continue a prosecution which would be regarded by the courts as oppressive or unfair and an abuse of the court's process.
- 3.6 Prosecutors review every case they receive from the police or other investigators. Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops, including what becomes known of the defence case. Wherever possible, they should talk to the investigator when thinking about changing the charges or

stopping the case. Prosecutors and investigators work closely together, but the final responsibility for the decision whether or not a case should go ahead rests with the CPS.

- 3.7 Parliament has decided that a limited number of offences should only be taken to court with the agreement of the DPP. These are called consent cases. In such cases the DPP, or prosecutors acting on his or her behalf, apply the Code in deciding whether to give consent to a prosecution. There are also certain offences that should only be taken to court with the consent of the Attorney General. Prosecutors must follow current guidance when referring any such cases to the Attorney General. Additionally, the Attorney General will be kept informed of certain cases as part of his or her superintendence of the CPS and accountability to Parliament for its actions.

## The Full Code Test

- 4.1 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.
- 4.2 In most cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.
- 4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.

## The Evidential Stage

- 4.4 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 4.5 The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.
- 4.6 When deciding whether there is sufficient evidence to prosecute, prosecutors should ask themselves the following:

Can the evidence

be used in court?

Prosecutors should consider whether there is any question over the admissibility of certain evidence. In doing so, prosecutors should assess:

- a) the likelihood of that evidence being held as inadmissible by the court;  
and
- b) the importance of that evidence in relation to the evidence as a whole.

Is the evidence reliable?

Prosecutors should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.

Is the evidence credible?

Prosecutors should consider whether there are any reasons to doubt the credibility of the evidence.

### The Public Interest Stage

- 4.7 In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.8 It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour. In some cases the prosecutor may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal rather than bringing a prosecution.
- 4.9 When deciding the public interest, prosecutors should consider each of the questions set out below in paragraphs 4.12 a) to g) so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, should enable prosecutors to form an overall assessment of the public interest.
- 4.10 The explanatory text below each question in paragraphs 4.12 a) to g) provides guidance to prosecutors when addressing each particular question and determining whether it identifies public interest factors for or against prosecution. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.
- 4.11 It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and those factors put to the court for consideration when sentence is passed.



4.12 Prosecutors should consider each of the following questions:

a) How serious is the offence committed?

The more serious the offence, the more likely it is that a prosecution is required.

When deciding the level of seriousness of the offence committed, prosecutors should include amongst the factors for consideration the suspect's culpability and the harm to the victim by asking themselves the questions at b) and c).

b) What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by the suspect's level of involvement; the extent to which the offending was premeditated and/or planned; whether they have previous criminal convictions and/or out-of-court disposals and any offending whilst on bail or whilst subject to a court order; whether the offending was or is likely to be continued, repeated or escalated; and the suspect's age or maturity (see paragraph d) below for suspects under 18).

Prosecutors should also have regard when considering culpability as to whether the suspect is, or was at the time of the offence, suffering from any significant mental or physical ill health as in some circumstances this may mean that it is less likely that a prosecution is required. However, prosecutors will also need to consider how serious the offence was, whether it is likely to be repeated and the need to safeguard the public or those providing care to such persons.

c) What are the circumstances of and the harm caused to the victim?

The circumstances of the victim are highly relevant. The greater the vulnerability of the victim, the more likely it is that a prosecution is required. This includes where a position of trust or authority exists between the suspect and victim.

A prosecution is also more likely if the offence has been committed against a victim who was at the time a person serving the public.

Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required.

In deciding whether a prosecution is required in the public interest, prosecutors should take into account the views expressed by the victim about the impact that the offence has had. In appropriate cases, this may also include the views of the victim's family.

Prosecutors also need to consider if a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence. If there is evidence that prosecution is likely to have an adverse impact on the victim's health it may make a prosecution less likely, taking into account the victim's views.

However, the CPS does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.

d) Was the suspect under the age of 18 at the time of the offence?

The criminal justice system treats children and young people differently from adults and significant weight must be attached to the age of the suspect if they are a child or young person under 18. The best interests and welfare of the child or young person must be considered including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending. Prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child.

As a starting point, the younger the suspect, the less likely it is that a prosecution is required.

However, there may be circumstances which mean that notwithstanding the fact that the suspect is under 18, a prosecution is in the public interest. These include where the offence committed is serious, where the suspect's past record suggests that there are no suitable alternatives to prosecution, or where the absence of an admission means that out-of-court disposals which might have addressed the offending behaviour are not available.

e) What is the impact on the community?

The greater the impact of the offending on the community, the more likely it is that a prosecution is required. In considering this question, prosecutors should have regard to how community is an inclusive term and is not restricted to communities defined by location.

f) Is prosecution a proportionate response?

Prosecutors should also consider whether prosecution is proportionate to the likely outcome, and in so doing the following may be relevant to the case under consideration:

- The cost to the CPS and the wider criminal justice system, especially where it could be regarded as excessive when weighed against any likely penalty. (Prosecutors should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs 4.12 a) to g), but cost is a relevant factor when making an overall assessment of the public interest.)

- Cases should be capable of being prosecuted in a way that is consistent with principles of effective case management. For example, in a case involving multiple suspects, prosecution might be reserved for the main participants in order to avoid excessively long and complex proceedings.

g) Do sources of information require protecting?

In cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

## The Threshold Test

- 5.1 The Threshold Test may only be applied where the suspect presents a substantial bail risk and not all the evidence is available at the time when he or she must be released from custody unless charged.

### When the Threshold Test may be applied

- 5.2 Prosecutors must determine whether the following conditions are met:
- a) there is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and
  - c) there are reasonable grounds for believing that further evidence will become available within a reasonable period; and
  - d) the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
  - e) there are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so.
- 5.3 Where any of the above conditions is not met, the Threshold Test cannot be applied and the suspect cannot be charged. The custody officer must determine whether the person may continue to be detained or be released on bail, with or without conditions.
- 5.4 There are two parts to the evidential consideration of the Threshold Test.

### The first part of the Threshold Test – is there reasonable suspicion?

- 5.5 Prosecutors must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.
- 5.6 In determining this, prosecutors must consider the evidence then available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:
- a) it is relevant; and
  - b) it is capable of being put into an admissible format for presentation in court; and
  - c) it would be used in the case.
- 5.7 If satisfied on this the prosecutor should then consider the second part of the Threshold Test.

The second part of the Threshold Test – can further evidence be gathered to provide a realistic prospect of conviction?

- 5.8 Prosecutors must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.
- 5.9 The further evidence must be identifiable and not merely speculative.
- 5.10 In reaching this decision prosecutors must consider:
  - a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
  - b) the charges that all the evidence will support;
  - c) the reasons why the evidence is not already available;
  - d) the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.
- 5.11 If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

### Reviewing the Threshold Test

- 5.12 A decision to charge under the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as is reasonably practicable and in any event before the expiry of any applicable custody time limit.

## Selection of Charges

- 6.1 Prosecutors should select charges which:
- a) reflect the seriousness and extent of the offending supported by the evidence;
  - b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
  - c) enable the case to be presented in a clear and simple way.
- 6.2 This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.
- 6.3 Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
- 6.4 Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.
- 6.5 Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

## Out-of-Court Disposals

- 7.1 An out-of-court disposal may take the place of a prosecution in court if it is an appropriate response to the offender and/or the seriousness and consequences of the offending.
- 7.2 Prosecutors must follow any relevant guidance when asked to advise on or authorise a simple caution, a conditional caution, any appropriate regulatory proceedings, a punitive or civil penalty, or other disposal. They should ensure that the appropriate evidential standard for the specific out-of-court disposal is met including, where required, a clear admission of guilt, and that the public interest would be properly served by such a disposal.

## Mode of Trial

- 8.1 Prosecutors must have regard to the current guidelines on sentencing and allocation when making submissions to the magistrates' court about where the defendant should be tried.
- 8.2 Speed must never be the only reason for asking for a case to stay in the magistrates' court. But prosecutors should consider the effect of any likely delay if a case is sent to the Crown Court, and the possible effect on any victim or witness if the case is delayed.

## Venue for trial in cases involving youths

- 8.3 Prosecutors must bear in mind that youths should be tried in the youth court wherever possible. It is the court which is best designed to meet their specific needs. A trial of a youth in the Crown Court should be reserved for the most serious cases or where the interests of justice require a youth to be jointly tried with an adult.



## Accepting Guilty Pleas

- 9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime.
- 9.2 Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Prosecutors must never accept a guilty plea just because it is convenient.
- 9.3 In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.
- 9.4 It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.
- 9.5 Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, prosecutors will consider whether a prosecution is required for that offence. Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review, in consultation with the police or other investigators wherever possible.
- 9.6 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, prosecutors must also bear in mind the fact that ancillary orders can be made with some offences but not with others.

## Reconsidering a Prosecution Decision

10.1 People should be able to rely on decisions taken by the CPS. Normally, if the CPS tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. But occasionally there are reasons why the CPS will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.

10.2 These reasons include:

- a) cases where a new look at the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
- b) cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again;
- c) cases which are stopped because of a lack of evidence but where more significant evidence is discovered later; and
- d) cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.

This document is available electronically from the CPS website at [www.cps.gov.uk](http://www.cps.gov.uk)

Further copies of The Code for Crown Prosecutors and information about alternative languages and formats are available from the CPS.

Please send an email to [publicity.branch@cps.gsi.gov.uk](mailto:publicity.branch@cps.gsi.gov.uk) or by writing to:

CPS Communication Division  
Rose Court  
2 Southwark Bridge  
London, SE1 9HS

The Code for Crown Prosecutors  
7th Edition, January 2013  
© Crown Copyright





# The Code

for Crown Prosecutors

February 2010

This booklet is available in:

এই বইটিকে বাংলা ভাষায় [redacted] (Bengali)

ਇਸ ਬੁਕਲੈਟ ਨੂੰ ਪੰਜਾਬੀ ਵਿਚ [redacted] (Punjabi)

આ બોધક પુસ્તકને ગુજરાતી [redacted] (Gujarati)

Mae'r daflen hon ar gael yn Gymraeg [redacted] (Welsh)

இந்த சிறப்புக் குறிப்பு தமிழில் [redacted] (Tamil)

此手册有 [redacted] (Traditional Chinese)

Mali umvishidahan wazara lagu helaa af Soomaali [redacted] (Somali)

Ce dleplari est disponible en français [redacted] (French)

Udokka niniejsza dostepna jest w jezyku polskim [redacted] (Polish)

(Arabic) [redacted]

(Urdu) [redacted]

## Introduction

- 1.1 The Crown Prosecution Service (CPS) is the principal public prosecution service for England and Wales. In January 2010, it merged with the Revenue and Customs Prosecutions Office (RCPO). The service is headed by the Director of Public Prosecutions (DPP) who is also the Director of Revenue and Customs Prosecutions. The DPP exercises his functions independently, subject to the superintendence of the Attorney General who is accountable to Parliament for the work of the prosecution service.
- 1.2 The DPP is responsible for issuing the Code for Crown Prosecutors (the Code) under section 10 of the Prosecution of Offences Act 1985. The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions. This is the sixth edition of the Code and replaces all earlier versions.
- 1.3 In this Code, the term “prosecutors” is used to describe members of the prosecution service who are designated as Crown Prosecutors; prosecutors who are members of the RCPO; Associate Prosecutors who are designated under section 7A of the Prosecution of Offences Act 1985 and who exercise their powers in accordance with the instructions issued by the DPP; and other members of the RCPO who are designated by the DPP in his capacity as the Director of the Revenue and Customs Prosecutions under section 39 of the Commissioners for Revenue and Customs Act 2005.
- 1.4 In this Code, the expression “police or other investigators” is used to describe members of all those investigative agencies, including the Serious Organised Crime Agency and the UK Border Agency, who prepare and present cases to the prosecution service.

- 1.5 Although the prosecution service works closely with the police and other investigators, it is independent of them. The independence of prosecutors is of fundamental constitutional importance.
- 1.6 The prosecution service co-operates with the investigating and prosecuting agencies of other jurisdictions to facilitate enquiries and prosecutions both in England and Wales and abroad.
- 1.7 In accordance with section 36(2) of the Commissioners for Revenue and Customs Act 2005, prosecutors from the RCPO who are acting in that capacity must have regard to the Code for Crown Prosecutors issued by the DPP.
- 1.8 In this Code, the term "suspect" is used to describe a person who is not yet the subject of formal criminal proceedings; the term "defendant" is used to describe a person who has been charged or summonsed; and the term "offender" is used to describe a person who has admitted his or her guilt to a police officer or other investigator or prosecutor, or who has been found guilty in a court of law.
- 1.9 The Code is one of two key published and publicly available documents that explain the purpose and work of the prosecution service. The second is the Core Quality Standards booklet. Only the Code is issued by law.
- 1.10 Together, they let the public know what prosecutors do; how they take their decisions; and the level of service that the prosecution service is committed to providing in every key aspect of its work.
- 1.11 The Code and the Core Quality Standards booklet are available from the contact points listed on the back cover of this booklet.



## General Principles

- 2.1 The decision to prosecute or to offer an individual an out-of-court disposal is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Casework decisions taken fairly, impartially and with integrity help to deliver justice for victims, witnesses, defendants and the public.
- 2.2 It is the duty of prosecutors to review, to advise on and to prosecute cases or to offer an appropriate out-of-court disposal to the offender. Prosecutors must ensure that the law is properly applied; that all relevant evidence is put before the court; and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.
- 2.3 Although each case must be considered on its own facts and on its own merits, there are general principles that apply to the way in which prosecutors must approach every case.
- 2.4 Prosecutors must be fair, independent and objective. They must not let any personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation, or gender identity of the suspect, victim or any witness influence their decisions. Neither must prosecutors be affected by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 2.5 The prosecution service is a public authority for the purposes of current, relevant equality legislation. Prosecutors are bound by the duties set out in this legislation.

- 2.6 The prosecution service is also a public authority for the purposes of the Human Rights Act 1998. Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act, at each stage of a case. Prosecutors must also comply with any guidelines issued by the Attorney General and with the policies of the prosecution service issued on behalf of the DPP. They must also comply with the Criminal Procedure Rules currently in force.

## The Decision Whether to Prosecute

- 3.1 In more serious or complex cases, prosecutors decide whether a person should be charged with a criminal offence, and, if so, what that offence should be. They make their decisions in accordance with this Code and the DPP's Guidance on Charging. The police apply the same principles in deciding whether to charge or summons a person in those cases for which they are responsible.
- 3.2 The police and other investigators are responsible for conducting enquiries into an allegation that a crime may have been committed. Every case that prosecutors receive from the police or other investigators is reviewed. Prosecutors must ensure that they have all the information they need to make an informed decision about how best to deal with the case. This will often involve prosecutors providing guidance and advice to the police and other investigators about lines of inquiry, evidential requirements, and assistance in any pre-charge procedures throughout the investigative and prosecuting process. However, prosecutors cannot direct the police or other investigators.
- 3.3 Prosecutors should identify and, where possible, seek to rectify evidential weaknesses, but, subject to the Threshold Test (see section 5), they should swiftly stop cases which do not meet the evidential stage of the Full Code Test (see section 4) and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution (see section 4). Although the prosecutor primarily considers the evidence and information supplied by the police and other investigators, the suspect or those acting on his or her behalf may also submit evidence or information to the prosecutor via the police or other investigators, prior to charge, to help to inform the prosecutor's decision.

- 3.4 Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test (see section 4). The exception is when the Threshold Test (see section 5) may be applied where it is proposed to apply to the court to keep the suspect in custody after charge, and the evidence required to apply the Full Code Test is not yet available.
- 3.5 Prosecutors must make sure that they do not allow a prosecution to start or continue where to do so would be seen by the courts as oppressive or unfair so as to amount to an abuse of the process of the court.
- 3.6 Review is a continuing process and prosecutors must take account of any change in circumstances that occurs as the case develops. Wherever possible, they should talk to the investigator first if they are thinking about changing the charges or stopping the case. Prosecutors and investigators work closely together, but the final responsibility for the decision whether or not a case should go ahead rests with the prosecution service.
- 3.7 Parliament has decided that a limited number of very serious or sensitive offences should only be taken to court with the agreement of the DPP. These are called "consent" cases. In such cases, the DPP or prosecutors acting on his behalf apply the Code in deciding whether to give consent to a prosecution.

## The Full Code Test

- 4.1 The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.
- 4.2 In the vast majority of cases, prosecutors should only decide whether to prosecute after the investigation has been completed and after all the available evidence has been reviewed. However, there will be cases where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these rare instances, prosecutors may decide that the case should not proceed further.
- 4.3 Prosecutors should only take such a decision when they are satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest. If prosecutors do not have sufficient information to take such a decision, the investigation should proceed and a decision taken later in accordance with the Full Code Test set out in this section.
- 4.4 Prosecutors must follow any guidance issued by the DPP to ensure that decisions in these cases are appropriate and correct.

## The Evidential Stage

- 4.5 Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. They must consider what the defence case may be, and how it is likely to affect the prospects of conviction. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- 4.6 A realistic prospect of conviction is an objective test based solely upon the prosecutor's assessment of the evidence and any information that he or she has about the defence that might be

put forward by the suspect. It means that an objective, impartial and reasonable jury or bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a different test from the one that the criminal courts themselves must apply. A court may only convict if it is sure that the defendant is guilty.

- 4.7 When deciding whether there is sufficient evidence to prosecute, prosecutors must consider whether the evidence can be used and whether it is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. In particular, prosecutors will need to consider the following issues.

**Can the evidence be used in court?**

- a) Is it likely that the evidence will be excluded by the court? There are legal rules that might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was obtained?
- b) Is the evidence hearsay? If so, is the court likely to allow it to be presented under any of the exceptions which permit such evidence to be given in court?
- c) Does the evidence relate to the bad character of the suspect? If so, is the court likely to allow it to be presented?

**Is the evidence reliable?**

- d) What explanation has the suspect given? Is a court likely to find it credible in the light of the evidence as a whole? Does the evidence support an innocent explanation?

- e) Is there evidence which might support or detract from the reliability of a confession? Is its reliability affected by factors such as the suspect's level of understanding?
  - f) Is the identification of the suspect likely to be questioned? Is the evidence of his or her identity strong enough? Have the appropriate identification procedures been carried out? If not, why not? Will any failure to hold the appropriate identification procedures lead to the evidence of identification being excluded?
  - g) Are there concerns over the accuracy, reliability or credibility of the evidence of any witness?
  - h) Is there further evidence which the police or other investigators should reasonably be asked to find which may support or undermine the account of the witness?
  - i) Does any witness have any motive that may affect his or her attitude to the case?
  - j) Does any witness have a relevant previous conviction or out-of-court disposal which may affect his or her credibility?
  - k) Is there any further evidence that could be obtained that would support the integrity of evidence already obtained?
- 4.8 Where it is considered that it would be helpful in assessing the reliability of a witness' evidence or in better understanding complex evidence, an appropriately trained and authorised prosecutor should conduct a pre-trial interview with the witness in accordance with the relevant Code of Practice.
- 4.9 Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

### **The Public Interest Stage**

- 4.10 In 1951, Sir Hartley Shawcross, who was then Attorney General, made the classic statement on public interest: “[i]t has never been the rule in this country – I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution”. He added that there should be a prosecution: “wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest” (House of Commons Debates, Volume 483, 29 January 1951). This approach has been endorsed by Attorneys General ever since.
- 4.11 Accordingly, where there is sufficient evidence to justify a prosecution or to offer an out-of-court disposal, prosecutors must go on to consider whether a prosecution is required in the public interest.
- 4.12 A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour, or unless the prosecutor is satisfied that the public interest may be properly served, in the first instance, by offering the offender the opportunity to have the matter dealt with by an out-of-court disposal (see section 7). The more serious the offence or the offender’s record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest.
- 4.13 Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits. Prosecutors must decide the importance of each public interest factor in the circumstances of each case and go on to make an overall assessment. It is quite possible that one factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may



be public interest factors tending against prosecution in a particular case, prosecutors should consider whether nonetheless a prosecution should go ahead and for those factors to be put to the court for consideration when sentence is passed.

- 4.14 The absence of a factor does not necessarily mean that it should be taken as a factor tending in the opposite direction. For example, just because the offence was not "carried out by a group" does not transform the "factor tending in favour of a prosecution" into a "factor tending against prosecution".
- 4.15 Some common public interest factors which should be considered when deciding on the most appropriate course of action to take are listed below. The following lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

**Some common public interest factors tending in favour of prosecution**

- 4.16 A prosecution is more likely to be required if:
- a) a conviction is likely to result in a significant sentence;
  - b) a conviction is likely to result in an order of the court in excess of that which a prosecutor is able to secure through a conditional caution;
  - c) the offence involved the use of a weapon or the threat of violence;
  - d) the offence was committed against a person serving the public (for example, a member of the emergency services; a police or prison officer; a health or social welfare professional; or a provider of public transport);

- e) the offence was premeditated;
- f) the offence was carried out by a group;
- g) the offence was committed in the presence of, or in close proximity to, a child;
- h) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics;
- i) the offence was committed in order to facilitate more serious offending;
- j) the victim of the offence was in a vulnerable situation and the suspect took advantage of this;
- k) there was an element of corruption of the victim in the way the offence was committed;
- l) there was a marked difference in the ages of the suspect and the victim and the suspect took advantage of this;
- m) there was a marked difference in the levels of understanding of the suspect and the victim and the suspect took advantage of this;
- n) the suspect was in a position of authority or trust and he or she took advantage of this;
- o) the suspect was a ringleader or an organiser of the offence;

- p) the suspect's previous convictions or the previous out-of-court disposals which he or she has received are relevant to the present offence;
- q) the suspect is alleged to have committed the offence in breach of an order of the court;
- r) a prosecution would have a significant positive impact on maintaining community confidence;
- s) there are grounds for believing that the offence is likely to be continued or repeated.

**Some common public interest factors tending against prosecution**

- 4.17 A prosecution is less likely to be required if:
- a) the court is likely to impose a nominal penalty;
  - b) the seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies (see section 7);
  - c) the suspect has been subject to any appropriate regulatory proceedings, or any punitive or relevant civil penalty which remains in place or which has been satisfactorily discharged, which adequately addresses the seriousness of the offending and any breach of trust involved;
  - d) the offence was committed as a result of a genuine mistake or misunderstanding;

- e) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- f) there has been a long delay between the offence taking place and the date of the trial, unless:
  - the offence is serious;
  - the delay has been caused wholly or in part by the suspect;
  - the offence has only recently come to light;
  - the complexity of the offence has meant that there has been a long investigation; or
  - new investigative techniques have been used to re-examine previously unsolved crimes and, as a result, a suspect has been identified.
- g) a prosecution is likely to have an adverse effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence and the views of the victim about the effect of a prosecution on his or her physical or mental health;
- h) the suspect played a minor role in the commission of the offence;
- i) the suspect has put right the loss or harm that was caused (but a suspect must not avoid prosecution or an out-of-court disposal solely because he or she pays compensation or repays the sum of money he or she unlawfully obtained);
- j) the suspect is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. Prosecutors apply Home Office guidelines about how to deal with mentally disordered offenders and must

balance a suspect's mental or physical ill health with the need to safeguard the public or those providing care services to such persons;

- k) a prosecution may require details to be made public that could harm sources of information, international relations or national security.

### **The views of victims or their families**

- 4.18 In deciding whether a prosecution is required in the public interest, prosecutors should take into account any views expressed by the victim regarding the impact that the offence has had. In appropriate cases, for example, a case of homicide or where the victim is a child or an adult who lacks capacity as defined by the Mental Capacity Act 2005, prosecutors should take into account any views expressed by the victim's family.
- 4.19 However, the prosecution service does not act for victims or their families in the same way as solicitors act for their clients, and prosecutors must form an overall view of the public interest.
- 4.20 Where prosecutors have a responsibility to explain their decision to the victim, for example, when they stop a case or substantially alter the charge in a case, they must comply with the Code of Practice for Victims of Crime and all relevant CPS Guidance. Prosecutors must follow any agreed procedures, including abiding by any time period within which such decisions should be notified to the victim.

## The Threshold Test

- 5.1 Prosecutors will apply the Full Code Test wherever possible. However, there will be cases where the suspect presents a substantial bail risk if released and not all the evidence is available at the time when he or she must be released from custody unless charged.
- 5.2 In such cases, prosecutors may apply the Threshold Test in order to make a charging decision.

### **When the Threshold Test may be applied**

- 5.3 The Threshold Test may only be applied where the prosecutor is satisfied that all the following four conditions are met:
- a) there is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and
  - b) there are reasonable grounds for believing that further evidence will become available within a reasonable period; and
  - c) the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
  - d) there are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case an application to withhold bail may properly be made.
- 5.4 Where any of the above conditions is not met, the Threshold Test cannot be applied and the suspect cannot be charged. Such cases must be referred back to the custody officer who will determine whether the person may continue to be detained or released on bail, with or without conditions.

- 5.5 There are two parts to the evidential consideration of the Threshold Test.

**The first part of the Threshold Test – is there reasonable suspicion?**

- 5.6 First, the prosecutor must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.
- 5.7 In determining whether reasonable suspicion exists, the prosecutor must consider the evidence which is currently available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:
  - a) it is relevant; and
  - b) it is capable of being put into an admissible format for presentation in court; and
  - c) it would be used in the case.
- 5.8 If this part of the Threshold Test is satisfied, the prosecutor should proceed to the second part of the Threshold Test.

**The second part of the Threshold Test – will there be a realistic prospect of conviction?**

- 5.9 Secondly, the prosecutor must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence taken together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.

- 5.10 The further evidence must be identifiable and not merely speculative.
- 5.11 In reaching a decision under this second part of the Threshold Test, the prosecutor must consider:
- a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
  - b) the charges that all the evidence will support;
  - c) the reasons why the evidence is not already available;
  - d) the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.
- 5.12 If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

### **Reviewing the Threshold Test**

- 5.13 A decision to charge under the Threshold Test must be kept under review. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to the granting of bail is justified. The Full Code Test must be applied as soon as is reasonably practicable and in any event before the expiry of any applicable custody time limit or extended custody time limit.



## Selection of Charges

- 6.1 Prosecutors should select charges which:
- a) reflect the seriousness and extent of the offending supported by the evidence;
  - b) give the court adequate powers to sentence and impose appropriate post-conviction orders; and
  - c) enable the case to be presented in a clear and simple way.
- 6.2 This means that prosecutors may not always choose or continue with the most serious charge where there is a choice.
- 6.3 Prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
- 6.4 Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.
- 6.5 Prosecutors must take account of any relevant change in circumstances as the case progresses after charge.

## Out-of-Court Disposals

- 7.1 The prosecution service is responsible for deciding whether to offer an offender a conditional caution in certain cases. In such cases, the Full Code Test must be met. Prosecutors will offer a conditional caution where it is a proportionate response to the seriousness and the consequences of the offending and where the conditions offered meet the aims of rehabilitation, reparation or punishment within the terms of the Criminal Justice Act 2003.
- 7.2 A conditional caution is not a criminal conviction but it forms part of the offender's criminal record and may be cited in court in any subsequent proceedings. It may also be taken into consideration by prosecutors if the offender re-offends. Prosecutors may offer a conditional caution where, having taken into account the views of the victim, they consider that it is in the interests of the suspect, victim or community to do so.
- 7.3 Prosecutors must follow the relevant Code of Practice and the DPP's Guidance on Conditional Cautioning when deciding whether to offer an offender a conditional caution.
- 7.4 The offer of a conditional caution which is accepted and complied with takes the place of a prosecution. If the offer of a conditional caution is refused or the suspect does not make the required admission of guilt to the person who seeks to administer the conditional caution, a prosecution must follow for the original offence. If the terms of the conditional caution are not complied with, the prosecutor will reconsider the public interest and decide whether to charge the offender. Usually, a prosecution should be brought for the original offence.
- 7.5 Only prosecutors can decide whether to authorise the offer of a simple caution to an offender for an offence that may only be heard in the Crown Court. The occasions when this will be an appropriate disposal will be exceptional.

- 7.6 In all other cases, prosecutors may direct that a simple caution be offered in accordance with CPS and Home Office Guidance, or suggest, for example, the issue of a Penalty Notice for Disorder. The issue of a Penalty Notice for Disorder is, however, a decision for the police.
- 7.7 Prosecutors must be satisfied that the Full Code Test is met and that there is a clear admission of guilt by the offender in any case in which they authorise or direct a simple caution to be offered by the police.
- 7.8 The acceptance of a simple caution or other out-of-court disposal which is complied with takes the place of a prosecution. If the offer of a simple caution is refused, a prosecution must follow for the original offence. If any other out-of-court disposal is not accepted, prosecutors will apply the Full Code Test, upon receipt of the case from the police or other investigators, and decide whether to prosecute the offender.

## Youths

- 8.1 For the purposes of the criminal law, a youth is a person under 18 years of age.
- 8.2 Prosecutors must bear in mind in all cases involving youths that the United Kingdom is a signatory to the United Nations 1989 Convention on the Rights of the Child and the United Nations 1985 Standard Minimum Rules for the Administration of Juvenile Justice. In addition, prosecutors must have regard to the principal aim of the youth justice system which is to prevent offending by children and young people. Prosecutors must consider the interests of the youth when deciding whether it is in the public interest to prosecute.
- 8.3 Prosecutors should not avoid a decision to prosecute simply because of the suspect's age. The seriousness of the offence or the youth's past behaviour is very important.
- 8.4 Cases involving youths are usually only referred to the prosecution service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither is appropriate or the child or young person does not admit committing the offence.
- 8.5 Reprimands, final warnings and conditional cautions (see section 7) are intended to prevent re-offending and the fact that a further offence has occurred may indicate that those previous disposals have not been effective. The public interest will usually require a prosecution in such cases.

## Mode of Trial

- 9.1 Prosecutors must have regard to the current Magistrates' Court Sentencing Guidelines and the relevant Practice Direction when making submissions to the court about where the defendant should be tried.
- 9.2 Speed must never be the only reason for asking for a case to stay in the magistrates' courts. But prosecutors should consider the effect of any likely delay if a case is committed or sent to the Crown Court, and the possible effect on any victim or witness if the case is delayed.

### **Venue for trial in cases involving youths**

- 9.3 Generally, prosecutors must bear in mind that youths should be tried in the youth court, wherever possible. It is the court which is best designed to meet their specific needs. A trial of a youth in the Crown Court should be reserved for the most serious cases or where the interests of justice require a youth to be jointly tried with an adult.

## Accepting Guilty Pleas

- 10.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime.
- 10.2 Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly where there are aggravating features. Prosecutors must never accept a guilty plea just because it is convenient.
- 10.3 In considering whether the pleas offered are acceptable, prosecutors should ensure that the interests and, where possible, the views of the victim, or in appropriate cases the views of the victim's family, are taken into account when deciding whether it is in the public interest to accept the plea. However, the decision rests with the prosecutor.
- 10.4 It must be made clear to the court on what basis any plea is advanced and accepted. In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.
- 10.5 Where a defendant has previously indicated that he or she will ask the court to take an offence into consideration when sentencing, but then declines to admit that offence at court, prosecutors will consider whether a prosecution is required for that offence. Prosecutors should explain to the defence advocate and the court that the prosecution of that offence may be subject to further review.

- 10.6 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, prosecutors also must bear in mind the fact that ancillary orders can be made with some offences but not with others.
- 10.7 Prosecutors must comply with the "Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise" which set out in greater detail the extent of prosecutors' duties and role in the acceptance of guilty pleas.

## The Prosecutor's Role in Sentencing

- 11.1 Sentencing is a decision for the court, but prosecutors have a duty to offer assistance to the sentencing court in reaching its decision as to the appropriate sentence by drawing the court's attention to the following factors:
- a) any aggravating or mitigating factors disclosed by the prosecution case;
  - b) any Victim Personal Statement;
  - c) where appropriate, evidence of the impact of the offending on a community;
  - d) any statutory provisions, sentencing guidelines, or guideline cases which may assist; and
  - e) any relevant statutory provisions relating to ancillary orders (such as anti-social behaviour orders).
- 11.2 Prosecutors may also offer assistance to the court by making submissions, in the light of all the above factors, as to the sentencing range within which the current offence falls.
- 11.3 In all complex cases or where there is the potential for misunderstanding, the prosecutor must set out in writing the aggravating and mitigating factors that he or she will outline when informing the court of the case in the sentencing hearing. In all other cases, this approach should be considered and undertaken if it will be of benefit to the court or the public to understand the case.



- 11.4 It is the duty of the prosecutor to apply for compensation and ancillary orders, such as anti-social behaviour orders and confiscation orders, in all appropriate cases. When considering which ancillary orders to apply for, the prosecutor must always have regard to the victim's needs, including the question of their future protection.
- 11.5 Prosecutors should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persist in the assertion, and it appears relevant to the sentence, the court should be invited to hear evidence to determine the facts and sentence accordingly.
- 11.6 Prosecutors must comply with the "Attorney General's Guidelines on the Acceptance of Pleas and the Prosecutor's Role in the Sentencing Exercise" which set out in greater detail the extent of prosecutors' duties and role in the sentencing process.

## Reconsidering a Prosecution Decision

- 12.1 People should be able to rely on decisions taken by the prosecution service. Normally, if the prosecution service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, the case will not start again. But occasionally there are special reasons why the prosecution service will overturn a decision not to prosecute or to deal with the case by way of an out-of-court disposal or when it will restart the prosecution, particularly if the case is serious.
- 12.2 These reasons include:
- a) rare cases where a new look at the original decision shows that it was wrong and, in order to maintain confidence in the criminal justice system, a prosecution should be brought despite the earlier decision;
  - b) cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the prosecutor will tell the defendant that the prosecution may well start again;
  - c) cases which are stopped because of a lack of evidence but where more significant evidence is discovered later; and
  - d) cases involving a death in which a review following the findings of an inquest concludes that a prosecution should be brought, notwithstanding any earlier decision not to prosecute.
- 12.3 There may also be exceptional cases in which, following an acquittal of a serious offence, a prosecutor may, with the written consent of the DPP, apply to the Court of Appeal for an order quashing the acquittal and requiring the defendant to be retried.

This is a public document.

Further copies of this document and information about alternative languages and formats are available from:

CPS Communication Division  
Rose Court  
Southwark Bridge  
London SE1 9HF

Email: [publicity.branch@cps.gsi.gov.uk](mailto:publicity.branch@cps.gsi.gov.uk)

For information about the Crown Prosecution Service, and to view or download an electronic copy of this document, please visit our website:

**[www.cps.gov.uk](http://www.cps.gov.uk)**

CPS Policy Directorate  
© Crown Copyright 2010

Printed by Blackburns of Bolton



**A question of  
evidence?  
Investigating and  
prosecuting rape in  
the 1990s**

by  
Jessica Harris and  
Sharon Grace

**A Research, Development and  
Statistics Directorate Report**

# Home Office Research Studies

The Home Office Research Studies are reports on research undertaken by or on behalf of the Home Office. They cover the range of subjects for which the Home Secretary has responsibility. Titles in the series are listed at the back of this report (copies are available from the address on the back cover). Other publications produced by the Research, Development and Statistics Directorate include Research Findings, the Research Bulletin, Statistical Bulletins and Statistical Papers.

## The Research, Development and Statistics Directorate



RDS is part of the Home Office. The Home Office's purpose is to build a safe, just and tolerant society in which the rights and responsibilities of individuals, families and communities are properly balanced and the protection and security of the public are maintained.

RDS is also a part of the Government Statistical Service (GSS). One of the GSS aims is to inform Parliament and the citizen about the state of the nation and provide a window on the work and performance of government, allowing the impact of government policies and actions to be assessed.

Therefore -

Research Development and Statistics Directorate exists to improve policy making, decision taking and practice in support of the Home Office purpose and aims, to provide the public and Parliament with information necessary for informed debate and to publish information for future use.

First published 1999

Application for reproduction should be made to the Information and Publications Group, Room 201, Home Office, 50 Queen Anne's Gate, London SW1H 9AT.

© Crown copyright 1999 ISBN 1 84082 288 0  
ISSN 0072 6435

---

# Foreword

With one-quarter of recorded rape cases in England and Wales reaching conviction in 1985 and only one in ten in 1996, there is ongoing concern as to why the conviction rate is so low. The research outlined in this report was designed to examine this issue and identify the characteristics of those cases that reached conviction and those that did not. It was also intended to provide a comparison with previous similar Home Office research based on 1985 data. The most striking finding is that the nature of recorded rape cases has changed over the years. A far higher proportion now involves assailants known to the complainant (often including 'date rapes'). These types of case raise evidential difficulties and this has implications for the way they are dealt with by the criminal justice system.

David Moxon  
Head of Crime and Criminal Justice Unit  
Research, Development and Statistics Directorate.

# Acknowledgements

We are very grateful to the Chief Constables and Chief Crown Prosecutors who agreed to take part in this study and, in particular, those in the five areas who helped us with our research.

Particular thanks are due to our liaison officers in each of the police forces' who were very helpful and co-operative, as well as to our contacts in the CPS. These people remain anonymous since we do not wish to identify the areas involved.

We are indebted to all those who agreed to be interviewed for this study, including judges, barristers, CPS lawyers and caseworkers, and the police, and particularly to the complainants who agreed to talk to us about their experiences.

Thanks are also due to the Saint Mary's Centre in Manchester for its important help and advice throughout the research. Jennifer Temkin and Sue Lees also provided helpful insights into some of the problems with rape cases.

Finally, we would like to thank our colleagues within RDS – David Brown for his extremely helpful advice and comments throughout the project, Pat Dowdeswell for her help and support with statistics, Robert Street for his assistance with interviews and drafting comments and Joel Miller for his invaluable help with the multivariate analyses.

Jessica Harris  
Sharon Grace



---

# Contents

<b>Foreword</b>	<b>Page</b>
	<b>iii</b>
<b>Acknowledgements</b>	<b>iv</b>
<b>Summary and recommendations</b>	<b>ix</b>
<b>1 Introduction</b>	<b>1</b>
Background to the research	1
Aims of the research	2
Methodology	3
<b>2 The sample</b>	<b>5</b>
The changing nature of rape cases – 1985-1996	5
Relationship between complainant and suspect	5
Circumstances surrounding the attack	8
<b>3 The processing of rape cases by the police</b>	<b>11</b>
Overview of police decision-making	11
No-criming	14
Detection	15
No further action	15
Case characteristics and police decision	17
CPS advice	20
Further issues arising from interviews	20
<b>4 CPS decision-making</b>	<b>25</b>
<b>5 The progress of rape cases through the courts</b>	<b>29</b>
Magistrates' courts and the Crown Court	29
Case outcomes	30
Sentences	33

<b>6</b>	<b>Practitioners' views of the court process</b>	<b>35</b>
	The number and nature of rape cases reaching court	35
	The trial	36
	The jury	37
	Sentencing	37
	Who makes a good witness?	39
	The use of sexual history evidence	40
	Easing the trauma for the complainant	41
<b>7</b>	<b>Discussion</b>	<b>43</b>
	No-criming	44
	No further action	45
	Discontinuance by the Crown Prosecution Service	46
	Court proceedings	47
	Further work	49
	<b>Appendices:</b>	<b>51</b>
	A Overall attrition rate for rape – 1985-1997	51
	B Comparing the two rape studies	52
	C Crimed cases / Circumstances surrounding the attack	53
	D Multivariate analyses	55
	E Research on the experiences of rape complainants	60
	<b>Bibliography and references</b>	<b>63</b>

**List of tables**

Table 2.1:	Relationship between complainant and suspect – reported rapes	6
Table 2.2:	Marital status of complainant	6
Table 2.3:	Age of complainant by complainant/suspect relationship	7
Table 2.4:	Degree of consensual contact prior to rape	8
Table 2.5:	Location of first offence	9
Table 3.1:	Attrition prior to first court appearance according to relationship between complainant and suspect	12
Table 3.2:	Association between circumstances of the allegation and police decision-making	12
Table 3.3:	Reasons given for no-criming according to relationship between complainant and suspect	14
Table 3.4:	Age of complainant and case outcome (pre-court)	19
Table 4.1:	Age of complainant and CPS action	27
Table 5.1:	Outcome at the Crown Court	31
Table 5.2:	Sentence by offence type	33

**List of figures**

Figure 2.1:	Estimated breakdown of types of rape case, 1985 and 1996	5
Figure 3.1:	Reasons given for no-criming and no further action by the police	13
Figure 3.2:	Flow diagram – the attrition process of rape cases (crimed cases)	17
Figure 4.1:	Flow diagram – the attrition of rape cases from charge to conviction	26
Figure 5.1:	Flow diagram – the attrition of rape cases from prosecution to conviction	30
Figure 5.2:	Defendant pleas at the Crown Court	32
Figure 5.3:	Proportion of males sentenced to immediate custody for offences of rape and attempted rape of a female, England and Wales 1996	34
Figure 6.1:	Males sentenced to imprisonment for rape at the Crown Court by length of sentence: 1980 and 1996	38
Figure 7.1:	The overall attrition process for cases in the study	43



---

# Summary and recommendations

## **Background**

There has been considerable concern in recent years about the continuing fall in the conviction rate for rape. In 1985 it stood at 24 per cent nationally but in 1997 was just nine per cent. The decline has occurred despite a range of initiatives to improve the criminal justice system's response in rape cases. These include a circular to the police, designed to elicit a more general sympathetic response to rape victims' and a change in the law to recognise that rape can be committed within marriage. The research described in this report was as a response to the concerns and had two main aims:

to discover what factors influence whether an initially recorded rape leads to a conviction for rape;

whether such factors have changed in recent years and, if so, whether this calls for changes in guidance or procedures.

## **Methods**

The study examined nearly 500 incidents initially recorded as rape by the police in 1996 and followed their progress through the criminal justice system. Information was extracted from police and Crown Prosecution Service (CPS) files, using the complainant's account of the incident as the basic source of information, supplemented by police, medical and witness statements. Interviews were also carried out with police, CPS lawyers, barristers, judges and complainants. Some comparisons were possible with an earlier study by the Home Office, which drew on 1985 rape cases.

## **The changing nature of rape cases**

Rapes committed by a person unknown to the victim ('stranger' rapes) formed only 12 per cent of the sample; those committed by acquaintances or intimates accounted for 45 per cent and 43 per cent of cases respectively.

This illustrates a very marked change from the previous Home Office study, in which stranger rapes constituted 30 per cent of all cases.

Because, nationally, the number of recorded rapes has risen threefold since 1985, this indicates that the actual number of recorded stranger rapes has not changed significantly, but that the number of recorded 'acquaintance' and 'intimate' rapes has increased substantially.

### **The attrition process**

The study found that only 6 per cent of the cases originally recorded by the police as rape resulted in convictions for rape. This represents 9 per cent of crimed rapes which is a similar figure to that recorded in the national statistics (see Appendix A). Of the initial sample of cases:

25 per cent were no-crimed by the police;

no suspect was identified in 11 per cent;

the police took no further action (NFA) against the suspects in 31 per cent;

8 per cent were discontinued by the CPS;

7 per cent resulted in an acquittal or the case to lie on file;

7 per cent resulted in a conviction for an offence other than rape.

### ***Relationship between complainant and suspect***

Cases involving acquaintances were most likely to be no-crimed.

Cases involving intimates were most likely to be NFA-ed or discontinued by the CPS.

In the minority of stranger rape cases where a suspect was identified, the case was more likely to proceed to court than in those cases where the complainant and suspect were previously acquainted.<sup>1</sup>

### **Detection**

Of cases which were crimed, only 15 per cent went undetected.

---

<sup>1</sup> Nine stranger cases reached court.

The detection rate in stranger rape cases was considerably lower than average: despite advancements in forensics, only one-third were detected.

## **Police decision-making**

### *No-criming*

Home Office guidance advises that the police may no-crime a case where the complainant 'retracts completely and admits to fabrication'.

There appears to have been a reduction since 1985 in the proportion of cases no-crimed – from 45 per cent to 25 per cent.

Although the most common reason for no-criming decisions was that the complaint was believed false or malicious, over one-third of cases were no-crimed because the complainant withdrew and 15 per cent because there was insufficient evidence.

The strongest predictors of whether cases were no-crimed were the age of the complainant and whether violence was used during the attack. Thus, cases were least likely to be no-crimed where the complainant was aged under 13 or where violence was used during the assault.

### *No further action*

Half of all detected crimed cases were NFA-ed. In fact, a reduction in the no-criming rate appears to have been offset by an increase in the NFA rate.

The most common reason for cases being lost here was complainant withdrawals – half were NFA-ed for this reason and one-third due to insufficient evidence.

The strongest predictors of whether cases were NFA-ed were the age of the complainant, whether violence was used during the attack and the degree of consensual contact between the complainant and suspect prior to the attack. Thus, cases were most likely to proceed involving complainants under 13 where violence was used during the attack and there had been no prior contact between complainant and suspect.

The police sought CPS advice in 20 per cent of detected cases – mostly because of evidential problems. The CPS usually confirmed police concerns over evidential sufficiency and advised no further action. It transpired from interviews with prosecutors that they would like to see more advice cases.

### **CPS decision-making**

Half of all cases were crimed and detected by the police and sent to the CPS for a decision on prosecution. The CPS discontinued just over a quarter of these cases.

It is rarely in the public interest to discontinue a case of rape. Of the cases that the CPS discontinued, only 15 per cent were dropped on public interest grounds. These were non-stranger rapes where the complainant was unwilling to attend court and a witness summons to compel attendance was felt inappropriate. All the other cases discontinued were dropped on evidential grounds.

There was found to be a significant association between the age of a complainant and whether a case was discontinued – those involving particularly young or particularly old complainants were most likely to be proceeded with.

### **At court**

The nature of cases reaching court has changed over the last ten years or so – many more acquaintance and intimate cases means that the issue is increasingly one of consent.

Two-thirds of defendants reaching the Crown Court were convicted of an offence. Just over one-quarter of defendants were convicted of rape or attempted rape.

One-quarter of all Crown Court cases resulted in an acquittal, usually by a jury.

Attrition occurred where three-quarters of defendants pleading guilty to lesser charges were convicted of those charges only, indicating a form of plea-bargaining between the prosecution and the defence.

A number of those interviewed suggested that severe sentences in rape cases involving acquaintances or intimates – five-year starting point in contested trials – indicates that juries are reluctant to convict.



## **Discussion**

Consideration should be given to re-issuing guidance on the no-criming of rape cases and ensuring that this is covered in police training and HMIC inspections.

There is a need:

for improved levels of support for complainants at all stages;

for improved levels of communication – between the police and the CPS, and between the police and complainants;

for better evidence-gathering in the form of photographs and reports that can be used at later stages;

for training and refresher training for all concerned;

for measures to provide better protection for vulnerable or intimidated witnesses in rape trials;

for an improvement in prosecution standards, ensuring that prosecuting barristers pay is broadly similar to that of defence lawyers, to remove possible imbalances;

to address the issue of how rape is defined, including whether it should be 'graded' in some way (a Review of Sex Offences will be a useful opportunity to consider this).

Further research might examine how complainants are treated during the early stages of the process and provide a better understanding of why complainant withdrawals occur. Further work might also more thoroughly assess the reasons behind attrition and precisely how decisions are influenced at each stage. Also, in considering best models of practice, it is worth looking at how rape is processed in other countries (again, something that will be considered in the Sex Offences Review.)

## **Recommendations arising from the research**

1. The existing guidance on restricting the circumstances in which cases may be no-crimes remains valid. Consideration should be given to its reissue, and to ensure that it is adequately covered in police training and in HMIC inspections.

2. Those reporting rape to the police should be given greater support, perhaps involving agencies other than the police. Some other jurisdictions (eg some US states) have involved victims more closely in the investigative process, and have coupled this with support to help them persevere. There are various models which would be worth more thorough investigation.
3. There is a particular problem with intimate and acquaintance rapes where there is a need to identify the specific reasons for cases being dropped which was not possible in the present study.
4. The police should be more disposed to consult the CPS in borderline cases, and should not be too quick to assume that cases that may look unpromising could not be built up, especially if the complainant can be drawn more prominently into the process.
5. It is interesting that cases in which there is evidence of violence are often dropped. There would appear to be scope for better evidence-gathering, eg through photographs and medical reports, and for ensuring that such evidence is given due weight in later discussions.
6. Individual police officers rarely deal with rape – the number of rapes reported each year is only about one-twentieth of the number of police officers. There is a clear need to cover in training the issues raised by rape cases, but also to ensure that refresher training is given as best practice develops.
7. Further research could examine the ways in which cases are dealt with and complainants treated in the early stages of the process in order to produce a better understanding of why withdrawals occur. This would more clearly identify the dynamics of the process, which was not wholly possible in the present study.
8. A comprehensive study, to include tracking cases in detail and interviewing decision-makers and complainants in specific cases, would identify both the reasons why the CPS drop cases and recommend the police not to charge. This would accord with the recommendation in the Glidewell Report that a study should be made of the reasons for discontinuance in more serious offences.
9. During the current research some lawyers expressed reservations about victims meeting their attacker, but the Glidewell Report 'Speaking up for Justice' puts forward the view that the idea is worthy of discussion. The report also recommends (Recommendation 27) meetings between prosecutors and certain vulnerable or intimidated witnesses, claiming that it would assist the presentation of the case

and provide reassurance for the witness. It is worth considering the practices of countries such as the USA and Sweden, where the equivalent of the CPS does meet with complainants.

10. A study of those types of offence with a high rate of charge reduction, as recommended in the Glidewell report, would help identify the underlying reasons for the change in the nature of charges.
11. The Review of Sex Offences will provide a useful platform by which to consider whether there should be any changes in the way rape is defined, including whether it should be 'graded' in some way: the dichotomy between initial recording and conviction is clearly unsatisfactory. It runs counter to moves in the context of violent offences to settle charges at an early stage, generally to provide a firm base for later decision-making, for example in terms of early guilty pleas.
12. There is a need to improve standards of prosecution and to ensure that prosecuting barristers' pay is broadly similarly to that of defence lawyers (to remove possible imbalances in the level of expertise on each side).
13. Other points emerging from this research simply reinforce the cases for change already before Parliament, which are designed to give more protection to vulnerable victims and witnesses.



---

# 1. Introduction

## Background to the research

Apart from murder, rape is perhaps the crime that horrifies most. Rape of a woman is legally defined as 'sexual intercourse where a man knows that a woman is not consenting or is reckless as to whether or not she is consenting'. Young women fear rape above all other crimes (Hough, 1995) and may actively adapt their lifestyles in ways that aim to avoid the risk of being attacked (Hough, 1995; Stanko, 1990). Such concerns are reflected in (and some would say fuelled by) media reporting of rape cases. Over the past decade, in particular, such reporting has focused on what has been seen as the criminal justice system's 'failure' to achieve convictions in rape cases. Indeed, the criminal statistics do indicate a big drop in the conviction rate for rape cases since 1985 (see Appendix A).

This decrease in the conviction rate has occurred despite numerous policy and practice initiatives aimed at improving the criminal justice response to rape. For example, Home Office Circular 69/1986 encouraged the police to have a more sympathetic approach when dealing with rape victims, and this is thought to account for much of the increase in reporting and recording of such offences. Further, the House of Lords in *R v R* (1997)<sup>3</sup> upheld the Court of Appeal's decision that rape can be committed within marriage and this ruling was given statutory effect in the Criminal Justice and Public Order Act 1994. The 1993 Sexual Offences Act changed the law so that boys under the age of 14 could be charged with rape.

The Home Office has previously addressed the issue of attrition in rape cases. In 1992 a report was published that showed that only one-quarter of cases initially recorded by the police resulted in a conviction for rape in 1985 (Grace et al, 1992). The study identified three key points of attrition in the criminal justice process:

when the police decided to no-crime the incident;

when the police, having initially recorded the incident as a crime, decided not to proceed to prosecution;

---

2 Since 1985 the law has been changed – making it possible for rape to be perpetrated on a male, although this is not within the remit of the present study.

3. *R v R* (1997) 4 AU ER 481, HL.

when most of those who were convicted at court were not convicted of rape.

The study drew attention to the widely different circumstances in which rape occurs. It identified three main categories:

'Stranger' cases comprise those where the suspect had had no contact with the complainant prior to the attack.

'Acquaintance' cases were those where the complainant and suspect were casually known to one another, eg the complainant had accepted a lift from the suspect, they had a prostitute and client relationship or they had met at a party.

'Intimates' covered those where the suspect was having, or had had, a relationship with the complainant, was a friend or was a member of her family – such cases often involving children. There were 22 cases of marital rape.

These differences have important implications for the likelihood of offenders being successfully prosecuted and convicted. The previous study found that those cases that typically resulted in a conviction for rape involved young, single women attacked by strangers who were also physically injured in the attack. Alleged attacks by acquaintances were:

the most likely to involve the withdrawal of the complaint;

the most likely to be contested;

the least likely to result in a conviction.

The 1985 figures provide a benchmark for assessing change, both in the types of case coming to police attention and in the way the criminal justice system responds.

### **Aims of the research**

This study had two key aims:

to discover what factors influence whether an initially recorded rape leads to a conviction for rape; and

whether such factors have changed in recent years, which might in turn call for changes in guidance or procedures.

The research also addressed:

whether there have been changes in the types of rape case coming to police attention – as between rapes involving strangers, acquaintances and intimates;

if so, did this change contribute to the reduction in the proportion of reported rapes resulting in conviction, and, if it did, was this due to evidential difficulties with acquaintance rapes or to other factors?

what kind of cases are most likely to be discontinued by the CPS and why? Do cases where the defence of consent was used 'fail' at a greater rate than others?

## Methodology

Using police and CPS files, the study traced the progress of 483 cases initially recorded as rape in 1996 and extracted details about the characteristics of each case. The statement of the complainant was used as the main source of information, backed up by the police, witness and medical examiners' statements. The sample was drawn more or less equally from five police force and CPS areas, representing metropolitan, urban and rural areas. Male rape cases were not included: they would raise different issues, are comparatively rare and would need to be studied separately<sup>4</sup>.

The 483 rapes were reported by 456 complainants, indicating that some complainants reported more than one rape. The tables are based mainly on all 483 rapes.

In addition to the main quantitative study, a total of four focus group meetings were held with the police and the CPS. The police representatives specialised in dealing with rape cases. The CPS focus groups comprised both lawyers and caseworkers. Using vignettes of cases as a starting point for a free-ranging discussion, respondents were asked about their experiences in dealing with rape cases and for their views on the difficulties in investigating, charging and prosecuting such cases.

Individual interviews were held with five judges experienced in dealing with rapes and with five barristers. Seven trials were observed at the Old Bailey. Finally, a small sample of self-selected women who withdrew their allegations during the police investigation were interviewed to discover the reasons behind their decision not to proceed. These women were not from the complainant sample for this study. Withdrawal from the case by the

<sup>4</sup> Recently reported efforts by the Metropolitan Police Service confirm the different issues and taboos in dealing with male rape (The Guardian, 3 Mar 1999).

complainant was by far the most common cause of cases being dropped. Although only four women, contacted through a centre which deals with rape complainants on a day-to-day basis, agreed to take part, their experiences were of interest and chimed with other research (see Appendix E).

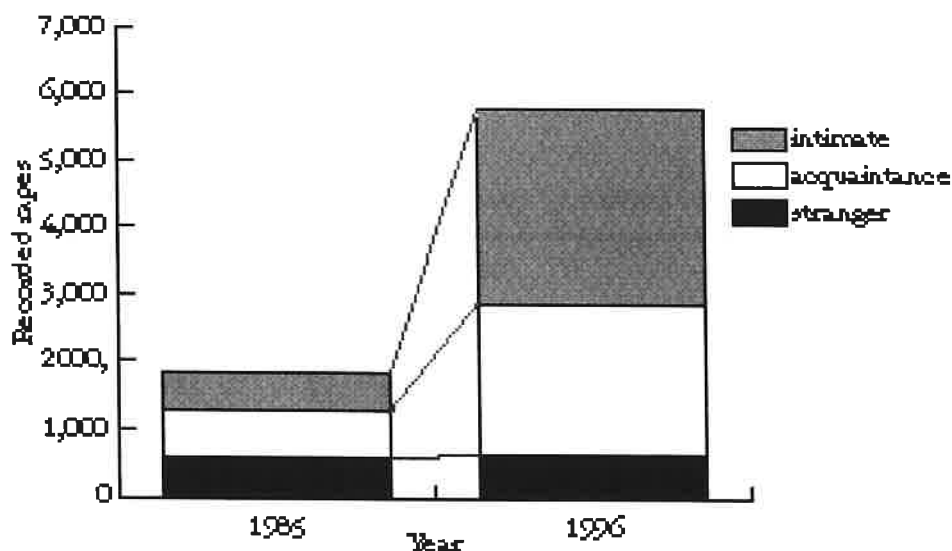


## 2 The sample

### The changing nature of rape cases, 1985-1996

There is a striking difference in the nature of initially recorded rapes between the previous study (Grace et al, 1992) and this study. The proportion of all rape cases categorised as stranger rapes dropped from 30 per cent in 1985 to 12 per cent in 1996. The total number of recorded rape offences has increased more than threefold, so the number of stranger rapes has not changed significantly between the two studies. By contrast, the number of acquaintance and intimate rapes has increased greatly. To illustrate this point, Figure 2.1 shows the national total of criminally recorded rapes and projects the breakdown of the three types of rape from the two Home Office studies thereon.

*Figure 2.1: Estimated breakdown of types of rape cases, 1985 and 1996*



### Relationship between complainant and suspect

Table 2.1 gives a more detailed breakdown of the relationship between complainant and suspect for cases in the present study.

**Table 2.1: Relationship between complainant and suspect – reported rapes**

	per cent	n=
<b>Strangers</b>	<b>12</b>	<b>(52)</b>
<b>Acquaintances</b>	<b>45</b>	<b>(194)</b>
Met within 24 hours		(102)
Met more than 24 hours before		(70)
Known vaguely		(12)
Prostitute and client		(10)
<b>Intimates</b>	<b>43</b>	<b>(204)</b>
Relative (not father)		(10)
Parental figure		(32)
Current husband		(22)
Former husband		(8)
Current co-habitee		(2)
Former co-habitee		(1)
Current boyfriend		(40)
Former boyfriend		(44)
Work colleague		(3)
Friend		(34)
Family friend		(8)
<b>TOTAL</b>	<b>100</b>	<b>(450)</b>

Note: n=450 of 483 initially recorded rapes for which relationship is known

**Table 2.2: Marital status of complainant**

	Stranger %	Acquaintance %	Intimate %	All %
Single	55	74	61	66
Cohabiting/long-term relationship	19	12	18	16
Married	14	8	9	9
Separated	5	2	7	5
Divorced	7	4	4	4
Widowed	-	1	1	1
<b>TOTAL (n)</b>	<b>100 (42)</b>	<b>100 (167)</b>	<b>100 (193)</b>	<b>100 (402)</b>

Notes:

1. n=402 of 483 initially recorded rapes for which complainant's marital status and relationship were known.
2. Percentages do not always add up to 100 due to rounding.

Table 2.2 shows that over three-quarters of complainants were either single or no longer in a relationship. In one-third of cases where the complainant was in a relationship, the allegation was against their partner.

**Table 2.3: Age of complainant by complainant/suspect relationship**

	12 and under	13-15	16-25	26-35	36-45	Over 45	TOTAL(n)
Stranger %	3	12	11	15	9	21	12 (52)
Acquaintance <sup>5</sup> %	30	52	46	34	51	25	43(191)
Intimate %	67	37	43	52	40	54	45(203)
Total % (n)	100 (33)	100 (87)	100 (164)	100 (95)	100 (43)	100 (24)	100 (446)

Notes:

1. n=446 of 483 initially recorded rapes for which age of complainant and complainant/suspect relationship were known.
2. Percentages do not always add up to 100 due to rounding.

The age make-up of the complainant sample was similar to that of the previous Home Office study (Grace et al, 1992), although slightly more complainants (just over one-quarter) were under 16. Most of the remainder (58 per cent of the total) were aged 16 to 35. Only 5 per cent were over 45.

Complainants under the age of 12 were the most likely of the age categories to have reported being raped by someone they knew well and least likely to have been raped by a stranger.

Complainants between 13 and 15 years of age were the most likely to have reported being raped by an acquaintance.

Complainants over the age of 45 were the most likely to have reported being raped by a stranger.

Although data was collected on ethnicity, detailed analysis was not possible due to the small numbers on which this information was available.

<sup>5</sup> A large proportion of girls under 16 were raped by acquaintances, often within 24 hours of first meeting them. One-quarter of suspects in these cases were also under 16 and just over one-quarter between 16 and 25. They usually met at a public outdoor place and attacks were likely to take place in either the suspect's home (30%) or some other private indoor place (26%).

## Circumstances surrounding the attack

### *Consensual contact*

**Table 2.4: Degree of consensual contact prior to rape**

	Stranger %	Acquaintance %	Intimate %	All %
Had sexual intercourse with suspect	-	3	4	3
Had sexual contact (not intercourse)	-	3	4	3
Had prior sexual relationship with suspect		1	48	23
Voluntarily kissed with suspect	-	10	5	7
Allowed suspect to put his arm around her		2	1	1
Accepted invitation into suspect's house	-	17	6	10
Accepted a lift with suspect	-	17	2	8
Walked home with suspect	-	4	1	2
Danced with suspect	-	3	-	1
Case of child abuse <sup>6</sup>	-	-	16	7
Other	-	29	11	18
No consensual contact immediately prior to attack	100	10	4 <sup>7</sup>	18
<b>TOTAL (n)</b>	<b>100 (47)</b>	<b>100 (174)</b>	<b>100 (197)</b>	<b>100 (427)</b>

Notes:

1. n=418 of 483 initially recorded rapes for which consensual contact and relationship were known; consensual contact was known for 427 in total.
2. Percentages do not always add up to 100 due to rounding.
3. 'Other' covers a range of circumstances: for example, where the complainant woke up in the suspect's bed, she gave him directions or he showed her round a house.

In 82 per cent of cases, there was some degree of consensual contact between the complainant and suspect immediately prior to the attack. This compares with the previous Home Office study (Grace et al, 1992) in which there was prior consensual contact in 37 per cent of cases. The differences between the two studies will partly reflect the growth in the proportion of acquaintance/intimate rapes. Almost one-quarter of complainants had had a prior sexual relationship with the suspect – as against three per cent in the previous study. All cases of child abuse involved intimate relationships, usually involving a parental figure. In many cases involving acquaintances, the complainant went back home with the suspect, having met him at a public venue, as reflected in their accepting a lift from, or an invitation to the home of, the suspect.

- 6 Degree of consensual contact in this context is a proxy for some form of intra-familial relationship, which is involved in most child abuse cases.
- 7 Consensual contact was the degree of contact immediately prior to the attack and therefore was recorded as none if, for instance, a complainant awoke to find the suspect in her bedroom, which might involve intimates.

*Location of attack**Table 2.5: Location of first offence*

	Stranger %	Acquaintance %	Intimate %	All %
Workplace	-	-	1	<1
Home of victim	6	16	32	22
Home of suspect	-	26	24	22
Home of complainant and suspect	-	1	30	13
Other indoor/private place	14	24	7	16
Park/green site in town or built-up area	14	3	2	4
Field/countryside	2	-	-	<1
Suspect's car	2	14	2	7
Complainant's car	-	1	1	<1
Public area	55	14	2	13
Waste ground	4	1	-	1
Other	4	1	1	1
TOTAL (n)	100 (51)	100 (185)	100 (199)	100 (462)

## Notes:

1. n=435 of 483 initially recorded rapes for which location of attack and relationship were known; location was known for 462 in total.
2. Percentages do not always add up to 100 due to rounding.
3. Including alleyway, street area, railway station, bus stop.
4. Including building sites, rubbish dumps, disused areas of land.

Almost three-quarters (73%) of alleged offences took place in a private setting. Cases of child abuse involving intimates invariably took place at a private indoor place which was usually the home of the complainant and/or suspect. Only 18 per cent of alleged attacks occurred outdoors, with a further seven per cent taking place in the suspect's car. These findings are similar to those of the previous study (Grace et al, 1992), although more complainants were found to go back to the suspect's home in the present study.

147

A question of evidence? Investigating and prosecuting rape in the 1990's

---

## 3. The processing of rape cases by the police

This chapter examines the factors which influence the processing of rape cases – from the decision on whether to record the allegation as a crime to the decision on whether to charge.

In the past, a common defence in rape cases was that the suspect had been wrongly identified. In stranger rape cases the police investigation will aim to identify the suspect – perhaps through an ID parade or even Crime-Stoppers appeals to the public. In addition, with the development of forensic testing and DNA profiling in particular, it is now usually possible to prove (if the rape is reported promptly) that intercourse has occurred and the identity of the assailant.

Evidence is especially problematic in cases where:

- a complainant and suspect are known to one another;

- there was some degree of consensual contact leading up to the alleged attack; and

- there is little evidence of any violence or injury (Grace et al, 1992; Wright, 1984; Chambers and Millar, 1986; Lees and Gregory, 1993).

### **Overview of police decision-making**

Once an allegation of rape has been made to the police, there are circumstances in which the case can subsequently be 'no-crimed'. If the police do decide to treat the case as a crime, they may nevertheless decide not to pursue it if they feel the chances of a successful prosecution are slight. The relationship between a complainant and suspect had a strong bearing on the attrition process, as Table 3.1 shows.

**Table 3.1: Attrition prior to first court appearance according to relationship between complainant and suspect.**

	Stranger %	Acquaintance %	Intimate %	All %
No-crime	28	30	16	25
Undetected	48	13	2	11
No further action	4	24	45	31
Cautioned	-	1	1	1
Charged	20	32	36	31
<b>TOTAL (n)</b>	<b>100 (52)</b>	<b>100 (194)</b>	<b>100 (204)</b>	<b>100 (483)</b>

Note:

1. n=450 of 483 initially recorded rapes for which both relationship and outcome prior to court were known.
2. Percentages do not always add up to 100 due to rounding.

Table 3.1 shows that no-crime rates for alleged stranger and acquaintance attacks were quite similar – close to 30 per cent, compared with 16 per cent of cases involving intimates. The latter were therefore more likely to be crimed but were also more likely to result in no further action.

Table 3.2 provides more details of the relationship between police decision-making and the nature of the case.

**Table 3.2: Association between circumstances of the allegation and police decision-making**

	No-crime (n=124)		No further action (n=151)	
	%	(n)	%	(n)
<b>Relationship</b>				
Stranger	28	(14)	15	(2)
Acquaintance	30	(59)	43	(47)
Intimate	16	(33)	55	(92)
<b>Age of complainant</b>				
12 and under	6	(2)	27	(8)
13-15	23	(22)	28	(18)
16-25	26	(46)	51	(55)
26-35	29	(29)	75	(41)
36-45	35	(17)	77	(20)
Over 45	28	(7)	56	(9)
<b>Degree of consensual contact</b>				
Some	22	(78)	50	(124)
None	23	(17)	27	(9)
<b>Use of violence</b>				
Some	15	(37)	43	(76)
None	23	(20)	54	(33)

Notes:

1. No-crimes: the per centage refer to the number of initially recorded rapes. No further actions: the per centage refer to the number of crimed and detected rapes.
2. All associations were significant at the 99 per cent level.



Multivariate analyses showed that violence and age were found to predict no-criming decisions and violence, age and consensual contact were found to predict the police taking no further action (see Appendix D).

Salient points from Table 3.2 are as follows.

No-criming is least likely with intimate rapes, victims aged under 13 and where violence has been used.

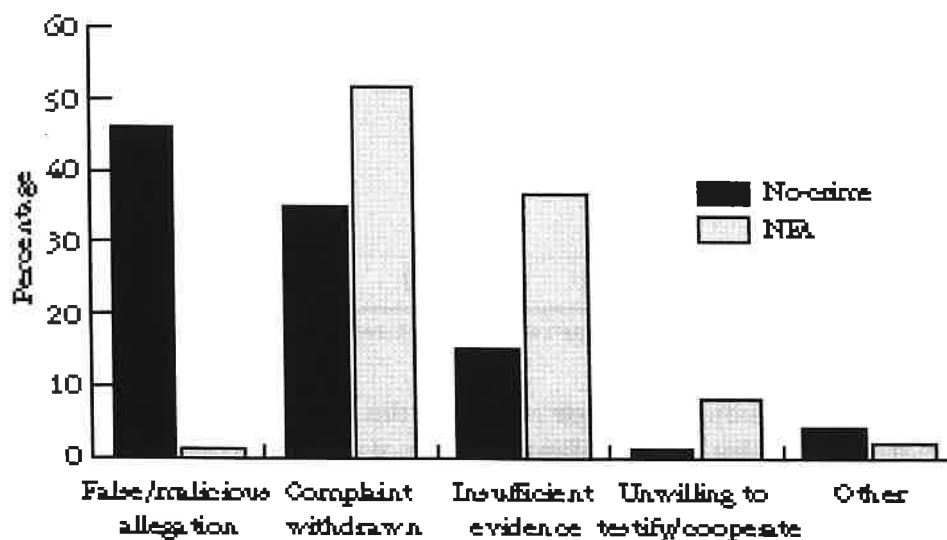
Cases where there was no evidence of any violence or the threat of violence towards the complainant were more likely to be no-crime. The most common reason for this was retraction by the complainant. In contrast, evidence of injury could both strengthen a case in the eyes of the police and make the complainant more determined to persevere.

No further action is most common with intimate rapes, where complainants are aged between 26 and 45 and where there has been some consensual contact.

Over half of those cases where there was no evidence of any violence or injury to the complainant were NFA-ed. When controlling for other factors, the lack of evidence of violence by a suspect was one of the strongest predictors of cases being no-crime or NFA-ed.

Figure 3.1 indicates the different reasons for police decisions to no-crime and NFA.

*Figure 3.1: Reasons given for no-criming and no further action by the police*



The main reason for cases not proceeding to a charge was withdrawal by the complainant – more than half the cases were NFA-ed for this reason. Thirty seven per cent of cases were NFA-ed on the grounds that there was insufficient evidence to proceed.

Of course, the police effectively have little choice when a complainant withdraws (although they may influence that decision). Cases where the complainant withdraws tend to be those where there is a high degree of consensual contact, and even where the complainant does not withdraw the chances that the case would succeed in court are often relatively poor.

The key issues of no-criming and whether to take further action are considered in more detail below.

### No-criming

Although one-quarter of all cases were no-crime<sup>8</sup>, the level is much lower than previously. In a study based on 1985 data, Lloyd and Walmsley (1989) found that the average no-criming rate during the second quarter of 1985 was 45 per cent (though ranging from nil to 86 per cent between forces). The fall is consistent with guidance given to the police in Home Office Circular 69/1986, which states that no-criming is only appropriate where 'the complainant retracts completely and admits to fabrication'. However, there was variation between forces in the study, from 14 per cent to 41 per cent, and Table 3.3 shows that reasons for no-criming were not confined to complaints being false.

*Table 3.3: Reasons given for no-criming according to relationship between complainant and suspect*

	Stranger %	Acquaintance %	Intimate %	All %
Complaint withdrawn	14	42	33	36
False/malicious complaint	64	37	52	43
Insufficient evidence	21	15	12	15
Unwilling to testify	-	-	3	1
Other	-	5		5
<b>TOTAL (n)</b>	<b>100 (14)</b>	<b>100 (59)</b>	<b>100 (33)</b>	<b>100 (123)</b>

Note: n=106 of 483 initially recorded rape cases for which both relationship and reasons for no-criming were known.

Although the most important single reason for the police deciding to no-crime a case of rape was that the complaint was false or malicious, many cases were dropped for evidential reasons or because the complainant withdrew.

<sup>8</sup> This figure was an estimate based on the 1985 data also used in the previous rape study (Grace et al, 1992). See Appendix B for more information on the bases on which the two rape studies are compared.

While a single reason for no-criming was usually recorded on the police file, in practice there might be several reasons. For example, the main reason might have been that a complainant withdrew her allegation, although it was clear from the file that in some cases the police also suspected the allegation to be false or thought the evidence was weak.

### **Detection**

In 15 per cent of crimed rapes no suspect was caught. This was so in 66 per cent of stranger cases, compared with 17 per cent of acquaintance attacks and only three per cent of incidents involving intimates. Forensic testing was used in 108 crimed cases – taking the form of DNA profiling in just over half of these. In three of the 13 stranger rape cases, forensic testing established identity. However, it appears that detection rates for stranger rapes are poor despite advancements in forensics including DNA profiling – (of crimed cases, two-thirds of stranger rapes were undetected in the present study compared with one-third in the previous study (Grace et al, 1992))

Once detected, attacks by strangers were the least likely to be NFA-ed. However, the relatively low detection rate for these cases means that, in practice, they are the least likely to be prosecuted.

### **No further action**

In considering further progress of cases through the system it is helpful to discard the 25 per cent of cases which were no-crimed and focus on those that survived this initial filter. The characteristics of the crimed sample are described in Appendix C. Figure 3.2 shows what happened to these cases.

Perhaps the most striking feature of Figure 3.2 is that it shows that half of all crimed cases that were counted as detected resulted in no further action.

For practical purposes, cases are still being lost since a reduction in no-criming might be largely offset by an increase in NFA cases. Such a shift might therefore have symbolic importance, and police sometimes showed a keen awareness of this:

“If rape was treated as any other crime you would probably no-crime a lot more. But because rape is treated as something special, and indeed it is a serious crime, it is much more difficult to no-crime it”

The impact of Home Office guidelines comes through in the following note, written by a detective superintendent to whom the file had been submitted suggesting a no-crime:

“I am concerned to note that this allegation has been classified ‘no-crime’ – this classification is contrary to service policy... the victim expressed a desire that police did not pursue the allegation of rape. She does not state that the offence did not take place... the allegation must be classified as a rape.”

This case was, indeed, recorded as a crime although the police subsequently took no further action.

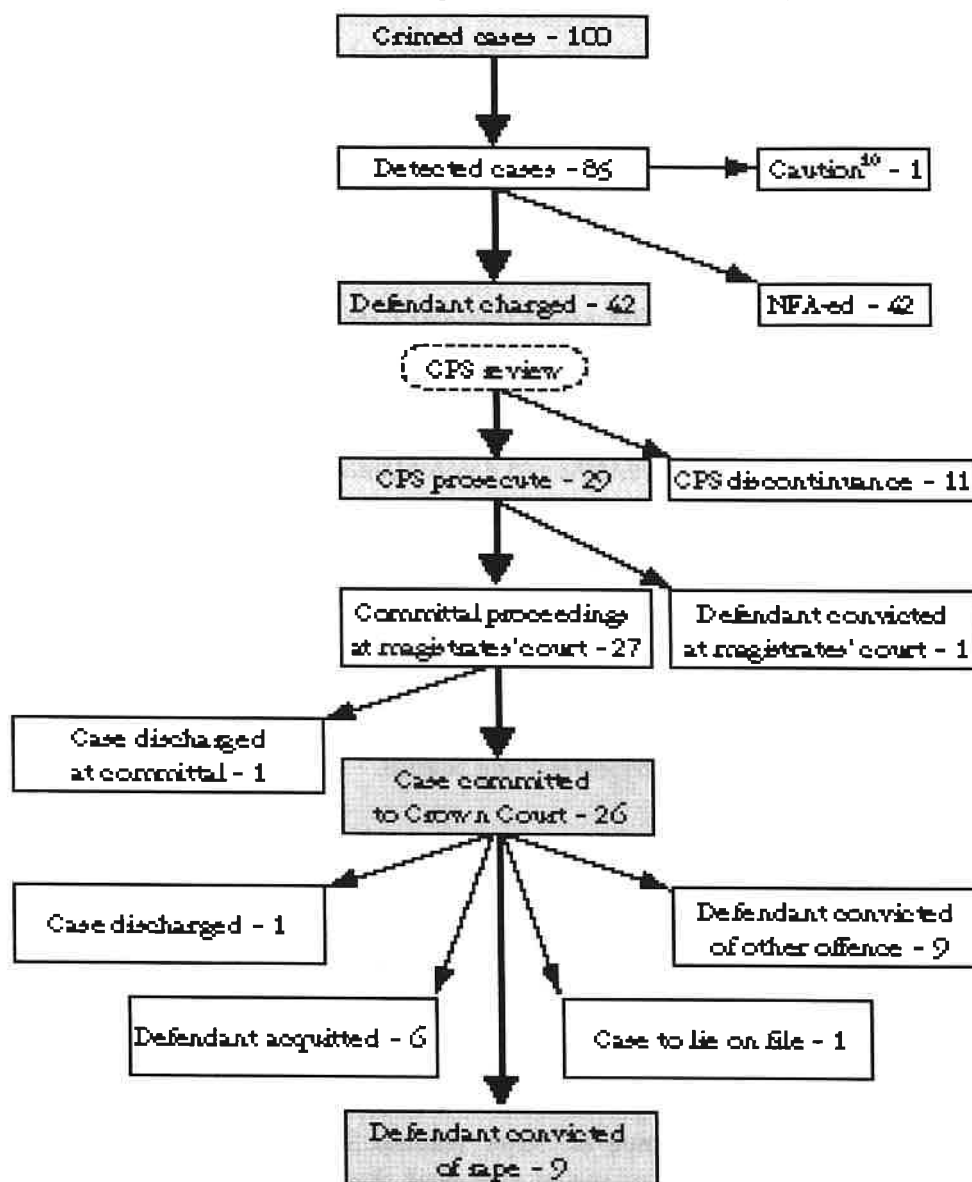
Incidents involving acquaintances normally involved some degree of consensual contact between the complainant and suspect prior to the attack. More than three-quarters of these cases involved complainants and suspects who had met within 24 hours of the attack – which would cover most of what are commonly described as ‘date rapes’. Fifty-one per cent of acquaintance cases where there had been some prior consensual contact were NFAed, compared with half this number where there had been none.

Police interviews confirmed that evidence of a complainant having consented to being with a suspect, having perhaps left a club with him and having not sustained injuries, would tend to undermine her case:

“... people would think there are no visible injuries to her... they had both been drinking... had an evening together and she left with him quite happily, got into his car, went back to his flat...that dirt gets thrown up.”

Figure 3.2: Flow diagram illustrating the attrition process of rape cases (percentages)

(base = overall sample of crimed cases, n=360)<sup>9</sup>



## Case characteristics and police decision

### Group attacks

Twenty-seven cases involved group rapes with two or more suspects: the majority of these cases were no-crimed. In three cases suspects were not identified, three were NFA-ed and one case was discontinued by the CPS.

<sup>9</sup> Percentages do not always sum to 100 due to rounding or missing information.

<sup>10</sup> A suspect was cautioned in four cases – two involving rape and two involving unlawful sexual intercourse (USI) involving very young suspects.

Almost all were acquaintance attacks occurring indoors, with some consensual contact prior to the attack and little evidence of violence. Evidential difficulties are inherent in group attacks: a complainant might find it difficult to remember the sequence of events, including who allegedly raped her and in what order. This makes the job of preparing a watertight case difficult and the police will be all too aware that, if the case does get to court, the defence will exploit any inconsistencies.

In ten cases, one suspect raped two or more complainants. Just two of these cases dropped out as NFAs.

### *Recent complaint and the complainant's demeanour*<sup>11</sup>

No association was found between the speed with which an attack was reported and whether it was no-crimed, although lawyers and barristers thought quick reporting strengthened a complainant's story. However, police interviews also revealed a general feeling that a greater number of 'historical' rapes than ever before are now being reported, with an increased social awareness and acceptance of abuse, especially of children. This has been fostered by the work of organisations like Childline.

In some cases it was felt that a woman's demeanour was important. It is commonly expected that, in the aftermath of a rape, a victim's trauma will be reflected in their being hysterical and tearful.

"... it's something that has to be covered in the statement really, why, you know they haven't reported it to you for two weeks or something, or seemed calm when they did. It could be that there's a genuine reason you know, but it doesn't look good on paper, does it?"

Therefore, it seems that a complainant's demeanour following an alleged rape was thought to be important, when it should not be. Various research studies confirm the existence of 'Rape Trauma Syndrome' – many victims exhibit a controlled response and in fact mask their feelings, appearing calm and composed (Holmstrom and Burgess, 1978). It is clearly important that police and prosecutors should not read too much into the complainant's demeanour.

### *Age of complainant*

Table 3.4 shows how the attrition process operated for different age groups.

<sup>11</sup> A report on child abuse cases by Gwyn Davis also discusses aspects such as recent complaint and the complainant's demeanour when giving evidence.

**Table 3.4: Age of complainant and case outcome (pre-court)**

	12 & under %	13-15 %	16-25 %	26-35 %	Over 35 %	All %
No further action	27	28	51	75	69	49
Caution	3	3	1	-	-	1
Charged	67	50	29	15	20	50
TOTAL(n)	100 (29)	100 (88)	100 (165)	100 (94)	100 (68)	100 (305)

Note: n=298 of 305 crimed and detected rapes for which complainant's age and case outcome were known).

Cases where the complainant was under 16 at the time of the alleged attack were most likely to proceed to court. Cases with complainants under 16 had the lowest NFA rate and ultimately the highest conviction rate. One factor is that, even if lack of consent cannot be proved, intercourse with a girl under 16 is illegal; so a USI (unlawful sexual intercourse) charge might be substituted, as happened with three cases in this study.

### *Violence and injury*

Violence was recorded in around 60 per cent of crimed cases. Mostly this amounted to rough treatment such as pushing but sometimes involved beating, punching and kicking. Perhaps unsurprisingly, cases involving strangers were the most likely to be violent, as well as those involving complainants between 16 and 25. Three-quarters of stranger attacks involved violence. In 11 of these incidents the attacker threatened the complainant with a weapon, usually a knife, and in four other cases he threatened to kill her.

Of the 211 women for whom some level of violence was recorded, four suffered fractured or broken bones or cuts requiring stitches. Two of these women, plus a further two, were hospitalised. Of the remainder:

nearly 100 received physical injury (other than the alleged rape) including mild bruising, scratches or bite marks;

34 suffered vaginal or anal cuts or hymenal tears;

31 suffered more severe bruising, including black eyes and lacerations.

### *Consent*

In more than half the cases in this study where information about defence deployed by the suspect was available, the main defence relied upon was one of consent. Consent was relied upon in 62 per cent of cases involving acquaintances and half of those involving intimates. In one-quarter of cases, the suspect totally denied the offence. These cases usually involved stranger attacks or intimates.

### **CPS advice**

The police sought CPS advice on whether to charge in 63 cases – 20 per cent of cases in which there was a detected suspect. Where the police sought advice, the CPS recommended no further action in two-thirds of cases. They asked for additional information in ten cases, all of which involved younger complainants.<sup>12</sup> The rate at which the CPS recommended no further action – at 66 per cent – may seem high. However, the police seek advice mainly where the evidence is problematic and the CPS may simply confirm that the prospects of success are low. From interviews, it was clear that advice was often sought in cases where the police, for their part, felt that it would probably be right to drop the case.

Interviews with CPS lawyers indicated that they would like to see more requests for advice in rape cases than at present, and this might result in fewer discontinuances. This is not always possible before the police must charge or release the suspect, but they can (and often do) bail the suspect to return to the police station, and this provides time to consult.

### **Further issues arising from interviews**

#### *Complainant withdrawals*

Where the complainant does not wish to give evidence the case could not normally proceed. With intimates, withdrawal sometimes happens because the complainant is reunited with the suspect. Emotional and financial dependence was felt by police and lawyers to be a common reason for a woman feeling unable to pursue the allegation. In one case a complainant's statement revealed that she wished to withdraw her allegation, although she still maintained that she had been raped: if her husband went to prison and lost his job, she would lose everything.

---

<sup>12</sup> In these cases, eight suspects were subsequently charged and while proceedings against four were later discontinued by the CPS, two were convicted – one for rape.



In interviews with police officers, it was suggested that it was important for them to warn the complainant about possible evidential difficulties with her case and what would happen if she went to court. The following quotes make the same basic point, but with different emphasis.

“You have to sort of look after them and at the same time explain the process so that you reassure them that what they are doing is the best possible course of action in order that we can investigate it properly.”

“We would always explain to them that they are going to get a hard time, we don't sort of paint a rosy picture especially if... it's one of consent but we'll say that we will support them as much as we can and we are behind them. And we sort of prepare them for what they are going to face and a lot of them realise that.”

“... if you do really think that it is going to be very difficult to prove, is it worth putting the victim through that and going to court and for them to find a jury don't convict the person and then sometimes they could end up well nobody's believed me at the end of the day, which is another sort of trauma for her.”

In warning complainants about the difficulty of securing a conviction, the police might put complainants off pursuing their case without meaning to. The four complainants who were interviewed felt that the police had actively encouraged them to withdraw their allegations. One complainant was told in no uncertain terms that the evidence in her case was weak, even given her injuries:

“I showed them my bruises right... and do you know what they said, 'your bruises are not good enough'. I went 'well what do you mean my bruises are not good enough, I've just been raped for God's sake, you don't talk to me like that' – 'your bruises ain't good enough, you've got no case.’”

The manner in which the police deal with a complainant will obviously affect the way she feels. Even if they do not tell her to withdraw her allegation in so many words, she might be left feeling that it is her only option. An extreme example of this involved one complainant who recalled being taken to the police station where two male CID officers sat with her in a room and questioned her. She said that suggestions were made to her that sometimes women allege rape when it is not in fact true, and that her experience was likely to have been consensual given that the suspect was an ex-boyfriend of hers. Further, she alleged that, as far as they were concerned, blood which was found at the scene of the incident was seen as indicative only of 'rough sex' having occurred. At no point did the officers apparently take a statement from her, apart from recording her eventual decision to withdraw.

“They didn’t actually let me speak, I never wrote a statement with them, only to retract my complaint, that’s all I did. And that wasn’t my idea.”

Police and CPS lawyers cited other factors which might encourage rape complainants to withdraw their allegations. They thought that certain ethnic communities and religious groups put pressure on complainants to withdraw their allegations. Orthodox Jews were mentioned as one example. It was suggested that there needs to be more specific police training, so that they are better equipped to deal with sensitivities of this sort. As one lawyer put it:

“It may be difficult in [a big city] to cope with the diversity sometimes... police are not always experienced enough or trained enough to deal with pressures from cultural groups.”

Each of the complainants spoken to maintained that if they were raped again they would not report the attack to the police. Of course, too few complainants were interviewed to be able to generalise from their experiences. However, other research supports these findings. A study by Jennifer Temkin (1999), for example, documents the negative perception of rape victims about the way their cases were dealt with. Most complaints were of the disbelieving attitudes of the police and the insensitive ways in which cases were handled.

It should be pointed out that some stations attach a high priority to the care and support given to rape victims. This is reflected in initiatives such as the introduction of victim suites, often away from police premises, the appointment of chaperones in some forces, improved channels of communication to keep victims updated, improved training for officers of both genders and specialist help provided through Victim Support. However, until such initiatives become the rule as opposed to the exception and involve all those concerned, the task of improving police services is not yet complete (Adler, 1991; Temkin, 1999; Victim Support, 1996).

### *Communication*

Good communication is vital if cases are to be pursued effectively.

“The main problem for a woman after the initial investigation was undoubtedly the general lack of information resulting in feelings of helplessness and non-involvement.”

Chambers and Millar (1986)

Temkin (1999) reports that, often, the complainant, having given her statement, never hears from the police again. Although the present study

was not able to explore this issue systematically, two of the complainants who were interviewed in this study were critical.

“... I had no idea what was going on with the police, what they were doing about it, and really if it was all over, you know... like I had been sent home with a smacked bottom. But they were in touch with [the suspect], telling him what was going on and what was going to happen.”

There is a clear need for communication, liaison and skills with dealing with diverse communities. This relates to all those who come into contact with rape complainants, from the police and medical examiners to bodies like Rape Crisis and Victim Support, to name two that already exist and serve to facilitate this.

### *Vulnerable adults*

Forty cases in which the police decided not to bring charges involved complainants who had learning disabilities or were mentally disordered<sup>13</sup>. Sometimes it was thought that the complainant would not make a convincing witness. In addition, allegations of rape by complainants suffering from mental disorder were sometimes considered to be a ‘cry for help’ or ‘attention-seeking’. Often, these women had made similar allegations in the past. Despite the police sometimes believing that the complainant had probably been raped, they were concerned that the stress of a trial might damage her health.

### *‘Second-guessing’ the CPS and the jury*

One effect of the decrease in no-criming has been that the NFA filter is catching more cases. A major change since the previous study is that the CPS, rather than the police, now makes the decision whether or not to proceed with a prosecution, which obviously changes the dynamics of the whole prosecution process. The police are likely to draw on their experience of what the CPS will support, just as the CPS, in reviewing the evidence, will have regard to how a jury will view it. As one police officer put it:

“... we tend to work backwards from experience... because when you have had your fingers burned in Crown Court a few times and asked a question why didn’t you do this, or why did you do that, and you think, oh God I hadn’t thought of that, those experiences burn on your mind as the same for all of us, so when you come to deal with a case later we tend to look at where we are going with it, and work back to provide all the issues that will help us to get there.”

<sup>13</sup> Twenty-two cases involving women suffering from mental disorder or learning disabilities were no-crimes, usually because their allegations were believed to be false, and 18 were NFA-ed.

However, an alternative perspective is that the police should not act as 'gatekeepers' and should, to a large extent, investigate a case and submit it for prosecution regardless of the way in which it is likely to be perceived by the CPS.

"Whatever the CPS think ultimately, it's still our duty to investigate it as thoroughly as possible, and although perhaps in the back of your mind you might think... really we haven't got any corroboration all we're going to have is his word against hers... it's still our duty to investigate."

For its part, in reviewing the case the CPS must decide whether the evidence is likely to persuade a jury. For example, is there corroboration by way of medical or forensic evidence? Are there independent witnesses? Is there evidence of violence? As one CPS lawyer said:

"We might believe that [a complainant] will come up to proof but convincing a jury is a different thing... at the end of the day the jury in a 95 per cent date rape case will say 'sorry, we are not going to send this guy to jail for seven years because the woman, you know, met him and went with him quite willingly.'"

This may point to a need for better training and evidence-gathering for the police, including collection and presentation of expert evidence. There is a particular need to ensure that full use is made of any evidence of injury.

---

## 4. CPS decision-making

If the police decide to charge a suspect, the case is passed to the CPS for a decision on whether to proceed with a prosecution. The CPS must decide whether prosecution is appropriate applying the evidential and public interest tests set out in the Code for Crown Prosecutors. Firstly, is there enough evidence to provide a 'realistic prospect of conviction': would a jury, properly directed, be more likely than not to convict the defendant? If there is insufficient evidence, the case cannot proceed. Secondly, if there is sufficient evidence, is it in the public interest to proceed? It is highly unlikely that it would not be in the public interest to prosecute a rape case because rape is a serious offence, likely to result in a significant sentence, where the victim is likely to be vulnerable, put in considerable fear and attacked – all factors in favour of prosecution set out in the Code. Figure 4.1 shows what happened to those cases submitted to the CPS.

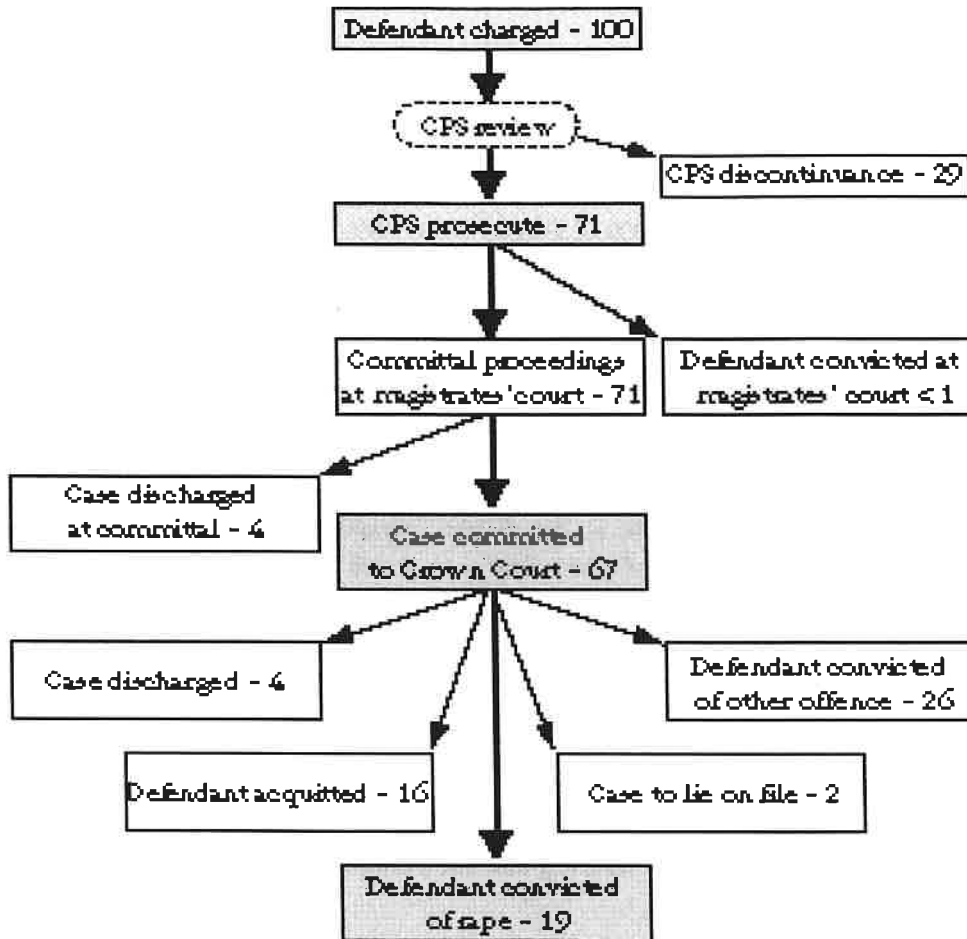
Half the cases crimed and detected by the police were submitted to the CPS for prosecution. The CPS discontinued just over one-quarter of these cases<sup>14</sup>. About half these were discontinued at or before the first court hearing, 16 per cent before the second hearing and the remainder at or after the second court hearing.

In discussion, the CPS maintained that they always try to press ahead with prosecution and would not discontinue without very good reason. There was only limited information as to the nature of evidential weaknesses, although in five cases the witness's refusal to give evidence was noted on file.

---

<sup>14</sup> This compares with the national discontinuance rate of 12 per cent for 1996.

**Figure 4.1: Flow diagram illustrating the attrition of rape cases from charge to conviction (percentages)**  
 (base = defendants charged; n=140)<sup>15</sup>



Sexual assault cases in general and rape cases in particular raise a number of evidential difficulties:

they often involve vulnerable victims, including children and those with mental health problems or learning disabilities;

the victim's sexual history is sometimes an issue;

there is often a prior relationship between victim and offender which can test the victim's willingness to give evidence – and the victim can pull out at any point in the process, effectively leaving the prosecution without a case;

with most other crimes it is clear that a criminal act has occurred; with sex offences involving those over 16 the issue commonly turns on the issue of consent – simply his word against hers.

<sup>15</sup> Percentages do not always sum to 100 due to rounding or missing information.

There were mixed views about how far the system should have regard to the welfare of the complainant. Some police officers and CPS lawyers felt that a rape case should be given a chance in court in borderline cases. However, one CPS lawyer argued that it was right for the decision on prosecution to be distanced from the complainant.

“I know that a lot of people think that... you should give the victim her day in court, but I don't think that is right at all... I think the victim doesn't really have much of a say whether you discontinue the case or not, it has to be just between the officer and yourself.”

The research examined the link between CPS decision-making and features of the case. There was found to be a significant association between the age of the complainant and whether a case was discontinued. Cases involving particularly young complainants (under 12 years old) or older complainants (over 45 years old) were those most likely to be proceeded with by the CPS. (see Table 4.1).

*Table 4.1: Age of complainant and CPS action*

	12 & under %	13–15 %	16–25 %	26–35 %	36–45 %	Over 45 %	All %
Discontinued	14	34	33	29	17	–	28
Prosecuted	86	66	67	71	83	100	72
TOTAL(n)	100 (21)	100 (44)	100 (49)	100 (14)	100 (6)	100 (7)	100 (147)

Note: n=141 of 147 rapes where a suspect was charged for which age of complainant was known.

No significant association was found between other case circumstances, such as consensual contact, and the CPS decision to discontinue cases.

Two alleged acquaintance rape cases and four involving intimates were recorded as having been dropped on public interest grounds<sup>16</sup>. However, closer examination suggested that these cases involved complainants who were reluctant to give evidence and so could more accurately have been recorded as discontinued on evidential grounds<sup>17</sup>.

<sup>16</sup> These included husband and wife or boyfriend and girlfriend cases and ones involving young children.

<sup>17</sup> It was sometimes difficult to distinguish between a public interest discontinuance and a complainant withdrawal as the same event was often recorded in different ways as cases proceeded through the CPS stage.

165

A question of evidence? Investigating and prosecuting rape in the 1990's

---



---

## 5. The progress of rape cases through the courts

### **Magistrates' courts and the Crown Court**

Rape is an indictable-only offence and therefore must be tried at the Crown Court. All cases start off in the magistrates' court<sup>18</sup> but can only be finalised there if they are reduced to lesser offences such as indecent assault or unlawful sexual intercourse (USI)<sup>19</sup> or are discontinued prior to or at committal. Court proceedings were brought against 100 defendants. Of the initial sample of crimed cases, only 26 per cent reached the Crown Court. One defendant was convicted and sentenced at the magistrates' court for USI.

When cases were first heard at a magistrates' court 88 defendants were charged with rape and five with attempted rape. A further three defendants were charged with USI and another two with indecent assault<sup>20</sup>. Sixty-six defendants faced additional or alternative charges, 43 of which were sexual offences.

Figure 5.1 gives an overview of what happened to the 100 defendants who were prosecuted.

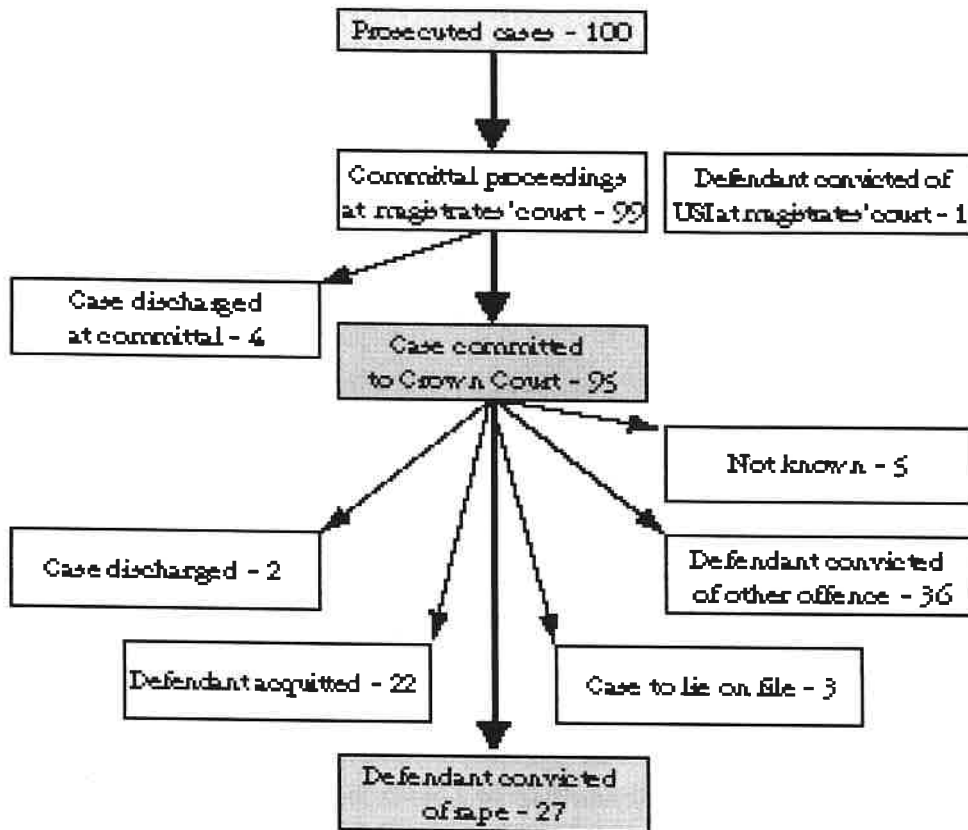
---

18 Indictable-only offences will be sent straight to the Crown Court under the Crime and Disorder Act 1998.

19 Such cases are triable either at magistrates' court or Crown Court.

20 Two defendants were charged with non-sexual offences including false imprisonment.

*Figure 5.1: Flow diagram illustrating the attrition of rape cases from prosecution to conviction (percentages)*  
 (Base = prosecuted cases; n=100)



### Case outcomes

Table 5.1 shows convictions for both rape and alternative charges, and details of acquittals, according to type of rape.

*Table 5.1: Outcome at the Crown Court*

	Stranger (n)	Acquaintance (n)	Intimate (n)	All (n)
Convicted of rape	2	13	10	25
Convicted of attempted rape	1	1	-	2
Convicted: USI under 16	-	5	5	10
Convicted: USI under 13	-	1	1	2
Convicted: indecent assault	2	8	7	17
Convicted: incest	-	-	2	2
Convicted: other non- sexual offence	1	-	4	5
Jury acquittal	2	8	6	16
Judge ordered acquittal	-	1	1	2
Judge directed acquittal	-	1	3	4
Other	-	2	3	5
Not known	-	3	2	5
TOTAL (n)	8	43	44	95

Note: n=95 (Crown Court defendant sample)

In all, 63 offenders were convicted of an offence at the Crown Court. Of these, 25 were convicted of rape and two of attempted rape. Only 9 per cent of the original sample of 299 suspects for crimed rapes were convicted of rape or attempted rape. This compares with the national conviction rate of 10 per cent at the time of the research in 1996. Among the remaining 36, 17 were convicted of indecent assault and 12 for USI.

Table 5.1 shows that a number of defendants in cases involving acquaintances or intimates were convicted of USI but (as one would expect) no stranger defendants were. A significant minority of defendants in all three relationship groups were convicted of indecent assault. These were not necessarily less serious offences: indecent assault carries a maximum sentence of ten years. One stranger was convicted of assault occasioning grievous bodily harm. Four intimates were convicted of other non-sexual offences which included assault or affray: this might indicate that these incidents were associated with domestic violence.

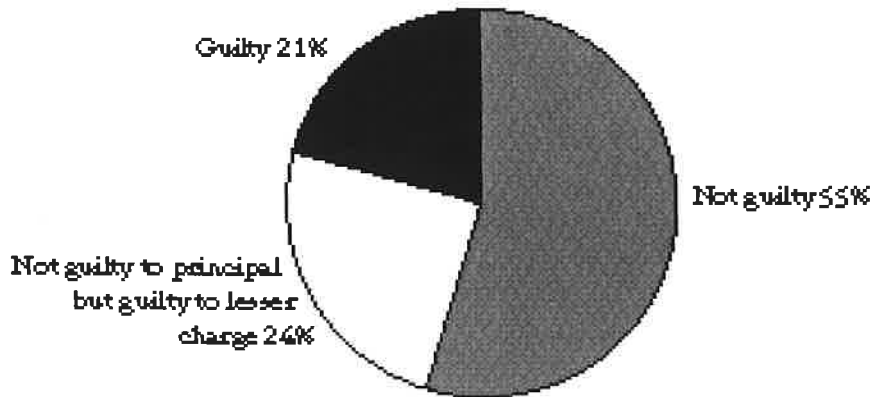
*Plea**Figure 5.2: Defendant pleas at the Crown Court*

Figure 5.2 shows defendant pleas at the Crown Court.

Three-quarters of those defendants who pleaded guilty to a lesser charge were convicted only of those charges. (In the remaining cases the plea was not accepted and the case went to trial.) Interviews with judges and barristers confirmed that plea-bargaining, or 'horse trading' as one judge called it, often takes place. Relative certainty of conviction and sparing the complainant from having to give evidence can be persuasive factors when considering whether to hold out for a rape conviction.

Defendants in both alleged acquaintance and intimate rapes were more likely than strangers to plead guilty to an alternative offence. Intimate cases often involve children and it may be difficult to establish whether all the legal components of a rape charge have been made out. In these circumstances, a charge of indecent assault is often substituted.

*Age*

Cases involving particularly young complainants (especially under 13 years of age) were more likely to result in conviction:

88 per cent of cases reaching the Crown Court involving complainants under the age of 13 led to a conviction;

three-quarters of cases involving complainants aged 16 to 25 led to a conviction;

Only half those cases involving women over 25 reaching the Crown Court resulted in a conviction.

### *Acquittals*

One-quarter of all cases reaching Crown Court resulted in an acquittal, usually by a jury. There was no significant variation in the acquittal rate between the three relationship groups or between age groups, although cases involving older complainants (over 26) were more likely to lead to acquittal at court than those involving younger complainants. However, a few cases where the complainant and suspect were known to one another resulted in:

judge directed acquittals – where, after hearing the prosecution evidence, the judge decided that the prosecution had not presented sufficient evidence to prove its case (four cases);

judge ordered acquittals - where the prosecution offered no evidence at the outset of the trial because the key witness did not appear (two cases).

### **Sentences**

Table 5.2 shows the sentences given to those convicted of rape or other offences.

*Table 5.2: Sentence by offence type*

	Rape (n)	Attempted rape (n)	Other offences (n)
Up to 12 months	1	-	8
1-2 years	1	-	7
>2-4 years	4	1	7
>4-6 years	7	1	3
>6 years	9	-	4
Life	3	-	-
Community service	-	-	1
Probation	-	-	3
Supervision order	-	-	1
Conditional discharge	-	-	2
<b>TOTAL</b>	<b>25</b>	<b>2</b>	<b>36</b>

Note: n=63 (those defendants who were convicted at Crown Court).

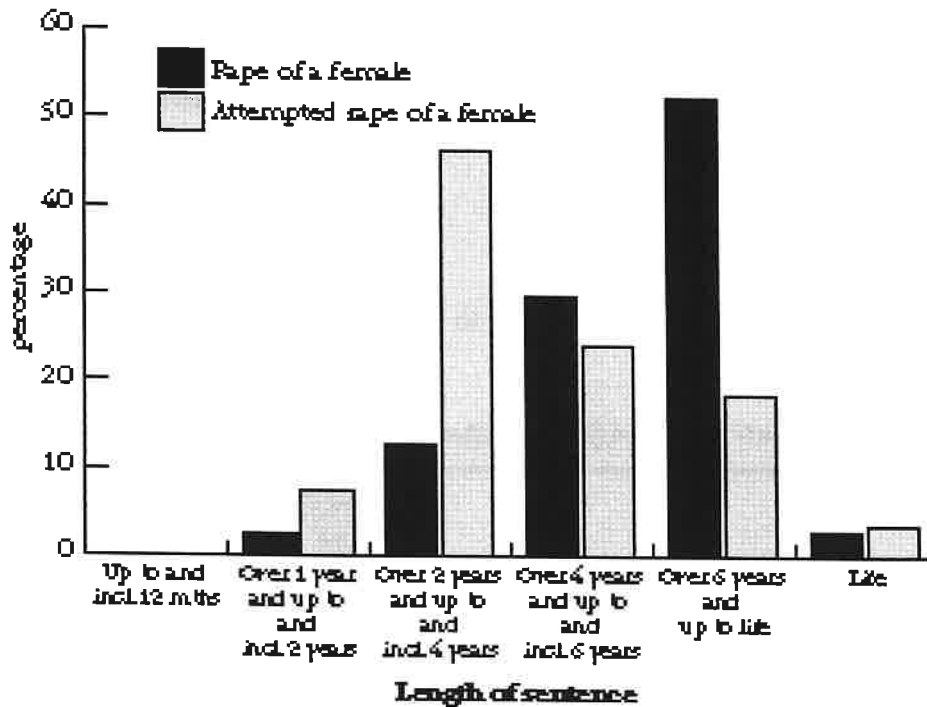
All those convicted of rape or attempted rape were imprisoned, in most cases for more than four years and in three cases for life. Among the 36 defendants convicted of offences other than rape, 29 were imprisoned, and the remaining seven received community sentences or conditional discharges.

The figure below gives an indication of national sentencing figures for rape and attempted rape at the time of the research. It indicates that where a defendant is convicted of rape, the sentence is likely to be severe:

half those convicted of rape incurred custodial sentences of over six years up to life; and

just under 30 per cent incurred sentences of between four and six years.

*Figure 5.3: Proportion of males sentenced<sup>21</sup> to immediate custody for offences of rape and attempted rape of a female, England and Wales 1996*



21 Total males sentenced at the Crown Court for the offence of rape of a female was 478 of which 465 were given a custodial sentence, 29 detained under s53 of the Children and Young Persons Act 1933, 3 Restriction Order, 3 Probation Order, 2 Hospital Order, 2 fully suspended sentence, 1 absolute discharge, 1 Supervision Order and 1 otherwise dealt with. Total males sentenced at the Crown Court for the offence of attempted rape of a female was 63 of which 54 were given a custodial sentence, 5 detained under s53 of the Children and Young Persons Act 1933, 2 Hospital Order, 1 Probation Order and 1 Supervision Order.

---

## 6. Practitioners' views of the court process

Because the number of cases reaching court covered by this study was quite small, interviews with CPS lawyers, barristers and judges were important in exploring some of the issues underlying the statistical findings.

### **The number and nature of rape cases reaching court**

The number of cases reaching the Crown Court increased from 758 in 1985 to 1,341 in 1997. Judges and barristers confirmed that the types of rape case reaching court had changed over the last ten years or so. But interviewees suggested that this was because the filtering of cases by the police and CPS was less rigorous than in the past, notwithstanding the fact that the proportion of initially recorded rapes reaching court has fallen.

"... you used to only get the strong cases going to court, whereas now... you've got far more weak rapes going to court than any other category of case." [Barrister]

In fact, as Appendix A shows, the proportion of rape cases that reach court has declined markedly over the years. But the study shows that the nature of cases proceeding to court has changed (i.e. more acquaintance/intimate rapes), reflecting changes in the nature of cases reported. The case now usually turns on the issue of consent, which puts into context the perceptions that cases are 'weaker' than they used to be.

"What is happening now... is that a very much larger proportion of cases of rape now depend on one person's word against another's." [Barrister]

The notion that there are 'types' of rape permeates the court process, as exemplified by the following comment from a judge.

"... I wonder whether the serious type of rape of a stranger... in a public place or whatever at night should not be a rather separate offence than, if I can put it to the other end of the scale, the misunderstanding between two people who know each other."

Other respondents suggested that in cases where the complainant and suspect are known to each other, there are also more likely to be false allegations.

“The weaker cases, the simply word against word cases, you are going to get a higher percentage of cases in which there is a fraudulent allegation, you are bound to, I think it’s inevitable.”

[Barrister]

This barrister went so far as to suggest that perhaps it is more likely that false allegations of rape reach court, the genuine complainant having withdrawn her complaint because she cannot face the ordeal of a trial. However, there was no evidence that this view was widely shared.

### **The trial**

Once it is decided that a case will go to court, the CPS instructs a barrister to represent it at the trial. Barristers interviewed felt that the standard of cases presented to them by the CPS was generally good and that papers were received in good time. But sometimes a case conference involving the CPS, police and barrister could be a helpful means of ensuring that any weaknesses could be addressed in good time. For example, if there is reference to violence, is there supporting photographic or medical evidence?

Where the issue is one of consent, the defence has little choice but to seek to undermine the credibility of the complainant. To this end, it may seek to exploit details of her sexual history or mental health.

Experienced judges can be given a ‘sex ticket’ which authorises them to preside over serious sex cases such as rape, and training is given. There was a widespread view that barristers ideally should have had several years experience before tackling rape trials, which call for a degree of specialism. However, one barrister criticised the CPS for the level of fees they attach to rape cases. In general, the more serious the case the higher the fee and, therefore, the more senior the barrister who will take the case. It was suggested that the CPS send rape cases to chambers with relatively small fees attached, which would preclude senior barristers from taking them.

“It’s not that the good people and experienced people are holding out for silly money... I mean we’ll accept the fact that we’ll get paid half what the defence barrister is going to get but just don’t pay us a quarter of what the other guy is going to get, that’s simply insulting and we won’t do it”



The view echoes The Review of the Crown Prosecution Service (the Glidewell report) which recommended that fees paid to prosecution counsel should be in line with those paid to the defence<sup>22</sup>.

## **The jury**

“It’s a matter for the jury. It is not a matter for a police officer, a lawyer, a judge or anyone else.”

With most rapes involving people known to the victim, the task usually facing the jury is to decide whether or not the complainant consented and, if she did not, whether the defendant was reckless as to consent. The requirement that the jury must be satisfied ‘beyond reasonable doubt’ in cases which hinge on her word against his sets a tough challenge for the prosecution. Nevertheless, judges and barristers interviewed did not believe that juries have too much problem with rape trials. There was a view that the prosecution prefers to see a jury made up predominantly of men, as it was thought that women tend to be judgmental of their own sex and might have less sympathy for the complainant. One police interview offered a rather different perspective.

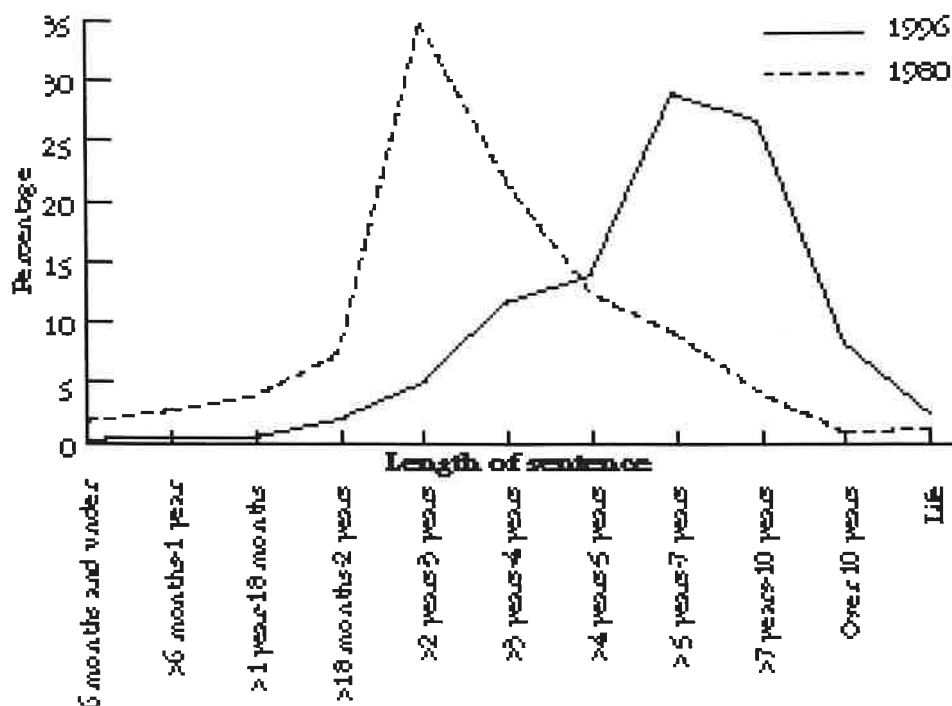
“It is a judgement call, these people are sitting in their jury room and they think that some of them are blokes and they have gone out at a night on the town and they have had a few beers and they chatted up a girl and then they have made a pass at her and got a brush off, but thought oh my goodness, what would I have done if... and that is the area where people think do I really put this nice bloke from the students union into prison for this for rape when, you know, they were both drunk as skunks, etc., etc.”

## **Sentencing**

Judges interviewed stated that evidence of violence was always an important factor in sentencing. Other aggravating factors included: indulgence in perversion; infliction of more than one sexual act on the complainant; and the use of a weapon. In addition, an incident involving a breach of trust, perhaps where the complainant was in the care of the defendant, might result in a more punitive sentence.

<sup>22</sup> Recent analysis has shown that, on average, CPS fees are about 66 per cent of the value of fees paid to defence counsel out of the Graduated Fee Scheme. The gap may be larger for rape cases for which the defence are often able to obtain a Legal Aid Certificate for leading counsel

Figure 6.1: Males sentenced to imprisonment for rape at the Crown Court by length of sentence: 1980 and 1996



Source: Criminal statistics.

As a result of Billam<sup>23</sup>, and perhaps pressure from the public and women's groups, sentences for rape offences have increased over the years (see Figure 6.1). Some of the judges interviewed believed that, as a result of stiffer sentences, juries are now less likely to convict.

"A five-year starting point for a contested trial is too high... if it's a date rape thing, and [the jury] think 'possibly it was rape, but it's not worth five years.'"

Judges were not unanimous, however: another believed that sentences are still too low, especially for 'date rape' cases. The relevance of plea was summed up by one judge.

"I think we all regard a plea of guilty in a sex case as deserving an even greater discount than it does in any other case because of not putting the girl through the ordeal!"

23 The then Lord Chief Justice, Lord Lane, in his summary to the R v Billam case (February 1986) set out the following sentencing guidelines:

- i. rape committed by an adult without any aggravating or mitigating factors in a contested case (i.e. not guilty plea) - five years starting point;
- ii. rape committed by two or more men acting together, or by a man who has broken into or otherwise gained access, or by a person in a position of responsibility, or who abducts the victim - eight years starting point;
- iii. defendants who have committed a campaign of rape on a number of different women - 15 years or more;
- iv. where the defendant has perverted or psychopathic tendencies or gross personality disorder and where he is likely to remain a danger for some time - life sentence is not inappropriate.

Indeed, several judges suggested that the Billam guidelines are not as helpful as they were because the nature of the cases now coming before the courts is different.

“I believe that I have presided over a number of what we will call date rape cases in which, given my own total discretion, I would not have given him five years.”

### **Who makes a good witness?**

“Someone who is telling the truth – it’s as simple as that.” [Barrister]

There appeared to be a wide range of views as to what made a complainant convincing when she was standing in the witness box. From the prosecution point of view, a witness who breaks down sobbing in the witness box was said to be ‘cosmetically effective’ in some cases. On the other hand, a well-prepared complainant was also seen as a strong witness. From the defence point of view, it would usually be counter-productive to cause a complainant avoidable distress. It was felt that particularly young or particularly old complainants often make good witnesses, as a jury will tend to judge them as unlikely to lie.

“If you’ve got a child under ten and... she says you know, this man put his penis in my vagina, you think well it’s more likely they are telling the truth because a child under ten wouldn’t know that grown-ups do that sort of thing.”

Teenage witnesses were felt to be more problematic. According to one barrister, teenage girls have been known to make allegations as a way of attention-seeking. It was also alleged that sometimes young girls indulging in sexual activities might claim that it was without consent when they were confronted by a parent.

Perhaps surprisingly, prostitutes were said to be convincing witnesses. It was felt that, given the nature of a prostitute’s work, they are unlikely to ‘cry rape’. In addition, rapes of prostitutes are often violent and evidence of injury will usually count in support of an allegation. As one police officer said:

“I regard them as business people. Why would they want to take God knows how many hours out of their tour of duty when they could be making money to make up a spurious story?... and most prostitutes you know they’re pretty strong people and unless there is an overt weapon that can do them harm, they’re not going to let somebody get the better of them... so you usually find some supportive evidence of violence.”

Consistency of evidence was seen as particularly important. This is not always easy as an account is likely to have been provided several times: to the first person the complainant tells after the attack; to the police; in response to questions from the medical examiner; and in her cross-examination at court. The defence will draw attention to any discrepancies in a woman's story.

Some cases may appear weak on the surface but, when given a chance in court, result in a conviction. One judge spoke about a case in which a complainant had returned home with a group of men intending to have intercourse with one of them but on the way deciding that she would rather have intercourse with another. However, when the second man had later tried to have intercourse with her she pushed him off and ran out of the flat. The incident was recorded as rape and, as the judge said, there was very little evidence to support the allegation and a conviction appeared highly unlikely. However, the case was proceeded with, the complainant turned out to be a good witness and when it went before a jury they found the defendant guilty.

### **The use of sexual history evidence**

The Sexual Offences (Amendment) Act 1976 sought to protect a complainant of rape from the unrestricted admission at trial of evidence relating to, or cross-examination about, her previous sexual experiences with people other than the accused. It is now for the judge to decide whether sexual history evidence should be admitted. In addition to this, measures are being introduced in the Youth Justice and Criminal Evidence Bill which give further restrictions upon what evidence of an alleged victim's sexual behaviour can be considered relevant.

Judges and barristers were generally of the opinion that the sexual history of a complainant was often relevant to a case. They felt that blocking such evidence might present a false picture to the jury.

"If you were sitting on the jury and that was the issue – in the back of the car, did she consent or did she not – would you not want to know whether she has slept with the last five men that she went to the dance hall with?" [Judge]

Another judge took the opposite view.

"Normally, whether a girl has consented with this man has got nothing to do with whether she has consented with another. It is wrong simply to say to a girl 'you will go with anybody', because she may go with anybody except him."

Some respondents thought sexual history might be relevant, but only if it showed that the complainant was lying: for example, if she claimed that she was a virgin at the time of the alleged attack and the defence can show her to have slept with someone in the past. Evidence that she has lied about some part of the allegation has implications for her other evidence. It can also remove the element of aggravation that the victim was a virgin.

The complainant's sexual history was not raised in the handful of cases observed, and information about admission of sexual history evidence was not available from the files examined for the statistical exercise.

**Easing the trauma for the complainant**

When a complainant is called to give her evidence in court, the prosecution may ask the judge for a screen to be erected so that the complainant cannot see the defendant. One-way glass from the public gallery, whereby the public can watch proceedings but cannot be seen or heard from the court, was mentioned by barristers and judges as another way to make the complainant feel at ease. It has been suggested that having a complainant give evidence via a video link from a separate room (particularly in the case of vulnerable witnesses) might go some way further towards easing her trauma (Home Office report: 'Speaking Up For Justice', 1998<sup>24</sup>). However, CPS lawyers, judges and barristers did not see this as a good idea in the general run of cases. It was felt that a complainant can have a more positive impact on the jury by giving evidence in person, as implied by one judge.

“In some cases I think that the jury do regard the whole thing as just another television programme... if you can possibly put... flesh and blood on the witness stand you are going to find a much more convincing prosecution case than if you don't.”

There is no evidence from child abuse cases that having evidence presented via a video link makes any difference to the outcome of a case. So this difficulty may be more imagined than real. The answer is probably that different approaches are needed in different circumstances. There is a need to balance the possible (but unproven) risk that the jury will be less directly affected by the victim if she gives the evidence through a live link with the risk that without the protection of a live link some victims will either not pursue their case through to court, or will be very distressed by the process of giving evidence. The Interdepartmental Working Group on the treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System made recommendations which focus on the needs of the witnesses, rather than on the offence. Recommendations in its report propose the development of

24 Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System.

training materials which will enable all practitioners in the criminal justice system to have at least a minimal level of awareness of vulnerable or intimidated witness issues. Rape is one of a number of offences which can involve especially vulnerable victims, by virtue of age, mental illness or learning disabilities.

Delays in cases coming to court were considered to be another source of anxiety and strain for the complainant. This can be very frustrating for the prosecution if not for the defence. As one barrister put it:

“The defence and the defendant have a vested interest in delay.”

Delays and adjournments can occur when the court is waiting for forensic evidence. However, this would usually only be where a case rests on the identification of a suspect and such cases are relatively unusual. Generally, respondents felt that rape cases are not necessarily more subject to delays than any other kind of case, and that the difficulties are part of the more general problem of delay. The provisions in the Crime and Disorder Act 1998 for indictable-only cases such as rape to start in the Crown Court should help reduce court delays, once rolled out nationally<sup>25</sup>.

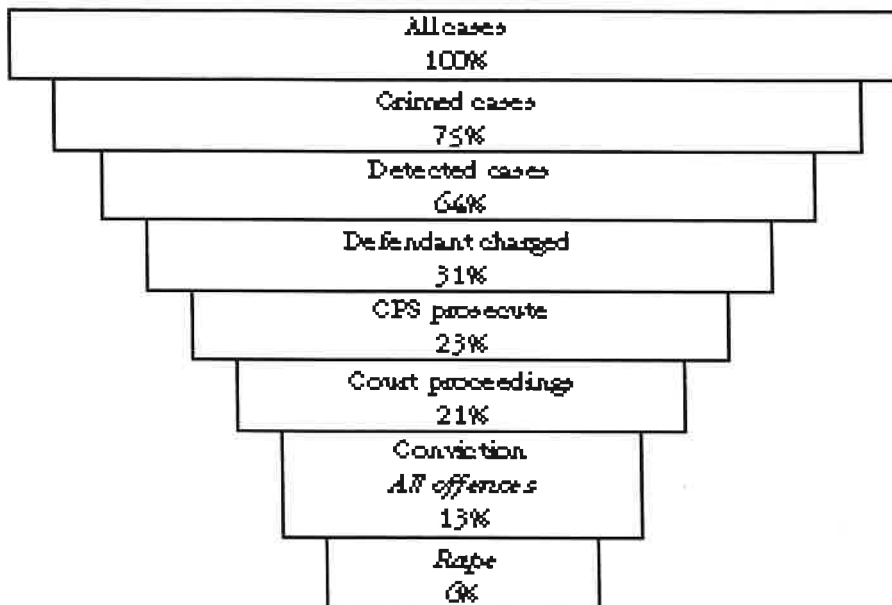
---

<sup>25</sup> The indictable-only provisions are currently being piloted in six areas of England and Wales.

## 7. Discussion

This study has examined the processing of rape cases by the criminal justice system and pointed to the stages at which cases fall by the wayside. Figure 7.1 provides an overview of the process and shows that of every 100 cases in the study, only six resulted in a conviction for rape.

*Figure 7.1: The overall attrition process for cases in the study (actual proportions) N=483<sup>26</sup>*



The national statistics of rape offences show a similar picture.

The proportion of recorded rapes resulting in a defendant being convicted for rape was lower in 1997, at nine per cent, than in any other year except 1994. However, since 1985, the number of recorded rapes has increased more than three-fold.

The problem of attrition in the criminal justice system, and its increase over time, is not restricted to rape offences. A recent study (Langan and Farrington, 1998) examined changes in attrition between 1981 and 1995 for a variety of offences ranging from murder and rape to motor vehicle theft.

<sup>26</sup> 483 cases is the sample on which complete information is available – from recording to conviction.

The study showed that the risk of being caught and convicted had fallen for all the offences considered. While the proportions of alleged rapists convicted fell by 63 per cent there was a similar fall for assault (66%). The increase for rape partly reflects changes in reporting, which itself may reflect greater confidence that the police will deal sympathetically with complainants. But it also means that most of the increase centres on cases involving acquaintances and intimates, and it has always been these cases that are most likely to be dropped. Nevertheless, the fact that fewer stranger rapes are ending in conviction – mainly because of poorer detection rates – is a cause for concern.

A point which runs through much of the process is the need for practitioners to have a better understanding of the particular needs of victims of sexual offences. There is also a link with some of the concerns about other offences, notably those involving domestic violence, in that the prior relationship between victim and offender can make the practical and emotional issues particularly difficult to handle. It is especially difficult for a victim to persevere with a case of length when she may be in a continuing relationship with the accused, or if pressure may be brought to bear through other social contacts or networks.

Despite the explanations, it is cause for concern that only 6 per cent of those initially accused of rape were convicted of rape or attempted rape. The figure rises to 9 per cent if no-crime cases are removed and to 21 per cent if convictions for any offence are included, but these are still low. The problem is not primarily that cases are not cleared up – in the great majority of cases the identity of the alleged offender is known. But it is precisely because the victim so often knows the offender that difficulties often arise in pursuing cases to a successful conclusion. This chapter looks at the key points at which cases drop out of the system, and what more might be done to secure convictions.

### **No-criming**

One quarter of incidents initially recorded as rape are subsequently no-crime by the police.

Cases should only be no-crime where there is clear evidence that the allegation was fabricated. The research suggests that, although fewer cases are no-crime than used to be, many are wrongly no-crime rather than being NFA-ed. For example, it was found that in some instances the reason for no-criming was that there was insufficient evidence.



**Recommendations**

- 1. The existing guidance on restricting the circumstances in which cases may be no-crimed remains valid. Consideration should be given to its re-issue, and to ensuring that it is adequately covered in police training and in HMIC inspections.

**No further action**

Half of all cases which are 'crimed' and cleared up result in no further action by the police.

The presumption is that a serious crime has been committed, and in most cases the police know who did it. The most common reason why cases drop out at this stage is that the complainant did not wish to proceed. (This was also a common reason for no-criming, and the reality is that less no-criming would be likely to result in more NFA.) This prompts questions:

do complainants receive sufficient support to persevere when the case could succeed, or are they too often discouraged by the police?

do the police set the evidential test too high, perhaps second-guessing the CPS?

is sufficient use made of evidence of violence?

There are examples of cases succeeding where the initial evidence looked unpromising, and it is almost certain that at least some of the cases which are not proceeded with could result in conviction. But where the case turns on the defendant's evidence against the complainant's, and because a jury must be satisfied 'beyond reasonable doubt' that she is telling the truth and he is lying, it is not surprising that many cases are dropped.

**Recommendations**

- 2. Those reporting rape to the police should be given greater support, perhaps involving agencies other than the police. Some other jurisdictions (eg some US states) have involved victims more closely in the investigative process, and have coupled this with support to help them persevere. There are various models which would be worth more thorough investigation.
- 3. There is a particular problem with intimate and acquaintance rapes, where there is a need to find out in more detail why cases are dropped than was possible in the present study.

4. The police should be readier to consult the CPS in borderline cases, and should not be too quick to assume that cases which may look unpromising could not be built up, especially if the complainant can be drawn more prominently into the process.
5. It is of interest that cases in which there is evidence of violence are often dropped. There would appear to be scope for better evidence gathering, eg through photographs and medical reports, and for ensuring such evidence is given due weight in later discussions.
6. Individual police officers will rarely deal with rape – the number of rapes reported each year is only about one twentieth of the number of police officers. There is a clear need to cover the issues raised by rape cases in training, but also to ensure that refresher training is given as best practice develops.
7. Further research could examine the way in which cases are dealt with and complainants treated at the early stages of the system in order to get a better understanding of why withdrawals occur. This would more clearly identify the dynamics of the process – this was not wholly possible in the present study which was primarily restricted to retrospective analysis of case files.

### **Discontinuance by the Crown Prosecution Service**

Just over one-quarter of cases forwarded to the CPS were discontinued.

The CPS dropped some cases because, despite having persevered through the earlier stages, the complainant decided not to co-operate. Sometimes this happened before the case reached court; in other cases later. On other occasions the CPS reviewed the available evidence and decided that the chances of conviction were not sufficient for there to be a realistic prospect of conviction. This prompts questions about the level of co-operation between the police and CPS where more evidence was needed, and perhaps whether too high a threshold is set.

Anecdotal evidence suggests a need for greater specialisation in the legal profession as there are key features of rape cases which differentiate them from the general norm. Sexual offences are still comparatively rare in terms of court caseloads, and because of non-specialisation, lawyers deal with few sexual cases of any sort, and very rarely with rape.

It is worth citing from the Glidewell report, as it strongly echoes key findings of the present study.

'With some offences... the CPS lawyer has a particularly difficult task in deciding whether to discontinue. A charge of rape, where the defence is consent, is perhaps the most difficult offence on which to make such a judgement on paper. Often, if what the complainant says is believed completely, the defendant was Guilty of rape but, where there are no signs of violence or other facts which tend to support her account, the issue will in the end depend on whether she is believed by a jury. ....This raises the question whether, in some limited circumstances, CPS lawyers should be permitted (as at present they are not) to meet complainants in order to gain a clearer understanding of the alleged circumstances and to decide as best they can whether a complainant is likely to convince a jury.' (Chapter 4 , para 33.)

### ***Recommendations***

8. A study, as mentioned above, which tracked cases through in detail with interviews with decision-makers (including complainants) on individual cases, would pick up reasons why the CPS drop cases (and also why they recommend the police not to charge). This would link with a recommendation in the Glidewell report that a study should be made of the reasons for discontinuance in more serious offences.
9. Although in the present study some lawyers expressed reservations about meeting victims, Glidewell offers the idea of meetings with the complainant as an idea worth discussion. The report 'Speaking Up For Justice' makes a recommendation (Recommendation 27) for meetings between the prosecutor and certain vulnerable or intimidated witnesses, claiming that it would assist the presentation of the case and provide reassurance for the witness. It is worth considering the practices of other countries such as the USA, where the equivalent of the CPS does meet with complainants.

### **Court proceedings**

It is not uncommon for charges to be downgraded, typically from rape to indecent assault, when the case comes to trial. There is a difficult balance to be struck between securing a certain conviction to a lesser offence, and downgrading what is a very serious offence. This raises the question of whether the law itself needs any revision. This is a complex issue, since being raped by someone known and trusted can be potentially even more traumatic than being raped by a stranger. So there are no easy answers based on the relationship between complainant and suspect. But given the fact that

only 43 per cent of convictions were for rape or attempted rape, in effect offences initially recorded as rape are being reclassified as they progress through the criminal justice system. And it would appear that most of this happens late on, given the difference between the offence charged at committal and the outcome at the Crown Court. This is another issue that was picked up in the Glidewell report. It is, however, worth noting that 'lesser' offences sometimes attracted more severe penalties than some rapes; so while rape may have the most severe maximum penalty, there is considerable overlap in the sentences handed out for different offences. This reflects the full range of aggravating and mitigating factors which may be even more important than the precise charge.

There were clear differences of view about when (if ever) the sexual history of the complainant was relevant. The only clear support for such evidence is if it bears on the veracity of the complainant – for example if she claims she was a virgin at the time and there is evidence that she was not. That apart, from interviews with judges, prosecutors and police, the nearest view to a consensus is probably that of the judge who said: "It is wrong simply to say to a girl 'you will go with anybody', because she may go with anybody except him".

The high rate at which complainants withdraw and previous research (Davis and Westcott, 1992) strongly suggest that complainants feel that giving evidence in court would be a harrowing ordeal. Ways of providing better protection in certain types of case were set out in 'Speaking up for Justice', the report of the Interdepartmental Working Group of the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System. As a result, measures are being introduced in the Youth Justice and Criminal Evidence Bill. These cover such issues as physical measures to reduce the stress of giving evidence at trial (such as screens, live link CCTV and pre-recorded interviews); restrictions on the freedom of defendants personally to cross-examine their alleged victims; and further restrictions upon what evidence of an alleged victim's sexual behaviour can be considered relevant.

Glidewell pointed to the imbalance in resources available to the defence and prosecution, with defence fees on average between 50 per cent and 80 per cent higher than those of the prosecution. This echoes points from interviews in the present study.

### *Recommendations*

10. A study of offences with high rates of charge reduction, as recommended in the Glidewell report, would help explain the dynamics behind the change in charges at court.

11. The Review of Sex Offences will provide a useful opportunity to consider whether there should be any changes in the way rape is defined, including whether rape should be 'graded' in some way: the mismatch between initial recording and conviction is clearly unsatisfactory. It runs counter to moves in the wider context of violent offences to settle charges at an early stage, so that these can better inform later decision-making, for example in terms of early guilty pleas.
12. There is a need to improve prosecution standards, and to ensure that prosecuting barristers are paid broadly similarly to defence lawyers to remove possible imbalances between the expertise the two sides bring to the issues.
13. Other points emerging from this research simply reinforce the case for the changes which are already before Parliament, and which are designed to give more protection to vulnerable victims and witnesses.

### **Further work**

There are two particularly important gaps in information which need to be addressed. First, while this study has shown the extent of attrition and the stage at which it occurs, further vital information could be gained from a study which tracked cases through to conclusion, to assess the precise way in which decisions are influenced at each stage.

Second, while it is rarely practicable to import ideas directly from other countries, there are likely to be elements in the way rape cases are dealt with elsewhere that would be worth considering. Some of these have been touched on, but further evidence – for example whether better support for victims has directly helped to reduce attrition – would be worth investigating.

187

A question of evidence? Investigating and prosecuting rape in the 1990's

---

# Appendices

## Appendix A

*Table A.1: Overall attrition rate for rape between 1985 and 1997*

	Total number of offences recorded by the police as rape		Total number of offences cleared up by the police		Total number of offenders proceeded against at magistrates' court		Total number of offenders committed for trial at Crown Court		Total number of offenders appearing for trial at Crown Court		Total cautioned or found guilty of rape	
	No	%	No	%	No	%	No	%	No	%	No	%
1985	1,842	100	1,177	64	844	46	758	41	569	31	450	24
1986	2,288	100	1,428	62	927	41	804	35	593	26	415	18
1987	2,471	100	1,748	71	1,048	42	867	35	649	26	453	18
1988	2,855	100	2,055	72	1,288	45	1,082	38	799	28	540	19
1989	3,305	100	2,455	74	1,400	42	1,140	34	930	28	613	19
1990	3,391	100	2,498	74	1,467	43	1,147	34	914	27	561	17
1991	4,045	100	3,062	76	1,711	42	1,323	33	914	24	559	14
1992	4,142	100	3,124	75	1,648	40	1,184	29	933	22	529	13
1993	4,589	100	3,403	74	1,704	37	1,202	26	892	19	482	10
1994	5,032	100	3,695	73	1,782	35	1,266	25	940	19	460	9
1995	4,986	100	3,722	75	1,604	32	1,048	21	1,065	21	578	12
1996	5,759	100	4,418	77	1,696	29	1,158	20	1,107	19	573	10
1997	6,281	100	4,946	78	1,880	30	1,341	21	1,209	19	599	9

Notes.

1. Recorded figures and clear-ups (first two columns) do not include no-crimes.
2. Figures in this table are taken from two sources – those in the first two columns are offence-based while those in the remaining columns are offender-based.

## Appendix B

### Comparing the two rape studies

The no-criming figure was calculated on a different basis in the previous Home Office study based on 1985 data. The previous study only recorded cases no-crimes at least one-month after the allegation, while no-crimes recorded within the month were included in the present study. However, during the period of their research, Lloyd and Walmsley<sup>27</sup> (1989) found that the average no-criming rate during the second quarter of 1985 was 45 per cent<sup>28</sup>.

Therefore, figures from the previous study were re-calculated on a new basis of recorded crimes:

335 cases initially recorded as rape including 25 per cent no-crimes;

464 cases initially recorded as rape including 45 per cent no-crimes.

Using the base figure of 464, calculations in the previous study give the following:

45 per cent no-crimes;

10 per cent NFA-ed;

7 per cent undetected;

2 per cent cautioned;

35 per cent reached court;

7 per cent found not guilty/discharged at court;

27 per cent resulted in some conviction at court, 19 per cent of these for rape.

---

27 This figure was an estimate based on the 1985 data also used in the previous rape study (Grace et al, 1992). See appendix A for more information on the bases on which the two rape studies are compared.

28 Although there was considerable variation between forces (0 to 86 per cent).



## Appendix C

### Crimed cases

*Table C.1: Relationship between complainant and suspect-reported rapes*

	per cent	(n)
<b>Stranger</b>	<b>11</b>	<b>(38)</b>
<b>Acquaintances</b>	<b>39</b>	<b>(135)</b>
Met within 24 hours		(66)
Met more than 24 hours before		(47)
Known vaguely		(14)
Prostitute and client		(7)
<b>Intimates</b>	<b>50</b>	<b>(171)</b>
Relative (not father)		(5)
Parental figure		(27)
Current husband		(18)
Former husband		(6)
Current cohabitee		(2)
Former cohabitee		(1)
Current boyfriend		(33)
Former boyfriend		(39)
Work colleague		(3)
Friend		(29)
Family friend		(8)
<b>TOTAL(n)</b>	<b>100</b>	<b>(344)</b>

Note: n=344 of 360 crimed rapes for which relationship is known

**Table C.2: Marital status of complainant**

	Stranger %	Acquaintance %	Intimate %	All %
Single	55	73	60	65
Cohabiting/long-term relationship	24	12	19	17
Married	10	8	9	9
Separated	7	3	8	6
Divorced	3	5	3	4
Widowed	-	-	1	<1
<b>TOTAL(n)</b>	<b>100 (29)</b>	<b>100 (121)</b>	<b>100 (163)</b>	<b>100 (321)</b>

Notes:

1. n=321 of 360 crimed rapes for which complainant's marital status and relationship were known.
2. Percentages do not always add up to 100 due to rounding.

**Table C.3: Age of complainant by complainant/suspect relationship**

Age	Stranger %	Acquaintance %	Intimate %	Total %(n)
Under 12	-	32	68	100 (31)
13-15	10	52	38	100 (69)
16-25	13	41	46	100 (124)
26-35	14	27	59	100 (71)
36-45	4	44	52	100 (27)
Over 45	22	22	56	100 (18)
<b>TOTAL(n)</b>	<b>11</b>	<b>39</b>	<b>50</b>	<b>100 (353)</b>

Notes:

1. n=353 of 360 crimed rapes for which age of complainant and complainant/suspect relationship were known.
2. Percentages do not always add up to 100 due to rounding.

## Circumstances surrounding the attack

### *Consensual contact*

*Table C.4: Degree of consensual contact prior to rape*

	Stranger %	Acquaintance %	Intimate %	All %
Had sexual intercourse with suspect	-	2	4	3
Had sexual contact (not intercourse)	-	2	3	2
Had prior sexual relationship with suspect	-	1	49	25
Voluntarily kissed with suspect	-	11	5	7
Allowed suspect to put his arm round her	-	3	1	2
Accepted invitation into suspect's house	-	16	4	8
Accepted a lift with suspect	-	11	2	5
Walked home with suspect	-	6	1	3
Danced with suspect	-	5	-	2
Case of child abuse	-	-	17	9
Other	-	31	11	18
No consensual contact immediately prior to attack	100	14	4 <sup>29</sup>	18
<b>TOTAL (n)</b>	<b>100 (36)</b>	<b>100 (126)</b>	<b>100 (167)</b>	<b>100 (332)</b>

Notes:

1. n=332 of 360 crimed rapes for which consensual contact and relationship were known.
2. Percentages do not always add up to 100 due to rounding.
3. 'Other' covers a range of circumstances: for example, where the complainant woke up in the suspect's bed, she gave him directions or he showed her round a house.

<sup>29</sup> Consensual contact was the degree of contact immediately prior to the attack and therefore was recorded as none if, for instance, a complainant woke to the suspect in her bedroom, which might involve intimates.

*Location of attack**Table C.5: Location of first offence*

	Stranger %	Acquaintance %	Intimate %	All %
Workplace	-	-	1	<1
Home of victim	5	15	34	23
Home of suspect	-	27	22	22
Home of complainant and suspect	-	1	32	16
Other indoor/private place	16	24	5	14
Park/green site in town or built up area	16	4	1	4
Field/countryside	-	-	-	-
Suspect's car	3	10	2	5
Complainant's car	-	-	1	<1
Public area	51	16	2	13
Waste ground	5	2	-	1
Other	3	2	1	1
TOTAL (n)	100 (37)	100 (135)	100 (168)	100 (344)

## Notes:

1. n=344 crimed rapes for which location of attack and relationship were known.
2. Percentages do not always add up to 100 due to rounding.
3. Including alleyway, street area, railway station, bus stop.
4. Including building sites, rubbish dumps, disused areas of land.

*Violence**Table C.6: Use of violence*

	Stranger %	Acquaintance %	Intimate %	All %
Some violence	74	59	59	61
No violence	3	22	21	20
No information	23	19	20	19
TOTAL	100 (38)	100 (135)	100 (171)	100 (344)

## Notes:

1. n=344 crimed rapes for which use of violence and relationship were known.
2. Percentages do not always add up to 100 due to rounding.

*Defence***Table C.7: Main defence used**

	Stranger %	Acquaintance %	Intimate %	All %
Total denial of offence	8	6	11	9
Issue of consent	8	23	16	18
Disputed circumstances		4	2	3
None specified	5	4	4	3
No information	79	63	67	67
<b>TOTAL(n)</b>	<b>100 (38)</b>	<b>100 (135)</b>	<b>100 (171)</b>	<b>100 (344)</b>

## Notes:

1. n=344 crimed rapes for which main defence used and relationship were known.
2. Percentages do not always add up to 100 due to rounding.

**Table C.8: Defence used related to use of violence**

	Some violence %	No violence %	No information %	All (n)
Total denial of offence	8	9	10	(8)
Issue of consent	22	15	6	(17)
Disputed circumstances	3	3	1	(3)
None specified	5	4	-	(4)
No information	62	69	83	(68)
<b>TOTAL(n)</b>	<b>100 (211)</b>	<b>100 (68)</b>	<b>100 (81)</b>	<b>100 (360)</b>

## Notes:

1. n=360 crimed rapes for which main defence used and use of violence were known.
2. Percentages do not always add up to 100 due to rounding.

**Table C.9: Age of complainant and degree of violence**

	Under 12	13-15	16-25	26-35	36-45	Over 45	All
Some violence	16	47	72	65	55	67	60
No violence	29	26	12	17	19	33	19
No information	55	27	16	18	26	-	21
<b>TOTAL(n)</b>	<b>100 (31)</b>	<b>100 (73)</b>	<b>100 (129)</b>	<b>100 (71)</b>	<b>100 (31)</b>	<b>100 (18)</b>	<b>100 (353)</b>

## Notes:

1. n=353 initially recorded rapes for which defendant age and use of violence were known.
2. Percentages do not always add up to 100 due to rounding.

## Appendix D

### Multivariate analyses

*Table D.1: Logistic regression analysis predicting no-crime decisions by the police*

Variable	B	Standard Error	Wald Statistic	Signif	R	Exp (B)
Age of complainant (Under 16)			12.2242	.0067	.1064	
16-25 years	.8089	.2992	7.3077	.0069	.0982	2.2454
26-35 year	.9816	.3309	8.8019	.0030	.1112	2.6686
Over 35 years	1.0442	.3523	8.7841	.0030	.1110	2.8411
Use of violence	-1.3512	.2314	34.1059	.0000	.2416	.2589
Constant	-1.1461	.2341	23.9674	.0000		

Notes:

1. n=483 (complainants and suspects). Data were missing in seven cases.
2. Other variables tested were relationship, marital status, place of contact, location of attack, threat of violence, injury and time of complaint.

*Table D.2: Logistic regression analysis predicting no further action decisions by the police*

Variable	B	Standard Error	Wald Statistic	Signif	R	Exp (B)
Age of complainant (Under 16)			45.8975	.0000	.3199	
16-25 years	1.7448	.3702	22.2136	.0000	.2277	5.7246
26-35 years	2.8783	.4593	39.2712	.0000	.3092	17.7840
Over 35 years	2.4319	.4785	25.8348	.0000	.2473	11.3806
Use of violence	-1.2507	.3172	15.5481	.0001	-.1864	.2863
Consensual contact	1.3171	.4461	8.7187	.0031	.1313	3.7325
Constant	-2.0620	.5130	16.1544	.0001		

Notes:

1. n=282 (complainants and suspects). Data were missing in 30 cases.
2. Other variables tested were relationship, marital status, place of contact, location of attack, threat of violence, injury and time of complaint

Logistic regression identifies which factors are independently associated with a particular outcome variable when all other factors are held constant. However, it should be borne in mind that any significant statistical relationship between variables does not necessarily imply a causal relationship between the two. A range of variables<sup>32</sup> were tested to explore their association with police decisions to no-crime cases and to take no further action. Numbers were too small to produce significant associations at the CPS and court stages.

32 The independent variables selected were age of complainant, relationship between complainant and suspect, degree of consensual contact, place of initial contact, location of offence, use of violence and extent of injury.

In order to predict no-criming and no further action being taken by the police, the most satisfactory model was constructed using the following variables: age of complainant and use of violence, as well as evidence of consensual contact in the case of NFA.

The estimated coefficients (B) produced by the model are shown in Tables C.1 and C.2. Each coefficient represents a change in the 'log odds' of no-criming or no further action (i.e. a change in the likelihood of these disposals) associated with a one-unit increase in a predictor variable, while controlling for all other predictor variables. It can be seen that for all predictor variables an increase in value is associated with a greater likelihood in a case being no-crimeed or NFA-ed.

Because the size of the predictor variables will affect the size coefficient estimate, to obtain a comparable indicator of the effect of the different predictor variables, it is necessary also to look at the Wald statistic and the R statistic. The latter can range in value from -1 to +1 (a positive value indicating that as the variable increases, so does the chances of a case being no-crimeed or NFA-ed, while a negative value indicates the opposite), and is a measure of the relative (and partial) contribution of each variable to the model.

In the final models used, violence and age were found to predict no-criming decisions and violence, age and consensual contact were found to predict the police taking no further action.

## **Appendix E**

### **Research on the experiences of rape complainants**

An issue emerging from this study as worthy of further research is that of complainants' experiences of the criminal justice system. Complainant withdrawals account for the majority of the attrition rate of rape cases and it is necessary to investigate further why this is happening. Findings from the present research are limited since just four women agreed to be interviewed. In fact, there is a dearth of research on this subject. However, some of the relevant work that has been carried out is summarised below.

#### **Adler, 1990**

This was a postal survey to discover how women who reported rape or a serious sexual assault to the Metropolitan Police and whose cases had been crimed viewed their treatment by the police; 103 women reporting between May 1990 and February 1991 responded. It was found that 89 per cent of respondents were satisfied or very satisfied with their treatment by women police officers and 76 per cent were satisfied or very satisfied with the male detective investigating the case. Adler concluded, "Attitudes to victims of rape in the Met are now overwhelmingly caring and sympathetic. The vast majority of women speak very favourably indeed of their experience of reporting". (Adler, 1991, p.1115).

#### **Lees and Gregory, 1993**

This study was concerned mainly with attrition rates in sexual assault cases. 24 women were interviewed who had reported sexual assault in North London between 1988 and 1990. Only four had been involved in cases of rape or attempted rape. They found that 75 per cent of the women were generally satisfied with their treatment by the police. Several complainants, however, were not satisfied with their treatment and few were told of the outcome of their cases. The authors concluded, "The service provided by the police has greatly improved. The police are to be congratulated for these improvements". (Lees and Gregory, 1993, p.23).

#### **Temkin, 1997**

This study cast a shadow of doubt on any optimistic assumptions about new police regimes; 23 women who reported rape to the Sussex police between 1991 and 1993 were interviewed in depth. Overall, the majority of women (57 per cent) were fairly positive about the service provided by the police, while 43 per cent expressed more negative views. One conclusion drawn in this study was that, "Old police practices and attitudes, widely assumed to have been vanished, are still in evidence and continue to cause victims pain and trauma". (Temkin, 1997, p.527)



**Temkin, 1999**

Seventeen women whose cases were recorded as rape between 1993 and 1995 were interviewed in depth about their overall attitudes and experiences of police processes, from reporting to the trial; 21 police officers were also interviewed, eight having been involved in cases in the victims sample. The study findings indicate that although police guidelines provide a framework for a system of care for victims, in practice they are not always followed. Indeed, disbelieving and stereotypical attitudes persist about women who report rape .

It is worth bearing in mind that women who were included in these research projects were those who responded to questionnaires or letters, who might have had different experiences from those who did not respond.



# Bibliography and references

- Alder, Z.** (1987). Rape on trial. London: Routledge and Kegan Paul.
- Adler, Z.** (1991). 'Picking up the pieces'. Police Review (1991), May, 1114.
- Chambers, G. and Millar, A.** (1986). Prosecuting sexual assault. Edinburgh: HMSO (A Scottish Office social research study).
- Criminal Justice and Public Order Act 1994.**
- Davis, G. and Westcott, H.** (1992). "Video-technology and the child witness" in (Eds) Dent, H. and Flin, R. Children as witnesses. Chichester: John Wiley and Sons
- Grace, S., Lloyd, C. and Smith, L. J. F.** (1992). Rape: from recording to conviction. Research and Planning Unit Paper No.71.
- Holmstrom, L. and Burgess, A.** (1978). The victim of rape: institutional reactions. Wiley-interscience.
- Home Office Circular 69/1986.**
- Hough, M.** (1995). Anxiety about crime: findings from the 1994 British Crime Survey, Home Office Research Study No.147. London HMSO.
- Langan, P.A. and Farrington, D.P.** (1998). Crime and Justice in the United States and in England and Wales, 1981-96, US Department of Justice, Bureau of Justice Statistics.
- Lees, S. and Gregory, J.** (1993). Rape and sexual assault: a study of attrition. Islington Council.
- Lees, S. and Gregory, J.** (1996). 'Attrition in rape and sexual assault cases', British Journal of Criminology, vol 36, no.1, pp 1-17.
- Lloyd, C. and Walmsley, R.** (1989). Changes in rape offences and sentencing. Home Office Research Study No.105. London: HMSO.

**Quinsey, V. L. and Upfold, D. (1985).** "Rape completion and victim injury as a function of female resistance strategy". *Canadian Journal of Behavioural Science*, Vol 17, No.1.

**Sex Offences (Amendment) Act 1976.**

**Soothill, K. and Grover, C. (1998).** 'The public portrayal of rape sentencing: what the public learns of rape sentencing from newspapers', *Criminal Law Review*, 1998, pp455-464.

**Stanko, E. (1990).** *Everyday violence*, London: Pandora Press.

**Temkin, J. (1987).** *Rape and the legal process*. London: Sweet and Maxwell.

**Temkin, J. (1999).** 'Reporting rape in London: a qualitative study', *Howard Journal of Criminal Justice*, February 1999.

**Victim Support publication (1996).** *Women, Rape and the Criminal Justice System*, Victim Support.

**Wright, R. (1984).** 'A note of the attrition of rape cases', *British Journal of Criminology*, vol.24, no.4, pp339-400.

---

# Publications

## List of research publications

The most recent research reports published are listed below. A full list of publications is available on request from the Research, Development and Statistics Directorate, Information and Publications Group.

### Home Office Research Studies (HORS)

186. **The restricted hospital order: from court to the community.** Robert Street. 1998.
187. **Reducing Offending: An assessment of research evidence on ways of dealing with offending behaviour.** Edited by Peter Goldblatt and Chris Lewis. 1998.
188. **Lay visiting to police stations.** Mollie Weatheritt and Carole Vieira. 1998
189. **Mandatory drug testing in prisons: The relationship between MDT and the level and nature of drug misuse.** Kimmet Edgar and Ian O'Donnell. 1998
190. **Trespass and protest: policing under the Criminal Justice and Public Order Act 1994.** Tom Bucke and Zoë James. 1998.
191. **Domestic Violence: Findings from a new British Crime Survey self-completion questionnaire.** Catriona Mirrlees-Black. 1999.
192. **Explaining reconviction following a community sentence: the role of social factors.** Chris May. 1999.
193. **Domestic Violence Matters: an evaluation of a development project.** Liz Kelly. 1999.
194. **Increasing confidence in community sentences: the results of two demonstration projects.** Carol Hedderman, Tom Ellis and Darren Sugg. 1999

### **Research Findings**

63. **Neighbourhood watch co-ordinators.** Elizabeth Turner and Banos Alexandrou. 1997.
64. **Attitudes to punishment: findings from the 1996 British Crime Survey.** Michael Hough and Julian Roberts. 1998.
65. **The effects of video violence on young offenders.** Kevin Browne and Amanda Pennell. 1998.
66. **Electronic monitoring of curfew orders: the second year of the trials.** Ed Mortimer and Chris May. 1998.
67. **Public perceptions of drug-related crime in 1997.** Nigel Charles. 1998.
68. **Witness care in magistrates' courts and the youth court.** Joyce Plotnikoff and Richard Woolfson. 1998.
69. **Handling stolen goods and theft: a market reduction approach.** Mike Sutton. 1998.
70. **Drug testing arrestees.** Trevor Bennett. 1998.
71. **Prevention of plastic card fraud.** Michael Levi and Jim Handley. 1998.
72. **Offending on bail and police use of conditional bail.** David Brown. 1998.
73. **Voluntary after-care.** Mike Maguire, Peter Raynor, Maurice Vanstone and Jocelyn Kynch. 1998.
74. **Fast-tracking of persistent young offenders.** John Graham. 1998.
75. **Mandatory drug testing in prisons – an evaluation.** Kimmett Edgar and Ian O'Donnell. 1998.
76. **The prison population in 1997: a statistical review.** Philip White. 1998.
77. **Rural areas and crime: findings from the British crime survey.** Catriona Mirrlees-Black. 1998.

78. **A review of classification systems for sex offenders.** Dawn Fisher and George Mair. 1998.
79. **An evaluation of the prison sex offender treatment programme.** Anthony Beech et al. 1998.
80. **Age limits for babies in prison: some lessons from abroad.** Diane Caddle. 1998.
81. **Motor projects in England & Wales: an evaluation.** Darren Sugg. 1998
82. **HIV/Aids risk behaviour among adult male prisoners.** John Strange et al. 1998.
83. **Concern about crime: findings from the 1998 British Crime Survey.** Catriona Mirrlees-Black and Jonathan Allen. 1998.
84. **Transfers from prison to hospital - the operation of section 48 of the Mental Health Act 1983.** Ronnie Mackay and David Machin. 1998.
85. **Evolving crack cocaine careers.** Kevin Brain, Howard Parker and Tim Bottomley. 1998.
86. **Domestic Violence: Findings from the BCS self-completion questionnaire.** 1999. Catriona Mirrlees-Black and Carole Byron. 1999.
87. **Incentives and earned privileges for prisoners – an evaluation.** Alison Liebling, Grant Muir, Gerry Rose and Anthony Bottoms. 1999.
88. **World Prison Population List.** Roy Walmsley. 1999.
89. **Probation employment schemes in inner London and Surrey – an evaluation.** Chris Samo, Michael Hough, Claire Nee and Victoria Herrington. 1999.
90. **Reconviction of offenders sentenced or released from prison in 1994.** Chris Kershaw. 1999.
91. **Domestic violence matters: an evaluation of a development project.** Liz Kelly. 1999.
92. **Increasing confidence in community sentences.** Carol Hedderman, Tom Ellis and Darren Sugg. 1999.

## **Occasional Papers**

**Evaluation of a Home Office initiative to help offenders into employment.** Ken Roberts, Alana Barton, Julian Buchanan and Barry Goldson. 1997.

**The impact of the national lottery on the horse-race betting levy.** Simon Field and James Dunmore. 1997.

**The cost of fires. A review of the information available.** Donald Roy. 1997.

**Monitoring and evaluation of WOLDS remand prison and comparisons with public-sector prisons, in particular HMP Woodhill.** A Keith Bottomley, Adrian James, Emma Clare and Alison Liebling. 1997.

**Evaluation of the 'One Stop Shop' and victim statement pilot projects.** Carolyn Hoyle, Ed Cape, Rod Morgan and Andrew Sanders. 1998.

**Restorative Justice: an overview.** Tony Marshall. 1999.

**Step 3: an evaluation of the prison sex offender treatment programme.** Anthony Beech, Dawn Fisher and Richard Beckett. 1999.

## **Requests for Publications**

Home Office Research Studies, Research Findings and Occasional Papers can be requested from:

Research, Development and Statistics Directorate  
Information and Publications Group  
Room 201, Home Office  
50 Queen Anne's Gate  
London SW1H 9AT  
Telephone: 0171-273 2084  
Facsimile: 0171-222 0211  
Internet: <http://www.homeoffice.gov.uk/rds/index.htm>  
E-mail: [rds.ho@gtnet.gov.uk](mailto:rds.ho@gtnet.gov.uk)



*HMcp*si**  
*H M Crown Prosecution Service Inspectorate*



**A Report on the Joint Inspection  
into the Investigation  
and Prosecution of Cases  
involving Allegations of Rape**

**April 2002**



## CONTENTS

<b>INTRODUCTION</b>	<b>1</b>
Purpose	1
Background to the inspection	1
Terms of reference and main aims	2
Acknowledgments	2
<b>METHODOLOGY</b>	<b>3</b>
Selection of sites	3
Scope of the inspection	3
Project steering group	4
Literature review	4
File examination	5
Interviews	5
Court observation	5
Structure of the report	5
<b>CONCLUSIONS, COMMENDATIONS, GOOD PRACTICE, RECOMMENDATIONS AND SUGGESTIONS</b>	<b>7</b>
Victim care	7
Recording procedures	8
Investigation	8
File process	8
Review and decision-making	9
Preparing cases	10
The trial	11
Victims	11
Guidance and training for prosecutors	12
Attrition	12
Good practice	13
Commendations	14
Recommendations and suggestions	15

<b>VICTIM CARE</b>	<b>19</b>	<b>FILE PROCESS</b>	<b>41</b>
Introduction	19	File monitoring	41
Initial contact with police	19	Timeliness of police requests for advice	41
Medical examinations	20	Recommendation six	42
Recommendation one	20	Timeliness of advice given by the CPS	42
Multi agency activity	21	Appropriateness of requests for advice	42
Forensic medical examiners	21	Recommendation seven	43
Recommendation two	23		
Selection and training of police officers	23	<b>REVIEW AND DECISION-MAKING</b>	<b>45</b>
Recommendation three	24	General	45
Deployment of trained staff	24	Quality of decision-making in advice cases	45
Victim liaison	25	Informal advice	46
Recommendation four	25	Recommendation eight	46
Victim Support	25	Quality of substantive decisions to prosecute	47
		Selection of the appropriate charge	47
<b>RECORDING PROCEDURES</b>	<b>27</b>	Quality of decisions to discontinue	48
The report	27	<i>Cases dropped in the magistrates' courts</i>	48
Ethnicity issues	27	<i>Sent cases dropped in the Crown Court before preparation for trial</i>	49
Crime report finalisations	28	<i>Judge ordered acquittals</i>	49
Apparent disparities	29	<i>Proposed approach to review of cases to be discontinued</i>	50
Integrity	29	Acquittals	50
Recommendation five	29	<i>Judge directed acquittals</i>	50
		<i>Acquittals after trial</i>	50
<b>INVESTIGATION</b>	<b>31</b>	<i>Trends in acquittals</i>	51
Policy log	31	Review endorsements	51
A profile of rape	31	Recommendation nine	52
Statement taking	33	The prosecutor's approach to review	52
Interviews of alleged offenders	34	<i>The approach to allocation</i>	52
Resources	34	<i>General approach to review</i>	53
High number of complaints withdrawn	34	<i>Approach to the issue of the victim's credibility</i>	53
Instances of false allegation	35	<i>Approach to different types of evidence</i>	54
Male rape	35	<i>Inconsistency of approach</i>	55
Convictions	36	<i>Proposed approach</i>	55
Forensic issues	36	Recommendation ten	56
Intelligence	38	Custody/bail	56
Supervision of investigations	39	Victim retraction	57
		Cases involving child victims	58
		Cases involving victims with learning difficulties	59
		Learning from experience	60
		Recommendation eleven	60

**PREPARING CASES**

Introduction	61
Disclosure of unused material	61
<i>Police training</i>	61
<i>Recommendation twelve</i>	61
<i>Primary disclosure</i>	61
<i>Secondary disclosure</i>	62
<i>Disclosure of sensitive material</i>	63
<i>Disclosure of third party material</i>	63
<i>Recommendation thirteen</i>	65
<i>Previous sexual relationship</i>	65
<i>The way forward</i>	66
Preparation of papers for the Crown Court	66
Sent cases	67
Indictments	67
Instructions to counsel	68
Post committal advice from counsel	69
Recommendation fourteen	69
Plea and directions hearings	70
<i>Suggestion one</i>	70
Medical and scientific evidence	71
Case and file management	71

**THE TRIAL**

<b>THE TRIAL</b>	<b>73</b>
The CPS in the Crown Court	73
Cross examination of the victim	74
<i>General</i>	74
<i>Previous sexual history</i>	75
<i>Recommendation fifteen</i>	75
Listing of cases	76
Advocacy	77
<i>Selection of counsel</i>	77
<i>The quality of advocacy</i>	78
<i>Monitoring advocacy standards</i>	78
<i>Recommendation sixteen</i>	78
Returned briefs	78

**VICTIMS**

<b>VICTIMS</b>	<b>81</b>
General	81
Reliance of victims to report offences of rape	81
Victim care after the conclusion of the investigation	82
Progress updates	82
<i>Suggestion two</i>	83
Liaison with victims about decisions in a case	83
Separate representation for victims	84
Court familiarisation visits	85
Personal contact with victims at court	86
Special measures to give evidence	86
<i>Suggestion three</i>	88
Liaison with Victim Support and the Witness Service	88
Liaison with special interests groups	89

**GUIDANCE AND TRAINING FOR PROSECUTORS**

<b>GUIDANCE AND TRAINING FOR PROSECUTORS</b>	<b>91</b>
Introduction	91
National guidance for the prosecution of rape offences	92
New topics for inclusion	92
Recommendation seventeen	93
Training	93
Recommendation eighteen	94

**ATTRITION**

<b>ATTRITION</b>	<b>95</b>
Research	95
Our findings	95
<i>Decision to report</i>	95
<i>Investigation</i>	95
<i>Dropping of cases by the CPS</i>	96
<i>Acquittals after trial</i>	97
Comparison of attrition rates	97
Conclusion	98

**GLOSSARY OF TERMS USED IN THIS REPORT**

<b>GLOSSARY OF TERMS USED IN THIS REPORT</b>	<b>99</b>
<b>ANNEX A</b>	Terms of reference
<b>ANNEX B</b>	Project steering group membership
<b>ANNEX C</b>	Statistics
<b>ANNEX D</b>	Representatives of the criminal justice agencies and special interest groups who assisted our inspection
<b>ANNEX E</b>	Home Office Detection Codes



# INTRODUCTION

## Purpose

- 1.1 This inspection was conducted jointly by Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI). Its purpose was to analyse and assess the quality of the investigation, decision-making and prosecution by the police and the Crown Prosecution Service (CPS) of allegations of rape. In doing so, its aim was to ascertain, if possible, the reasons for the high attrition rate, and to identify good practice and make recommendations to address this.

## Background to the inspection

- 1.2 There are few offences that impact so severely on the victim. Whilst the number of reported rapes, 8,593,<sup>1</sup> represents only 0.17% of all recorded crime, the enormity of the effect on victims and on the fear of crime amongst women goes to the heart of quality of life. As with other aspects of personal crime, there is undoubtedly substantial under-reporting. The Rape Crisis Federation of England and Wales in its Annual Report, for example, suggests that only 12% of the 50,000 women who contacted their services in 1998 reported the crime of rape to the police.
- 1.3 Over recent years the percentage of successful prosecutions for rape offences has shown a marked decline. The rate of conviction for rape, after trial, has decreased from one in three cases reported (33%) in 1977 to one in 13 (7.5%) in 1999. Furthermore, only one in five (20%)<sup>2</sup> reported cases currently reaches the trial stage.
- 1.4 The increasing attrition rate has been widely publicised, as have general concerns about the handling of allegations of rape at all stages, including:
- difficulties in obtaining independent evidence to support allegations;
  - the thoroughness of investigations;
  - variations in assessment of the weight of factors in cases;
  - the perpetuation of myths and preconceptions;
  - the cross-examination of victims in court, in particular about previous sexual behaviour and medical history;
  - the role of the prosecutor at court in relation to acting in the interests of justice and taking into account the interests of the victim;
  - increase in "drug induced" offences; and
  - increase in acquaintance rape offences.

<sup>1</sup> Male and Female Reported Rapes Apr 2000 - March 2001 - Home Office Statistical Bulletin 12/01

<sup>2</sup> Home Office Statistics

## Introduction

- 1.5 There have also been government initiatives, such as the policy paper “Living Without Fear” and proposals for the overhaul of sexual offences in England and Wales (“Setting the boundaries - reforming the law on sex offences”).
- 1.6 It was against this background of increasing concerns that we agreed a joint inspection, in an attempt to identify causes of the increasing attrition.

## Terms of reference and main aims

- 1.7 The inspection team’s terms of reference were:
- “HMCPSI and HMIC to carry out an analysis of investigations, decision-making and prosecutions of allegations of rape, from initial report through to case disposal. The review will cover all offences of rape, including allegations of male rape, as well as those involving children.”
- 1.8 A detailed list of the issues we considered is set out at Annex A.
- 1.9 The main aims of the review were to:
- assess the quality of investigation of cases involving allegations of rape;
  - assess the quality of advice, decision-making, case preparation and presentation at court of cases involving allegations of rape;
  - assess the quality of any guidance as to policy and practice;
  - scrutinise the treatment of victims and witnesses;
  - ascertain, if possible, the reasons for the high attrition rate; and
  - identify good practice and make recommendations to secure improvements in the practice of both police and CPS.

## Acknowledgments

- 1.10 The inspection team comprised a staff officer from HMIC and two legal inspectors from HMCPSI. In addition, officers seconded from Devon and Cornwall Constabulary, Derbyshire Constabulary, Hampshire Constabulary, South Yorkshire Police and the Royal Ulster Constabulary assisted us throughout the inspection.
- 1.11 The Chief Inspectors and the inspection team are grateful for the co-operation and support of all those with whom they came into contact during the inspection - either in the preparation of material for the team’s consideration, or in interview.



## METHODOLOGY

- 2.1 The purpose of a thematic inspection is to paint a picture about how a given subject is dealt with throughout England and Wales. This inspection considered the practice and performance of both the police and the CPS, based on evidence drawn from a number of police forces/CPS Areas. (Police forces and CPS Areas are coterminous, save CPS London which covers both the Metropolitan and City of London Police).

### Selection of sites

- 2.2 Nine police forces/CPS Areas assisted us in our work: Avon and Somerset, Devon and Cornwall, Greater Manchester, Humberside, Leicestershire, London (Metropolitan Police), Northumbria, North Wales and Staffordshire. These forces/CPS Areas represented a cross-section, and provided us with a mix of urban and rural environments from which to draw our evidence. An additional force was originally included, but was unable to provide the necessary information. HMIC used some data from a tenth force (Derbyshire) to increase statistical validity.
- 2.3 Files from the sites were examined, and six police forces/CPS Areas were visited: Greater Manchester, Humberside, London (Metropolitan Police), Northumbria, North Wales and Staffordshire.

### Scope of the inspection

- 2.4 The inspection involved a detailed analysis of police and CPS practice and procedures, as well as the manner in which cases are handled and presented at court.
- 2.5 Cases involving allegations of rape against children were included in our review, as were allegations of male rape, but discrete samples were not requested. We also considered the ethnicity of both the victim and the suspect/defendant.
- 2.6 The issue of why victims are reluctant to report allegations of rape has already been the subject of much academic study, and therefore the review did not include a detailed consideration of the topic. It did, however, explore the possible causes with special interest groups, as well as considering the treatment of victims and the issue of why the attrition rate is so high.
- 2.7 We used the following approach to carry out our review:
- research of literature by an academic;
  - discussion about the key issues, available guidance and policy, and any available data with CPS Policy Directorate;
  - discussion about methodology and key issues with a project steering group;
  - analysis by HMIC of 1,741 crime records from ten police forces;

- examination and analysis by HMIC of 230 advice files and prosecution files;
- examination and analysis by HMCPST of 156 advice files and prosecution files;
- visits to six police forces/CPS Areas to carry out structured interviews with key personnel;
- visits to examination facilities in each of the six forces;
- interviews with forensic medical examiners (FMEs) and Forensic Science Service (FSS) staff;
- interviews with staff at dedicated sexual assault referral centres;
- interviews with local representatives of criminal justice agencies;
- interviews with special interest groups; and
- observation of trials and checking of case files.

#### Project steering group

- 2.8 The inspection benefited from the advice of a project steering group (PSG) comprising individuals with particular expertise and knowledge in relation to the investigation and prosecution of rape offences. The Chief Inspectors are grateful for their valuable contribution to the inspection. A list of the individuals is set out in Annex B.
- 2.9 The PSG assisted us in the scoping of the inspection, including methodology, during the course of the inspection and in the finalisation of the report.

#### Literature review

- 2.10 Professor Liz Kelly, of the University of North London was commissioned by HMCPST to undertake a review of previous research into the investigation and prosecution of rape offences. The 'literature review' considered research undertaken in England and Wales, as well as international research where appropriate, and incorporates Professor Kelly's personal observations on the strengths and weaknesses of the current system.

- 2.11 The work is very informative and was considered by the team undertaking the formal inspection. It does not, however, form part of their formal findings. The results of her review have been published as a separate document, copies of which can be obtained from HMCPST.

- 2.12 Professor Kelly also provided assistance as a member of the PSG.

#### File examination

- 2.13 The ten police forces were asked to provide crime reports, which had been initially recorded as rape, from 31 December 2000 or before. We examined 1,741 crime reports, and produced a detailed analysis of the data.
- 2.14 We examined 65 advice files, 147 prosecution files and 18 joint advice and prosecution police files in more detail. The resulting data was also analysed. We refer to this sample as the "police file sample".
- 2.15 We had intended to examine the corresponding CPS files. However, the CPS was not able to provide us with all of the files. Some had been destroyed in accordance with the rules relating to retention and destruction. CPS Areas were not able to locate others, possibly because the CPS does not record cases by offence codes. We therefore examined 31 advice and 125 prosecution CPS files. This sample is referred to in the report as the "CPS file sample".
- 2.16 The documentary analysis provided a comprehensive database as a resource to the inspection. Annex C sets out some of the resulting data.

#### Interviews

- 2.17 We interviewed police and CPS staff at all levels at the six sites we visited. They were seen either individually or in small groups. We also interviewed FMEs and FSS staff.
- 2.18 In order to complete the picture, we also saw staff at dedicated sexual assault referral centres and local representatives of other criminal justice agencies. We did not consider it to be appropriate to interview victims themselves, and so we interviewed representatives of special interest groups, in order to seek the victim's perspective. A list is set out at Annex D.

#### Court observation

- 2.19 We attended the Crown Court in two forces/Areas and observed the conduct of rape trials. This enabled us to assess the performance of the prosecution team, including counsel, and the approach of the court to applications to cross examine victims about their previous sexual history.

#### Structure of the report

- 2.20 We have set out our findings and the good practice we identified, and make recommendations and suggestions to improve matters under the following main headings:
- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Victim care</li> <li>• Investigation</li> <li>• Review and decision-making</li> <li>• The trial</li> <li>• Guidance and training for prosecutors</li> </ul> | <ul style="list-style-type: none"> <li>• Recording procedures</li> <li>• File process</li> <li>• Preparing cases</li> <li>• Victims</li> <li>• Attrition</li> </ul> |
|--|---|

*Methodology*

## **CONCLUSIONS, COMMENDATIONS, GOOD PRACTICE, RECOMMENDATIONS AND SUGGESTIONS**

### **Victim care**

- 3.1 We consider that the treatment afforded to rape victims throughout the investigative process is key to the prospects of securing a conviction. Interviews with police personnel revealed that in many cases the availability of trained staff to receive rape victims was problematic across the service. This was particularly evident where the level of trained staff is low and availability is spread across a large geographic area. It is most important at the outset of the process, where it is essential that the victim feels supported by the police.
- 3.2 The environment into which a victim is taken is not always conducive to securing the confidence of the victim. Whilst there is an inevitable delay in the brigading of the necessary expertise, we found that waiting areas, where they existed, were of poor quality and that, in some cases, there was an inordinate delay, sometimes for some hours, before the victim had access to specialist staff. Whilst we acknowledge that dedicated suites are not always feasible, we consider that forces should revisit their arrangements for rape victim care to ensure that they are both user friendly and fit for the purpose.
- 3.3 The training available to police personnel does not conform to a common minimum standard. As a consequence, a variety of training methods have developed resulting in a lack of consistency in approach by the service in general. We consider that National Police Training should re-visit this issue, together with the Association of Chief Police Officers (ACPO), in an effort to bring about a more concerted approach.
- 3.4 The training issue extends to the role of the forensic medical examiners (FMEs), many of whom are solely reliant on skills developed as part of 'on the job' training. A recent Home Office document has highlighted this issue, and we have recommended that forces review the role and the training of the FME to work towards the accreditation of each doctor to the level required by the Diploma of Jurisprudence. Given the rapid developments in forensic science techniques, it is essential that the Association of Police Surgeons (APS), together with ACPO, ensures that those tasked with this key investigative role operate from the necessary skill base. The need for this requirement becomes more acute when balanced against the perennial difficulties faced by the police service in the recruitment and retention of FMEs, particularly female doctors, which limits the choice for victims where the sex of the examining doctor is an issue.
- 3.5 The dedicated sexual assault referral centres were good examples of the benefits of the police working in partnership with other agencies, including the Health Service, Social Services and FMEs, to enhance service delivery to victims of serious sexual assaults. At the other end of the spectrum were those forces that continue to work in isolation of such arrangements, where the facilities for the care of victims are less satisfactory and which have the greatest potential to aggravate levels of attrition.

**Recording procedures**

3.6 The analysis of crime records revealed that the police approach to the recording and process of reported offences showed some marked disparities. All forces have to comply with 'Home Office Counting Rules', which direct them on the mechanics of recording and finalisation of all crime reports.

3.7 It is apparent that different standards are applied across the police service, resulting in a misrepresentation both of recorded levels of crime and the final outcome of some investigations. We believe that this is either because of a lack of knowledge or a misinterpretation of Home Office guidelines (because of anomalies within the guidelines, which allow for varying interpretations). Some forces have already introduced systems designed to produce an audit trail for all instances of crime and to ensure integrity of the recording process. The work currently being undertaken by ACPO to set a common standard to the criteria for crime recording, due to be implemented in April 2002, should help to achieve a more equitable basis against which to benchmark force performance. We have reminded forces to move in the direction of developing processes whereby the integrity of crime recording and investigation can be shown to be beyond reproach.

**Investigation**

3.8 The difficulties faced by the police when investigating allegations of rape cannot be overstated. There is a general perception that the majority of rape offences are committed by a lone male against a female who is unlikely to be known to him. The reality is that this type of offence forms only a very small part of the overall total. In fact, it is more likely that the victim (male or female) has formed a relationship with the accused, albeit in some cases not long before the commission of the offence. This results in a high percentage of offences being committed where there is unlikely to be independent evidence to support a victim's allegation.

3.9 We acknowledge the difficulties faced by the police, which are in part supported by key statistics that highlight the problem. However, it is our view that these problems support the need for a more professional approach at the outset if the criminal justice system is to secure more convictions and greater support for current and future victims. We consider that a more concerted approach in the areas of statement taking and interviewing of alleged offenders, together with a better application of the forensic disciplines, can help to achieve this. Closer monitoring of investigative activity by officers with relevant experience should also assist in developing the skills of investigators.

**File process**

3.10 The prosecution file submitted by the police to the CPS is the basis upon which crown prosecutors make their decisions. We were concerned that, with a few exceptions, the police supervision of file content and quality was less than that required to ensure that all investigative opportunities had been explored prior to submission of the file to the CPS.

3.11 Files submitted to the CPS for their consideration of the available evidence prior to charge (advice files) are not subject to any time limits. We found the time-scales for the submission of advice files varied. The longer the delay the greater the likelihood of impaired memory, or ready defence contentions of such impairment. Victims also have the right to expect that such matters be dealt with expeditiously. We consider that ACPO should review its approach in this regard, and introduce realistic time-scales for the submission of advice files for all offences. There are time limits for the consideration of advice files by the CPS, and we found that generally advice was provided in a timely way.

3.12 Although we considered that it was appropriate for the police to have requested advice in all the advice cases that we examined, there were some charged cases that might have benefited from pre-charge advice. We have therefore recommended that ACPO and Chief Crown Prosecutors (CCPs) consider agreeing protocols in relation to the submission of advice files in rape cases.

**Review and decision-making**

3.13 We were generally satisfied that decision-making by crown prosecutors was in accordance with the Code for Crown Prosecutors. However, in many instances there was either no review endorsement or only a very limited one. There was also evidence of incorrect reasoning for decisions and/or a failure to address all the relevant issues in a few cases.

3.14 We were satisfied that prosecutors were identifying the correct charge or charges on which to proceed in the large majority of cases. There was, however, evidence of late decision-making, which, in some instances, led to cases proceeding to the Crown Court on the wrong charges.

3.15 Most decisions to discontinue cases were properly made in accordance with the principles set out in the Code for Crown Prosecutors, but we had concerns about some. We considered that they should have proceeded to trial on alternative charges, or have been the subject of further enquiries. In some instances no reasons were noted down for pursuing alternative charges, or for dropping cases.

3.16 The evidence in cases involving allegations of rape can be limited to the victim's word against the defendant's (as with cases of domestic violence), with the major issue being whether or not the victim consented. Rape cases can therefore be difficult to review, with the risk that consideration of the victim's credibility can result in inconsistent decision-making. We found that the prosecutor's approach too often tended to be one of only considering any weaknesses, rather than also playing a more proactive role in seeking more information and trying to build or develop the case.

3.17 Rape cases are handled in the main by experienced prosecutors, but are not generally allocated to specialists. We consider that the way forward is for all allegations of rape to be reviewed by prosecutors who have received specialist training in the handling of sexual offences. We also consider that all cases where a prosecutor is contemplating dropping or substantially reducing the prosecution case (including cases which have been sent in by the police for advice) should be seen by, and/or discussed with, a second prosecutor before the final decision is made. The second prosecutor could be a designated lead prosecutor for a Trials Unit or CPS Area. This should increase consistency of decision-making, thereby raising public confidence in the CPS.

3.18 The review and handling of cases involving victims who are children or have learning difficulties was variable in quality. Again there was a failure to fully address all the issues, or to record decisions. We consider that further training and guidance is required.

3.19 We did not find much evidence of an attempt to learn from experience, with some adverse case reports failing to analyse the issues properly. There needs to be a concerted effort by all members of the prosecution team, including counsel, to ensure that the reasons for any failures are known to, and discussed by, the team.

#### Preparing cases

3.20 Our findings and comments in relation to disclosure are, in many ways, similar to those made in the CPS Inspectorate's Thematic Review of the Disclosure of Unused Material (Thematic Report 2/2000). In particular, we found that the schedule provided by the police frequently required amendment, and that inadequate endorsements of decision-making in relation to disclosure made it difficult to determine what action, if any, had been taken. We note that working groups of representatives of the police and CPS have been set up to take forward the recommendations in the Thematic Report, and trust that our current findings will be included in their considerations.

3.21 We found that difficulties are encountered in relation to third party material, and that, in some instances, the police and the CPS are not as proactive in seeking revelation of such material as is necessary for a proper review of the case. This can lead to cases being dropped at a late stage. Conversely, we also found some evidence of confidential third party material, such as the victim's medical notes, being disclosed without proper consideration of the rules on disclosure. Some Areas have agreed protocols with organisations holding third party material. These appear to operate effectively, and we consider them to be good practice.

3.22 Most indictments were properly drafted, but there were some which required amendment. These related in the main to a failure to identify the correct charge at an early stage, or a failure to consider properly the issues in the case. Instructions to counsel reflected a similar failure to analyse cases effectively and identify issues, and we considered many to be inadequate.

3.23 Research findings in other countries appear to show that a dedicated prosecution team with a clear sense of purpose helps ensure that cases are prepared and presented in the best possible way. Many of the inadequacies in review and case preparation could be resolved if early conferences were held involving the whole prosecution team, including prosecution counsel. Currently, such conferences are not held routinely. We are of the view that consideration should be given to holding a conference with counsel at an early stage, in order to ensure that the proper charges, and the issues in the case, are identified. In these circumstances, it is important that there is continuity of counsel. Not only is there a need to ensure that counsel is instructed at an early stage, but there should also be an expectation that the selected counsel retains the brief.

#### The trial

3.24 In most Areas, there was some evidence of an attempt to provide continuity of prosecutor throughout the life of a case, and of caseworker cover at trial. There was a marked contrast in efficiency, and quality of service to the victim, between those Areas where there was high caseworker cover (where it was good), and those where it was low or lacked continuity (where it was not).

3.25 We found that the operation of the provisions limiting cross-examination of a victim on his or her previous sexual history was inconsistent. In some Areas, it appeared to be operating within the correct parameters. However, we also came across instances where the proper considerations had not been taken into account, which in one case led to the victim being cross-examined in an inappropriate way.

3.26 Rape cases are still not always listed at the Crown Court in a way that takes the needs of the victim into account. In particular, we found evidence of cases being listed as "floaters", that is, a case not assigned to a specific court room, but awaiting one becoming available because of, for example, a cracked or ineffective trial. This means that some victims have to attend court unnecessarily, and we observed one instance of a case being transferred to a different venue on the day of trial. We also found that often victims have to wait at court before giving evidence, when a concerted effort on the part of the prosecution team could have prevented this happening.

3.27 There were mixed views about the standard of advocacy, with some concern being expressed about disparity of fees between prosecution and defence counsel. This should now be resolved with the recent introduction of a new Graduated Fee Scheme, but care still needs to be taken to ensure that counsel of sufficient experience and expertise are instructed.

3.28 We found there to be a high rate of returned briefs. If counsel changes at every hearing there is no continuity, and there is a risk that inconsistent approaches will follow. This would detract from any benefit gained from having early case conferences. It will require a will and determination both on the part of the CPS and the Bar to ensure that counsel originally instructed to represent the prosecution retains the brief throughout the case, as well as the assistance of Crown Court listing officers and judges. This would not only be of benefit to the needs of the victim, but should also result in better preparation and presentation of the case.

#### Victims

3.29 An important issue as far as victims are concerned is the lack of information provided about progress in the case. The Victim's Charter places the responsibility for keeping a victim informed about significant developments in a case on the police. Our findings show that there were no local protocols/guidance in place, although there was evidence of good examples of ad hoc contact made by individual officers.

3.30 Liaison with victims in relation to decisions made about cases is encouraging. Out of court, the CPS is in the process of introducing a scheme which will mean that major decisions in cases involving allegations of rape will be communicated to victims. Although we found that victims are informed about decisions made at court, the practice of counsel and caseworkers making other personal contact with victims at court was variable, and did not match up to the aspirations of the CPS in this respect.

3.31 When the special measures to assist vulnerable or intimidated witnesses to give evidence are implemented, many of these problems may be resolved. Guidelines envisage that an early meeting between the prosecutor, caseworker and police will take place, and it is hoped that prosecution counsel will also attend. We are optimistic that, provided all members of the prosecution team undertake their duties in accordance with the guidelines, the new measures should result in it being easier for a victim to proceed with an allegation of rape. There should also be a consequential raising of the quality of evidence given on behalf of the prosecution.

**Guidance and training for prosecutors**

3.32 The national guidance provided for prosecutors is in need of updating and expansion. Amongst other topics, we consider that thought should be given to including guidance on how to deal with those cases where a victim retracts. Further training will be necessary, to deal with the additional topics and to ensure that all specialist prosecutors are equipped to handle these most sensitive of cases.

3.33 In particular, research findings need to be considered, with a view to determining what, if any, guidance should be provided. Consideration also needs to be given to how to make sure that evidence and information is given to the jury, to overcome the myths and preconceptions that they may have and which the defence so often try and reinforce. Proper strategies to present the cases in the best possible light need to be the subject of training and discussion, so that a core of specialists, very experienced, prosecutors is built up, and the expertise then passed to others.

**Attrition**

3.34 Analysis of the 1,741 police crime reports showed an attrition rate similar to that of other research. Cases reported to the police resulted in a charge/summons or caution rate of 28.3%. 59.2% did not result in a charge, compared with the research rate of between 36% to 67%. Of the 230 cases in the police file sample, 42.2% proceeded to court. 57% did not proceed to court, a higher figure than that of between 33% and 50% referred to in the literature review, and higher than the CPS national average for all cases. Cases which were prosecuted resulted in a conviction rate of 60.8% (including guilty pleas). 39.2% resulted in an acquittal. Cases which proceeded to trial resulted in an acquittal of 70.4%.

3.35 We consider that if the steps outlined in the report are adopted, and if there is a concerted effort, and joined up approach, on the part of all those involved in the investigation and prosecution of rape offences, the attrition rate could be reduced. However, acquittals occur even where cases are properly investigated, prepared and presented. It cannot be overlooked that wider issues are involved that require an effort on the part of the criminal justice system itself. Changes have been made over the years about the need for corroboration and restricting the extent to which a victim's previous sexual history is relevant. Further provisions to be introduced to support vulnerable victims should enhance the quality of evidence in some rape cases.

**Good practice**

3.36 It is also appropriate that we should draw particular attention to those practices or initiatives that we consider other police forces or CPS Areas might wish to note when dealing with similar issues:

*Victim care*

- 1 the provision of a designated and specialist medical examination facility;
- 2 the monitoring of all incidents of rape and development of crime pattern analysis on intelligence referrals by Northumbria Police;
- 3 the practice in the Metropolitan Police of only officers who have completed their probationary period and been trained in cognitive interview techniques undertaking chaperone/sexual offences investigation technique training;
- 4 the introduction by the Northumbria Police of a forum for police chaperones to share their experience and build up good practice;

*Investigation*

- 5 the use by the Senior Investigating Officer of a decision log documenting the rationale behind the lines of investigation and other management issues;
- 6 the practice of equipping first response staff with mouth swab and urine kits, to prevent loss of evidence;
- 7 the practice of operating a central submission policy for all forensic samples;
- 8 the provision of the statement of complaint to the Forensic Science Service, to inform the analysis of forensic submissions;
- 9 the capture of relevant data and its timely submission to the Serious Crimes Analysis Section by Staffordshire Police;

*File process*

- 10 the guidelines on the referral of cases to the CPS for advice, such as those agreed by the police and CPS in North Wales;

*Review and decision-making*

- 11 the practice by prosecutors in Greater Manchester and North Wales of exploring the issues behind retractions, and asking the officer in the case to offer the victim further support and advice;
- 12 the protocol on how to handle cases involving witnesses with learning difficulties agreed between the police, CPS and Social Services Directorate in Merseyside;

**Preparing cases**

- 13 the agreement entered into by the police and CPS in London whereby there is revelation of certain documents to the CPS, and computerised disclosure schedules and a new joint training package have been developed;
- 14 the protocol on the disclosure of medical counselling notes agreed between the CPS and St Mary's Hospital in Greater Manchester;
- 15 the practice of providing a full note to the police (with the prosecutor's views on the case, and any further work that needs to be carried out) when preparing a case for committal, and its inclusion in the brief to counsel;

**The trial**

- 16 the practice in many Areas of sending the caseworker in the case to attend court to cover the trial;
- 17 the practice in one London Crown Court of time being set aside for any legal arguments, so that the victim can start giving evidence without any unnecessary delay;
- 18 the maintenance by CPS London of a formal list of counsel considered suitable for rape cases;

**Victims**

- 19 the practice of some counsel of speaking to victims, to explain proposed decisions;
- 20 the practice of one team in CPS Greater Manchester of providing the Witness Service with a copy of the witness list and brief details of the nature of the case at the time the instructions to counsel are prepared; and
- 21 the sending of a letter by the CCP in CPS Northumbria to all counsel's chambers in the area, reminding counsel of the need to introduce themselves to victims in allegations of sexual offences.

**Commendations**

- 3.37 We have commended the police and the CPS in relation to three matters in the report, in particular:
  - 1 the practice of some prosecutors of making thorough review endorsements;
  - 2 the publishing in Northumbria of a joint agency protocol governing the way in which social services' records are handled; and
  - 3 the involvement of the police and the CPS in assisting in training of volunteers, both for the Witness Service and Victim Support.

**Recommendations and suggestions**

3.38 The distinction between recommendations and suggestions lies in the degree of priority that the Inspectors consider should attach to the proposals. Those meriting highest priority form the basis of recommendations.

3.39 We recommend that:

**Victim care**

- 1 all forces carry out an immediate review of existing facilities for victim examination so that both victim care and the integrity of evidence are maximised;
- 2 ACPPO reviews the role of the FME. Such a review should incorporate:
  - performance management issues;
  - training;
  - achieving value for money; and
  - recruitment and retention levels of female FMEs;
- 3 ACPPO and National Police Training (NPT) review the training of officers who deal with rape victims, so that the appropriate skills and competencies are enhanced in officers at an appropriate level and are made available to victims across the service;
- 4 the role of rape victim chaperone should be risk assessed to ensure the welfare of the officers and to ensure a quality service to victims;

**Recording procedures**

5 the Home Office, together with ACPPO, revisits the criteria for the classification of 'detected' and 'undetected' offences, specifically in those cases where an alleged offender is named but there is insufficient evidence to support the victim's testimony;

**File process**

- 6 ACPPO introduce realistic time scales for the submission of advice files for all offences;
- 7 ACPPO and Chief Crown Prosecutors should agree protocols in relation to the submission of advice files in rape cases;

**Review and decision-making**

- 8 police officers seek, and prosecutors give, advice in rape cases only if they are in possession of a full file containing sufficient evidence upon which a decision can be made (save in exceptional circumstances);
- 9 prosecutors make full records on files of review decisions in cases involving allegations of rape;

022



- 10 • all rape cases be allocated to specialist lawyers, who should be responsible for the case from advice stage to conclusion of any proceedings; and

- all decisions to drop or substantially reduce the prosecution case, or to advise the police to take no further action, be discussed with a second specialist lawyer before a final decision is taken;

- 11 • prosecutors insert a standard paragraph in instructions to counsel, requesting a written report in any case involving an allegation of rape which results in an acquittal;

- any written report is used to complete an adverse case report, setting out the factual and legal reasons for the acquittal; and
- the adverse case report is used to discuss with the police any lessons to be learned;

#### *Preparing cases*

- 12 ACPO revisit the provision of disclosure training, in conjunction with the CPS, so that a more standardised and professional approach by police officers can be achieved;

- 13 when relevant, the issue of third party material should be specifically drawn to the attention of counsel, with instructions that any disclosure of such material should be made only in accordance with the statutory tests;

- 14 a conference with trial counsel should take place in every case involving an allegation of rape, and that it should be arranged as soon as practicable;

#### *The trial*

- 15 clear instructions are given to prosecuting advocates that offensive and seemingly irrelevant questioning should be challenged, and inappropriate cross-examination about previous sexual experience should be tackled;

- 16 CCPs introduce structured monitoring of Crown Court advocates who prosecute cases involving allegations of rape;

#### *Guidance and training for prosecutors*

- 17 the CPS updates, revises and widens its guidance to prosecutors on the review and handling of cases involving allegations of rape; and

- 18 legal training on sexual offences be up-dated in the near future. It should be re-launched and undertaken by all appropriate lawyers and caseworkers.

- 3.40 We suggest that:

#### *Preparing cases*

- 1 the lawyer in the case (if an higher court advocate) or prosecution counsel instructed to appear at trial should be required to attend the plea and directions hearing in all cases involving allegations of rape;

#### *Victims*

- 2 ACPO revisit the area of contact with victims during the life of a case, with a view to introducing protocols/guidance; and

- 3 ACPO and CCPs introduce monitoring of performance in relation to the introduction of special measures to give evidence.

222

## VICTIM CARE

### Introduction

- 4.1 If the criminal justice system as a whole is to meet the needs of rape victims, the system must be seamless in its professionalism and sensitivity. This should be from the time an allegation is made to the conclusion of the issue, whether that end is judicial or administrative (that is, classification under Home Office Counting Rules).
- 4.2 The report examines the role of the police and CPS sequentially from initial victim complaint through preparation and submission of the prosecution (or advice) file to the CPS to its final conclusion. Whilst the various stages have been examined and are commented on, it is the totality which is the key to both the delivery of justice and the basis of confidence in the system for the victim.

### Initial contact with police

- 4.3 The avenues of initial report are consistent with methods of reporting of other crime. Victims may telephone the emergency services or their local police station, or report in person to a police officer or at a police station. It is important that the person who handles the first report, not necessarily a police officer, treats the victim with sensitivity, is generous with their time and professionally attentive.
- 4.4 We believe a victim reporting to a police station, or brought to a station, should be provided with a waiting area that ensures respect for privacy and a generally sympathetic environment. The impression created by surroundings at this particularly traumatic time can be influential in a victim deciding whether to pursue the complaint. There is inevitably some delay as the necessary responses take time to arrange, but it is likely that time lapse will be exaggerated in the mind of a victim. We accept that it would be prohibitively costly to provide a bespoke facility in every police station. What is required is privacy in a calm environment, which additionally minimises the risk of forensic contamination. The inspection revealed examples of lengthy delays in the provision of service to victims. Whilst this was not the norm, we are of the view that every effort should be made to eradicate any unnecessary impediments, thereby encouraging more victims to report.
- 4.5 The inspection team found that victims from ethnic minorities find particular difficulty in bringing offences against them to police notice. In the Metropolitan Police Service (MPS), for example, 88 minority ethnic women informed the Haven Centre (a dedicated sexual assault referral centre) of offences against them between May 2000 and July 2001. Only four wanted police to be involved, whilst a further five only supplied information anonymously. In Northumbria, the Rape Examination Counselling Help Centre (REACH) has seen a limited use by minority ethnic victims despite being appropriately staffed to meet their cultural and language needs.

## Medical examinations

- 4.6 The arrangements for the medical examination of victims are crucial both to their well being and to the evidence gathering process. Facilities provided are now on a sliding scale from the ideal to the less than adequate. The ideal offers a designated and specialist examination facility with a victim-based choice of the sex of the doctor carrying out any examination. The inspection revealed a number of examples of **good practice** facilities:
- St Mary's Hospital in Greater Manchester.
  - The Juniper Centre in Leicestershire.
  - The Haven Centre in London.
  - The REACH Centre in Northumbria.

4.7 Although no formal data exists to support this view, interviews with special interest groups and police alike report the impact of these and other such sexual assault referral centres as showing increased satisfaction with the police from victims. An additional advantage of this approach is that victims can access from the outset skills and professionalism from a range of agencies, including health and social services, as well as counsellors and skilled volunteers.

4.8 At the bottom of the sliding scale was the use of doctors' surgeries. At the lower end are forces without dedicated examination suites but with facilities that serve a dual purpose, with primary use geared to the child victims of abuse. This is not regarded as good practice, taking account of the advances in forensic science and evidential needs. The Inspectors found that such facilities do not offer the care and professionalism that a victim has the right to expect. The potential for contamination must be minimised to withstand any subsequent challenges to the evidence gathered. Ad hoc arrangements and inadequate management of facilities could provide a greater likelihood of evidential challenge. The employment, for example, of specialist cleaning contractors needs to be considered. The unacceptable practice, as in one case, of forensic medical examiners (FMEs) having to clean surgeries or suites themselves must be eliminated.

4.9 Providing the appropriate environment is important for all victims, but especially so for those who have particular difficulty in bringing any sexual assault upon them to police notice. There is a range of reasons for such reluctance. For some minority ethnic victims there may be cultural factors, religious influence and, at times, a lack of faith in police. Similar considerations may also apply to many male victims. The provision of appropriate facilities can reduce some of the apprehensions especially when there is a professional continuum from notification, through medical examination and statement taking, to after-care and access to skilled counselling. We comment further on the reluctance of some victims to report an allegation of rape in chapter 11.

### RECOMMENDATION ONE

**We recommend that all forces carry out an immediate review of existing facilities for victim examination so that both victim care and the integrity of evidence are maximised.**

## Multi agency activity

4.10 Even if a victim remains unwilling to support a police investigation, the self-referral to agencies outside the police service is still a source of potentially important information. Its aggregation forms the basis of vital intelligence in the analysis of the incidence of rape. Information still has validity if the anonymity of the victim remains protected by the referral agency, particularly when the perpetrator is named.

4.11 The Sexual Offences Unit of Northumbria Police, for example, monitors all incidents of rape, irrespective of the source of the report, and develops crime pattern analysis on intelligence referrals in addition to offences reported to police. This is in keeping with the principles of the National Intelligence Model. The Inspectors endorse this approach and commend it to the police service as **good practice**.

4.12 The forces that have identified good multi agency practice need to market it actively in their areas. It is important that those who, sadly, become victims know what they can expect from the police, CPS and other agencies.

4.13 Whilst multi agency activity is the way forward it has to be realised that this desired approach must be constantly nurtured by the participating agencies. During the inspection there was evidence of fractures in the network of communication between partner agencies. A lack of consultation and communication corrodes the structure of co-operation and substantially inhibits real quality of service to victims.

## Forensic medical examiners

4.14 The role of the FME who examines a rape victim is pivotal in the evidence gathering process and it is essential that sample taking is carried out in a manner sensitive to the victim. The professional expertise in relation to this offence and the appropriate demeanour for a particular victim are crucial ingredients in securing evidence and encouraging a victim to pursue the allegation with confidence. In the majority of instances, FMEs are general practitioners (GPs) who run their own surgeries and carry out the role of FME in addition to those duties. Historically the police service has faced difficulties with both the recruitment and the retention of FMEs. This has resulted in a trend developing whereby forces are outsourcing this specialism. The service provided by FMEs can be costly given that there is little potential to forecast demand. The costing issue has assumed greater significance since the introduction of 'best value' principles. Forces will need to maintain the balance between budgetary control and service provision, whilst at the same time guarding against any dilution in the quality of the FME function.

4.15 The inspection revealed that:

- the majority of FMEs are male. Nationally, only 18.2% (208 of 1,145) are female. This figure compares with 35% of female GPs nationally;
- it has proved difficult to recruit and retain female doctors;
- generalist FMEs carry out the majority of the examinations of rape victims; and
- there is a correlation between those forces measuring up to the ideal in medical examination facilities and their ability to provide specialist FMEs for rape victims, and such forces find it easier to recruit and retain women doctors.

4.16 The implications of this are quite clear. Previous research has indicated that many female victims, and some male victims, prefer examination by a female doctor. This legitimate exercise of choice sometimes results in lengthy delays before a victim can be examined. This is unacceptable, particularly where waiting areas are inadequate, and is a denial of quality of service at a traumatic time when the need for such service is at its greatest.

4.17 The Home Office report 'Speaking Up for Justice' recommended that:  
*"Victims (both male and female) of rape or serious sexual offences should have a realistic choice of being examined by a female doctor"*.

We support the implementation of this recommendation and urge forces to revisit this document.

4.18 Greater Manchester Police, with Home Office support, is piloting a scheme that uses the skills of a trained forensic nurse to carry out the victim medical examination. Amongst other potential benefits, it reduces significantly the time waiting for FMEs, principally GPs, whose time is substantially committed to the needs of their own patients. We believe this innovative approach to have merit and await the full evaluation of the pilot scheme in March 2002.

4.19 The professional relationship between FMEs and police staff was not always harmonious. We discovered numerous examples of strained relationships between some police staff and FMEs. There is an un-bridged gap between the expectations of police investigating officers and those of FMEs. This is to the disservice of both victims and justice and is not acceptable.

4.20 Some FMEs felt that they should be seen as, and made to feel, an important part of the investigative team. They seek, and are also entitled to, formalised feedback on the progress of investigations. They should not be left to await receipt of a court warning or to casually hear of the outcome of a case, which is the norm. In turn, there should be an agreed form of performance monitoring. This would not be an invasion of the diagnostic independence of a doctor but would enhance their status and professionalism. It cannot be that an outcome of an inadequate examination is the loss of a prosecution and there the matter ends. Such events are, at the least, discoveries of a training need, which must be addressed.

4.21 We believe that the FME's vital role sits logically within the forensic framework of the investigation. Those scientific support managers who provide forensic services within the police service should therefore have responsibility for the FME, who is a significant contributor to the chain of forensic evidence. The managers should have the responsibility to ensure that FMEs are kept up to date with relevant scientific advances and to call upon the services of organisations such as the Forensic Science Service (FSS) to assist with the continual professional development of FMEs.

4.22 We encourage a closer, more outcome focussed, working relationship between the Association of Police Surgeons, Forensic Science Service and Association of Chief Police Officers. The underpinning philosophy of that relationship must be that victim needs are paramount and are wholly entwined with the needs of justice.

4.23 Victims, justice and the police service demand the highest standards from FMEs. Reciprocity equally demands that FMEs are equipped with proper, ongoing training so their knowledge is contemporary and their professionalism enhanced. The report of a Home Office Working Group on Police Surgeons (FMEs) 2001 recommends that FMEs be trained to the level of the Diploma in Medical Jurisprudence. We commend that recommendation to the police service.

4.24 Notwithstanding the extensive training activity across the police service in equality and diversity issues, FMEs are conspicuously absent from the training loop. This is a significant void that needs to be filled. The personal trauma of a victim of rape demands sensitivity beyond clinical skill. We found evidence of a less than sensitive approach to victims by a minority of FMEs. In one example, the inspection team found that the insensitive comments made by one male FME contributed to the female victim withdrawing her consent to the medical examination, with the potential loss of evidence. This may also lead to victims withdrawing from the entire investigative process, which will only benefit the alleged offender/s and impairs the credibility of police.

**RECOMMENDATION TWO**

**We recommend that ACPPO reviews the role of the FME. Such a review should incorporate:**

- performance management issues;
- training;
- achieving value for money; and
- recruitment and retention levels of female FMEs.

**Selection and training of police officers**

4.25 The key to quality of service in this aspect of policing, as in others, is deploying the right officer, with the proven skills to the appropriate task. We are concerned that the police service is failing to translate these guiding principles into action in relation to rape investigation.

4.26 In one force, for example, two weeks of training in sexual offences investigation are given to all probationary constables at around 64 weeks of their service. On completing this course those officers are eligible for deployment that may include the taking of a key victim statement. This is too early in their police experience and in their policing maturity because, at that stage of their service, many such officers will have had limited opportunities to become involved in rape investigations. This is particularly so where the incidence of reported rape is relatively low. As an example of **good practice**, in the Metropolitan Police Service (MPS) it is noted that officers must be out of their probationary period (around 104 weeks of service), and have been trained in cognitive interview techniques, prior to undertaking chapervone/sexual offences investigation technique training.

4.27 In a number of police areas there are specialist officers trained in sexual offences investigative techniques and their assigned role is to deal with the victim. They are an important part of the investigation team. They are the main link between the victim and the police investigation and aim to keep the victim fully informed. These officers are not counsellors, but their task is assisting the investigation team to gather evidence and information in a manner that is suited to the victim's particular needs. They explain the investigation and criminal justice process and can refer victims on to specialist supporting agencies. They help the victim to make a detailed statement of the offence.

4.28 We welcome all officers and other personnel who have contact with the public, being trained to a requisite standard of awareness, so that initial contacts with a victim are professionally handled. However, the taking of key statements from, and ongoing work with, victims requires officers of proven competency. Only officers with a particular aptitude developed by appropriate training can achieve such a competency. The initial selection for training in sexual offences investigation is a line management responsibility that should draw upon the advice of staff with established competency. Whilst it is necessary that an applicant for selection does so voluntarily, the emphasis must be placed on suitability, not simply willingness to undertake the role.

4.29 The standard of available training in sexual offences investigation was variable across the police service. The course content of the MPS and Humberside particularly impressed and we urge forces to emulate their standards. An absence of superficiality and depth of expertise, together with width of external input throughout the syllabus, was characteristic of this impressive training.

#### RECOMMENDATION THREE

**We recommend that ACPPO and National Police Training review the training of officers who deal with rape victims, so that the appropriate skills and competencies are enhanced in officers at an appropriate level and are made available to victims across the service.**

#### Deployment of trained staff

4.30 The availability of trained chaperrone staff varied across the country. Often such officers are part of patrol teams on shift work whose abstraction for prolonged periods can cause tension between line managers and detectives responsible for rape investigation. We found that there are still instances of victims waiting an inordinate time for the specialist attention of a trained officer. A victim being 'handed on' by non-specialists intensifies the difficulty. Whilst we recognise the logistical difficulties in predominantly rural forces, where the expertise is spread across a large geographic area, the potential harm to the victim's perception of service provision must be recognised.

4.31 Awareness of the problem has led some forces to find lateral solutions. Warwickshire Police, for example, has introduced a 24-hour call out rota for rape investigators. Whilst welcoming any initiative that enhances quality of service, we do not wish to see the goodwill of officers being exploited. There ought to be some compensation for standby duties, in line with equivalent arrangements in some forces for firearms and search teams. From a wider perspective, the police service needs to be cognisant of the requirements of the recent legislation on the working time directive, which may effect an individual officer's ability to perform on-call duties.

#### Victim liaison

4.32 The role of victim liaison officer/chaperone should be seen as specialist, not simply one of the many tasks that any officer should be able to perform. Chief Officers should remember and act on their duty of care, not only to the victim, but also to the liaison officer. The inspection found some victim liaison officers carrying heavy caseloads. The emotional demands on such officers must be remembered and their welfare needs given priority. Unacceptable strain on officers can have a negative impact on the victim, so the best intentions lead to a counter-productive cycle. We were surprised to find that no risk assessment process had been applied in any of the forces visited. There are numerous successful precedents of risk assessments in other aspects of policing and its absence in respect of victim liaison leaves officers psychologically vulnerable. The consequential financial vulnerability extends to Chief Constables and Police Authorities as the officers' employers. The inspection team was made aware that the Chief Constable in one force area is presently in litigation with a member of staff.

4.33 One example of **good practice** found by the inspection team was in the Northumbria Police area, where at the initiative of a divisional detective chief inspector the force has introduced a forum where staff deployed as chaperones can share their experience and build up good practice.

#### RECOMMENDATION FOUR

**We recommend that the role of rape victim chaperone should be risk assessed to ensure the welfare of the officers and to ensure a quality service to victims.**

4.34 There is an important caveat regarding the role of victim liaison. It is difficult to set down hard and fast rules, as the key is that each victim must be treated on a careful assessment of specific needs. Whilst some will need, and want, ongoing support, others will see this, no matter how well intended, as a further intrusion and an obstacle to moving on with life. The ultimate can be the withdrawal of a complaint of rape, which undermines the original objective.

#### Victim Support

4.35 Recommendation 55 of 'Speaking up for Justice' is helpful to forces in addressing the difficulty:

*"In the case of rape or serious sexual offences pre and post-trial support should be provided by an agency other than the police such as Victim Support".*

4.36 We found that, whilst some forces have developed effective notification and communication procedures with support agencies, in others there was room for improvement. Regrettably, there were occasions when Victim Support was not informed of rape cases despite the victim having given their consent. This is not acceptable, particularly as we were generally impressed with the aftercare provided. It is important that a victim has access to all the support required especially during that agonising period between initial contact with police

*Victim Care*

and subsequent proceedings. The support to victims by these caring agencies mitigates an over reliance of some victims on an individual officer. It is realistic and not uncaring that police have an exit strategy by drawing upon the skills of appropriate agencies to sustain victim care. We consider the treatment and care of the victim after a defendant has been charged further in chapter 11.

## RECORDING PROCEDURES

### The report

- 5.1 The Inspection included the analysis of 1,741 crime reports from forces where the initial allegation was one of rape. This study represents the largest as yet undertaken into allegations of this type of offence, revealing useful information which is certainly statistically reliable. The research of crime reports resulted in findings consistent with 'Rape - The Forgotten Issue?' Kelly (2001) in that there is a huge disparity in the way that forces record and subsequently classify allegations of rape. At the heart of the issue, as identified in the HMIC Thematic Report 'On the Record' (2000) is the threshold for crime recording which fluctuates between irreconcilable standards:
- Record where it is alleged a crime has been committed (*prima facie*).
  - Record following the application of an evidential test to the circumstances (evidential).
- 5.2 Without an agreed standard across the police service, inter-force comparisons on recorded crime and crimes cleared-up is a matter of conjecture rather than certainty and relative performance a matter of debating the variables. We look forward to the introduction, with effect from 1 April 2002, of the national common standard of crime reporting and audit devised and agreed by ACPO. Such a standard, correctly applied, should bring greater consistency and allow better comparison of data.
- 5.3 One of the force areas originally asked to participate in the inspection process was unable to supply the data required, and information supplied from Derbyshire was added in its place. In addition, deficiencies in recording practice amongst forces resulted in incomplete data sets under particular headings for this category of offence. We were disappointed, therefore, that 26% of the examined reports failed to record information in at least one of the following categories:
- date of birth of victim;
  - sex of victim;
  - victim/offender relationship; and
  - final result.
- 5.4 The missing information is readily available to investigating officers and its absence cannot fail to be noticed by their supervisors. This failure to record the obvious is unacceptable. Its omission prevents meaningful analysis by the wider police service or by an individual force. Some forces, including Greater Manchester and Staffordshire, have recognised the problem and introduced procedures to eliminate deficiencies. Other forces are advised to follow this lead.

### Ethnicity issues

- 5.5 During the course of the inspection, analysis was also carried out with regard to ethnicity issues. Areas such as reporting, conviction and victim/suspect relationship were reviewed. The database figures were too small, however, to provide any statistically significant information of value. This is clearly an area with potential for further research and development.



## Crime report finalisations

5.6 The chart below audits the trail of the 1,741 crime reports examined through to their finalisation under the Home Office Counting Rules. It is important to read the chart in the context of the Home Office Codes, a full breakdown of which is given in Annex E.

### Recorded rape reports - result of investigations

Police Force Area	Undetected	No Crime	Detected under HO Codes	CPS Advice to take NFA	Cautioned	Charged/ Summoned	Total Reports Reviewed
Avon and Somerset	(54.6%) 102	(0.5%) 1	(10.0%) 20	(0.5%) 1	(2.7%) 5	(31.0%) 58	187
Derbyshire	(45.2%) 71	(20.4%) 32	(5.1%) 8	(1.3%) 2	(1.3%) 2	(26.8%) 42	157
Devon and Cornwall	(15.9%) 30	(6.9%) 16	(33.3%) 63	(7.9%) 15	(2.1%) 4	(33.9%) 64	192
Greater Manchester	(33.3%) 59	(22.6%) 40	(10.7%) 19	(7.9%) 14	-	(25.4%) 45	177
Humberside	(65.3%) 113	-	(3.5%) 6	-	(2.9%) 5	(28.3%) 49	173
Leicestershire	(52.8%) 93	(21.0%) 37	(4.6%) 8	(1.1%) 2	-	(20.5%) 36	176
Metropolitan	(70.5%) 141	(0.5%) 1	(5.0%) 10	(6.5%) 13	-	(17.5%) 35	200
Northumbria	(34.1%) 60	(24.4%) 43	(3.4%) 6	(11.4%) 20	-	(26.7%) 47	176
North Wales	(14.3%) 28	(12.8%) 25	(35.7%) 70	(0.5%) 1	(3.6%) 7	(33.2%) 65	196
Staffordshire	(45.8%) 49	(22.4%) 24	(2.8%) 3	(2.8%) 3	(1.9%) 2	(24.3%) 26	107
<b>TOTAL</b>	<b>746</b>	<b>219</b>	<b>213</b>	<b>71</b>	<b>25</b>	<b>467</b>	<b>1,741</b>

5.7 A Review of Police Forces' Crime Recording Practices goes some way to explaining the revised April 1998 Home Office Counting Rules. It explains the 12 general principles and that as long as one of them is satisfied the police can count a recorded crime as detected. This range of detection includes charge, caution or summons of an offender, offences admitted by the offender and taken into consideration with other crimes when sentenced (TTC), and no further action (NFA) (detailing ten occasions where an offence might be deemed detected despite the absence of follow-up action).

5.8 Under the same guidance the 'no crimes' procedure should only be adopted if the crime occurred outside the police area where it was recorded, if it has been determined that no offence was committed (that is, a false allegation) or if the offence forms part of an offence already recorded.

## 3 Review of Police Forces' Crime Recording Practices - Home Office Research Study 204

## Apparent disparities

- 5.9
- Undetected classification ranged from 14% (North Wales) to 70% (Metropolitan),
  - Cases discontinued by police ranged from less than 5% (Metropolitan) to 36% (North Wales),
  - Charged cases ranged between 17% (Metropolitan) to 32% (Devon and Cornwall),
  - No crime classifications ranged from less than 1% (Metropolitan) to 24% (Northumbria),
  - The number of rape cases recorded as finalised by way of caution is a cause for concern.

5.10 It is important to state that the figures shown are a snapshot of recorded rape offences. We make no judgement on the performance of individual forces, but remind them of the benefits of effective monitoring systems to ensure compliance with national standards.

5.11 Recent research carried out on behalf of the Sentencing Advisory Panel at the Home Office contends that the practice of cautioning for an offence of rape is outside of sentencing guidelines. We are of the view that such practice should be adopted only in extreme circumstances.

## Integrity

5.12 The integrity of crime recording processes is essential if public confidence in the system is to be fostered. We are satisfied that inappropriate recording practices originate in lack of knowledge or misinterpretation of Home Office Counting Rules, as opposed to wilful manipulation of the data. Whilst the absence of such impropriety is welcome, the veracity of the figures remains in doubt. In one force, for example, allegations were wrongly classified as 'no crime' where the victim, for whatever reason, declined to give evidence but insisted that the offence had been committed.

5.13 It is accepted that police decision-making, particularly in cases without independent evidence where some form of prior relationship existed, is capable of alternative interpretation. To change in such cases can be construed by some as evidence of police support for the victim, although the day of disappointment is merely postponed. Others can alternatively interpret it as a cynical method of securing a 'detected' classification. There are perceived difficulties in pursuing rape charges through the courts when there is an element of previous relationship. In one force area the attrition rate was 24 out of 25 charges not supported by the CPS.

5.14 There is a dilemma for forces in the classification of some crime records. This is particularly acute in relationship cases without independent evidence where the alleged offender is often identified. Where the CPS and/or police decide within their current guidelines not to prosecute, the matter remains under the Counting Rules an undetected crime of rape. Despite the reality that no other person will be sought for the offence, every such classification adds to a distorted perception of police commitment and competence in investigating rape offences. Such classifications, when aggregated, may inhibit victims from reporting crime as they interpret a low detection rate as 'a lack of police interests' or as a judgement on police competence. This is not in the wider public interest, nor is it in the interest of victims.

- 5.15 In the interim, forces need to be strictly ethical in recording offences and in their subsequent classification. The distorting impact of some classifications is not to be used as an avenue of escape from existing clearly laid down procedure.

**RECOMMENDATION FIVE**

**We recommend that the Home Office, together with ACPO, revisits the criteria for the classification of 'detected' and 'undetected' offences, specifically in those cases where an alleged offender is named but there is insufficient evidence to support the victim's testimony.**

## INVESTIGATION

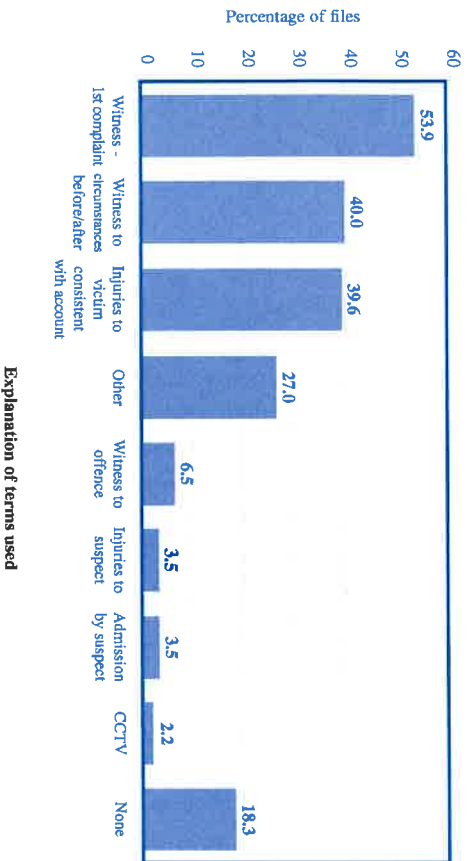
### Policy log

- 6.1 At the outset of any rape investigation it is essential that a suitable level of appropriately skilled staff and the necessary logistics be put in place. The use by the Senior Investigating Officer of a decision log, documenting the rationale behind the lines of investigation and other management issues is **good practice**. Indeed, all crime investigator courses detail the importance of decision/policy logs. We encourage all forces to adopt the use of such decision logs in rape investigations, as is ACPO policy in murder cases. ACPO Guidelines in respect of homicide cases have been in existence since 1982. These were supplemented by an ACPO Major Crime Review Document which formally extended that guidance to include other serious crime. Forces are reminded of the benefits of serious crime review and the merits in adhering to ACPO Guidelines.

### A profile of rape

- 6.2 The common perception in the public mind of the rape of a woman is the picture of an offender, unknown to the victim, attacking her with force or the threat of force. Horrific as these cases are, they represent a minority of reported rape offences. It will be reassuring to the public that the inspection found the police service responds well in terms of resources in such cases.
- 6.3 The greater majority of cases are preceded by a previous mutual knowledge, and often a relationship of varying length of time between victim and offender and the matter of consent is the contentious issue. Of the 1,471 reports where relevant information was supplied, 14% (208) involved rape by a stranger. Only 12% (26) of these cases resulted in a prosecution whereas 57% (119) were classified as undetected. The remaining 30% (63) were finalised in the main by use of the 'no crime' category. We were surprised at the low level of detection rates despite stranger rapes normally attracting significant police resources. It is true that such offences can be amongst the most difficult to investigate. However, it is believed that continuing developments with police reform, National Crime Faculty resources, improved training, and advances in technology/forensic areas will result in continuing improvements.
- 6.4 The difficulties of investigating some of these cases to a conclusion that satisfies both the victim and justice should not be underestimated. Lack of supporting evidence is a problem in itself, often further complicated by alcohol or drug misuse. Much research has been carried out on the issue of drug related rape and more needs to be done to raise the awareness of the potential loss of evidence if steps are not taken for the early capture of body fluids from both victims and suspects. This added difficulty was highlighted recently in 'A Question of Evidence? Investigating and Prosecuting Rape in 1990's' Harris and Grace (1999).
- 6.5 We found that, on some occasions, the social status of the victim, and/or the circumstances of the offence, determined the level of response from both the police and the CPS. There were examples where the police and CPS had made value judgements on the credibility of the victim as a witness rather than giving emphasis to the actual evidence that he/she could provide. Value judgements on the status or character of a witness should not deny access to justice.

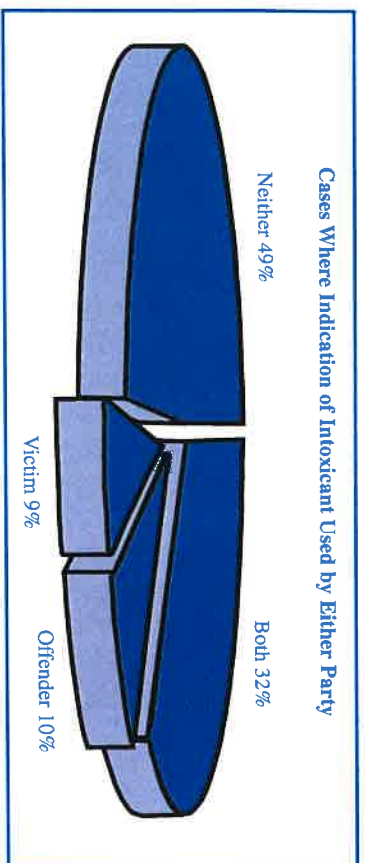
6.6 The chart below illustrates the percentage of the 230 police files where other supporting evidence was available:



**Witness of first complaint** - This refers to the person that the victim first told of the alleged offence. The witness is therefore witness to the victim's demeanour when informed of the assault, and not the alleged assault itself.

**Other** - This refers to a number of miscellaneous items, none of which were key issues in the investigation/evidential trail. An example of this is when there has been a separate allegation made in the past by another victim, where historical information exists, that is, although not recorded/ reported at the time as rape could corroborate some evidence of old injuries. Additionally, there was evidence of a small number of cases involving historical reporting to friends.

6.7 In 18.3% of cases no supporting evidence was found. Of equal significance is the statistic that only 3.5% (eight) of cases resulted in an admission being made by an alleged offender. These two bare statistics support the assertion that this type of offence is difficult to investigate and is one contributory factor to the low conviction rate. The remaining categories all support a victim's version of events to some degree, but there will be substantial variations in the weight which will be attached to them in the course of criminal proceedings. Taken individually they may or may not constitute sufficient evidence upon which to base a successful prosecution.



6.8 Much research has been carried out into offences involving the use of drugs (for this purpose alcohol is included as a drug). These offences are known as 'drug assisted rape' when the drugs are purposefully used to secure a sexual assault. They often fall within the term used by the media as 'date rape', although this is a misnomer as many women state that they were not on a date.

6.9 In the crime report sample in answer to the question "were drugs induced without the knowledge of the victim?" the response was extremely low. Given the high profile afforded to this type of offence by police, other agencies and media circles these findings are surprising.

6.10 There was evidence that some victims had been sexually assaulted/raped whilst unconscious but this inspection did not uncover statistical evidence that this was widespread.

6.11 There was a much higher finding that alcohol was present, without indication of a predatory motive. When the question asked was "is there evidence of alcohol being used by either suspect or victim?" 51% of cases reported alcohol was present either in the victim, the offender, or both. The use of alcohol may clearly increase a victim's vulnerability to sexual assault, and may influence the actions of the offender. It may also shape the initial police response to a victim.

#### Statement taking

6.12 The taking of the statement from a victim is a key component of the whole investigation. Its content is the fulcrum of police activity whilst the style of its taking will, for good or ill, leave an indelible mark on the victim. It is important too, that the statement contains the victim's own words and not the interpretation of those words by the officer taking such a statement. Not surprisingly the quality of such statements was positively related to the experience of the statement taker. Most statements were comprehensively detailed regarding events surrounding the offence. On the other hand, there was confusion as to the detail necessary to outline the previous sexual experience of the victim. This is an issue upon which ACPD and the CPS need to provide guidance to give investigators the clarity that will lead to consistency. If depth of such history is not required, victims are being subjected to unnecessary embarrassment without sound cause. We comment on how inclusion of unnecessary detail can lead to inappropriate cross-examination in chapter 10.

6.13 It was reassuring to find that some forces are aware of the phenomenon of 'Rape Trauma Syndrome'<sup>4</sup> and the even broader clinical diagnosis of post-traumatic stress disorder. This may render some victims emotionally incapable of providing a written statement shortly after an attack or, in extreme cases, for days or weeks. Whilst the syndrome provides a further difficulty for investigators, it is important that all forces make relevant staff aware of its existence, and accept the reassurance that we found that, once it was identified early, victims were able to provide a detailed account of events generally within 48 hours. It is also an issue upon which CPS Policy Directorate should consider providing guidance/training (see chapter 12).

**Interviews of alleged offenders**

6.14 A further important element of the investigation is the interview of the alleged offender. We were disturbed to find little evidence of the monitoring of the quality of interviews. Furthermore, we are aware that monitoring of interviews across all offences is extremely limited. This is a necessary management task if the appropriate standard is to be maintained and the necessary learning experience realised. The deficit was common across the ten forces, despite such monitoring being highlighted in 'PEACE' training.

**Resources**

6.15 The major factor determining the extent of a particular investigation was, quite obviously, the number of police officers available to work on the enquiry. Resources are, and will remain, finite and at that time the abstractions imposed by other major crime enquiries, as seen in many forces, left insufficient staff to sustain a thorough investigation. We did not set out to compare deployment on major non-rape investigations with resources given to rape. It is also clear that resource allocation can be affected by the impact of the offence on the community, publicity and the nature and circumstances of the offence. Realising, through resource allocation, the priorities forces themselves have set out (in their crime or sexual offence strategies) will always require finely balanced judgements.

**High number of complaints withdrawn**

6.16 Only 1,379 cases of the 1,741 held in the police report database contained sufficient detail to assess why such a high number of complaints are withdrawn. In 343 cases (25%) the victim withdrew the complaint. This is the largest percentage of those cases that did not end in prosecution. A total of 86 complaints (6.2%) were withdrawn by victims who were partners of the alleged offender and 59 complaints (4.2%) were withdrawn by victims who were former partners of the alleged offender. To reiterate, in cases where victims withdrew their complaint more than a third (42.3%) featured rape by a partner or former partner. This is a significant figure and illustrates the difficulties faced by rape victims when pursuing a complaint against an offender on whom they may rely or depend both economically and emotionally. An added complication is the potential for victims to be intimidated into withdrawing the allegation either directly or indirectly by the defendant.

**Instances of false allegation**

6.17 From the same data set as above, 164 complaints out of 1,379 (11.8%) were found to be false allegations. Some 20 (12%) of these false allegations were involving a partner. Furthermore, 42 of the data set of the false category (25%) were alleged stranger rape. In 20 cases the offender victim relationship was not included. Whilst recording practice is not beyond criticism, these figures highlight some of the difficulties faced by the police and may contribute to cultural cynicism surrounding victim credibility where it exists.

6.18 The inspection team was surprised to find a relatively high figure for false allegations of rape and, as identified within the literature review, there is a scarcity of research by police into this area. Indeed, with the competing pressures for resource allocation this may be understandable. However, this is clearly an area that could be pursued further to establish if this is an issue of incorrect recording, a workplace cultural issue, or what factors motivate those who make false allegations of rape, be they male or female.

**Male rape**

6.19 Out of the 1,741 crime complaints reviewed, the sex of the offender was recorded in 1,735 instances and from this figure, 7% (122) were male victims. Since the introduction of the statutory offence of male rape in 1996 there has been an increase in reporting of offences year on year amounting to an enhanced reporting rate of 192.5%.

Year	Number of Recorded Male Rapes
1996	227
April 97 - March 98	375
April 98 - March 99	504
April 99 - March 00	600
April 00 - March 01	664

6.20 The relatively recent creation of the offence, accompanied by a residual reluctance of some men to report offences, means that the experience of investigators is limited. Forces need to continue to share experience and cultivate expertise in a victim centred approach. We were pleased to find, among most of the forces visited, substantial effort, including multi agency initiatives, to encourage male victims to report offences. It is the view of Survivors UK, through their own research, that of the 586 calls received by them during the year 2000 only 11% of allegations were reported to the police. We were told that the reasons for the relatively low reporting rates include:

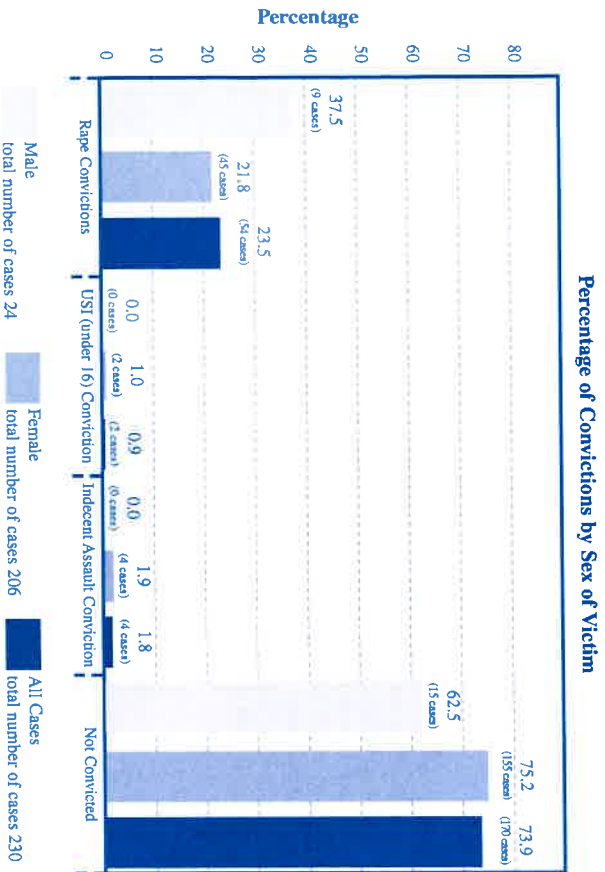
- not knowing that it is a crime;
- not wanting to tell;
- not knowing how to;
- fear of not being believed;

4 Burgess and Holstrom Study 1974  
 5 Planning and Preparation, Engage and Explain, Account, Clarification and Challenge, Closure and Evaluate (PEACE)  
 Joint Inspection into the Investigation and Prosecution of Rape Offences in England and Wales

- fear of disclosure of sexuality;
- concern that sexuality may become an issue;
- fear of being accused of committing a crime themselves; and
- myths about police.

### Convictions

6.21 Amongst the 230 police files examined, there were 54 convictions for rape (23.5%) and a further six convictions for other sexual offences (2.6%). A higher proportion of cases resulted in the conviction of the accused party for rape where the victim was male (37.5%) than was the situation where the victim was female (21.8%). The conviction rate by sex of victim is detailed below.



### Forensic issues

6.22 As outlined in the HMIC Thematic Report 'Under the Microscope' (2000) the one consistency of forensic science is its dynamism. Developments across the various disciplines demand that officers be constantly updated so the potential of the advances is realised.

6.23 There is an incremental scale of the extent of knowledge required of officers with different roles in the investigative process. Whilst the training of specialists is adequate, the crucial, initial link, first contact officer, or officer at a scene, is not always adequately forensically aware. Such knowledge is crucial to a professional investigation and the need cannot be met by an 'add-on' extra at a wider training event, as happens in some forces.

6.24 It was reassuring to find, however, examples of innovative thinking to secure improvement. The Metropolitan Police, jointly with the Forensic Science Service (FSS), has initiated a pilot scheme whereby victims who report suspected drug facilitated sexual assault are voluntarily asked to take their own urine and mouth swab samples. This is with the assistance of a suitably trained member of staff. Consent is obtained from the victim for the samples to be forensically examined. The early evidence mouth swab is relevant if oral sex is an issue and the urine sample prevents the loss of drug evidence. For both samples time is of the essence. Indeed, some forces have already equipped their first response staff with mouth swab and urine kits. We recognise this as **good practice** and look forward to the outcome of the pilot scheme.

6.25 There is a range of problem areas, identified by us, which can readily be eliminated:

- Lack of awareness of the importance of the order in which intimate samples are taken, and the need for sequential numbering when more than one sample per site is provided.
- Lack of understanding by officers of the differences between DNA1 & DNA2<sup>7</sup> examination kits. Evidence was found of some forces submitting DNA2 kits directly to the National DNA database custodian. Other instances were identified where DNA1 kits were submitted as evidential samples to the FSS laboratories.
- Variations in the quantity of samples submitted. Some forces adopt a 'submit everything' approach whilst others are more selective. It would be advantageous, in cases where selective submission is applied, for forces to make the FSS aware as to what else might be available for examination if required.
- Inappropriate assumptions by forensic medical examiners (FMEs) are based on 'sight' examination of samples taken. This can potentially deflect the accompanying investigator from the objective of acquiring best evidence from a victim.
- An example which best illustrates a general lack of awareness is that in 80% of submissions to the FSS for examination where 'consent' is the issue, investigating officers are not requesting any evidential DNA samples to be cross-matched with existing samples on the National DNA Database for undetected offences. This is a lost opportunity.
- Identification of lubricants on intimate samples taken within two days is rarely requested. In the absence of semen, the presence of condom lubricant on an intimate swab could indicate penetration.

<sup>6</sup> Samples routinely taken from detainees for all recordable offences

<sup>7</sup> Samples taken for comparison with crime scenes

- vii) Delays in the submission of samples to the FSS. In one force area, samples can take up to three weeks to reach the laboratory.
- viii) Delays in the examination of samples upon reaching the FSS laboratory.
- ix) In cases where the complaint is withdrawn by the victim early communication with the FSS should take place.

6.26 These difficulties are not insurmountable but indicate a need for more effective monitoring of forensic submissions.

6.27 The majority of forces operate a central submission policy for all forensic samples. This is **good practice** and such centralised units are able to offer advice and expertise to practitioners in packaging and selection of samples. This also creates an environment where the costing and quality of sample submissions is monitored effectively. Those forces which operate outside of such practices, should review existing policy to establish whether the benefits of a central submissions process is relevant to their area. We support the concept and encourage forces to work towards its introduction.

6.28 We are encouraged by the gradual introduction of crime scene managers as part of the investigation team, in line with recommendations contained within the HMIC Thematic Report 'Under the Microscope' (2000).

6.29 However, an example of the failure to exploit forensic potential is the tendency of the police to ask the FSS, where consent is at issue, "Can you connect the suspect to the victim?". The question ought to be: "*Is there any scientific evidence to support the allegation that the suspect had non-consensual intercourse with the victim?*".

6.30 The cornerstone of progress and improvement in evidence gathering is that police, FMES and the FSS work together in a spirit of integration rather than perpetuate the demarcation of different disciplines. The provision of the statement of victim to the FSS in some police areas to inform the analysis of forensic submissions is seen as **good practice**. We found little further evidence of common protocols to maximise the contribution of each discipline to the advantage of what should be the shared objective. There is little doubt that lack of knowledge and collective ignorance of procedures may be restricting opportunities to identify more offenders.

## Intelligence

6.31 The linking of offences of rape is not necessarily a straightforward task but advances in DNA techniques ease many difficulties. However, with some exceptions, forces have failed to put in place robust monitoring systems to ensure early identification of a linked series of rapes. Work is underway within the Intelligence Unit of the Metropolitan Police and in the Northumbria Police Sexual Offences Unit to capture this intelligence more effectively, and to feed it through to operational detectives for action. These approaches are welcome.

6.32 The National Crime Faculty houses a database within the Serious Crimes Analysis Section (SCAS). Part of its function is to collate and analyse intelligence on linked rape offences. This is an important facility which depends on forces supplying accurate and timely data. Both these ingredients have regrettably been lacking for a number of years. We remind forces of the unrealised benefits of this facility and urge them to meet the requirements of accuracy and timeliness. We have no doubt that there is an underused mechanism to speed the identification of serial rapists who are not inhibited by force boundaries. Staffordshire Police is a source of **good practice** in the capture of relevant data and its timely transmission to SCAS.

## Supervision of investigations

6.33 HMIC would expect that officers involved in the supervision of rape cases would have received appropriate training to the required level, that is, have completed the National CID Training Course. In all cases they should monitor, as a minimum, such areas as:

- outstanding lines of enquiry;
- quality of statements;
- quality of suspect interview;
- reviewing resources;
- gathering of expert evidence;
- documenting policy;
- forensic results; and
- file compilation.





## FILE PROCESS

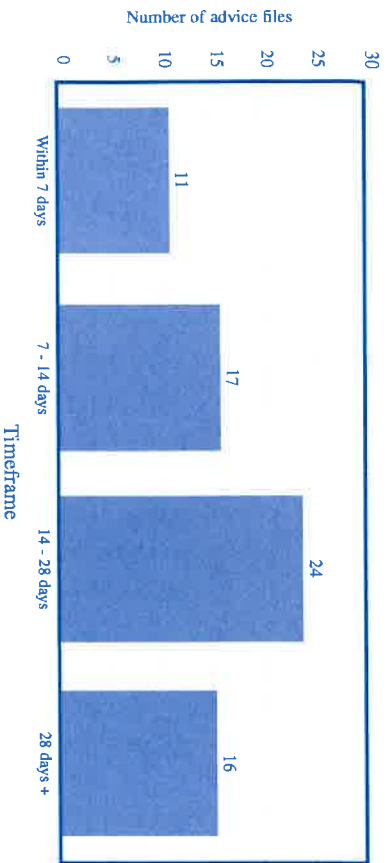
### File monitoring

- 7.1 The professionalism that should be the feature of the investigation needs to be sustained in the compilation of the case file which is submitted to the CPS. The prospective success of a prosecution is enhanced by the submission of a quality file containing quality evidence, assembled from thoughtful taking of statements, tenacious interviews of the offender and the exploitation of forensic techniques.
- 7.2 We were disappointed that too often the standard of supervision of the various aspects of the investigation was less than adequate. Indeed, in the worst cases not only was the investigative activity of constables left unsupervised, but also those officers were taking decisions that ought to be the responsibility of their supervisors. A lack of monitoring of the quality of statements was the norm rather than the exception. The paucity of supervision is reflected also in the preparation of files where too often the crown prosecutor is the first qualitative check. This is an abrogation of responsibility by supervisors.
- 7.3 The inspection identified notable exceptions to the trend. In Northumbria, rigour and professionalism mark the quality assurance of files. The Lambeth division of the Metropolitan Police has also introduced appropriate supervision of all files.

### Timeliness of police requests for advice

- 7.4 We found that files submitted after an offender is charged on prima facie evidence in support of the allegation are dispatched within agreed time limits. However, those files that are submitted to the CPS for advice are not subject to any time constraints. We are concerned that the absence of such a requirement is leading to an unacceptably relaxed attitude to the submission of such files with some taking several months to complete. The demands on officers are appreciated, but nevertheless the lack of time requirement does not reduce the need for an early determination of the case. The victim is entitled to the matter being resolved without delay. Suspects too are entitled to an early resolution of the issue. The longer the delay, the greater the likelihood of impaired memory or ready defence contentions of such impairment. It is not acceptable therefore that some advice files remain inactive for lengthy periods.

7.5 We found advice file submission times, where recorded, to be as follows:



**RECOMMENDATION SIX**  
We recommend that ACPPO introduce realistic time scales for the submission of advice files for all offences.

#### Timeliness of advice given by the CPS

7.6 The CPS nationally has agreed with the police service a time guideline for dealing with requests for advice in no more than two weeks from the receipt of an adequate file. We found that advice was provided in a timely manner in 29 of the 31 files in the CPS sample. Of the remaining two cases, advice was provided late in one instance and we could not ascertain timeliness in the second.

#### Appropriateness of requests for advice

7.7 CPS staff had mixed views about whether the police are making appropriate requests for advice. Some considered that there are some charged cases that should have been sent in for advice. On the other hand, some prosecutors considered that some clear-cut cases were sent in for advice.

7.8 All cases in our sample had been appropriately sent in by the police for advice. However, we have some concerns about whether more cases should be submitted for advice, and whether a failure to submit some cases leads to an increase in the numbers of cases dropped by the CPS. We do, however, recognise that there may be issues about whether a suspect is in custody or can be granted bail.

7.9 We examined the question of whether the police should have submitted the file for pre-charge advice in our main file sample. We considered that they should have done so in at least five out of 27 cases that were dropped in the magistrates' courts, three out of 15 judge ordered acquittals and one out of six judge directed acquittals. However, out of those nine cases, we considered that the police decision to charge not to be reasonable in only three instances.

7.10 There does not, therefore, appear to be a major problem about the submission of files for advice. And, if the recommendation made by Sir Robin Auld, in his review of the criminal courts, (that the CPS should determine the charge in most cases) is adopted most problems should disappear. However, there is currently a potential for errors, and there will always be cases where a formal advice file will have to be submitted to the CPS. We therefore consider that it would be prudent for formal arrangements to be made about the submission of advice files.

7.11 The police and CPS in North Wales have agreed guidelines on the referral of cases to the CPS for advice. The guidance in relation to the submission of cases involving allegations of sexual offences highlights the types of case which experience has shown can be particularly problematic. It contains a sensible and balanced approach, and we commend the agreement of such protocols as **good practice**.

**RECOMMENDATION SEVEN**  
We recommend that ACPPO and Chief Crown Prosecutors should agree protocols in relation to the submission of advice files in rape cases.

*File Process*

## REVIEW AND DECISION-MAKING

### General

- 8.1 We examined the quality and timeliness of the decision-making by prosecutors at various stages in the progress of the cases within the CPS file sample, including cases where the police sought advice from the CPS before taking a decision.
- 8.2 Prosecutors are required to take all decisions in accordance with the principles set out in the Code for Crown Prosecutors (the Code) promulgated by the Director of Public Prosecutions under section 10, Prosecution of Offences Act 1985. The most fundamental aspect of the Code is the twin criteria for the institution or continuation of proceedings. First, there must be sufficient evidence to provide a realistic prospect of conviction. Secondly, once a case has passed the evidential test, the circumstances must be such that a prosecution would be in the public interest.
- 8.3 The decision whether to institute proceedings rests, other than in exceptional circumstances, with the police. On occasions, they request advice from the CPS before taking the decision. Following the institution of proceedings, the police submit a file to the CPS that should be subject to initial review to see whether it should be accepted for prosecution. In some cases this may lead to a decision to terminate the proceedings at the outset. Where a case proceeds, it must be subject to continuous review. The evidential position or surrounding circumstances may change during the life of any case, and the CPS must respond quickly and positively to review the case again and reassess it.
- 8.4 We examined not only the substantive decision whether to prosecute, but also a number of other decisions. These included whether to oppose bail; the identification of the correct charge; and the soundness of systems for recording decisions and reasons on files.
- 8.5 Assessing the quality of legal decision-making is difficult. Decisions frequently turn on legal or evidential issues that are essentially matters of professional judgement. It frequently occurs that different lawyers do, for perfectly proper reasons, take different views in relation to the same case. Our assessment in relation to quality of decision-making, therefore, considers whether the decision taken was one that was properly open to a reasonable prosecutor having regard to the principles set out in the Code and other relevant guidance. A statement that we consider that a decision was not in accordance with the Code therefore means that we consider it was wrong in principle, not merely that inspectors might have come to a different conclusion. Against this background, we set out our findings.

### Quality of decision-making in advice cases

- 8.6 Generally, we were satisfied that decision-making in advice cases was in accordance with the principles set out in the Code. We examined 31 advice cases and were satisfied that in 29 cases (93.5%) the Code tests were properly applied. A full explanation for the advice was given to the police in 25 of the 31 cases.

- 8.7 We were concerned that the prosecutor had not always sought further information where necessary. In ten cases, the initial file contents were insufficient to advise upon, and further evidence or information was sought in eight of those cases. This means that, in our view, the prosecutor gave advice in two cases prematurely.
- 8.8 The advice in one instance was to prosecute for an offence of indecent assault, instead of rape, in circumstances where there were difficulties in proving whether or not penetration had occurred. Further medical evidence should have been sought, in order to resolve the issue, when it may have been possible to charge the defendant either with an offence of rape or of having sexual intercourse with a girl under 16 years old (“unlawful sexual intercourse”).
- 8.9 There were 16 other cases we examined (not forming part of the advice file sample), where the CPS had given pre-charge advice to prosecute. We considered that in 15 instances the advice was in accordance with the Code. However, the remaining case was dropped in the magistrates’ court and we considered that the initial advice should have been to take no further action. The victim had said from the start that she would not support a prosecution, and this position did not change.
- 8.10 Whilst most of the decisions in the advice cases were in accordance with the Code, we were not always satisfied that they were made for the correct reasons, and in some cases the prosecutor appeared not to have considered all the relevant issues. In a few instances, the flawed reasoning was followed through in the written advice sent to the police. We consider the prosecutor’s approach to review in more detail below.

#### Informal advice

- 8.11 The police view is that there has been an increase in informal requests for advice by telephone, and that this includes rape cases. The CPS view, however, is that prosecutors do not, and should not, give advice on rape cases over the telephone.
- 8.12 We saw two cases where informal advice had been given, and we considered that it was inappropriate for the prosecutor to have given advice without a file having been submitted. One case involved particularly difficult and sensitive issues. Neither case required an urgent decision.
- 8.13 We always urge prosecutors to assist police in urgent cases and suggest that any oral advice given is followed up in writing. Cases involving allegations of rape usually involve consideration of complex issues, and prosecutors should exercise caution in providing informal advice. It is particularly important, therefore, that the police prepare and submit a full file of evidence in all cases where they wish to seek advice from the CPS, unless there is particular urgency. It is equally important that prosecutors are in possession of all necessary evidence before they reach a decision.

#### RECOMMENDATION EIGHT

**We recommend that police officers seek, and prosecutors give, advice in rape cases only if they are in possession of a full file containing sufficient evidence upon which a decision can be made (save in exceptional circumstances).**

#### Quality of substantive decisions to prosecute

- 8.14 We considered the substantive decision to prosecute in 91 cases. Generally, we found that decisions were being made in accordance with the Code. The Code test relating to evidential sufficiency had been properly applied in 86 out of the 91 cases (94.5%). The public interest test had been properly applied in all relevant cases.
- 8.15 We considered the initial decision to proceed not to be in accordance with the Code in five cases: we were of the opinion that they should have been terminated at an early stage. Two cases resulted in judge ordered acquittals and two were jury acquittals, while the fifth was a judge directed acquittal. (Judge ordered acquittals are cases where a trial judge at the Crown Court, at the request of the prosecution, orders that an acquittal should be entered prior to the empanelling of a jury. Judge directed acquittals are cases where a trial judge in Crown Court proceedings rules, following the commencement of the evidence, that it is insufficient for the Crown to proceed and directs the jury to acquit.)
- 8.16 We have set out above our concerns that in some advice cases the reasoning behind the decisions is sometimes flawed, or that not all the relevant issues appear to have been considered. We have similar concerns in relation to some substantive decisions to prosecute. We are also concerned that, in some instances, we were unable to determine the reason for decisions, as there was either no review endorsement, or an inadequate one (a finding also made in the literature review). We consider these issues further below.

#### Selection of the appropriate charge

- 8.17 We found that the prosecutor generally identified the correct charges on which to proceed. In our sample, we considered that the appropriate charges had been selected in 85 out of 91 cases.
- 8.18 In six cases we considered that the prosecutor had selected the wrong charge. This resulted in the indictment having to be amended in four of the six cases. In two instances, this was because there was insufficient evidence to prove offences of rape, and lesser charges of unlawful sexual intercourse and indecent assault had to be substituted.
- 8.19 Another case involved a child victim, and a youth defendant who had been charged with an offence of rape. He had offered to plead guilty to an offence of unlawful sexual intercourse with a girl under 13 from the start. The reviewing lawyer noted that the rape charge was to be continued “at this stage”. The case was transferred to the Crown Court. There were no charges or developments subsequently, and a plea to unlawful sexual intercourse was ultimately accepted.
- 8.20 A proper review of these cases in the first instance would have resulted in the correct charge being selected. Failure to determine the appropriate charges as soon as possible can cause delay, and unnecessary anxiety to both victims and defendants.

8.21 It can be difficult to decide whether or not to include alternative charges, such as unlawful sexual intercourse, on an indictment where there is clear evidence of an offence of rape. Putting on an alternative charge could lead to a jury thinking that the prosecution was uncertain of the strength of the case, and convicting of the less serious charge. It could also result in a guilty plea to the lesser charge being accepted inappropriately, if the instructions to the advocate do not make the position clear. We comment on the need for proper instructions to be given to counsel in chapter 9.

8.22 However, there are also dangers in not including an alternative charge. In one of the cases in our sample the CPS correctly proceeded on a count of rape, where the victim was a fifteen-year old girl. On the day of the trial, the defendant offered to plead guilty to an offence of unlawful sexual intercourse. The prosecution wished to continue with the trial on the charge of rape, but counsel applied to add a count of unlawful sexual intercourse to the indictment, to enable the defendant to enter a guilty plea. This was not allowed. In the event, the trial proceeded and the judge directed an acquittal.

8.23 We consider that the application was properly made, although it was within the judge's discretion whether to allow it. Whilst the decision to proceed on the charge of rape was in accordance with the evidence, consideration should have been given to the possibility of adding other charges at an earlier stage. The application to add the additional count was made over two months after the case was transferred to the Crown Court. We also noted that no conference with counsel had been held. We comment on the need to hold conferences with counsel in chapter 9, but note here that the issue of what are the appropriate charges needs to be determined at an early stage, usually in discussion with counsel.

8.24 The issue of choice of charge is linked to the prosecutor's approach to review. We deal with this further below.

### Quality of decisions to discontinue

#### *Cases dropped in the magistrates' courts*

8.25 We examined 27 cases that were dropped in the magistrates' courts, to determine whether the Code tests had been applied correctly. We considered that the decision to discontinue was in accordance with the Code in 23 cases. There was insufficient evidence in 21 of the 23 cases, and the victim was unwilling to give evidence in two cases.

8.26 We had concerns about the decisions made in four of the 27 cases. In one case there was sufficient evidence to continue with the charge of rape, and the case should not have been dropped. In a second case, although we considered that the decision to drop the charge of rape accorded with the evidence, it was not appropriate to have dropped the charge of having unlawful sexual intercourse. The third case was discontinued prematurely, as the result of outstanding forensic evidence could have affected the prospects of conviction.

8.27 The fourth case was difficult. The victim had retracted her statement, although making it clear that she would still wish to see the defendant punished. We considered that the victim should have been offered support, with a view to seeing if she would pursue the case. (We comment further on the issue of victim retraction below.) In addition, in view of the fact that the defendant had admitted unlawful sexual intercourse, it might have been possible for the case to have proceeded on a lesser charge.

#### *Sent cases dropped in the Crown Court before preparation for trial*

8.28 Since 15 January 2001, adults charged with rape are sent to the Crown Court for trial under section 51, Crime and Disorder Act 1998 ("sent cases"). The CPS categorises all dropped sent cases as judge ordered acquittals (see below). For the purposes of this review, we differentiated between sent cases which were dropped before being prepared for trial, and those which were dropped subsequently.

8.29 We examined seven sent cases which had been terminated before being prepared for trial. We considered that the decision to terminate was in accordance with the Code in six instances. There was insufficient evidence in five cases and the victim was unwilling to give evidence in the sixth case.

8.30 It would appear that the seventh case was terminated because the police file was not ready. The case was re-reviewed when all the evidence was available and a decision was made not to re-instate it. This was in accordance with the Code.

#### *Judge ordered acquittals*

8.31 We examined 16 judge ordered acquittals, and considered that the decision to stop the prosecution was in accordance with the Code in every case. There was insufficient evidence to provide a realistic prospect of conviction in ten cases, and the victim was unwilling to give evidence in a further four cases.

8.32 It was not considered to be in the public interest to continue with the remaining two cases. The decision was correct in one of those cases. The victim had given evidence twice, following which the jury had to be discharged; she refused to give evidence for a third time. We have concerns about the reasoning behind the decision to agree to a final warning of a youth for indecent assault in the other case: the prosecution lacked resilience by wavering over its decision about the evidence and the appropriate charge.

8.33 Although we agreed with the decision to terminate in each case, we were concerned about the quality of review endorsements. In one case, there was no endorsement setting out the basis on which the case was initially accepted; nor was there a proper consideration of why it was ultimately dropped. In another case, the decision to drop the case was reasonable, but there was no endorsement or letter setting out the reasoning behind the decision. There was an initial review note in another case, but no subsequent endorsement setting out the issues surrounding the decision to drop the case, nor of a conference held to discuss the expert's report which led to the case being dropped.

242

8.34 In another case, not part of the sample, we disagreed with the decision not to proceed to a re-trial, after the jury had failed to reach a verdict. Two of the three victims were willing to give evidence again, and the case did not appear to be significantly weaker than when the initial decision to proceed was made. There was no endorsement setting out the reasons behind the decision, and we could see no justification for not proceeding with the case.

*Proposed approach to review of cases to be discontinued*

8.35 In view of the high attrition rate, we consider that all proposed discontinuances of cases involving allegations of rape should be seen by, or discussed with, a second prosecutor. This is a practice which is already in operation for all proposed discontinuances in some Areas.

8.36 We consider how prosecutors approach their review of cases involving allegations of rape generally, and how this could be improved, in more detail below. The proposal we make here about a second opinion is included in the recommendation we make about review of cases generally.

**Acquittals**

*Judge directed acquittals*

8.37 We examined six judge directed acquittals and considered that the initial decision to proceed was correct in five cases.

8.38 In two instances, prosecution counsel continued with the case even though the judge had indicated that he considered the evidence to be weak. We considered that this was a reasonable decision to make in each case. In another two cases, prosecution counsel offered no further evidence after conflicting evidence had been given. We considered that this was an appropriate course to take in each case.

8.39 In one evidentially difficult and borderline case, there was no review endorsement and the instructions to counsel made it appear as though the reviewing lawyer did not consider there to be a realistic prospect of conviction. We did not share that view. Although we considered that the decision to proceed with the case was in accordance with the Code, the case was allowed to proceed through the system without any careful consideration of the issues, or a firm decision being made about the prospects of conviction.

8.40 In another difficult case involving a child witness, the initial review note indicated that there was a prima facie case. A further review note did not take the consideration of the evidence any further, and the instructions to counsel did not contain any analysis of the evidence.

*Acquittals after trial*

8.41 Thirty-two cases proceeded to full trial, resulting in 12 convictions and 20 acquittals. We considered that the initial decision to proceed was in accordance with the Code in all 32 cases.

8.42 One case was illustrative of our concerns about the lack of a comprehensive review note, and the instructions to counsel did not deal with all the issues. The defendant was 43, with previous convictions for indecent assault and gross indecency; the victim was 14. There was dispute about penetration and the medical evidence was incomplete. A proper review would have led to further enquiries being made. The defendant pleaded guilty to a charge of indecent assault, although the trial proceeded on the charge of rape. There was no evidence of a considered review, no proper consideration of the medical evidence, and a failure to consider the issues in the instructions to counsel.

8.43 We comment further both about the standard of review endorsements and the quality of instructions to counsel below.

*Trends in acquittals*

8.44 Our interviewees were generally of the opinion that the level of acquittals does not reveal any pattern which might reflect on the CPS. Allegations of rape by current or former partners were said to result most frequently in acquittal, followed by allegations of rape by acquaintances, or where the victim had been drinking.

8.45 The view is that juries tend to acquit in cases where the evidence consists of one person's word against another's. In other words, an acquittal is likely where there is only the evidence of the victim and defendant, and no supporting or corroborative evidence. Interviewees also said that the result of a case could depend on how the victim and defendant each appear when giving evidence. More than one interviewee referred to this as being how each party "performs" in court.

8.46 Other comments made were that juries may have a preconceived notion of what rape is, and that there is a reluctance to convict of anything short of a rape committed by a stranger. Reference was also made to juries perhaps being concerned about making mistakes because of the serious consequences of a conviction.

8.47 Prosecutors should proceed with cases where they consider that there is a realistic prospect of conviction, that is, in cases where a jury, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. They should not be deterred from prosecuting cases on the basis that they think a jury may not convict, and we are pleased to record that no prosecutor expressed such a view.

**Review endorsements**

8.48 We examined 125 files to ascertain the quality of review endorsements, and were disappointed with the standard we found. Evidential considerations were fully recorded in only 55 cases (44%). Public interest considerations were fully recorded in 39 out of 68 relevant cases (57.4%).

8.49 We saw some files with either no review endorsement at all, or no more than a note to say that the case had been provisionally accepted but needed a proper review when the full file had been received. Other files involved decisions to proceed on a charge other than rape, but there was no note setting out the reasoning behind the decisions. Some files contained inappropriate comments, with evidence of value judgements being made.

8.50 On the other hand, we saw instances of files with detailed review notes, setting out the issues and the Code test considerations. We **comment** those prosecutors who do make thorough review endorsements.

8.51 These figures are lower than our findings in HMCPST's inspections of CPS Areas, where we examine a full range of cases. They are also lower than our findings for rape cases in Area inspections. They are disappointing findings, as we would have expected prosecutors to take more care when reviewing rape cases than was evident from our file examination.

8.52 HMCPST commented on the shortcomings in relation to review endorsements in its Annual Report for 1999 - 2000. It will be a matter of real concern to the CPS that in cases as serious and sensitive as those involving allegations of rape the performance is not better.

8.53 We also examined 33 files where the case had been dropped, to see if the prosecutor's reasons for the decision had been endorsed. We found that the reasons were only endorsed in 20 instances (60.6%). Other research has also found that the precise reasons for a case being dropped are seldom clear from an examination of the file.

8.54 It is essential that prosecutors record their reviews properly. Doing so should help to focus their minds, and thereby ensure a better, more effective, review. It should also help prosecutors to provide reasons to victims, as envisaged under the Direct Communication with Victims Scheme (see chapter 11). Furthermore, in the light of the implementation of the Human Rights Act 1998, which came into force on 2 October 2000, records of review decisions may be subject to increased scrutiny.

#### RECOMMENDATION NINE

**We recommend that prosecutors make full records on files of review decisions in cases involving allegations of rape.**

#### The prosecutor's approach to review

##### *The approach to allocation*

8.55 Generally, rape cases are allocated to lawyers in the Trials Units (TUs) (which deal with committals and Crown Court work), with those involving children being dealt with by experts in cases involving child victims and witnesses. They are allocated according to experience, ability and workload. With one exception, we found that specialists are not used to deal with rape cases, as most TUs are staffed by experienced lawyers. In one TU, we were told that all files involving allegations of rape are allocated to the specialist in child victim/witness cases.

#### *General approach to review*

8.56 Until 1995, it was obligatory for a warning to be given to the jury about convicting a defendant of an offence of rape without corroboration, that is, proof from a source other than the victim that implicates the defendant in the commission of the offence. It is now no longer obligatory for such a warning to be given, but it is still open to a judge to give a warning if considered appropriate. We saw only one case in our file sample where a discretionary warning was given.

8.57 The abolition of the obligatory warning, which means that an offence of rape can be prosecuted on the evidence of the victim alone, has made the review of such cases more difficult, and more susceptible to inconsistency. Some researchers argue that taking into account an evaluation of a victim's credibility can introduce an element of subjectivity into a prosecutor's judgement.

8.58 We asked prosecutors how they approach the review of rape cases, and what factors they take into account. Almost invariably, we were told that each case is examined on its own merits and that the absence or presence of evidence that supports the allegation does not necessarily influence the decision. Overall, we were told that prosecutors see whether a case hangs together, without any obvious flaws or difficulties. The result can mean that, in effect, prosecutors look only for any problems/weaknesses in a case, with a view to dropping it, rather than also trying to look for its strengths and to develop a case in order to be able to proceed.

#### *Approach to the issue of the victim's credibility*

8.59 The relative credibility of the victim and the defendant may be an important factor in determining whether or not there is a realistic prospect of conviction. Many prosecutors, including some counsel, consider that any background information which the police can provide about the victim, or the case, enables a more realistic appraisal of the victim. In one Area, prosecutors require detailed information about the victim, which the police provide in the form of pen pictures. In another Area, the police provide information about the likely quality of a victim's evidence in note form. Generally, however, such information is not routinely given.

8.60 Properly drafted and used, pen pictures could be a useful tool in assisting a prosecutor in determining the prospects of a conviction. However, there are risks involved in their drafting and use. There is a danger that they might include value judgements and/or derogatory comments, or that they could introduce a subjectivity into a prosecutor's judgement. Care also needs to be given to any disclosure issues arising. We consider that such pen pictures should be used with caution.

8.61 We canvassed opinion on whether prosecutors should meet the victim when reviewing a case, in order to assist in their decision-making. Views varied in relation to the benefit, and whether it would help prosecutors to assess a victim's credibility and how they might give evidence. Some considered it might help; others did not. Concern was also expressed about the possibility of allegations of "coaching" being made.



8.62 Although we support the meetings with victims we describe in chapter 11, we are concerned that the risks of meetings used to assist in reviewing cases may outweigh the likely benefits. Not only is there the risk of allegations of coaching, but also regard must be had to disclosure issues and the possibility of the prosecutor becoming a witness. However, the difficulties are clearly overcome in Scotland and in Northern Ireland, where the prosecutor does meet witnesses in advance of trial, and the issue merits detailed consideration or research by the Home Office.

8.63 We also asked what use prosecutors make of the video recording of a child witness's interview. They told us that they use the video to assess the child's ability to give evidence, and his or her attention span. Importantly, they do not generally use the video as a means of assessing the child's credibility. Prosecutors thought that they would not use a video recorded interview of an adult to assess credibility either. We agree with this view, although a video recording could be of assistance in assessing how convincing a person is as a witness.

*Approach to different types of evidence*

8.64 The central issue in many rape trials is consent. In our file examination, we saw a number of cases in which the defendant claimed that not only did the victim consent, but also actively facilitated sexual intercourse. The victim naturally denied such an assertion, and the issue was really the relative credibility of the parties involved. However, time and time again, we saw prosecutors developing concerns as to whether the defendant could be said to be reckless, when there was no scope for a genuine, but mistaken, belief as to consent. A mistake in the analysis of the case confuses the question of what evidence should be sought, but, more importantly, it confuses the consideration of whether evidence of sexual history should be allowed. Prosecutors should be urged to differentiate between the two situations when considering cases.

8.65 We also noted, from our file examination and interviews, that prosecutors can tend to treat medical evidence as one of the more important factors in the case. The lack of injuries is often taken into account, yet research has shown that clear external or internal injuries occur in only about a quarter of reported rape cases. We also noted that prosecutors often readily accept a conclusion that the injuries or findings are consistent with a victim's account, and fail to consider whether it could also be consistent with other possibilities, in particular those suggested by the defendant in interview. The lack of a proper assessment of the medical evidence can then be effectively exploited in the cross-examination of the forensic medical examiner. We do not advocate that prosecutors should assume the role of medical experts themselves, but we think that they need more help to assess the weight of the available medical evidence, and to be knowledgeable enough to call for further evidence where necessary.

8.66 A victim's behaviour after the rape is another feature that prosecutors sometimes take into account. Examples of factors that are often taken as indicators that the victim is unreliable or not telling the truth are:

- the timeliness of a complaint;
- the failure to recall apparently important details;
- the failure to escape, despite having an opportunity to do so; and
- any lack of co-operation with the police.

8.67 In other words, prosecutors often assess a victim's behaviour against what they view as logical, common sense and natural responses to a crime. Rape is a violation of personal intimate and psychological boundaries, and the research evidence is that there are a range of responses from victims, from extremely distressed through to quiet and controlled. Some guidance on the topic could help prosecutors place what initially might be viewed as illogical or inexplicable responses into context, and to analyse and prepare the case accordingly. How this is conveyed to the jury is more problematic.

8.68 It is clear to us that prosecutors require detailed guidance on how to review allegations of rape and, in particular, what weight to attach to different types of supporting evidence. We deal with the guidance that is currently provided by CPS Policy Directorate, and make a recommendation about the issuing of further guidance or training, in chapter 12.

*Inconsistency of approach*

8.69 Many external interviewees expressed a view that, in some instances, prosecutors proceed with cases where there is insufficient evidence to satisfy the Code. They considered that public pressure is such that prosecutors feel that not proceeding with a case will only result in criticism, and that it is therefore easier to simply allow a case to take its course. We deal in chapter 11 with the difficulties victims face in court when giving evidence, and the ways in which this could be improved. But it is clear that it is a traumatic experience for a victim to give evidence about such intimate details, and it is not something that he or she should have to do if there is no realistic prospect of conviction. It is particularly important, therefore, that prosecutors proceed only with appropriate cases.

8.70 On the other hand, some external interviewees were of the view that some cases that are not prosecuted should be the subject of charges. It is always important that prosecutors do not drop cases where there is a realistic prospect of conviction. It is particularly important that they do not do so in rape cases, where a defendant may present a risk to the public.

8.71 Although we considered that most of the decisions made in the cases we examined were in accordance with the Code (based on our test of the "reasonable prosecutor"), there were some instances where inspectors might not have reached the same conclusion. This applied both to cases that were dropped, or pleas to lesser charges were accepted, as well as to some cases that were prosecuted.

8.72 We were therefore left with concerns that whether or not a rape allegation was proceeded with could depend on who the reviewing prosecutor was. In other words, we were not satisfied that all rape cases are being reviewed consistently.

*Proposed approach*

8.73 Prosecutors expressed the view that there was a risk that they would develop too narrow a focus if they dealt exclusively with rape/sexual offence cases. This was of particular concern to those who work in large CPS Areas, where the volume of rape cases could lead to prosecutors handling no other types of cases. There was also concern that it would result in other prosecutors not therefore developing the necessary skills to deal with rape cases in the future. These concerns could be tackled by a properly structured system of specialisation, rotation and training.

8.74 The counter view is that specialism is a good idea as it ensures that lawyers know what issues they should be taking into account and what evidence they should be looking for. Indeed, the literature review reveals that there is evidence from other countries that suggests that specialist prosecution teams decrease attrition. Their approach is to develop evidence which goes to the victim's credit and supports the complaint. This can include using expert evidence to explain aspects such as delayed reporting, lack of resistance and reactions to rape.

8.75 We agree with the proposition that specialism should increase the quality of review. We therefore consider that the way forward is for all allegations of rape to be reviewed by prosecutors who have received specialist training in the handling of sexual offences.

8.76 There are already many prosecutors who have been trained to handle cases involving child victims and witnesses. They will already have many of the necessary skills, and could develop the additional expertise we consider is required for handling rape cases. It would therefore be open to CCPs to provide additional training to these prosecutors, who appear to be well placed to undertake the work, or to ensure that other prosecutors receive training.

8.77 In the preceding paragraphs, we have dealt with our concerns about the quality of some decision-making and the difficult issues prosecutors have to consider. Some of those concerns would be met by the issuing of further guidance, and by the introduction of specialist lawyers. They would be further met if a second prosecutor saw/discussed all cases where consideration is being given to dropping a case, reducing a charge or advising the police to take no further action, before the final decision is made. This should increase consistency of review and thereby raise public faith in decision-making.

8.78 The second prosecutor should, of course, be a specialist lawyer. CCPs might want to consider the possibility of introducing a lead prosecutor in the Area or TU, to whom all difficult rape cases could be referred.

#### RECOMMENDATION TEN

##### We recommend that:

- all rape cases be allocated to specialist lawyers, who should be responsible for the case from advice stage to conclusion of any proceedings; and
- all decisions to drop or substantially reduce the prosecution case, or to advise the police to take no further action, be discussed with a second specialist lawyer before a final decision is taken.

#### Custody/bail

8.79 We were pleased to note that in all cases where a defendant appeared at court in custody there was sufficient information to enable a decision to be made whether to oppose bail. Prosecutors generally made appropriate decisions, and did so in 59 out of 61 relevant cases in our file sample.

8.80 We considered that the prosecution should have appealed against the granting of bail in four out of the 20 cases where an unsuccessful application was made for a remand in custody. Applications were made in three of the four cases, with two being successful.

8.81 Some external interviewees suggested to us that retraction by a victim may be linked to a defendant being granted bail, and that there is a fear of intimidation. Indeed, we were given an example of a case where the defendant did assault the victim after he had been granted bail.

8.82 There were no instances of retraction following the granting of bail in our file sample, but in one case it appears that the victim tried to commit suicide after the defendant was granted bail. However, the victim did not retract her statement, and the case proceeded to trial.

8.83 The police had granted the defendant conditional bail in 14 cases. An appropriate decision was made as to whether an application should be made in relation to the conditions in all but one case.

8.84 National standards of witness care (agreed by the Trials Issues Group) provide for the provision of information by the police to the CPS in cases where witnesses are concerned about the possibility of a defendant being granted bail. They also stipulate that the police should notify any witnesses who have expressed such a concern if bail is granted.

8.85 Representatives of special interest groups told us that victims are not routinely being notified of bail/custody decisions. In view of their concerns about intimidation, it is particularly important that they should be appraised of the position. We take the issue of updating victims further in chapter 11.

#### Victim retraction

8.86 The victim made a statement retracting the complaint, or expressing a reluctance/unwillingness to give evidence, in 11 out of 91 cases. Ten cases were terminated (either in the magistrates' courts or the Crown Court), and the remaining case resulted in a plea to a lesser offence. The police submitted their comments on the veracity of the retraction statement, and gave their views, in only one case. The prosecutor considered compelling the victim to give evidence in two cases.

8.87 The prosecutor considered making an application to have the victim's statement read, in accordance with section 23, Criminal Justice Act 1967, in one case. Subject to certain conditions, this section enables a witness's statement to be read to the court if he or she is outside the United Kingdom, or is mentally or physically unfit to attend court, or is too frightened to attend court. (We were pleased to note that in CPS Staffordshire this section had been used in a case, not part of the sample, where the victim had died. The defendant was convicted.)

8.88 There were six cases in the CPS file sample that had to be dropped as a direct result of the victim having retracted, or having indicated an unwillingness to assist the prosecution. Apart from the one case referred to above, there did not appear to have been any real attempt to explore the reasons behind the retraction or to ensure that the officer in the case was satisfied that it was genuine.

8.89 Some prosecutors in Greater Manchester and North Wales explore the issues behind retractions, and will ask the officer in the case to offer further support and advice. We commend this as **good practice**. This is in accordance with CPS guidance on how to deal with cases involving domestic violence (see below), and we consider that such steps should be taken in every case where the victim retracts.

8.90 Other prosecutors consider seeking a witness summons if there is a history of abuse. In one case, community pressure had led to a retraction, yet the victims had given evidence after the prosecutor had obtained witness summonses. The defendant was convicted. The CPS has recently issued revised guidance on how to deal with cases involving allegations of domestic violence where the victim has retracted. Although we acknowledge that rape cases do not necessarily attract the same considerations, so for example it may not be appropriate to seek a witness summons, we think that consideration should be given to producing guidance in relation to rape cases where the victim has expressed a desire to retract. Issues to be included could be consideration about whether the retraction is genuine, and whether the victim requires further support and protection. We comment in more detail on what further guidance we consider should be provided by the CPS, and make a recommendation in chapter 12.

#### Cases involving child victims

8.91 We examined 56 cases where a child witness had been interviewed by way of video recording. Some cases were very well handled, with careful notes and assessments. In particular, we found that in 24 out of 26 cases the provisions to transfer proceedings to the Crown Court were used. They were not used in one case, and we could not ascertain whether they were in another case. A timely written application for adducing the video evidence, and to use a television link facility, was made in every case.

8.92 We found that the lawyer had viewed the video recording before making a decision, in accordance with CPS guidelines, in 32 out of the 56 cases. We could tell that the video recording had not been watched in seven cases, but were unable to ascertain the position in the remaining 17 cases. At worst, this means that in 30.4% of cases where a child's evidence was by way of video recording a decision was made without all the evidence being considered. At best, it means that there has been a failure to endorse the file properly. Either way, this is not a finding that demonstrates that all serious child victim cases are being handled properly.

8.93 We examined ten cases where the allegation was of abuse some years earlier (known as "historic" allegations). These cases are particularly difficult to review, involving additional issues, such as possible abuse of process arguments. They can also require careful selection of charges. Of the ten cases we examined, four resulted in a conviction. There were three guilty pleas, four judge ordered acquittals, and two acquittals and one conviction by juries.

8.94 We were disappointed to note a lack of detailed review endorsements, and a failure to analyse all the issues. We also noted that three indictments had to be amended to add counts, as the prosecutor had not included sufficient counts to ensure that the defendant's criminality was fully covered. Further guidance needs to be given to prosecutors, particularly in relation to the drafting of indictments. We deal with training and guidance in chapter 12.

#### Cases involving victims with learning difficulties

8.95 Prosecutors can find it difficult to be sure how to approach cases involving people with learning difficulties. This is due in part to the legal framework, which does not help a prosecutor reviewing these cases and determining which is the appropriate charge. It is also due to the difficulties in assessing a victim's credibility, which are exacerbated in cases where the victim is perhaps considered to be suggestible. Further, victims with learning difficulties also have increased needs when giving evidence.

8.96 We have set out in earlier paragraphs the care that prosecutors need to take when selecting the appropriate charge, and when considering whether or not to add alternative charges. This is particularly acute when a prosecutor is dealing with a case where medical evidence shows that a victim is unable to consent. Even when there is clear evidence of rape, prosecutors should always consider adding a charge under section 7, Sexual Offences Act 1956, which makes it an offence to have sexual intercourse with a woman who suffers from a state of arrested or incomplete development of mind.

8.97 We examined nine cases involving victims with learning difficulties. It was clear that prosecutors were not always aware of how to handle the issues involved, including how to approach the question of the victim's abilities. This is an area where prosecutors require guidance and training, and should be included in the revisions we propose in chapter 12.

8.98 We examined one case where the issues had been very carefully considered. The reviewing prosecutor had liaised with other CPS Areas about how to deal with witnesses with learning difficulties, and had considered the use of screens for the giving of evidence. The prosecutor quite properly decided that an expert should be instructed to ascertain whether or not the two victims were capable of giving consent and/or exercising any judgement, their general level of capabilities and whether they were capable of giving reliable evidence. In assessing those issues, the expert did a suggestibility test, following which he concluded that they were suggestible. Although there were other evidential issues, the inevitable result of the expert's report was that the case had to be dropped.

8.99 This case demonstrates the difficulty that can be encountered when trying to review cases where the victim has learning difficulties. We noted that the prosecutor had obtained a copy of a protocol CPS Merseyside has entered into with the police and Social Services Directorate. The protocol is aimed at ensuring that cases are dealt with speedily and properly. One of its key features is the preparation by the social services of a witness profile matrix. The matrix not only deals with such issues as the victim's functional skills and powers of concentration, but also includes advice to counsel on how to ensure that the victim is able to give his or her evidence. We commend the agreement of such a protocol as **good practice**.

8.100 We comment in more detail in chapter 11 about the new special measures to assist vulnerable or intimidated witnesses in giving evidence. One of the measures is the video recording of adults with learning difficulties. This will not only help the victim in giving evidence, but should also assist the prosecutor in assessing a victim's abilities more accurately.

### **Learning from experience**

8.101 We could tell that an adverse case report had been completed in only nine out of the 23 judge ordered and directed acquittals we examined. However, their absence from the file does not necessarily mean that reports are not being routinely completed, as experience shows that they may be filed separately.

8.102 Six of the nine reports we examined contained full details of the factual and legal reasons for the acquittal. There were general lessons to be learned in the three remaining cases, and the failure to analyse the issues properly means that an opportunity to learn may have been lost.

8.103 This is of particular concern in view of our comments about a prosecutor's approach to review and the high attrition rate. The prosecution team, consisting of the officer in the case, the lawyer, the caseworker and counsel (and, in appropriate cases, the FME and/or the FSS), should be seizing every opportunity to see how performance could improve. This means that counsel should be instructed to ensure that written reasons for the failure are always provided in cases that result in an acquittal, with advice being given where appropriate. It also means that the prosecutor, caseworker and officer in the case should discuss the issues, in order to ensure that any weaknesses in investigation or prosecution process are used as learning points for the future.

### **RECOMMENDATION ELEVEN**

#### **We recommend that:**

- **prosecutors insert a standard paragraph in instructions to counsel, requesting a written report in any case involving an allegation of rape which results in an acquittal;**
- **any written report is used to complete an adverse case report, setting out the factual and legal reasons for the acquittal; and**
- **the adverse case report is used to discuss with the police any lessons to be learned.**

## PREPARING CASES

### Introduction

- 9.1 Good quality decision-making is of limited value if the subsequent handling of cases is not thorough and professional. In this section, we consider the performance of the police and the CPS in relation to specific stages in the progress of cases, from the institution of proceedings through to their conclusion.

### Disclosure of unused material

#### *Police training*

- 9.2 Following the introduction of the statutory disclosure requirement introduced by the Criminal Procedure and Investigations Act 1996 (CPIA), the police service trained its personnel, with some training being delivered jointly with the CPS. The training varied from force to force in both style and content, from distance learning packages to one-week courses. Whilst it is acceptable that the varying depth of knowledge required for different police roles is matched by equivalent depth of training, in general we found knowledge too shallow, particularly among non specialist officers. The more detailed training given to detectives was not always reflected in the standard of their disclosure practice. In the absence of a unified approach, local practice, even within forces, has developed in an ad hoc way.
- 9.3 Since the provision of the initial training some forces have failed to maintain training delivery to personnel involved in the investigative process. This has led to localised procedures being introduced, including an element of 'on the job' training.
- 9.4 This issue is key to the enhancement of the prosecution case, and a high quality approach is essential if conviction rates are to be increased. We acknowledge that the CPS has in conjunction with some forces introduced protocols aimed at improving the quality of disclosure data. However, this is not universal and we believe that a more structured approach across both the CPS and the police service is necessary.

### RECOMMENDATION TWELVE

**We recommend that ACPO revisit the provision of disclosure training, in conjunction with the CPS, so that a more standardised and professional approach by police officers can be achieved.**

#### *Primary disclosure*

- 9.5 In the course of an investigation, the police may have collected information that is not subsequently used by the prosecution. Primary disclosure is the duty placed upon the prosecutor by the CPIA to disclose any such material to the defence if in his or her opinion the material might undermine the prosecution case. The prosecutor must also give to the defence a list of all the non-sensitive material that might be relevant to the case but which is not used as part of the prosecution case.

- 9.6 The police will submit a non-sensitive material schedule (MG6C) that will list all the non-sensitive material in their possession, as agreed nationally with the CPS. The prosecutor must consider this schedule, together with a police report on disclosure and any material submitted by the police, and make a decision about what, if anything, to disclose. The prosecutor must then endorse his or her decision on the MG6C, a copy of which will be sent to the defence. Copies of any undermining material will also be sent to the defence, or they will be notified about how the material can be viewed.
- 9.7 Primary disclosure was made in 77 out of 80 appropriate cases (96.3%). We were not able to ascertain the position in the remaining three cases. It was dealt with appropriately in 54 of the 77 cases (70.1%). This is slightly lower than the overall rate of compliance of 73.4% in our inspections of CPS Areas to date.
- 9.8 The main reason for considering that primary disclosure had not been dealt with properly was that the MG6C required amendment in order to enable a properly formed decision to be made. Where the prosecutor works off inadequate information about the nature and content of material held by police, there is a risk that disclosable material may be overlooked, as was the position in 14 of the 23 relevant cases. In other cases, we considered that material which was revealed to the CPS should have been disclosed.

9.9 The police and CPS in London have entered into an agreement whereby there is revelation of certain documents to the CPS, and computerised disclosure schedules have been developed. A new joint training package has also been developed. We understand that in some parts of London this has resulted in an improvement in the quality of the schedules. We consider this initiative to be **good practice**.

9.10 Some of our interviewees pointed out that although in rape cases any account by the victim before he or she makes a witness statement, or is interviewed on video, must be scrutinised carefully, this is not even listed in the MG6C in many cases. Since most contested rape cases involve a challenge of the victim's credibility, and can turn on details in his or her account, we consider that the police must list pre-statement notes on the MG6C, and the disclosure officer, and subsequently the prosecutor, must carefully consider their contents for disclosure purposes.

#### *Secondary disclosure*

9.11 Secondary disclosure is the procedure whereby a prosecutor must disclose any information in his or her possession where the information might assist the defence case.

9.12 Secondary disclosure was made appropriately in 29 out of 53 cases (54.7%) where the duty to make secondary disclosure arose. This is a much lower figure than that found in our inspection of CPS Areas to date (69%).

9.13 We found evidence to show that secondary disclosure was not made in 13 cases. We could not ascertain whether it had been made in 11 cases. At worst, this means that secondary disclosure was not made in 24 cases. At best, it means that poor record keeping has made it impossible for us to properly examine the CPS performance in this respect.

#### *Disclosure of sensitive material*

9.14 The police should notify the CPS of any material which they consider to be sensitive. They did so in 21 out of 24 relevant cases. They did not do so in one case, and we could not ascertain the position in the remaining two cases.

9.15 There was evidence of proper consideration being given to whether the material was sensitive in ten out of the 21 cases (47.6%). This is much lower than the level of proper consideration found in Area inspections to date (68.2%). The prosecutor dealt with the disclosure of sensitive material appropriately in each case in which it was undertaken.

9.16 We considered that the prosecutor had not dealt with sensitive material satisfactorily in 11 cases. In one case, the prosecutor had received sensitive material from the social services, and considered that the material contained information that might undermine the prosecution case. The prosecutor dealt with the material as though it were third party material (see below) and wrote to the defence, asking them to apply to the court for an order for disclosure. This was a misunderstanding of the law, as once any material comes into the possession of the police or the CPS the material is prosecution material.

#### *Disclosure of third party material*

9.17 Occasions arise when information relating to an investigation exists, but it is not in the possession of the prosecutor or the police ("third party material"). Common examples of third party material in cases involving offences of rape include a victim's general medical history, or social services file.

9.18 Third party material may sometimes have a bearing on the strength of the evidence in a case. If it does, consideration must be given to whether it should be made available to the prosecutor in order to ensure that the strength of the prosecution case is assessed properly. The question of whether the defence is entitled to it under the CPIA should only fall to be considered once any informed decision to prosecute has been made.

9.19 The Attorney General's Guidelines on Disclosure, issued on 29 November 2000, made it clear that a prosecutor must be proactive in these matters. If the CPS or the police suspect that a third party has material or information which might be disclosable, if it were in the possession of the prosecution, then consideration must be given as to whether it is appropriate to seek access to the material. If it is considered appropriate, but the third party refuses access, the matter should be pursued and the prosecutor should seek other remedies afforded by law to gain access.

9.20 Our file examination confirmed the concern expressed by our external interviewees about the handling of third party material by the police and the CPS. Third party material existed in 26 cases in our file sample. Disclosure of the material was made voluntarily in four cases, and by court order in nine cases. We found that proper consideration was given to the issue in only 14 cases.

- 9.21 While the main issue is the timeliness of the disclosure, we are concerned that some prosecutors are taking a view that third party material is not their responsibility. In our file sample, the receipt and revelation of social services material led to the prosecution offering no evidence at the Crown Court in six cases. In another case, it led to the prosecution accepting pleas to less serious offences. The information in all seven cases should have been sought before the prosecutor's decision on the strength of the case.
- 9.22 The reviewing lawyer in one case expressed his frustration that the police had failed to make the material available to him sooner. The prosecutor, being a specialist in cases involving child victims and witnesses, should have anticipated that the material was in existence, and should have asked the police to look into the matter much sooner.
- 9.23 We should point out that we found cases where third party material was handled well. In one case, the CPS initiated contact with the social services. They reciprocated by examining their records, and forwarding relevant documents to the judge to decide whether disclosure should be made, well before the commencement of the case.
- 9.24 One of the difficulties confronting an investigating officer is that a third party has no obligation to reveal to the police or the CPS the existence or contents of any material that may have a bearing on a criminal investigation. In rape cases, the most common reasons for the reluctance by a third party to produce material were that it was given and received on a confidential basis, and that the information often referred to intimate personal details. The police have a general duty to pursue all reasonable lines of enquiries, but they do not have a power to require a third party to produce material for inspection. A power to compel production only arises after the commencement of criminal proceedings, and then by order of the court.
- 9.25 In the CPS Inspectorate's Thematic Review of the Disclosure of Unused Material (Thematic Report 2/2000) some of the difficulties that could result were highlighted, and it was recommended that CCPs take steps to develop protocols with local organisations that commonly hold such material.
- 9.26 In CPS Northumbria, a joint agency protocol governs the way in which social services' records are handled and it has attracted much praise from all agencies. We **commend** it.
- 9.27 CPS Greater Manchester have developed a protocol on the disclosure of medical counselling notes with St Mary's Hospital. This has attracted favourable comments from several of our interviewees, and we commend it as **good practice**. Many CPS Areas have now developed protocols with social services departments. Unfortunately, this practice is by no means widespread, and the arrangements tend to be on a case by case basis. This will have contributed to the problems we outlined earlier.
- 9.28 The reluctance to reveal material in the possession of third parties is often fuelled by a perception that such material will be routinely disclosed to the defence who may then use it to make an unwarranted attack on the victim in cross-examination. This has led to one voluntary organisation involved in counselling rape victims deciding not to keep notes of the counselling, with the result that the prosecution only knows of the fact of counselling if the victim raises the issue.

- 9.29 Our file examination generally supported the contention that prosecutors do not make routine disclosure of previous medical history and counselling notes, and that they are only disclosed in so far as it is necessary in accordance with the CPA. But we found isolated incidents where, in our view, the prosecution failed to balance the need to disclose against the intrusion into the victim's privacy by the disclosure.
- 9.30 In one case, counsel asked for the victim's medical notes because she suffered from depression, and asked the CPS to disclose them when they became available. The implication is, therefore, that there was no consideration of whether disclosure was necessary in the interests of justice. In another case, the CPS asked the police to seek consent to obtain the victim's historical medical records. It then disclosed to the defence the records going back many years. The reviewing lawyer considered that not everything had a bearing on the case, but that disclosure at the defence request must be complied with because the victim had given consent.
- 9.31 We disagree with this approach. Victims do not always understand fully their obligations and rights, and the ambit of what they consent to is not often clear. They will usually comply with any reasonable police request to support the prosecution. This should not be taken that the victim has no concern that the information may be disclosed, or that the prosecutor has no duty to protect that information.
- 9.32 The Attorney General's Guidelines do not advocate disclosure without a consideration as to whether the information might undermine the prosecution case, or might assist a known defence. They urge that consultation with the third party should normally take place before disclosure is made, as there may be public interest reasons which justify withholding disclosure and which would require the issue to be placed before the court.
- 9.33 In Greater Manchester, CPS lawyers are required under the protocol to check any notes revealed to them and they take decisions by reference to the statutory tests. The Clinical Director of the Centre has personally attended court to explain to the trial judge why disclosure was not thought to be necessary. This has resulted in fewer applications for disclosure being made.

#### RECOMMENDATION THIRTEEN

**We recommend that, when relevant, the issue of third party material should be specifically drawn to the attention of counsel, with instructions that any disclosure of such material should be made only in accordance with the statutory tests.**

#### Previous sexual relationship

- 9.34 The disclosure of information about a victim's previous sexual relationship can cause anxiety to a victim. Many victims are aware that this action may be taken, and it can have an effect on the willingness of the victim to proceed with the case. However, we did not find any evidence of such information being disclosed unnecessarily.

9.35 On the other hand, we did see some evidence of detail about previous sexual history being included in the victim's statement, and we have already referred to the need for ACPPO and the CPS to clarify what needs to be included. Prosecutors should be alert to the need to consider whether statements do contain unnecessary detail and, if they do, should edit those parts. Unless this is undertaken, and careful consideration is given to what is relevant and admissible, situations may arise where a victim is cross-examined in an inappropriate way.

#### *The way forward*

9.36 There is clearly a lot of work that needs to be done by both the police and the CPS, in order to improve their respective performance under the disclosure regime. In particular, the following points need addressing:

- retaining of police officers;
- improvement in quality of disclosure schedules;
- CPS compliance with primary and secondary disclosure;
- CPS consideration of sensitive material schedules;
- police/CPS handling of third party material; and
- ensuring applications by the defence for third party material are properly handled or dealt with.

9.37 ACPPO and the CPS have set up working groups, which are currently considering the recommendations made in the Thematic Report 2/2000. We trust that they will draw upon our findings in this report.

#### **Preparation of papers for the Crown Court**

9.38 All adult defendants charged with rape must first appear at a magistrates' court. Until recently, they were then committed to the Crown Court for trial under section 6, Magistrates' Courts Act 1980. Since 15 January 2001, adults charged with rape are sent to the Crown Court under section 51, Crime and Disorder Act 1998. For certain cases involving children as victims, the prosecution may transfer the case to the Crown Court under section 53, Criminal Justice Act 1991.

9.39 Before a case is committed or transferred, the prosecutor must prepare a set of papers which contain, as far as possible, all the evidence to be called by the prosecution. For sent cases, where the aim is to enable them to progress to the Crown Court in a much shorter period of time, the preparation of papers will occur after the case has reached the Crown Court.

9.40 The approach to the preparation of case papers differs between the Areas we visited, and there is variation within the Areas. In some cases, lawyers prepare the committal bundle. In other Areas, lawyers and caseworkers share the tasks. A third approach is for the caseworker to prepare the bundles under the supervision of a lawyer. In all cases, the lawyer is responsible for the contents of the bundle, and we found evidence of lawyers checking the papers in 72 out of 78 cases in our sample. Generally, the lawyer who is responsible for the case papers will have overall responsibility for the case in the Crown Court. The quality of the papers served, and the time scale within which they are served, is not different to those for all types of cases.

9.41 Several of our interviewees suggested that more use could be made of photographs to illustrate marks or injuries. It is right that the taking and use of photographs of rape victims should be minimised, but these should not be ruled out when the level of intrusion is minimal, so that the evidence can be presented clearly.

#### **Sent cases**

9.42 Cases are sent to the Crown Court by the magistrates' courts on the first appearance, without consideration of any evidence. Regulations provide for time scales, and extensions, for the service of the prosecution case on the defence.

9.43 Normally, a case reaches the Crown Court within ten days of the first hearing at the magistrates' courts. The Crown Court judge then holds a preliminary hearing to determine the timetable for the future progress of the case. The legislation provides that papers must be served within 42 days of the preliminary hearing, unless a judge has granted an extension of time. The CPS has issued guidelines to prosecutors that the 42 day period should not be treated as the normal period for the service of papers, and that every effort should be made to speed up cases which are relatively straightforward or in which guilty pleas are expected.

9.44 Forty-two days are not normally sufficient to deal with rape cases, which usually involve medical and/or scientific evidence, two of the most common causes of delays, with the result that some police file preparation units are simply not able to cope with the time scale. However, in cases where the defendants are in custody, there is understandable pressure from court to speed matters up.

9.45 We noticed that in one of the Areas we visited, the prosecution sometimes asks for, and obtains, an adjournment in the magistrates' courts before sending a case to the Crown Court. The prosecution tends to do this when there are some doubts as to whether the case should proceed, and some short-term enquiry might inform the decision. This Area also benefits from a comparatively lengthy period between the magistrates' courts and the Crown Court hearings. In other Areas, applications for adjournments are almost always refused.

9.46 The CPS is conducting an evaluation of the implementation of section 51, Crime and Disorder Act 1998. This should provide guidance for Areas to address the issues involved. We comment further upon difficulties in relation to medical and scientific evidence below.

#### **Indictments**

9.47 The quality of indictments is variable. In the 82 cases in the CPS file sample, the indictment had to be amended in 28 instances (34.1%). Some amendments tended to reflect the difference between the reviewing lawyer's and counsel's approach to the case. Other amendments were major.

9.48 In the CPS file sample, indictments were amended on six occasions to reduce the level of the charge, and on three occasions to increase the level of the charge. In one Area we noticed that further counts were added to four indictments. All four indictments related to offences of historic abuse against children.



9.49 We came across other instances that suggested that more care should be taken in the preparation of indictments. In one case, the indictment charged rape and incest. Since the defence was that nothing had occurred at all, the incest count was unnecessary. In a second case, the age of the victim was not included in the count where this was an element of the offence. In other cases, counsel had to amend the chronology of the counts, or the order of the defendants in the indictment was wrong for tactical reasons.

9.50 Many of the amendments were necessary because the correct charges had not been selected. We have dealt with this issue in chapter 8, and with the fact that an early discussion with counsel to discuss the issues in the case should resolve many of the problems set out in the preceding paragraphs. We comment on the need to have conferences with counsel below.

#### Instructions to counsel

9.51 It is important that counsel instructed to appear in the Crown Court receive comprehensive instructions in a timely manner. The instructions should contain an adequate analysis of the evidence and issues in the case. This is particularly important in rape cases as the case can often turn on the detail in the evidence. It is also important that, where it is reasonably foreseeable that the defendant may offer pleas to less serious offences, or to only some of the counts on the indictment, counsel is instructed about what is acceptable to the Crown. This should avoid delays caused by the need to conduct detailed discussions on the trial date. Instructions also need to ensure that counsel focus at an early stage on any arrangements that may be necessary for vulnerable witnesses.

9.52 We examined the quality of instructions to counsel in 77 cases. In most instances, an attempt had been made to discuss the facts in the case, but this tended to consist of a recital of some of the facts, and did not provide an adequate analysis of the issues. The brief contained a summary that adequately addressed the issues in 35 of the 77 cases (45.5%). The acceptability of pleas was dealt with in only 11 out of 47 relevant cases (23.4%). This accorded with the concerns of some of our external interviewees, and with the position in relation to the quality of CPS instructions to counsel generally. We would have hoped that cases as sensitive as rape would warrant something more professional and polished.

9.53 One case we examined illustrated the problems that could be caused by inadequate instructions. The instructions had failed to point out the various pieces of evidence which could have corroborated the victim's account that she did not, in fact, consent. Nor did they set out that the issue in the case was the respective credibility of the victim and the defendant, rather than the latter's recklessness. The trial judge indicated to prosecution counsel that he would warn the jury of the danger of finding the defendant guilty without corroborative evidence. Counsel conceded that there was no corroboration of whether the defendant was reckless as to whether consent was given, and offered no further evidence. As the defendant's account was that the victim actively participated, which she denied, there was no room for any defence that the defendant acted under an honest but mistaken belief. Although counsel should have been aware of this, if it had been set out clearly in the instructions the case might not have been dropped.

9.54 Another example of poor preparation was a case where counsel was instructed to consider producing a defendant's previous conviction for rape as evidence of propensity. However, details of the conviction were not included in the papers, nor was there any discussion on the legal considerations involved. In another case, emotive and inappropriate language that cast aspersions on a victim's character formed part of the case analysis. Another set of instructions did not explain the origins of a count which was not initially charged, but had been added by examining justices at committal.

9.55 One counsel drew our attention to the practice of one prosecutor of providing a full note to the police when preparing a case for committal. The note outlines the prosecutor's views on the case, and any further work that needs to be carried out. This note is then included in the brief. Counsel considered that this helped to focus any future discussion with the CPS and the police. We comment this as **good practice**.

9.56 We would also expect instructions to counsel to include any unusual aspects of sentencing that might arise. The briefs we saw included instructions on the need to consider, in appropriate cases, the possibility of an Attorney General's reference to the Court of Appeal on an unduly lenient sentence. However, we saw one case where no reference was made to the fact that the defendant was subject to the provisions of the Crime (Sentences) Act 1997 (life sentence upon conviction of further offence of violence). This information should have been included.

#### Post committal advice from counsel

9.57 The CPS has agreed nationally with the Bar that once counsel has received instructions to prosecute, he or she should advise the CPS on any weaknesses in the case, and identify any further work that should be done. This does not occur as often, or in as timely a fashion, as it should, and there is some supporting evidence in our file sample of a failure by counsel to give early attention to instructions. This tends to defeat the purpose of setting a challenging target for the timely delivery of instructions to counsel.

9.58 We found that conferences with counsel are not held routinely, and that it depends on whether the reviewing lawyer or counsel requests one. The majority of counsel we spoke to thought that conferences are beneficial in most rape cases, and that there is a need for them in many cases.

9.59 We agree that conferences with counsel would be beneficial in most, if not all, cases involving allegations of rape. It would ensure that all the issues in the case were discussed at an early stage. This would include, for example, the question of what charges should be on the indictment, and the question of which, if any, special measures to give evidence should be applied for. It should also include consideration of any forensic science evidence, with the relevant scientist attending the conference, to assist in ensuring that the evidence is properly understood in terms of content, meaning and weight. However, the advantages gained in having a conference are reduced if ultimately counsel returns the brief. We deal with the issue of the high number of returned briefs later.

#### RECOMMENDATION FOURTEEN

**We recommend that a conference with trial counsel should take place in every case involving an allegation of rape, and that it should be arranged as soon as practicable.**

**Plea and directions hearings**

9.60 The first effective hearing in the Crown Court, for committed or transferred cases, is known as a plea and directions hearing (PDH). The hearing provides an opportunity for the parties to identify the contested issues in the case, and for the Court to give directions to the parties on the progress of the case. However, the practice of some police officers of submitting prosecution evidence piecemeal, and beyond agreed time-scales, often renders the PDH ineffective.

9.61 The PDH is normally listed one month after a case is committed, or as directed by the judge in a preliminary hearing in a sent case. The prosecution and the defence should be ready to deal with a case at the PDH if the defendant pleads guilty. If the case is adjourned, the judge will usually give directions about the future management of the case. It is important that these directions are complied with in the time given by the judge, and we were pleased to see that directions were complied with in 33 out of 36 cases in our file sample.

9.62 Difficulties can occur if the counsel who appears at the PDH is not the counsel who has been instructed to prosecute the case. Not only are such counsel on occasions significantly more junior to those originally instructed, but also the opportunity to take key decisions in the case is missed. In one case in our file sample, counsel originally instructed to prosecute agreed with the CPS what would be acceptable pleas. A different counsel conducted the PDH, and agreed to accept pleas which did not accord with the agreement with the CPS. It proved impossible to correct the error, which resulted in the defendant receiving a comparatively light sentence.

9.63 This problem is widespread in all types of cases. We consider it to be particularly crucial in rape cases that the advocate who appears at the PDH is fully aware of all the issues in the case. This means that either it must be the lawyer in the case (if he or she is a CPS Higher Court Advocate), or counsel instructed to appear at the trial. This will require a commitment on the part of both the CPS and the Bar to ensure that the rate of returned briefs at PDHs is reduced.

**SUGGESTION ONE**

**We suggest that the lawyer in the case (if a higher court advocate) or prosecution counsel instructed to appear at trial should be required to attend the PDH in all cases involving allegations of rape.**

9.64 The CPS is required to provide a summary (by way of an agreed one page document) to the court and the defence at the PDH to assist in the identification of the issues and to help in listing the case on a suitable date. We found that these summaries can often be so brief as to be inadequate. In the worst example, the summary simply said "allegation of raping ST (12). Likely issue: consent". This case unsurprisingly attracted criticism from the court. It is a process to which the CPS should pay greater attention.

9.65 It is important that all the issues in the case are identified at the PDH. This includes ensuring that the court is made aware that, for example, there is a need for a video link. During the course of our court observations, we saw two cases which were delayed because they had been listed in court rooms without these facilities.

**Medical and scientific evidence**

9.66 Many of our interviewees expressed concern about the time it takes for scientific and medical evidence to become available to the police and the CPS. One Crown Court judge described this as the slowest part of the process. This means that decisions to charge and, in some cases, decisions to allow the case to proceed to the Crown Court are often taken without the benefit of what might be crucial evidence in the case.

9.67 We saw some cases which were dropped after medical/scientific evidence became available after the PDH. This meant that the decision to proceed to the Crown Court was taken in the absence of potentially crucial evidence. In one case, the medical evidence had taken a month to reach the CPS, and the scientific evidence took a further month. During this delay, the young defendant was required by his bail conditions to reside away from home and not to visit his hometown. As a result, his education was severely disrupted. We also saw a case where the defendant had changed his plea to guilty on the day of trial, following service of forensic evidence.

9.68 In two cases, we considered that the prosecutor should have awaited sight of the medical or scientific evidence before dropping the case.

9.69 Medical evidence is almost always required in rape cases, and in most cases the examination takes place very soon after a complaint is made. We are therefore concerned that there is still delay in the provision of evidential statements by medical examiners. Some of our concerns will be resolved by the new protocol agreed by ACPQ, the British Association of Emergency Medicine and the CPS, which covers timeliness and quality of statements provided by staff at accident and emergency departments of hospitals.

9.70 Clearly, there will be instances where it is necessary to charge a defendant before vital forensic evidence is formally prepared, and the majority of these will be sent cases. It is important that the prosecution is in a position to provide the court with information about when the evidence will be available, thereby enabling the Crown Court judge to set a realistic timetable for preparation of the case papers. All CPS Areas have agreed protocols/procedures with the police and Forensic Science Service. Properly implemented, these can ensure that the agencies work together to improve the delivery of results to court and thus avoid ineffective hearings. The CPS has expressed its concern about unrealistic timetables being set. The protocols should ensure that such unrealistic deadlines, which can cause delay in other cases, are not set.

**Case and file management**

9.71 We examined the file endorsements in the magistrates' courts in 125 cases. We found that the endorsements were clear and legibly showed a comprehensive record of case progress in 116 cases (92.8%). The position with Crown Court files was not as impressive. We concluded that the quality of file endorsement was satisfactory in only 66 out of 97 files (68%). In this report we have stated that we were unable in some cases to ascertain exactly what happened at particular stages of their progress. This was due in the main to poor quality file endorsements.

*Preparing Cases*

- 9.72 Some aspects of poor file management were apparent in our file sample. We came across loose pages bundled together, and notes of unknown origin/purpose, even when there was compartmentalisation of the file contents. There were instances of no, or inadequate, notes of the result of the trial, and we were not able to distinguish between the indictment initially lodged and the amended version in other cases.
- 9.73 In one case, all counts were left on file, but we were unable to find any explanation for this. In another case, a committal was discharged because the prosecution was unable to proceed, but there was no record of what, if anything, the CPS proposed to do about the discharge. In a third case, the prosecution was dropped after one defendant became very ill during the trial. There was no record to explain why the CPS could not proceed against the other defendant.
- 9.74 In one Area the shortage of caseworkers was seen to be having a significant impact on performance. We noticed that most of their files were not maintained properly, with key documents missing, or filed in no particular order. This means that anyone seeing the file for the first time may have to waste valuable time trying to locate information, thereby adding to the pressure upon them. The state of the files may be due to a lack of time to maintain them properly, but we think that investment in file management will yield profit. We should point out that this Area also provided a file the preparation of which was excellent and was one of the best in our file sample.

## THE TRIAL

### The CPS in the Crown Court

- 10.1 Cases in the Crown Court are usually conducted by counsel instructed by the CPS. There is also a growing cadre of CPS Higher Court Advocates (HCAs) operating in most Crown Court centres, handling mainly uncontested work. CPS caseworkers attend the Crown Court to assist counsel and HCAs. They also perform various tasks that might arise, for example obtaining information not contained in the brief, marshalling witnesses and exhibits, and taking a note of the proceedings where necessary. They provide a record of the proceedings, and they also have a part in witness care.
- 10.2 Ideally, the caseworker involved in the preparation of the case should cover the trial, and do so throughout the trial. This does not always happen, and the extent of caseworker coverage varies in different Areas. Most Areas make an effort to enable the relevant caseworker to be present at the start of the trial, and in some cases manage to provide continuity of cover. However, while in some Areas the coverage can be as much as one caseworker to one or two courtrooms, in other Areas this rises to one caseworker to four or five cases, several of which may be trials.
- 10.3 Low caseworker coverage and the lack of case ownership can give rise to:
- difficulties in prosecution counsel obtaining instructions or assistance from the CPS;
  - poor record keeping and file maintenance;
  - lack of contact with the victim;
  - breakdown in communications to witnesses about the progress of the case;
  - a perception that the CPS does not treat the case seriously enough, when compared with the presence of a defence team in the courtroom; and
  - the CPS appearing not to be in control of proceedings.
- 10.4 We found in our file sample that there was usually some form of caseworker coverage in 35 out of 40 trials. There was no cover in one case, and we could not ascertain the position in the remaining four cases. The caseworker in the case provided the cover in only 11 of the 35 cases. Continuity of cover through the trial occurred in only 14 cases.
- 10.5 During the course of our court observations, we noted that a good level of caseworker cover tended to result in business being conducted efficiently and effectively. The caseworkers were knowledgeable about the cases they were covering, even if they were not involved with the initial preparation of the case. In the Area that had the lowest level of caseworker cover, the conduct of CPS business was sometimes chaotic, with some caseworkers appearing to have little knowledge of the case or its progress. In one instance, a case was transferred to another court some distance away, without the caseworker's knowledge or involvement. In the same court, on another day, counsel sought an inspector's assistance on what to do with an offer of a plea to a less serious offence. In that Area, victim and witness care has effectively become the province of the police and organisations such as the Witness Service, and counsel tend to use the police officers in the case as their first point of contact. In a different court in the same Area, students employed during the summer holidays were used to cover absences due to summer leave.

10.6 These comments are not a reflection on the ability of the caseworkers involved. There is a sense that they are simply overwhelmed by the amount of work they have to get through each day. Where the CPS can only barely offer a basic level of service, very few cases can enjoy a higher degree of attention. This effect can be felt in rape cases.

10.7 As stated above, in many of the Areas we visited an effort was made to enable the caseworker in the case to attend court to cover the trial. We identify this as **good practice**.

10.8 Increasing the number of caseworkers in court is only part of the solution. CPS managers should also look carefully at how efficiency can be improved. The provision of copies of documents, and editing documents at the request of counsel, can take up much time. In many cases, this needs to be done at court because of poor case management or late requests by the defence. CPS managers should also consider whether staff at a lower grade should undertake basic clerical activities at court, serving a number of courtrooms. This can be extended to the recording of results and keeping witnesses informed of case progress. Managers in Areas where transfer of cases between courts is common should look to ways of ensuring that the receiving courts are adequately serviced.

10.9 Currently, there is no consistent lawyer presence at all Crown Court centres. The establishment of CPS Trials Units should mean that there will be more attendance by lawyers, which should assist in the legal aspects of cases. We noted that in two Areas one or more lawyers are normally present.

#### Cross examination of the victim

##### General

10.10 Contested rape cases almost invariably involve a challenge to the victim's credibility or recollection. The questioning of a victim in court often involves a significant intrusion into a victim's personal circumstances and lifestyle. It can also often involve questioning aimed at demonstrating that the behaviour of the victim led the defendant to believe that there was consent to sexual intercourse.

10.11 We understand that victims are aware that cross-examination may take place, and are aware broadly of the lines commonly adopted by defence counsel. However, they cannot understand the relevance of some questions of a personal nature, and are often surprised at the ferocity of the cross-examination, and many victims who have given evidence say that they would not report a rape again because of the ordeal. Practitioners we spoke to think that cross-examination of a victim generally, and in relation to his or her previous sexual behaviour, had become more restrained even before the commencement of section 41, Youth Justice and Criminal Evidence Act 1999 (YJ&CEA) in December 2000 (see below). However, they were not surprised at all by the reaction of the victims.

10.12 In an adversarial justice system, the defence is allowed to probe the prosecution case robustly and vigorously, but steps can be taken to minimise the level of hostility experienced by the victims. In one Area, defence counsel may, in so far as it does not conflict with their duty to their client, inform prosecution counsel of the nature of any intrusive questions that are likely to be asked, so that the victim will not be taken by surprise. In other Areas, prosecution and defence counsel have to introduce themselves to the victim together before the trial. These initiatives are encouraging.

##### Previous sexual history

10.13 The questioning of a victim about his or her sexual experience, by either the prosecution or the defence, is a contentious issue. There are occasions when a victim's previous sexual history may be relevant to an issue in the case, and evidence of it is then admissible. There is, however, a danger that this line of questioning can be used as a device unjustifiably to turn a victim's character into a significant issue in the case. The line is difficult to draw.

10.14 Section 2, Sexual Offences (Amendment) Act 1976 imposed some restrictions on the cross-examination of a victim about any sexual experience with a person other than the defendant. There were general concerns about the operation and ambit of that provision, and sections 41 to 43, YJ&CEA were enacted to address those concerns. The sections further restrict the circumstances in which evidence or questioning about a victim's sexual behaviour beyond the circumstances of the alleged offences can take place without the leave of the court. Unlike those under the 1976 Act, restrictions under the YJ&CEA apply to the prosecution as well as the defence, and include sexual activities with the defendant.

10.15 Many of our external interviewees consider that, since the commencement of the provisions, applications by the defence to adduce such evidence tend to be made properly, and that aggressive cross-examination occurs only rarely because it can be counter-productive. This view is not fully supported by CPS staff, representatives of victim and witness support organisations, or our own observations.

10.16 We observed an application to cross-examine being made. The application had some merit, but was refused. We were told of another case in the same Area where a different judge also expressed concern about a pending application.

10.17 On the other hand, we found in our file sample a case where a judge allowed the defence to cross-examine the victim, aged 14, about an alleged incident that had occurred when she was seven. We could not understand how this was relevant to the case.

10.18 The new restrictions apply to the prosecution as well, but we saw one case where prosecution counsel appeared not to have considered whether he could call the evidence himself. As a result, the defence application to cross-examine the victim seemed speculative but was not objected to, and the victim was cross-examined in an inappropriate way.

10.19 The procedure for application for leave to adduce the evidence is governed by rules of court. The party should normally provide notice of the application to the court and all the parties in the case, to allow the other parties to consider a response. The rules also envisage that applications should be made in advance of the trial. We are concerned that in a number of cases the procedure set out under the rules had not been adhered to, and we noted that written application had not been made in either of the two cases we observed in court.

#### RECOMMENDATION FIFTEEN

We recommend that clear instructions are given to prosecuting advocates that offensive and seemingly irrelevant questioning should be challenged, and inappropriate cross-examination about previous sexual experience should be tackled.

10.20 We understand that the Home Office is planning to undertake research into the operation of the provisions of section 41, YJ&CEA later this year. We welcome this initiative.

#### Listing of cases

10.21 In most Areas, cases are heard at the Crown Court to which they are committed, transferred or sent. In London, however, cases are regularly transferred between courts. We appreciate that there may be logistical reasons which make this necessary, but it can affect the preparation of cases. In particular, it can make arranging a court familiarisation visit for the victim difficult, and may influence the choice of venue for special measures meetings.

10.22 In all the Areas, trials are generally fixed, by that we mean that the court assigns a day on which the trial is expected to start. In London, rape cases are still listed as floaters, that is, cases that might be called on if a courtroom becomes available due to the collapse of other cases. Witnesses in floaters are left in suspense as to whether their case will be called on. They often have to wait for some time before they give their evidence, and in some cases are sent home after a long wait, without having given their evidence. We are concerned about the effect this has on witnesses, particularly victims in rape cases.

10.23 Even if trial dates are fixed, some courts regularly list other short hearings before rape trials. This lengthens the waiting time, as does the occurrence of legal arguments before the trial, some lasting several hours. This is as undesirable as floating rape trials.

10.24 We observed a case that was transferred on the day of trial from the Central Criminal Court to a court in the south western extreme of the capital. The victim had to be transported to Kingston. The delay in the commencement of the case led to the victim having to give evidence over the course of two days. Our attention was drawn to another case where the victim had to wait for a day and a half before she was called to give evidence, and she was then criticised for being five minutes late.

10.25 The CPS should try to ask witnesses to attend court at a time and date when it is anticipated that they will be required to give evidence. Some of our external interviewees commented on the unrealistic estimate the CPS arrived at. Others added that lengthy waits by the witnesses are also occasioned by legal arguments at the beginning or during the trial. In Greater Manchester, a pilot scheme has extended witness care by providing a pager unit, which allows victims to avoid the pressure of waiting within the court building until required to give evidence. However, if effective use is made of PDHs and other pre-trial hearings, the need to have witnesses waiting unnecessarily, even away from court with a pager, should be minimised.

10.26 The staggering of witnesses is down to local protocol. CPS policy is to take account of the needs of witnesses, and so aims to ensure as far as possible that cases are not listed as floaters. We were told that in one London Crown Court time is set aside for any legal arguments in the afternoon, so that the victim, who is usually the first witness, can start giving evidence the next morning without any unnecessary delay. This is a practice often used for young witnesses, and we are pleased to see that it is being extended to victims in rape cases. We commend this as **good practice**. We urge CPS Areas to work with Crown Courts to develop protocols which reduce time spent by victims waiting to give evidence, and to avoid rape cases being transferred or dealt with as floaters.

#### Advocacy

##### *Selection of counsel*

10.27 Rape cases are difficult cases to prosecute, particularly if the disputed issues involve consent. There is, therefore, a particular need to select counsel, or HCA, of experience and ability, and to ensure that there is continuity of counsel as the case progresses. The Bar, as well as some observers of the criminal justice system, have expressed concerns regarding the strength of prosecution counsel compared to their counterparts for the defence. They say that this is caused by a difference in the rates of remuneration between the prosecution and the defence. It is said that the result of this difference means that the CPS only obtain counsel of lesser experience and ability.

10.28 The evidence we received through interviews was inconclusive on the point. Some judges were of the view that most prosecution advocates are at least adequate or better, and that poor advocates appear for the defence too. Some interviewees pointed out that the issue is not so much that the rate of fees affects the availability of counsel, but that the given fee restricts the amount of time counsel can afford to give to the case. On the other hand, very experienced counsel said that they are pleased to be able to prosecute in rape cases.

10.29 A Graduated Fee Scheme was implemented on 29 October 2001 and is expected to solve any problems in this regard. Its aim is to ensure that there is no disparity in the fees paid to prosecution and defence advocates at the Crown Court, unless there is good reason for distinguishing the value of their comparative roles. The effectiveness of the new system remains to be assessed.

10.30 We think that the CPS should also give special consideration to cases involving several defendants, or where Queen's Counsel leads for the defence. In six cases in our sample the defence had instructed Queen's Counsel. The CPS had not done so in five cases, and we could not ascertain the position in the remaining case. We were told of a case where prosecution counsel, albeit an experienced advocate, found herself against five leading counsel and five junior counsel. The parity of remuneration in that case was an issue, but, more importantly, prosecution counsel would have been placed under tremendous pressure.

10.31 Most CPS staff are of the view that some counsel are better at prosecuting rape cases than others, and they strive to ensure that these counsel are instructed. The collection of information about counsel's ability is informal, however. Only CPS London had a formal list of counsel considered suitable for rape cases. Although their list is over-long, and perhaps in need of updating, we commend as **good practice** the creation of such lists with the agreement of, and in consultation with, the Bar. This can be achieved through discussion by the Joint Advocate Selection Committee.

10.32 Several caseworkers, from different Areas, expressed concern not so much about any imbalance of strengths, but that suitable counsel are in short supply, and that once they acquire a good reputation for rape cases they become heavily in demand.

*The quality of advocacy*

10.33 We attended the Crown Court on several occasions and generally found the quality of prosecuting counsel ranged from satisfactory to good. We were impressed with some aspects of performance by some counsel. On the other hand, there were occasions where the advocate's preparation for the trial, or mastery of the facts, could have been improved. We did not see any obvious difference between prosecution and defence advocates, although we have already referred to one counsel's failure to consider the restrictions on questioning victims about their previous sexual history above.

*Monitoring advocacy standards*

10.34 There is no general monitoring of advocacy standards in the Areas we visited, nor are there arrangements to confirm how counsel perform in rape cases. Any assessment tends to be in response to feedback of poor performance.

10.35 We consider that the value of effective monitoring of advocacy standards, coupled with effective feedback, cannot be underestimated. Rape cases require sensitive handling and special aptitude for such cases should be looked for:

**RECOMMENDATION SIXTEEN**  
**We recommend that CCPs introduce structured monitoring of Crown Court advocates who prosecute cases involving allegations of rape.**

10.36 Any monitoring should, of course, be discussed by each circuit's Joint Advocate Selection Committee, and needs to take into account the agreement between the CPS and the Bar on the selection of advocates in the Crown Court.

**Returned briefs**

10.37 Counsel originally instructed in a case may not always be able to conduct the trial. There are several reasons for this, including listing practices, late change of pleas, and trials going beyond the time initially allocated. This can mean a lack of continuity in case management and differing opinions leading to changes of how the prosecution is to be conducted. For briefs that are returned late, there can also be a question mark over whether counsel has had sufficient time to prepare the case, and whether the new counsel is of an acceptable standard.

10.38 Cases in our file sample demonstrate the scale of the problem. Counsel originally instructed appeared at the PDH in 42 out of 81 cases, and at trial in 19 out of 40 cases. In one case, different counsel, none of whom was counsel originally instructed, appeared at the PDH, the trial, and the sentencing hearing.

10.39 CCPs will want to ensure that the standard of advocacy and case management in the Crown Court is not adversely affected by the rate of returned briefs. In rape cases, it is particularly important that when returns become necessary the case should go to counsel of appropriate experience and calibre.

10.40 It is also important that there is as much continuity of cover as possible. We have already commented upon the need for conferences to be held with counsel in order to discuss the issues in the case. Such conferences will also be important when the special measures to assist vulnerable and intimidated witnesses to give evidence are implemented (see following chapter). Clearly, it would benefit both the preparation of the case, and the victim, if counsel instructed to prosecute the case attended any conferences and all the hearings in the case. This will require the commitment of the CPS and the Bar, and we trust that every effort will be made to achieve this.

260

*The Trial*



## VICTIMS

### General

- 11.1 Generally, great progress has been made in the service provided to victims. The Victim's Charter, which was published in 1996 and is currently being revised, sets out the duties of the various agencies in the criminal justice system. Victim Support and the Witness Service provide a valuable service to victims, as do many other organisations that represent the interests of the victim.
- 11.2 In addition, there have been a number of new statutory provisions (such as special measures to give evidence), which should further enhance the service provided to victims. They should also result in victims having a greater role in the criminal justice system.
- 11.3 It is important to remember that the prosecution, that is, the police, CPS and counsel, do not represent an individual victim, although they should take into account his or her interests and views. However, the prosecution needs to bear in mind that there is a balancing exercise to be undertaken between the rights of the victim and the competing rights of the defendant, and also between the victim and the interests of the public at large.

### Reluctance of victims to report offences of rape

- 11.4 Our inspection did not include a detailed study of the reasons for some victims being reluctant to report allegations of rape. In particular, as set out in the chapter dealing with our methodology, we did not interview victims. However, we did explore the possible causes with representatives of special interest groups.
- 11.5 Most interviewees had similar views about why there is so much under reporting. The reasons we were given included:
- fear of not being believed;
  - fear of judgements being made about their behaviour;
  - fear of the process, particularly of the court system; and
  - fear of reprisal.
- 11.6 These views accord with the literature review findings.
- 11.7 Another common reason for not reporting an offence of rape is because the parties knew each other. We have already considered the difficulties in relation to cases where a defendant is alleging that the victim consented. Generally, this is in cases where the parties know each other, and it is of note that victims themselves appear to be aware that these sorts of cases are difficult.

**Victim care after the conclusion of the investigation**

- 11.8 This report has consistently urged police forces to put victims at the centre of police activity. The needs of the victim continue beyond the demands of the medical examination and the taking of statements of evidence.
- 11.9 A victim's needs can often be met more appropriately by agencies independent of the police, and many victims benefit from the services of Victim Support. One initiative is a Vulnerable Witness Support Scheme in Humberside, currently funded by the Home Office and run on a multi agency basis. This pilot scheme has yet to be evaluated but victims (and other witnesses) regard its support as valuable. Another Home Office initiative is a scheme being piloted by St Mary's Hospital in Greater Manchester. A support worker is providing support to victims at the statement taking stage in liaison with the police, and continuing regular telephone contact throughout the case. The pilot will be evaluated in August 2002.

- 11.10 Some forces are recognising their responsibilities and responding to them in imaginative ways. We urge those forces yet to put necessary arrangements in place to learn from the experience of others. Those with adequate systems should ensure that they are monitored and evaluated so that no victims fall through the administrative safety net. Victims must remain at the centre of policy, process and practice from the first report to the judgement of the court and beyond.

**Progress updates**

- 11.11 One of the biggest complaints made by organisations representing the interests of victims was about the lack of information victims receive about the criminal justice system, including the likely time-scale between reporting the allegation and trial. There was also said to be limited updating on the progress of a case, including the position in relation to bail. This is of particular importance to a victim, especially in view of a general fear of reprisal. The general view was that a victim needs to be told from the start that the whole process will take time, and that he or she needs regular contact from someone in authority. We found no evidence of any effective system to ensure that the victim is kept informed about the progress of the case. We were told of an instance where a victim felt unable to leave her house after the defendant had been charged, for fear that she might receive a telephone call warning her to attend court.

- 11.12 The Victim's Charter places the responsibility for keeping a victim informed about significant developments in the case on the police. However, it also requires a will on the part of prosecutors and caseworkers to ensure that the police are aware of progress in a case, and thereby are put in a position to pass this information on to the victim. The CPS should prompt the police to speak to the victim in these circumstances, if possible before a final decision is made. We saw examples in our file sample of prosecutors doing this in relation to decision-making (see below).

- 11.13 One suggestion made by interviewees was that victims would benefit from a pack that sets out the various stages of a case and likely time-scales. There is already a Home Office produced leaflet which is given to witnesses by the police. It contains information about going to court, but none in relation to the criminal justice system or time-scales. Another booklet has been produced for relatives of homicide victims, although this covers issues unique to such cases, such as details about the coroner's court.

- 11.14 In Scotland, the Crown Office issued a booklet entitled "Advice for victims of rape or sexual assault" on 4 July 2001. It sets out information about the offence of rape, the role of the Procurator Fiscal and the investigation, going to court and the services available for information and support. It is also available in six languages other than English. This is an initiative which we consider could be of benefit to victims of rape in England and Wales: we are reinforced in this by the views expressed by interviewees.

- 11.15 There is a need to keep the victim informed during the period between charge and disposal. There were no formal protocols in place to ensure that this was undertaken, but we were made aware of ad hoc contact being made by individual officers.

**SUGGESTION TWO**

**We suggest that ACPPO revisit the area of contact with victims during the life of a case, with a view to introducing protocols/guidance.**

- 11.16 The need for information extends beyond the conviction of a defendant, as victims are concerned about when the defendant will be released from a term of imprisonment. The Probation Service has been under a statutory duty (section 69, Criminal Justice and Court Services Act 2000) since 1 April 2001 to consult and notify victims about release arrangements for offenders serving 12 months or more for a sexual or violent offence. (Prior to this, it was a Victim's Charter requirement in cases where a defendant had been sentenced to four years' imprisonment or more.) The police are now responsible not only for informing victims of the results of court cases, but also for sending victims a copy of the "Release of prisoners" leaflet in the event of a plea or a finding of guilt.

**Liaison with victims about decisions in a case**

- 11.17 It has to be remembered that it is the prosecution who have the responsibility to make decisions about a case, not the victim. However, victims should be informed of any significant decisions. They should be able to give their views about any proposals, and the prosecution should take these into account.

- 11.18 The CPS is currently in the process of introducing a scheme whereby there is direct contact between the CPS and victims. It has already been piloted in some Areas, and is due to be fully implemented by October 2002. The scheme involves the provision to victims of written confirmation of the reasons for decisions made to drop, or substantially alter, charges. In cases involving certain offences, including allegations of sexual offences, a meeting will also be offered.

11.19 The Attorney General's guidelines on the acceptance of pleas, introduced on 7 December 2000, emphasise the need to keep victims informed when consideration is being given to accepting a plea to a reduced number of charges, or less serious charges. The prosecution should speak to the victim so that the position can be explained, and their views and interests can be taken into account as part of the decision-making process.

11.20 We found that prosecutors regularly ask the police to inform victims about decisions made by them during the course of their review. In particular, we found that the victim was consulted in 13 out of 23 cases where a decision was made at an early stage to drop the case in its entirety. We also found evidence of liaison with the victim in five out of ten judge ordered acquittals.

11.21 We found evidence that victims were informed about decisions when they are at court. Indeed, we observed two instances of counsel speaking to victims, to explain proposed decisions, during the course of our court observations. Some counsel suggested that they would always do this personally. We commend this as **good practice**.

#### Separate representation for victims

11.22 It should always be open to a victim to raise issues with the officer in the case, who should make any necessary further enquiries and pass on that information to the prosecutor. However, the use that is made of any such information has to be decided by the prosecution. It is also open to a victim to seek advice from a solicitor: indeed, one of the defence solicitors we interviewed had acted for a victim in raising an issue with the CPS.

11.23 We canvassed opinion on whether victims should be more involved in the preparation of the case, and whether they should be separately represented. Almost without exception, our criminal justice agency interviewees, including Victim Support, were of the view that it would be inappropriate for a victim to be separately represented in court. They considered that it could cause conflict and delay, and that it could result in more acquittals. Other interviewees, particularly special interest representatives, thought that it would be beneficial.

11.24 The literature review shows that there have been proposals, both in this country and elsewhere, to allow separate representation for the victim at trial. It has been introduced in countries with an investigative system, but not in any with an adversarial system. The nearest any adversarial system has come to doing so is in Ireland, which has just introduced a limited procedure.

11.25 Although prosecution counsel is appearing on behalf of the Crown, and not on behalf of the victim, he or she is under a duty to ensure that the victim's rights are upheld. Disappointingly, this is not always adhered to. The case we referred to in chapter 10 was an example of a failure to protect the victim from unnecessary cross-examination and innuendo. However, provided that prosecution counsel does act properly, we conclude that a victim's rights can be sufficiently protected under the current system.

11.26 Special interest representatives were of the view that victims need to be more involved in the preparation of the case. The introduction of special measures to give evidence should result in some victim involvement (see below), as should the victim personal statement scheme. The scheme came into effect on 1 October 2001, and its purpose includes:

- giving victims the opportunity to state how the crime has affected them;
- allowing victims to express their concerns in relation to bail or the fear of intimidation by or on behalf of the defendant;
- providing victims with the opportunity of stating whether they require information about, for example, the progress of the case; and
- providing victims with the opportunity of stating whether or not they wish to request assistance from Victim Support or any other help agency.

11.27 The victim's personal statement will be considered when the prosecutor is reviewing the file. It may also contain information that may assist the prosecutor and the court when bail is considered. The Home Office is planning an evaluation of the scheme (in 2002) to establish the level of victim satisfaction, both at the time the personal statement was taken and later in the case. We trust that the CPS and the police will use any findings in order to address any areas of the scheme that may require attention.

#### Court familiarisation visits

11.28 The Witness Service is generally responsible for arranging for victims to visit the court where they will be giving evidence, so that they can familiarise themselves with the layout and procedure. Ideally, these visits should take place in advance of the trial.

11.29 Although generally no prosecutor or caseworker is present, the Witness Service relies on the CPS to provide them with details of cases, and the witnesses being warned, in order to arrange the visits. We were told that these details are not always provided, and that often any information given does not include the nature of the allegation. Without these details, the Witness Service is unable to offer its services as extensively as it would wish, including arranging familiarisation visits in advance, and providing appropriate support in court.

11.30 It is also important that the Witness Service is aware of the nature of sensitive cases, including rape allegations, in order that they can ensure that the appropriate volunteers are available for the visits and to assist the victim on the day of trial itself. We were told that one team in CPS Greater Manchester provides the Witness Service with a copy of the witness list and brief details of the nature of the case, at the time the instructions to counsel are prepared, that is, before the PDH and well before the date of trial. This ensures that the Witness Service is in possession of all information necessary to arrange timely familiarisation visits, and we commend this as **good practice**.

11.31 There was little information in our files about whether a court familiarisation visit had taken place, as the CPS is not generally present. This means that the CPS do not get to know whether one has taken place, and miss an opportunity for meeting victims before trial. Some interviewees suggested that, if possible, caseworkers and counsel should attend pre-court visits. This is envisaged as a possibility when special measures to give evidence are implemented (see below).

**Personal contact with victims at court**

11.32 It is obviously important that victims are kept informed about what is happening in the case when they are at court, and this should normally be undertaken by the CPS caseworker. We have already commented about the level of caseworker cover at the Crown Court. We found that in those Areas with a good level of coverage, the victim was kept well informed about events. Indeed, we saw examples of very good practice during the course of our court observations. On the other hand, we were very disappointed with the level of service provided by the CPS in the Area with the poorest caseworker coverage.

11.33 Recent changes to professional rules make it clear that contact by counsel with victims and witnesses is proper within set parameters. Indeed, the rules encourage the practice of counsel speaking to witnesses they expect to call to give evidence. They also place a responsibility on counsel to ensure that nervous or vulnerable witnesses are put as much at ease as possible.

11.34 Despite this, we were told that there is a variable practice on the part of counsel. Some counsel will always introduce themselves to victims before they give evidence, and some make a point of speaking to them again after they have given evidence. Other counsel will only speak to victims after they have given evidence. As many victims leave court immediately after they have given evidence, this means that many never have the opportunity to speak to prosecution counsel.

11.35 This is disappointing, particularly as our interviewees told us that it makes a big difference to how victims feel they have been treated if counsel speaks to them. We understand that the CCP in CPS Northumbria has written to all counsel's chambers in the area, reminding counsel of the need to introduce themselves to victims in allegations of sexual offences. We identify this as **good practice**. There seems no reason why this should not in fact be a standard instruction to counsel.

**Special measures to give evidence**

11.36 Giving evidence can be very traumatic for victims of rape offences, because of the nature of the allegation. Some victims find it difficult to give evidence in the sight of the defendant. Others find the giving of evidence in a public court traumatic, particularly if details of, for example, previous medical history are disclosed. Currently, there are limited measures to assist a victim in giving evidence. Those that do exist, such as screens behind which victims can give evidence, are discretionary and applications for their use are not always granted. Further, because of their discretionary nature, they can be seen as being prejudicial to the defendant.

11.37 'Speaking up for justice' ('the report') was published in June 1998. It contains 78 proposals which were designed to encourage and support vulnerable or intimidated witnesses to give their best evidence in criminal cases. In particular, it recommended that special measures be introduced, now enacted in Part II of the Youth Justice and Criminal Evidence Act 1999.

11.38 The provisions, when brought in, should provide for consistency of approach, and allow the involvement of the victim in determining which measures, if any, to include in an application. Their introduction will take place on 24 July 2002, with implementation being phased. Full implementation will occur by 2004.

11.39 Witnesses are eligible for special measures on grounds of age (under 17 at the time of any hearing), or incapacity, or of fear or distress about giving evidence. Victims of sexual offences are deemed to be eligible unless they inform the court that they do not wish to be eligible.

11.40 The special measures provided for include:

- screening of witness from the defendant;
- evidence by live television link;
- video recorded cross-examination or re-examination; and
- evidence given in private (that is, the court is cleared).

11.41 The last measure is limited to sexual offences, and is designed to allow the victim to give evidence of a sensitive nature without being open to public scrutiny.

11.42 The court may direct that evidence-in-chief is given by way of a video recorded interview. There is a presumption that in cases involving sexual offences where a witness is "in need of special protection" and where the evidence in chief is video-recorded, subsequent cross-examination and re-examination will take place by pre-recorded video unless the witness does not want it. This provision could assist in ensuring that victims are not made to endure the lengthy periods at court waiting to give evidence (as described in chapter 10 dealing with listing of cases).

11.43 The measures will not automatically be available at trial, as the court has to determine whether they would be likely to improve the quality of the evidence and, if so, which of the measures would maximise, so far as practical, the quality of the evidence. The court has to consider all the circumstances of the case and, in particular, the views of the witness and whether the measure/s might tend to inhibit the effective testing of the evidence by the defendant. In other words, the court has to balance the interests of the victim with those of the defendant and the wider public interest.

11.44 The report recommended that an early special measures meeting take place between the police and the CPS, to discuss and agree what special measures directions should be the subject of an application to the court. The views and preferences of the witness were to be taken into account during this meeting.

11.45 Police/CPS guidance states that such meetings will be attended by the police officer who has had contact with the witness and the reviewing lawyer. Where practicable, the caseworker and prosecution counsel should also attend. The guidance suggests that the meeting could take place at the same time as a court familiarisation visit, for which the Witness Service will remain responsible.

11.46 In addition to covering the special measures, the meeting should establish a link between the CPS and the victim. It could also include an explanation of court procedure and the roles of the various parties in the trial, if the meeting does not coincide with the pre-court familiarisation visit.

11.47 It is important to remember that both the Bar Code of Conduct and the Guide to the Professional Conduct of Solicitors make it clear that there must be no discussion of evidence with the witness. Any such discussion would be likely to lead to an allegation of rehearsing or coaching of the witness, which could lead to the exclusion of the evidence.

11.48 The aim must be to provide the maximum possible continuity. Therefore, the trial advocate (including counsel where appropriate) should, wherever possible, attend the meeting, as well as the caseworker. We have already commented about the high number of returns of brief. It will require a will and determination both on the part of the CPS and the Bar to ensure that counsel originally instructed to represent the prosecution retains the brief throughout the case. This would not only be of benefit to the needs of the victim but also should result in better preparation and presentation of the case.

11.49 We are optimistic that, provided all members of the prosecution team undertake their duties in accordance with the guidelines, the new measures should result in it being easier for a victim to proceed with an allegation of rape. They should also go some way towards "empowering" victims, who currently, we are told, feel frustrated by their lack of involvement in the case. It is, however, important that the opportunity for change should not be lost. We consider, therefore, that there should be structured monitoring, to include not only CPS and police performance, but also the attendance at meetings by prosecution counsel who conducts the trial.

**SUGGESTION THREE**  
**We suggest that ACPD and CCPs introduce monitoring of performance in relation to the introduction of special measures to give evidence.**

**Liaison with Victim Support and the Witness Service**

11.50 We were told that, generally, liaison at court by caseworkers with the Witness Service is very good. Formal liaison takes place at court user group meetings, and again was generally considered to be constructive.

11.51 There is less day-to-day contact with Victim Support, which is not surprising as a lot of their work is with victims whose cases never reach the court system. However, some members of Victim Support feel able to speak to prosecutors about any concerns they have on a case by case basis, and we trust that approaches such as these are dealt with appropriately. There is also a constructive relationship on a national level.

11.52 The police, CPS, Victim Support and the Witness Service in Humberside have agreed a protocol dealing with the Home Office Vulnerable Witness Support Scheme we referred to earlier in this chapter. They also undertook joint training of the volunteer court support workers, assisted by FME input. This is a good example of inter-agency co-operation.

11.53 We were pleased to note that both the police and the CPS assist in training of volunteers, both for the Witness Service and Victim Support, and we commend their involvement.

**Liaison with special interests groups**

11.54 There is some liaison with sexual assault referral centre representatives. This includes the regular meetings held between the CPS and police with the Rape Examination Counselling Help Centre (REACH) doctors in Northumbria, and the development of guidelines for the provision of medical statements. This is valuable in both developing good practice and promulgating the efforts and standards of service being achieved in an area.

11.55 Liaison with other special interests groups appears to be limited, and benefits need to be assessed locally. We encourage regular liaison.

266

*Victims*

## GUIDANCE AND TRAINING FOR PROSECUTORS

### Introduction

- 12.1 CPS staff are bound to take key casework decisions in accordance with the Code for Crown Prosecutors and the relevant law. In order to assist them to discharge their duties, the CPS Policy Directorate provides guidance on various casework themes, including sexual offences. Guidance is also given on casework tasks or processes, such as the disclosure of unused material and the care and treatment of victims and witnesses.
- 12.2 The guidance deals with issues of substantive law, as well as practice and procedure, the law of evidence and CPS policy. Policy Directorate will consult with appropriate CPS staff and other headquarters directorates when the guidance is prepared. Where appropriate, other government departments and public and private sector organisations will also be consulted.
- 12.3 The Prosecution Manual, which was launched in 1995, is the main source of casework guidance. Parts of it have been amended in response to new legislation, developing case law, and comments from staff and other interested parties. The Prosecution Manual's circulation is currently restricted to CPS staff, although copies have been provided to some other government departments. However, a recent change of policy, partly in response to the Freedom of Information Act 2000, has resulted in a project to overhaul the systems for providing legal information to CPS staff. The Prosecution Manual will be updated, and it will be made public. The target for internal publication is April 2002, with wider dissemination by the end of 2002.
- 12.4 Inspectors have found in the course of this inspection that there is often a misunderstanding, even amongst people who have a working knowledge of the criminal justice system, of CPS policy, practice and procedure. Some of our interviewees have also expressed a concern that CPS decision-making lacks transparency. We therefore welcome the proposed publication of the guidance.
- 12.5 The Prosecution Manual consists of several bulky volumes, and effecting amendments of any part of it takes time. Policy Directorate has therefore developed the use of Casework Bulletins. A Bulletin tends only to be several pages long, and can be disseminated electronically. It is used to bring matters to the attention of CPS staff rapidly.
- 12.6 There is also a CPS weekly bulletin known as Inform, where urgent instructions and guidance can be disseminated to all staff.
- 12.7 CPS staff can contact policy advisers based at the Policy Directorate for advice on issues in individual cases. Each policy adviser specialises on a number of topics such as sexual offences, disclosure, the Human Rights Act etc. CPS staff may also seek assistance from the Casework Directorate, which conducts serious or complex cases.

## National guidance for the prosecution of rape offences

- 12.8 The guidance for the prosecution of rape offences is contained in a chapter in the Prosecution Manual dedicated to sexual offences. There is also related guidance in a chapter dealing with offences involving child victims and witnesses.
- 12.9 The chapter on sexual offences was last amended in October 1996. However, seven Casework Bulletins have been issued since then, dealing with developments such as the Sexual Offenders Register and the changes to the law on the restrictions on the use of evidence of the victim's previous sexual history. We are told that as part of the project referred to above, the chapter will be the subject of an overhaul to take into account all the developments since 1996.
- 12.10 The first section expresses the view that many sexual offences are of a serious kind and that the public interest will normally require that the offender be prosecuted. We agree with this statement of principle.
- 12.11 Guidance is then given on charging practice and evidential considerations, both generally and on specific offences. Much of the guidance is clearly stated, but we consider that the following two aspects require clarification.
- 12.12 First, the Manual provides that "The character of the victim cannot be ignored when considering an alleged sexual offence. Such evidence may be relevant to the question of consent." This is repeated in the section dealing with evidential consideration in rape. We consider this statement to be too sweeping. It needs to address what, if any, character traits can be relevant, and why.
- 12.13 Secondly, the guidance states that the mental condition of the victim is an important consideration. It points out that while a victim who suffers from a mental disability needs particular protection, he or she can, on the other hand, be a difficult witness requiring corroboration on all the salient points of the defence. We have dealt with the difficulties prosecutors encounter when reviewing these cases in chapter 8. We would like to see the emphasis of the guidance shifted to demonstrate the importance of obtaining relevant expert assistance both in assessing the strength of the victim's evidence and in presenting the case.
- 12.14 The Casework Bulletins have generally kept pace with the development of the new legislation and case law. These should now be incorporated into the new version of the Prosecution Manual.
- New topics for inclusion**
- 12.15 As we have already stated, the decision making in the prosecution of rape offences can involve making an assessment of the victim's credibility as a witness, and weighing up the different factors in the case. It too easily can become a subjective process, vulnerable to stereotyping or assumptions. The majority of staff we spoke to considered that the guidance provided by the CPS is adequate to good, although some think that they need further guidance on some issues not yet covered. We agree that guidance on some further topics is required. These include:

- consent and the issue of recklessness;
- analysis of medical evidence;
- dealing with retractions;
- dealing with allegations of historic abuse against children; and
- how to approach cases where the victim has learning difficulties.

12.16 We are also of the view that the research findings in relation to how victims can react needs to be considered (see paragraphs 6.14 and 8.66 - 8.67), and guidance provided as appropriate.

12.17 Other topics include cases of drug assisted rapes. Reports of such cases, or suspicions that they might have occurred, have increased recently. Many Areas we visited have had some limited experience of dealing with these cases, but we found that there are gaps in the knowledge of the drugs commonly used, their effect and the scientific processes to determine their presence. The information is normally available on a case by case basis but, as it is a comparatively new type of offending for which there is no general knowledge within the CPS, guidance should be provided. An update on new developments in forensic science should also be undertaken.

### RECOMMENDATION SEVENTEEN

**We recommend that the CPS updates, revises and widens its guidance to prosecutors on the review and handling of cases involving allegations of rape.**

#### Training

12.18 Legal training for CPS staff is mainly delivered in-house on a national basis, as well as locally. Staff from headquarters directorates, and volunteers from the Areas, work with the Vocational Training Unit at CPS headquarters to maintain and develop all the national legal training material. The Unit also organises national training and manages a course brief database.

12.19 At a local level, each Area has a training strategy, and training can be delivered through formal events, as well as at team meetings and other briefings. Selected Area staff are trained to deliver nationally designed courses locally, and each Area may develop its own training material. Areas also have arrangements for learning from experience, and staff can attend external specialist training or seminars, should the need and the opportunity arise.

12.20 Formal internal CPS training for the prosecution of rape offences is in the form of a one-day course that covers all sex offences. The course, which can be delivered on its own or as a module in a wider package, deals with the substantive law as well as evidential considerations. It deals with the assessment of the victim's credibility in greater detail than the guidance in the Prosecution Manual, and case studies and peer discussion enhance the training. Nevertheless, our concerns about the Prosecution Manual, and the improvements we urge, apply equally to the training material. The tone of the material is defensive rather than constructive. There is a list of warning signs, but little or no help with how a case can be built and strengthened.



~~268~~  
269

12.21 The course material was last updated in September 1997. Although the relevant law, up to the time when the material was last revised, is accurately stated, there is an urgent need to bring it up to date. It also needs considerable expansion and, in our view, a one day course is inadequate to develop the necessary specialist knowledge. Future plans for a Prosecution College to raise standards through a centre of excellence for training and development are very welcome.

**RECOMMENDATION EIGHTEEN**

**We recommend that legal training on sexual offences be up-dated in the near future. It should be re-launched and undertaken by all appropriate lawyers and caseworkers.**

12.22 In addition to legal training, some CPS staff are also being trained how to deal with victims as part of the direct communication with victim initiative. Others will be trained in how to deal with special measures to give evidence, including meeting with the witness. We have covered both these issues in the preceding chapter.

## ATTRITION

### Research

13.1 Current research reveals that there are four key attrition points:

- decision to report;
- during investigation;
- CPS dropping a case; and
- acquittals after trial.

13.2 The literature review indicates that one in five reported rape cases reaches trial. Of these, half or less result in a conviction for rape or attempted rape, and a third result in acquittals. The remaining cases involve convictions for charges other than rape.

### Our findings

#### *Decision to report*

13.3 The Rape Crisis Federation has suggested that only 12% of the women who contacted them in 1998 reported the allegation to the police. We did not undertake a detailed review of why victims do not report allegations of rape. However, it is clear from our interviews with representatives of special interest groups that a fear of being “re-victimised”, and feeling that they will be “put on trial”, operates to influence victims. This perception is not surprising, in view of the publicity about how victims are treated by the criminal justice system, some of which we found is justified.

13.4 We consider that an increase in the number of cases reported to the police can be achieved by improved police liaison with other relevant agencies and special interest groups. This should also help heighten victims’ awareness of the facilities offered and the police commitment.

13.5 A real difference would also be made if the steps outlined below are taken, thereby improving the treatment of victims and the prospects of conviction. A victim is likely to be more willing to report an offence if it becomes known that an improved service is being provided.

#### *Investigation*

13.6 We defined attrition at the investigation stage as being where an allegation has been recorded as a crime, but the alleged offender has not been charged or cautioned. We also included the cases where the CPS advised the police not to charge (these amounted to 4% of the crime reports). It should be remembered that the figures also include those cases where the decision was made not to charge after the victim had retracted his or her statement. There is also an argument for excluding some of the cases which were detected under Home Office Codes, which would make the rates slightly lower.

13.7 Our findings show that the alleged offender was charged or cautioned in only 28.3% of the crime reports examined (492 out of 1,741):

Total Files Reviewed	Undetected	No Crime	Detected under HO Codes	CPS Advice to take NPA	Cautioned	Charged/ Summoned
1,741	746 (42.8%)	219 (12.6%)	213 (12.2%)	71 (4.1%)	25 (1.4%)	467 (26.8%)

13.8 The attrition rate in our sample was, therefore, 59.2%. This is similar to the rates quoted in the literature review, which varied from 36% to 67%.

13.9 An improvement in the standard of the initial treatment of victims by the police is required, including the environment into which they are taken. This will involve training of all those who come into contact with victims, both in how to approach their jobs and how to treat victims.

13.10 Improvements will continue when, on 1 April 2002, all police forces in England and Wales adopt the National Crime Recording System. It is believed that these new Home Office guidelines will improve consistency in recording, and diminish disparities between forces. The guidelines espouse a more victim centred approach to allegations of crime.

13.11 Continuing efforts need to be made by practitioners and supervisors to ensure enhanced statement taking from victims and interviewing of subjects.

13.12 Analysis of the 230 cases in the police sample (which were submitted to the CPS) shows that the case proceeded to court in 42.2% of cases:

Offence	Total	Not Charged on CPS Advice	Charged but Discontinued by CPS	Proceeded to Court	Result No Known
Rape	220	64	67	88	1
Unlawful Sexual Intercourse	4	0	0	3	1
Indecent Assault	6	0	0	6	0
Total	230	64	67	97	2

8 See Annex E for breakdown of Home Office Codes

13.13 Our sample shows that 57% of cases (131 out of 230) were either the subject of CPS advice to take no further action, or were dropped by the CPS after charge. This is higher than the figures referred to in the literature review where the rate was said to be 33% - 50% of all cases referred to the CPS.

13.14 We consider that an improvement in the quality and consistency of review can be achieved by the introduction of specialist prosecutors, who have received revised training and guidance, particularly in how to build cases. The number of rape cases where the CPS gives the police advice to take no further action, or drops or substantially reduces the prosecution case, should be reduced by the introduction of a procedure which requires all such cases to be the subject of a second opinion by another specialist before a final decision is taken.

*Acquittals after trial*

13.15 Our sample shows a conviction rate of 60.8% of all prosecuted cases (including guilty pleas):

Offence	Total Cases Proceeded to Court	Found Not Guilty	Convicted at Court - Guilty Plea	Convicted at Court - Not Guilty Plea
Rape	88	35	39	14
Unlawful Sexual Intercourse	3	1	2	0
Indecent Assault	6	2	2	2
Total	97	38	43	16

13.16 The sample shows an acquittal rate of 39.2% of all prosecuted cases. The acquittal rate is even higher (70.4%) if guilty pleas are excluded.

13.17 The introduction of specialist prosecutors, and use of experienced prosecution counsel, will improve the preparation and presentation of cases. This needs to be coupled with continuity of prosecutor, caseworker and counsel. The proper approach to special measures to help witnesses give evidence, and the linked meetings with victims, should also assist.

13.18 A more determined effort by the prosecution team, listing officers and indeed the trial judge, is also needed to ensure that the victim is properly treated, both before and in court, and is not subjected to unnecessary, or intimidating, cross-examination.

13.19 It is clear that there are wider issues involved than simply how the police and CPS handle cases. As we have stated, the level of acquittals did not reveal any pattern which might reflect on the prosecution. Our file sample included cases which appeared to have been handled properly by the police, CPS and prosecution counsel and yet still resulted in an acquittal. The new provisions dealing with vulnerable witnesses have the potential to improve the quality of evidence given by victims. This report has focussed on the performance of the police and CPS but, in our view, the criminal justice system as a whole needs to reassess the way it approaches cases involving allegations of rape.

### Comparison of attrition rates

- 13.20 In order to compare the attrition of rape cases in our sample with that of CPS national averages, we analysed the CPS sample, to determine at what stage cases were dropped after charge.
- 13.21 The national average for cases discontinued in the magistrates' courts is 13%. The average for judge ordered acquittals is 12.8%, while that for judge directed acquittals is 2.4%. This covers all offences, but the figures are significantly lower than those for our sample of rape cases, which were 21.6%, 19.2% and 4.8% respectively. (Note that the figure for judge ordered acquittals includes those sent cases which were dropped before being prepared for trial, in accordance with the CPS recording practices.)

### Conclusion

- 13.22 In themselves, the numbers appear shocking. The detailed analysis in this report shows how this comes about. The steps we have outlined, which could be taken from the outset, will, we hope, have a cumulative effect upon improving the quality of the evidence and presentation in court. The impact of this should be, hopefully, to reduce the attrition rate at each stage.
- 13.23 No one step will achieve a substantial reduction in the attrition rate. It will take a concerted effort on the part of all those involved in the investigation and prosecution of rape cases for any real result to be achieved. It also needs to be borne in mind, however, that there are wider issues involved, that require an effort on the part of the criminal justice system itself. Changes have been made over the years in relation to the requirement for a judicial warning to be given to the jury if there is no corroboration, and the extent to which a victim's previous sexual history is relevant. There are further provisions to come to enhance the quality of evidence of vulnerable witnesses.
- 13.24 It needs to be remembered that at the heart of the process is the issue of the treatment of the victim. As the literature review points out, the best evidence can only be gleaned from the best treated victim. Further changes may be necessary within the criminal justice system itself to address the issue of attrition, but in the meantime our findings reveal that there is much that can be done by the police and CPS, sometimes in conjunction with other organisations, to enhance the treatment of victims and the collection and presentation of evidence.

## GLOSSARY OF TERMS USED IN THIS REPORT

ACPO	Association of Chief Police Officers
APS	Association of Police Surgeons
CCP	Chief Crown Prosecutor
CPIA	Criminal Procedure and Investigations Act 1996
CPS	Crown Prosecution Service
DNA	Deoxyribonucleic acid
FME	Forensic medical examiner
FSS	Forensic Science Service
GMP	Greater Manchester Police
GP	General practitioner
HCA	Higher court advocate
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate.
HMIC	Her Majesty's Inspectorate of Constabulary
MPS	Metropolitan Police Service
NCF	National Crime Faculty
NPT	National Police Training
PDH	Plea and directions hearing
PEACE	Planning and Preparation, Engage and Explain, Account, Clarification and Challenge, Evaluate and Close
PSG	Project Steering Group
REACH	Rape Examination Counselling Help Centre
SCAS	Serious Crimes Analysis Section
SIO	Senior Investigating Officer
TIC	Taken Into Consideration
TU	Trials Unit
USI	Unlawful Sexual Intercourse
YJ&CEA	Youth Justice and Criminal Evidence Act 1999



## TERMS OF REFERENCE

HMCPST and HMIC to carry out an analysis of investigations, decision-making and prosecutions of allegations of rape, from initial report through to case disposal. The review will cover all offences of rape, including allegations of male rape, as well as those involving children. It will take into account:

- attrition rates and possible causes of attrition during the investigation stage;
- attrition rates and possible causes of attrition at the advice and prosecution stage;
- identification of any regional variations in attrition rates;
- advice and decision-making by the CPS;
- the preparation of cases for trial, including the prosecutor's duties of disclosure;
- the presentation of cases at court;
- interaction between the police, the CPS and prosecution counsel;
- the treatment and support of victims;
- identification of good practice throughout the process;
- identification of any training needs;
- liaison with outside agencies, such as Victim Support and Rape Crisis, to explore possible causes of under reporting and reluctance to report offences; and
- consideration of other research/reviews, with a view to ensuring that the review team's findings are passed on where relevant.





## PROJECT STEERING GROUP MEMBERSHIP

Jerry Hyde	HM Deputy Chief Inspector, HMCPSI (Chair)
Peter Franklin	Association of Police Surgeons
David Gee	Staff Officer, HMIC
Jessica Harris	Crime and Criminal Justice Unit, Home Office
Sue Hill	Detective Chief Inspector, Twickenham Police Station
Liz Kelly	Professor, Child and Woman Abuse Studies Unit, University of North London
Anita Mansley	St Mary's Sexual Assault Referral Centre
Mary Newton	Forensic Science Service
Katey Rushmore	HM Legal Inspector, HMCPSI
Alison Scott	HMIC (seconded from Hampshire Constabulary)
Ian Shaw	Forensic Science Service
Debora Singer	Victim Support
Paddy Tomkins	Assistant Inspector of Constabulary, HMIC
Baljit Ubhey	CPS, Policy Directorate
Robert Wood	Deputy Chief Constable, Derbyshire, ACPO



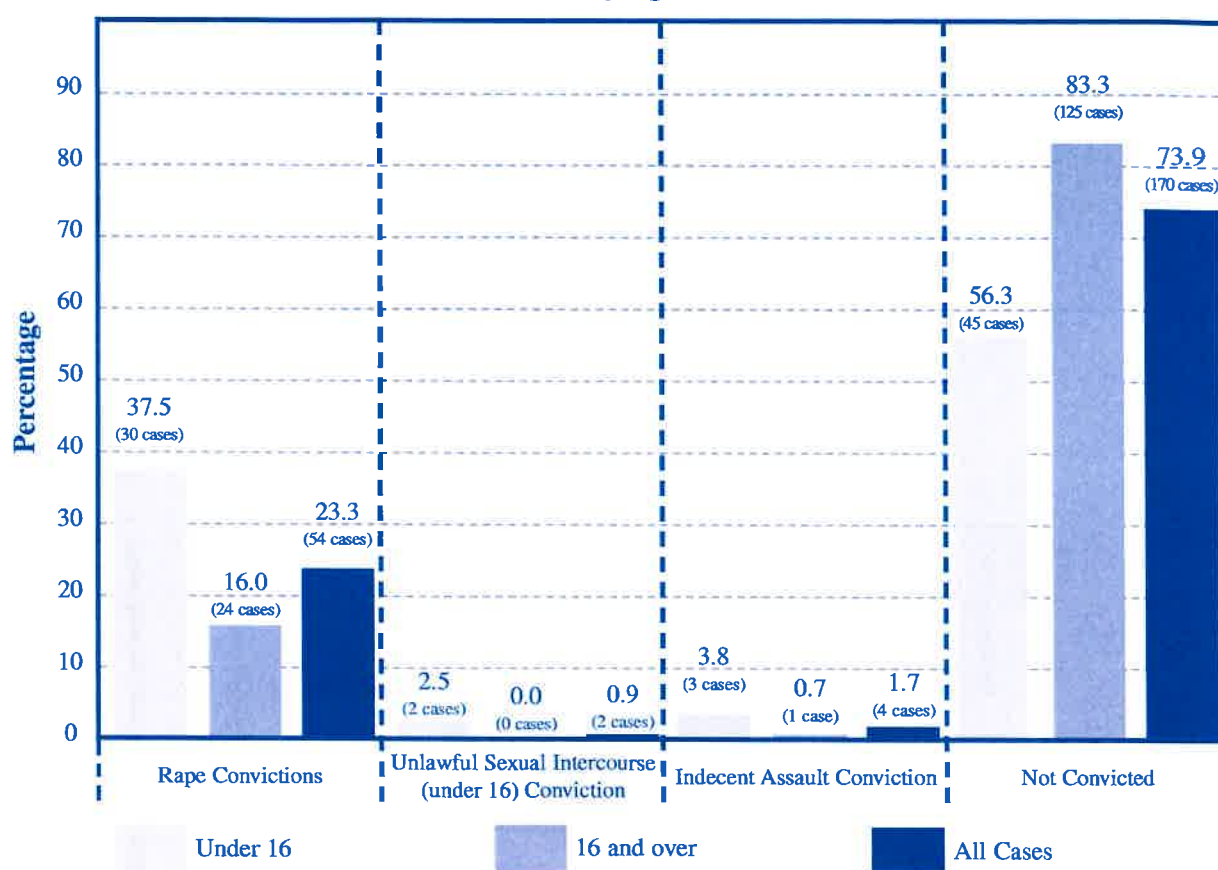
## STATISTICS

### Child victims

#### Conviction rate

The percentage of suspects convicted of rape in cases where the victim was under 16 at the time of the incident (37.5%) was more than twice that in cases where the victim was older (16%). 40% of cases with child victims resulted in the suspect being convicted of an offence, whilst this figure was 16.7% for adult rape.

Conviction Broken Down by Age of Victim at Time of Incident



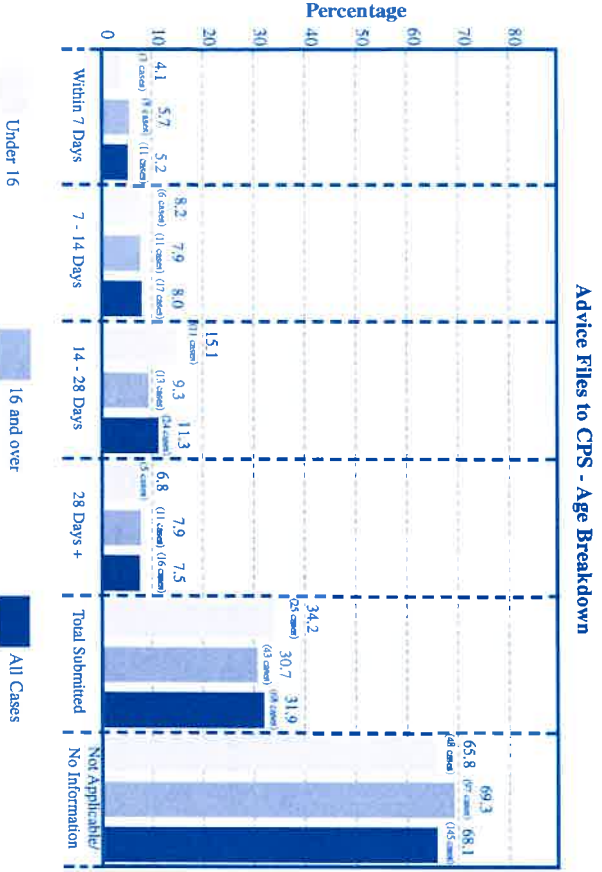
	Under 16	16 and Older	Totals
<b>Rape Convictions</b>	30 cases (37.5%)	24 cases (16.0%)	54 cases (23.3%)
<b>Unlawful Sexual Intercourse (USI) (under 16) Conviction</b>	2 cases (2.5%)	0 cases (0.0%)	2 cases (0.9%)
<b>Indecent Assault Conviction</b>	3 cases (3.9%)	1 case (0.7%)	4 cases (1.7%)
<b>Not Convicted</b>	45 cases (56.3%)	125 cases (83.3%)	170 cases (73.9%)
<b>Total</b>	80 cases	150 cases	230 cases

Advice files submitted to CPS

Seven of the 80 child victim files on the database lacked data regarding advice file submission. Of the remaining 73 files, 25 (34.2%) were submitted for advice and 48 (65.8%) were not.

Among cases where the victim was 16 years of age or older at the time of the offence, 43 were submitted for advice. This represents 30.7% of the 140 files that included this information. The other 97 (69.3%) were not submitted for advice.

Among the files examined, a slightly larger proportion (by around 3%) of advice files were submitted for child victim cases than was the situation for adult rapes.



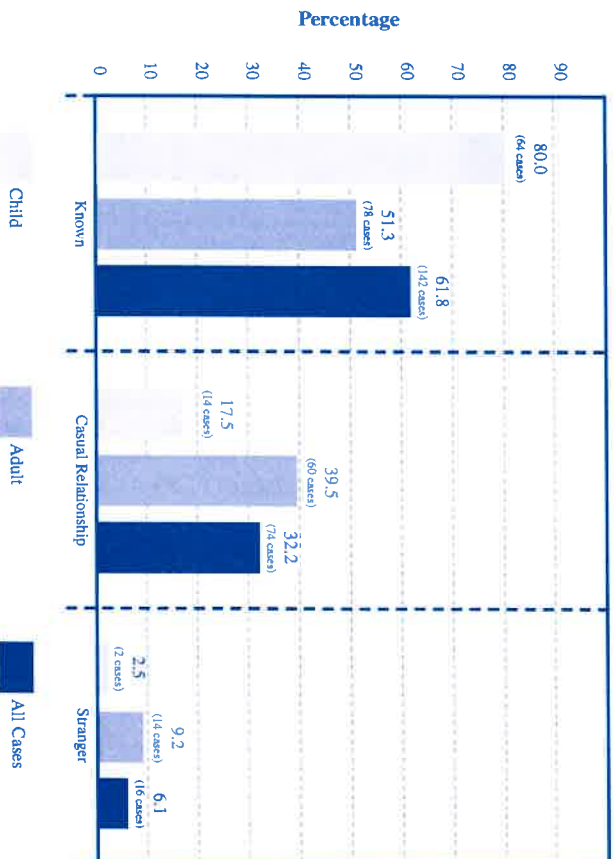
Submitted Within 7 Days	Victim Under 16 at Time of Offence	Victim 16 or over at Time of Offence
Submitted Within 7 - 14 Days	3 cases (4.1%)	8 cases (5.7%)
Submitted Within 14 - 28 Days	6 cases (8.2%)	11 cases (7.9%)
Submitted Within 28 Days +	11 cases (15.1%)	13 cases (9.3%)
Total Submitted	20 cases (27.4%)	32 cases (23.0%)
Total Not Submitted	58 cases (79.3%)	68 cases (48.7%)
No Information	7 cases (9.6%)	10 cases (7.1%)
Total Files Excl. No Information	73 cases	140 cases

Victim - suspect (1)\* relationship

Unsurprisingly, a far higher percentage of children knew their attackers than was the case in adult rape. Only 2.5% of the child victim cases were committed by strangers.

\* Where there was more than one suspect, we recorded the information relating to the first suspect.

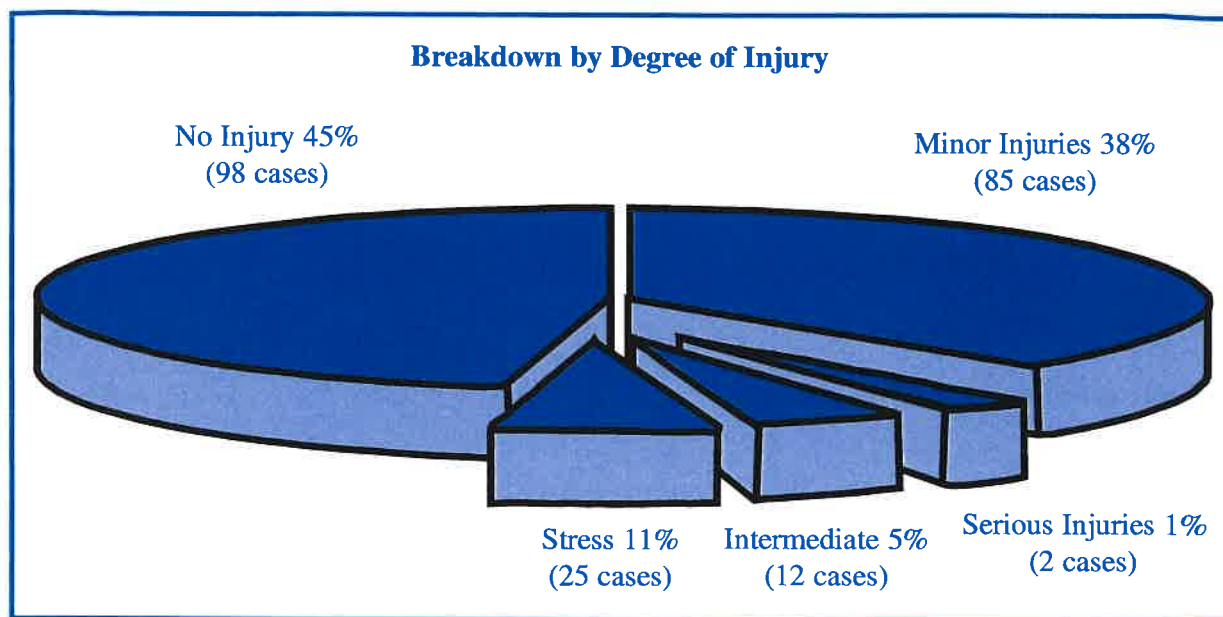
Age of Victim at the Time of Incident Broken Down by Victim - Suspect (1) Relationship



Relationship	Child	Adult	Total
Known	64 cases (80.0%)	78 cases (51.3%)	142 cases (61.8%)
Casual Relationship	14 cases (17.5%)	60 cases (39.5%)	74 cases (32.2%)
Stranger	2 cases (2.5%)	14 cases (9.2%)	16 cases (6.1%)
Total	80 cases	152 cases	230 cases

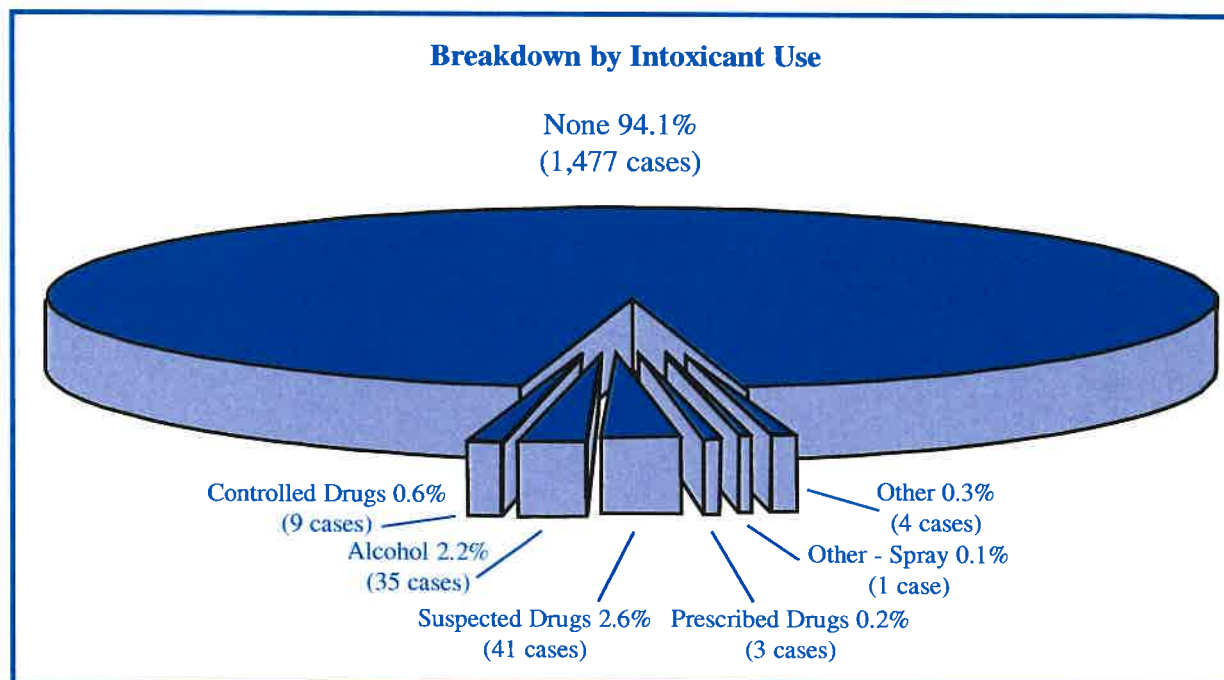
## Injuries

The following chart breaks down the 222 out of 230 files which provided the relevant information, by the degree of injury sustained by the victim:



## Intoxicants

Of 1,570 crime records examined, 1,399 contained information on the use of intoxicants as follows:



## **REPRESENTATIVES OF THE CRIMINAL JUSTICE AGENCIES AND SPECIAL INTEREST GROUPS WHO ASSISTED OUR INSPECTION**

### **Judges**

His Honour Judge Hodson, Recorder of Newcastle upon Tyne  
His Honour Judge Fabyan Evans  
His Honour Judge Humphries  
His Honour Judge Rogers QC  
His Honour Judge Shand  
His Honour Judge Styler

### **Defence solicitors**

Mr C Clark  
Ms B Higgenson  
Mr P Housiaux  
Mr L Pearson  
Mr G Robinson  
Mr R Thompson

### **Counsel**

Mr J Aitken  
Miss C Bradley  
Mr J Broadley  
Miss L Kamill  
Miss L Matthews  
Mr C Mitchell  
Mr R Trevor-Jones  
Mr R Witham

### **Victim support**

Mrs C Evans  
Mrs S Fisher  
Ms N Grundy  
Ms H Jobling  
Mrs A McDonnell MBE  
Ms T McIntosh  
Mr G Morgan  
Mrs C Muter  
Mrs B Roberts  
Ms D Singer  
Ms J Woodd

*Annex D***Witness Service**

Mr K Andrews  
Mrs I Ewing  
Mr G Lewis  
Mrs M Mather  
Ms J May  
Mr F Palmer  
Mr E Reavley  
Ms L Walkling

**Special interest representatives/organisations**

Ms J Barnard, Rape Crisis Federation  
Mr R Curren, Survivors UK  
Ms C Dawson , Rape and Sexual Abuse Support Centre, Croydon  
Ms H Jones, Rape Crisis Federation  
Mr R Kramer, Head of Campaigns, Mencap  
Ms S McNeil, Campaign to end rape  
Ms I Murray, Rape Crisis Federation  
Mr M Sullivan, Survivors UK  
Miss J White, Rape and Sexual Abuse Support Centre, Croydon  
Legal Action for Women  
Rape Crisis, Hull  
Women against Rape

**Sexual assault referral centre representatives**

St Mary's Hospital, Greater Manchester  
The Juniper Centre, Leicester  
The Haven Centre, London  
The REACH Centre, Northumbria

## HOME OFFICE DETECTION CODES

CODE	REASON
A	<p><i>A person has been charged or summonsed for the offence irrespective of any subsequent acquittal.</i></p> <p>If the CPS discontinues the case on the grounds of insufficient evidence, a senior officer of Inspector rank or above should review the reasons for the charge. If the senior officer agrees that there is insufficient evidence, then the detection must be cancelled and the offender removed from the CIS.</p>
B	<p><i>The offender has been cautioned or informally warned by police.</i></p>
C	<p><i>The offence has been taken into consideration by the court OR, if the offender is found to be not guilty, the unequivocal consent of the offender has been obtained, by way of statement of admission and desire to have the offence taken into consideration, on a signed TIC acceptance form, prior to him/her being found not guilty.</i></p> <p>If an offender asks for an offence to be TIC'd and the offence has not been previously recorded, it can be recorded as a TIC and detected only if the victim confirms that it was committed, and a TIC acceptance form has been signed. If there is no evidence other than that of the offender's interview, the offence can neither be recorded or detected.</p>
D	<p><i>No further action has been taken by the police for any of the reasons listed below. In all cases there must be sufficient admissible evidence to charge and the evidence to support the case must be such that if given in court would be likely to result in a conviction. It must be contained within signed witness statements or in other satisfactory documentation form. A pocket book entry is not sufficient in these circumstances with the exception of D4 below.</i></p>
D1	<p><i>The offender dies before proceedings could be initiated or completed.</i></p>
D2	<p><i>The offender is ill and unlikely to recover or too senile or too mentally disturbed for proceedings to be taken.</i></p>
D3	<p><i>Victim or essential witness is dead and the proceedings cannot be pursued.</i></p>
D4	<p><i>Victim or essential witness refuses or is permanently unable, or if a juvenile, is not permitted, to give evidence.</i></p> <p>The evidence of refusal will normally be recorded by a signed witness statement or signed pocket book, but in exceptional circumstances a note by the officer in their pocket book or other official record will be sufficient when a victim refuses to do either of the former.</p>
D5	<p><i>It has been ascertained that an offence has been committed by a child under the age of criminal responsibility.</i></p>
D6	<p><i>An offence is admitted by a juvenile of the age of criminal responsibility and police take no action, other than reporting the particulars to a local authority for action under the Children and Young Persons Act 1969.</i></p>
D7	<p><i>CPS or police officer of Inspector rank or above decides that no useful purpose would be served by proceeding with the charge.</i></p> <hr/> <p><i>Offender already serving a sentence (custodial or otherwise) for another offence.</i></p> <p>In general, an offence cannot be detected for Home Office purposes by this method if the suspect is already serving a custodial sentence for another offence. The only exception is where an offender is serving a sentence when evidence becomes available which, regardless of an admission, is sufficient to charge him/her. In such cases the offence can be detected by this method with the authority of CPS and a police officer of Superintendent rank or above.</p>
D8	<p><i>There is sufficient admissible evidence to charge the offender with a summary offence, but a police officer of Superintendent rank or above has authorised the detection as the time limit of six months for commencing prosecution has been exceeded.</i></p>

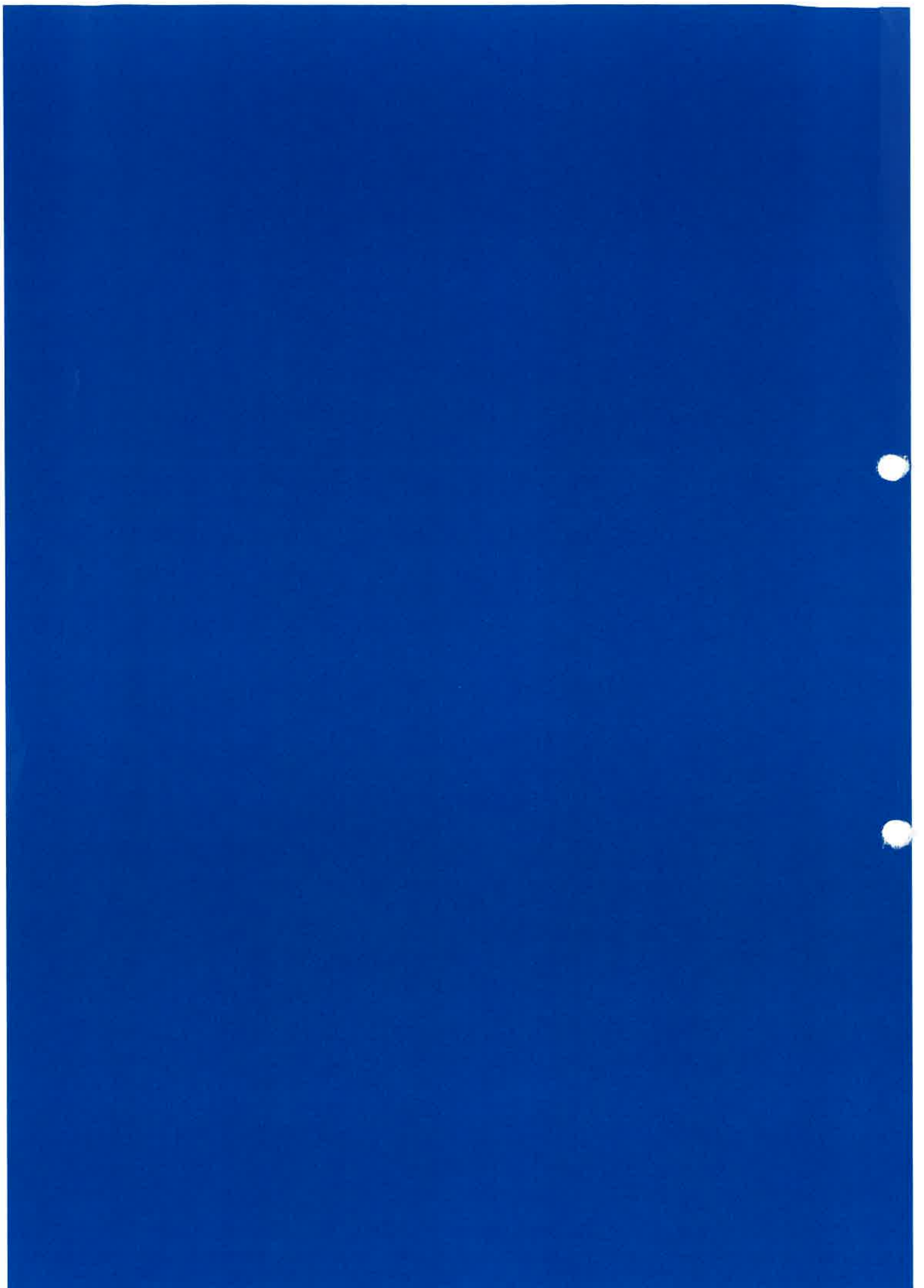




**HM Crown Prosecution Service Inspectorate**  
26 - 28 Old Queen Street, London SW1H 9HP  
Tel: 020 7210 1197. E-Mail: [cpsinspectorate@gtnet.gov.uk](mailto:cpsinspectorate@gtnet.gov.uk)

**HM Inspectorate of Constabulary**  
Home Office, 50 Queen Anne's Gate, London SW1H 9AT  
Tel: 020 7273 4197.







The Crown Prosecution Service.

# Rape and Sexual Offences: Chapter 8: Case Building

[How to use this Legal Guidance](#)

## Contents:

- [The Merits-Based Approach](#)
- [Early Consultation](#)
- [Pre-charge Activity](#)
- [NFA, lesser offences and DCV requirements](#)
  - [Preparing and managing the case](#)

See the Directors Guidance on Charging for the responsibilities of the police and CPS and operational arrangements.

The CPS Policy Statement on Rape emphasises the importance of building cases, rather than merely identifying their evidential weaknesses and requires a proactive approach to prosecuting.

## The Merits-Based Approach

When determining whether to prosecute rape cases, prosecutors should adopt a merits based approach to the evidential stage of the Code for Crown Prosecutors full code test and ask whether, on balance, the evidence is sufficient to merit a conviction taking into account what is known about the defence case. This approach was confirmed by the Divisional Court in *R (on the application of B) v Director of Public Prosecutions* in 2009. In June 2009, in a minute to all CCPs, the DPP instructed that they should ensure that the merits based approach was understood and adopted by all those who review rape cases. He emphasised that the alternative, described by the Court as a purely predictive (or book-makers) approach based on past experience in similar cases would be wrong. See: <<http://www.bailii.org/ew/cases/EWHC/Admin/2009/106.html>>.

## Early Consultation

The HMCPSI report on the joint review of the investigation and prosecution of rape offences, Without Consent, recommended that police forces and the CPS ensure that rape cases

288

receive full and early consultation between the IO and the rape specialist prosecutor. It also emphasised that there is a need to ensure that both police and prosecutors undertake early liaison and a team approach to case building.

Early consultation between the police and the CPS is essential in rape cases and the investigating officer will arrange an early consultation with a rape specialist prosecutor once the appropriate evidential standard is passed, where the allegations have not been or are not being admitted, or it seems likely that they will be denied.

Where a custody charging decision may be required an early consultation with a rape specialist prosecutor should take place as soon as practicable. Wherever possible 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 .

Combining the investigative and prosecutorial skills of the police and the rape specialist prosecutor ensures the early development of a joint strategy for the prosecution. Rape Specialist prosecutors will provide a provisional assessment of the case, lines of enquiry, identify likely charges and the evidence required to support them. They will be proactive in identifying and where possible rectifying evidential deficiencies and in bringing to an early conclusion those cases that cannot be strengthened by further evidence.

At the consultation stage the police should share with the rape specialist such information as they have about the case.

Consultation will be face to face in accordance with Paragraph 33 the Directors Guidance on Charging and in accordance with any local arrangements.

Early consultations need not be restricted to cases where there is already an identifiable suspect or that pass the threshold test. They may take place in any case where the early involvement of a prosecutor would assist in the gathering of relevant evidence, the questions to be asked of suspects, any pre-charge court procedures and any strategy for a likely prosecution. A brief written record of the consultation should be made on an MG3.

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

Chief Constables and Chief Crown Prosecutors will agree local arrangements for early consultations to take place. This should be with the rape specialist prosecutor allocated to the case. At the consultation stage, when it is not yet anticipated that authority to charge will be given, the police will not be required to submit a Pre-Charge evidential report in line with the National file Standard but should share with the rape specialist such information as they have about the case.

## Pre-charge Activity

Upon receipt of a pre-charge report, the allocated rape specialist lawyer:

- Creates an MG3/ 3A and Action Plan with action dates;
- Checks that the reverse of MG11 is filled in and any related MG2 completed;
- Ensures that the case is properly flagged as a rape case on CMS;
- Creates a detailed review on CMS to refer to all relevant issues from the Advice/ Review

Checklist (copy attached as Annex D);

- Considers material that undermines the prosecution case or assists the defence case, especially potential third party material. Detailed guidance is contained in Disclosure Manual;
- Considers holding a pre-trial witness interview (PTWI) and records their decision;
- Considers the forensic strategy and discusses the case with the forensic scientist if appropriate (See Chapter 9 Forensic/Scientific/Medical Evidence);
- Considers whether a forensic physician and/or medical expert should be called to give evidence, and takes steps to brief the expert properly in accordance with CPS guidance (See Chapter 9 Forensic/Scientific/Medical Evidence).

## NFA, lesser offences and DCV requirements

Any decision to NFA or charge a lesser offence must be agreed by a second rape specialist and the decision and name of the second specialist recorded on CMS. A DCV letter offering meeting must be sent to the complainant in accordance with Victims Code.

## Preparing and Managing the Case

Upon receipt of the upgrade file, a review should be undertaken by the allocated rape specialist lawyer and recorded on CMS. The lawyer will:

- Draft and forward to the police a further Action Plan (if required);
- Review the unused material;
- Serve prosecution evidence in accordance with courts directions;
- Supply initial disclosure and update disclosure record sheet;
- Prepare special measures applications, bad character applications and hearsay applications as necessary;
- Brief an appropriate advocate - counsel who has been accredited and monitored or in-house advocate who is a Rape Specialist;
- Prepare Instructions to counsel to include all relevant issues from the Advice/ Review Checklist;
- Arrange to hold a conference with trial counsel, the investigating officer, the forensic physician and any other expert witnesses as soon as possible. Ensure a record is made of any conference including those held at court;
- Co-ordinate any special measures meeting to enable counsel to meet the witness;
- Record on CMS any particular reasons for not including the forensic physician in the conference;
- Consider the defence statement and any actions required or chase defence and advise court if none received;
- Copy defence statement to police with Action Plan Consider response - Supply continuing disclosure letter;
- Liaise with the Witness Care Unit over outcome of any special measures application and pre-court familiarisation visit and ensure that the victim is updated on progress;
- Address any victim/ witness concerns;

290

- Check that an updated Victim Personal Statement has been served on the defence and court;
  - Ensure that the victim has been advised of the making of and outcome of any section 41 application or confirm with defence that none is to be made and remind them of timescales.
-



291

Text size

Contrast

Search



Careers ▶

Contact ▶

A A

A

About

CPS ☰

Crime

info ☰

Victims &

witnesses

Prosecution

guidance

Publications ~~news~~

# Rape and Sexual Offences - Chapter 21: Societal Myths

Legal Guidance



What is a "Myth"?

Myth 1: Rape Occurs Between Strangers in Dark Alleys

Implications

Facts

Myth 2: Women Provoke Rape By The Way They Dress or Act

Implications

Facts

Myth 3: Women Who Drink Alcohol or Use Drugs Are Asking to Be Raped

Implications

Facts

Myth 4: Rape is a Crime of Passion

Implications

Facts

Myth 5: If She Didn't Scream, Fight or Get Injured, It Wasn't Rape

Implications

Facts

Myth 6: You Can Tell if She's 'Really' Been Raped by How She Acts

Implications

Facts

Myth 7: Women Cry Rape When They Regret Having Sex or Want Revenge

Implications

Facts

Myth 8: Only Gay Men Get Raped/Only Gay Men Rape Men

Implications

## The Code for Crown Prosecutors

The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions that sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

Continue reading

## Prosecution guidance

FactsMyth 9: Prostitutes Cannot be RapedImplicationsFactsMyth 10: If the victim didnt complain immediately it wasnt rapeImplicationsFactsCrown Court Bench Book

This guidance assists our prosecutors when they are making decisions about cases. It is regularly updated to reflect changes in law and practice.

A B C D E F  
G H I J K L  
M N O P Q  
R S T U V W  
X Y Z

## What is a "Myth"?

A "Myth" a commonly held belief, idea or explanation that is not true. Myths arise from people's need to make sense of acts that are senseless, violent or disturbing. They attempt to explain events, like rape and abuse, in ways that fit with our preconceived ideas about the world - they arise from and reinforce our prejudices and stereotypes.

It is an unfortunate fact that myths about rape and sexual violence are brought into the jury room, and form an obstacle to obtaining convictions. It is therefore imperative that we recognise these myths and challenge them at every opportunity.

## Myth 1: Rape Occurs Between Strangers in Dark Alleys

### Implications:

- implies that home is safe;
- implies that rape can be prevented by avoiding certain places and therefore blames the victim;
- assumes a particular victim profile and therefore stigmatises him or her; and
- entrenches racial and class prejudices.

### Facts:

- the majority of rapes are committed by persons known to the victim;
- date or acquaintance rape is very common; and
- victims are often raped in their homes.

## Myth 2: Women Provoke Rape By The Way They Dress or Act

### Implications:

293

- attempts to excuse rape and "blame the victim";
- assumes that a woman who draws attention is looking for sex or "deserves what she gets" ; and
- re-victimises and stigmatises the victim.

### Facts:

- consent cannot be implied from flirtatious behaviour or from the way a person dresses; and
- only the rapist is responsible for the rape!

## Myth 3: Women Who Drink Alcohol or Use Drugs Are Asking to Be Raped

### Implications:

- attempts to excuse rape and 'blame the victim'; and
- re-victimises and stigmatises the victim.

### Facts:

- women have the same right to consume alcohol as men;
- being vulnerable does not imply consent;
- if a woman is unable to give consent because she is drunk, drugged or unconscious, it is rape; and
- only the rapist is responsible for the rape!

## Myth 4: Rape is a Crime of Passion

### Implications:

- assumes that rape is impulsive and unplanned;
- assumes men to be incapable of delaying gratification or controlling sexual urges;
- assumes that rape is about uncontrollable lust;
- attempts to excuse, minimise and romanticise rape;
- assumes that only 'attractive' women are raped;
- disregards elements of power, aggression, violence, control and humiliation in rape; and
- attempts to remove the responsibility for the rape from the rapist.

### Facts:

- research and evidence from rapists themselves suggests that most rapes are premeditated and planned;
- many rapists fail to get an erection or ejaculate;
- interviews with rapists reveal that they rape to feel powerful and in control, not for sexual pleasure;

294

- there is no typical victim of rape. Girls and boys and women and men of all ages can be victims; and
- many rapists are involved in sexually satisfying relationships with their partners at the time of the rape.

## **Myth 5: If She Didn't Scream, Fight or Get Injured, It Wasn't Rape**

### **Implications:**

- disbelieves and re-traumatizes the victim;
- invalidates the experience of the victim; and
- discourages him or her from seeking help.

### **Facts:**

- victims in rape situations are often legitimately afraid of being killed or seriously injured and so co-operate with the rapist to save their lives;
- the victims perception of threat influences their behaviour;
- rapists use many manipulative techniques to intimidate and coerce their victims;
- victims in a rape situations often become physically paralysed with terror or shock and are unable to move or fight; and
- non-consensual intercourse doesn't always leave visible signs on the body or the genitals.

## **Myth 6: You Can Tell if She's 'Really' Been Raped by How She Acts**

### **Implications:**

- disbelieves and re-traumatizes the victim;
- invalidates the victims experience and individuality; and
- discourages him or her from seeking help.

### **Facts:**

- reactions to rape are highly varied and individual; and
- many women experience a form of shock after a rape that leaves them emotionally numb or flat - and apparently calm.

## **Myth 7: Women Cry Rape When They Regret Having Sex or Want Revenge**

### **Implications:**

- reinforces stereotypes of the 'vindictive woman';
- reinforces stereotypes of women as untruthful;

295

- re-victimises and stigmatises the victim; and
- undermines her support for seeking justice

### Facts:

- Between January 2011 and May 2012, the DPP required CPS areas to refer to him all cases involving an allegedly false allegation of rape and/or domestic violence. During that time, there were 5,651 prosecutions for rape but only 35 for making false allegations of rape.

## Myth 8: Only Gay Men Get Raped/Only Gay Men Rape Men

### Implications:

- reinforces homophobic fears and prejudices;
- creates the illusion of the safety for straight men;
- re-traumatises and stigmatises male survivors; and
- ✓ results in very few reported rapes on men.

### Facts:

- men of all sexual orientations get raped;
- men who rape other men are often heterosexual - they usually have a relationship with a woman; and
- rapists rape other men as part of their violence and need for power, dominance and control.

## Myth 9: Prostitutes Cannot be Raped

### Implications:

- further disempowers sex workers; and
- ✓ provides an excuse for abuse

### Facts:

- prostitutes have the same rights with regards to consent as anyone else: the transactions they negotiate with clients are for consensual activities, not rape.

## Myth 10: If the victim didnt complain immediately it wasnt rape

### Implications:

- disbelieves and re-traumatises the victim;
- invalidates the experience of the victim; and
- discourages him or her from seeking help.

296

**Facts:**

- the trauma of rape can cause feelings of shame and guilt which might inhibit a victim from making a complaint. This fact was recognised by the Court of Appeal in R v D (JA) October 24 2008, where it was held that judges are entitled to direct juries that due to shame and shock, victims of rape might not complain for some time, and that a late complaint does not necessarily mean that its a false complaint.

**Crown Court Bench Book**

In 2010 the Judicial Studies Board published the Crown Court Bench Book setting out specimen directions for use by judges in the Crown Court.

See: [http://www.judiciary.gov.uk/NR/rdonlyres/BE25EBB6-AAD2-4ACD-8115-28D3BF613164/0/benchbook\\_criminal\\_2010.pdf](http://www.judiciary.gov.uk/NR/rdonlyres/BE25EBB6-AAD2-4ACD-8115-28D3BF613164/0/benchbook_criminal_2010.pdf)

*Chapter 17 The Trial of Sexual Offences* - is particularly useful for prosecutors, addressing myths, stereotypes and generalisations that may influence jury members in their deliberations. Trial advocates should be reminded to suggest appropriate directions from the Bench Book to the trial judge for inclusion in his/ her summing up to the jury.

Their inclusion in the Bench Book does not give the specimen directions the force of law. This will be conferred at such time as the Court of Appeal approves the contents of a specific direction (or directions) in a Judgement.



Rape and Sexual Offences - Chapter  
20: Media Guidance for Rape  
Prosecutors

UpRape and Sexual Offences - Chapter  
22: Monitoring Rape Prosecutions



@cpsuk



A university student has become the first person in the UK to be convicted and jailed for having an unlicensed fire... <https://t.co/RUyXbxJJPY>



297



Follow us



**The Crown Prosecution Service**  
102 Petty France

GOV.UK is the place to find government's services and information online.

[Careers](#) ▶



[Feedback and complaints](#) ▶



[Data protection](#) ▶



[Advocate Panels](#) ▶



[Crown Copyright and disclaimer](#) [Sitemap](#) [Privacy and cookies](#)

© Copyright 2017 CPS. All rights reserved.





## The Government Response to the Stern Review:

An independent review into how rape complaints are handled by public authorities in England and Wales



## Ministerial Foreword

Rape is a horrific crime that can ruin lives. Last year, 435,000 people suffered rape or sexual violence. But despite progress in recent years, it is estimated that up to 9 in 10 cases of rape go unreported and 38 per cent of serious sexual assault victims tell no one about their experience. The long term effects of rape on its victims can include depression, anxiety, post traumatic stress disorder, drug and substance misuse, self-harm and suicide. But things can be different. The simple fact is that when victims receive the support they need when they need it, they are much more likely to take positive steps to recovery. This should be our goal.

To help government improve its response to rape, Baroness Stern last year conducted an independent review into the treatment of rape complaints by public authorities. The review looked at the complete process of handling rape complaints – from the moment a rape is first reported until the case is concluded. It also looked at broader policy issues around our response to rape and sexual violence, taking in both the role of misunderstandings and myths about rape in how cases are dealt with, and looking beyond the criminal justice system to victims' support and services.

We are extremely grateful to Baroness Stern for all her work in this area, the result of which is a wide-ranging and authoritative report that has made a valuable contribution to our work on rape. The report's recommendations form the foundation of our future work to improve the way rape complaints are handled at every stage of the

process and, also, to strengthen our approach to prevention. A clear understanding of the nature and extent of rape will help all partners in preventing violence from occurring, in ensuring victims are properly supported and in holding perpetrators fully accountable for their crimes. We are committed to this approach.

Our commitment to tackling rape does not stop at the borders of the UK. Women and children are disproportionately affected in situations of conflict and post-conflict where they face a high risk of sexual violence. Rape is increasingly used as a weapon of war. Our action plan to tackle violence against women and girls, published alongside our response to Baroness Stern's review, sets out our commitment to tackling sexual violence and rape at an international level.

We have already begun work on many of the actions set out in this response and, last month, we announced £10.5 million of funding over the next three years for centres which provide specialist care to ensure that those traumatised by rape and sexual violence receive the specialist support they need. But we recognise that there is much more work to do. This is a long-term issue which needs a long-term solution and we are determined to ensure that victims of rape should be given the support they need to get their lives back on track.

Working together, we can make a difference.

Rt Hon Theresa May MP and  
Lynne Featherstone MP



# Contents

Ministerial Foreword	3
Contents	5
Introduction	7
Understanding sexual violence	10
Supporting victims	12
An effective criminal justice response	17
Accountability and governance	22
Summary of responses	24



## Introduction

Baroness Stern was commissioned by Jacqui Smith, then Home Secretary, and Harriet Harman, then Minister for Equalities, in November 2009 to conduct an independent review into how rape complaints are handled by public authorities in England and Wales. She was asked to consider how to encourage more victims to report rape, how to improve the response of the criminal justice system and the conviction rate in line with the principles of justice long established in the UK, and how to build confidence and satisfaction in the handling of rape cases. The formal terms of reference for the review were:

- to examine the response of the public authorities to rape complaints and examine how more victims can be encouraged to report;
- to explore ways in which the attrition rate in criminal cases can be reduced, and how to fairly increase the conviction rate;
- to identify how to increase victim and witness satisfaction, and confidence in the criminal justice system in addressing rape;
- to explore public and professional attitudes to rape and how they impact on outcomes;
- to utilise findings and information available from other relevant work, particularly the work on victims' experience being led by Sara Payne and the independent Taskforce on the health aspects of violence against women

and children, led by Professor Sir George Alberti, avoiding unnecessary duplication; and

- to make recommendations, with particular reference to improving the implementation of current policies and procedures.

Baroness Stern published her report in March 2010 and made 23 recommendations. The review recognised the progress that had been made in recent years in improving services to rape victims and concluded that many of the policies that had been put in place were the right ones. However, the review also highlighted the patchy nature of implementation across the country. While recognising that local areas must have the freedom to design their services and operations to meet their circumstances, the Stern Review called for a consistent approach that victims could rely on. This includes the need to recognise the harm that rape victims have suffered and that 'society has a positive responsibility to help and to protect, aside from the operation of criminal law'<sup>1</sup>. In addition, the review was critical of the way in which incomparable statistics had overtaken the debate around rape, the extent to which they had obscured the reality of criminal justice outcomes and their likely impact on the confidence of victims to report.

<sup>1</sup>Baroness Stern, A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales (Home Office, 2010).

The government welcomes these conclusions, and the body of work that has gone into providing a wide-ranging and authoritative report on rape. We note the extent to which the review has been supported by all those who deal with rape, most notably those experts who sit in the voluntary and community sector. We also welcome the way in which the review has brought to a head a number of issues that have hampered efforts to improve the state's response to rape and rape victims for a number of years.

We are clear that the response to rape victims needs to continue to improve. Our focus is on the rights and welfare of the victim and we are committed to ensuring that every victim of rape has access to appropriate support. That is why we have committed to improving funding for sexual violence support services by providing sustainable funding for rape crisis centres and supporting the opening of new centres. In January, we also launched the General Fund, which was open to all charities which support the most serious and vulnerable victims and those who are persistently targeted victims. This aims to build capacity across the whole of the victims' sector and to support it during the transition to a locally commissioned model. We have also published our strategic vision on ending violence against women and girls, and supporting action plan. This sets out our focus on prevention and on ensuring that there are sufficient support services for the victims of these crimes, as well as improving our criminal justice response to prevent further harm.

### Why does the response to rape still matter?

Much has been done to change the status of, and response to, allegations of rape. Legislation has been introduced to govern what elements of their lifestyle a victim may be asked about at court; special measures have been introduced that respect the victim's dignity and spare them the ordeal of facing their attacker in an open courtroom. There have been two independent thematic inspections of the police and the Crown Prosecution Service, with a further inspection finalising its conclusions at the time of this publication. Training for the police and

prosecutors has been overhauled, and specialisms introduced. New approaches to supporting victims have been piloted and mainstreamed. Awareness and understanding of what rape is, who can be a victim and who is responsible have grown significantly.

And yet, we know that somewhere in the region of 89 per cent of rapes go unreported<sup>2</sup>. 38 per cent of victims of serious sexual assault since the age of 16 tell no-one about their experience<sup>3</sup>. Some 3.2 million women in England and Wales have been sexually assaulted at some point since the age of 16<sup>4</sup>, and 38 per cent of all rapes recorded by the police are committed against children under 16 years of age<sup>5</sup>. Alongside the statistics is the reality of what these crimes mean for victims: long term effects can include depression, anxiety, post traumatic stress disorder, drug and substance misuse, self-harm and suicide. Each adult rape is estimated to cost over £96,000 in its emotional and physical impact on the victims, lost economic output due to convalescence, treatment costs to health services and costs incurred in the criminal justice system<sup>6</sup>.

And what of our understanding of rape? Rape is the intentional penetration of the vagina, anus or mouth of another person without their consent,

2 Smith, K. (Ed), Coleman, K., Eder, S. and Hall, P. (2011) Homicides, Firearm Offences and Intimate Violence 2009/10 (Supplementary Volume 2 to Crime in England and Wales 2009/10) Home Office Statistical Bulletin 01/11, Table 3.12.

3 *ibid.*

4 Smith, K. (Ed), Coleman, K., Eder, S. and Hall, P. (2011) Homicides, Firearm Offences and Intimate Violence 2009/10 (Supplementary Volume 2 to Crime in England and Wales 2009/10) Home Office Statistical Bulletin 01/11, Table 3.02.

5 Flatley, J., Kershaw, C., Smith, K., Chaplin, R. and Moon, D. (Eds.) (2010) Crime in England and Wales 2009/10. Home Office Statistical Bulletin 12/10, Table 2.04.

6 Home Office, 2005. The economic and social costs of crime against individuals and households 2003/04. Figures from this report were up rated to 2009 prices as follows: The physical and emotional cost component of this estimate was up rated to account for growth in nominal income - this reflects changes in prices and evidence that health quality is a normal good and hence the costs of negative health impacts rise with real income. Other costs were up rated for inflation only using the GDP deflator series published by HMT.



and when the perpetrator does not reasonably believe that they consent. Consent, the fundamental basis of the 2003 Sexual Offences Act, is still misunderstood and many 'rape myths' commonly held. For example many still believe that rape is an offence committed by strangers and it cannot be rape when the sexual violence occurs within marriage or a committed relationship: in fact the most common perpetrators in incidents of serious sexual assault against women are current or ex-partners (54 per cent)<sup>7</sup>. Other 'myths' include that there must be physical force used in rape. Whilst some degree of physical force was used in 64 per cent of cases<sup>8</sup>, the victim was beaten by the offender in only 9 per cent cases. Equally, it is widely assumed that a victim of rape will be obviously upset, but there is no 'right' reaction to rape. Symptoms of Rape Trauma Syndrome include recurrent and intrusive recollections of the rape, numbing of general responses, feelings of detachment and estrangement, difficulty sleeping, and outbursts of anger.

Furthermore, there is much that victims and victims' organisations tell us about how the system can treat individual complainants and the harm that can result from a failure to deal with rape allegations seriously, swiftly and effectively. This government is determined to see further improvement in the care that such vulnerable victims have a right to expect.

### The focus of this response

Baroness Stern made it clear that her review was focused on all victims of rape. Indeed, the review highlights the additional barriers that some victims may face, either because of their gender, race, age, religion or belief, sexual orientation, because of disabilities which may prevent them from accessing the services they need, or simply as a result of assumptions made about their lifestyles.

We recognise these points, and the government's response therefore takes the same approach: we are concerned here with all victims. We have published our strategic vision for tackling violence against women and girls in recognition of the impact of gender-based violence as both a cause and consequence of gender inequality. However, we remain clear that all victims are entitled to the support they need, that men are victims of rape and sexual violence also, and our response to these recommendations set out in this document is therefore based on that recognition. The use of the term 'victim' relates to all victims, not just women and girls.

In addition, while the Stern Review focused on rape, many of the conclusions and recommendations have equal value in relation to other forms of sexual violence. We therefore often refer to rape and sexual violence throughout the document to indicate our intention that these improvements should apply not only to rape but to all forms of sexual violence.

For the purposes of the response, we have grouped the recommendations into four key themes: i) understanding sexual violence; ii) supporting victims; iii) an effective criminal justice response; and iv) accountability and governance. We have included a summary of our responses to the recommendations in numerical order in the table at the end.

<sup>7</sup> Smith, K. (Ed), Coleman, K., Eder, S. and Hall, P. (2011) Homicides, Firearm Offences and Intimate Violence 2009/10 (Supplementary Volume 2 to Crime in England and Wales 2009/10) Home Office Statistical Bulletin 01/11.

<sup>8</sup> Based on analysis of 2009/10 BCS data.

## Understanding sexual violence

Baroness Stern was clear from the outset of her review that she was keen to tackle the myths that persist about rape, from why it is perpetrated and who is responsible, through to how successfully it is prosecuted and perpetrators are held to account. An informed perspective is vital to our efforts to tackle rape – a clear understanding of the nature and extent of rape will help all partners in preventing violence from occurring, in ensuring victims are properly supported, and in holding perpetrators fully accountable for the crimes they have committed. We accept Baroness Stern's recommendations in this area and will take action to provide a framework in which data and knowledge about rape are clearly presented.

### Improving presentation of data

#### Recommendation 1

*We recommend that the National Statistician and the Home Office should aim to ensure that the publication of crime statistics is always accompanied by enough explanation to ensure that their meaning can be widely understood.*

#### Recommendation 3

*In view of the controversy surrounding false allegations, the strong feelings the subject arouses and the part the controversy plays in the response to rape complainants, we recommend that the Ministry of Justice commissions and publishes an independent research report to study the frequency of false allegations of rape compared with other offences and the nature of such allegations.*

#### Recommendation 4

*We recommend that the Home Office and Ministry of Justice should work with the National Statistician in order to find a way of presenting criminal justice data that enables comparisons to be made of the outcomes for various offences, and makes clear what conclusions can and cannot be drawn from those data.*

The Stern Review was critical of the way in which crime and conviction statistics relating to rape have been taken out of context to present misleading attrition rates for rape cases. It also highlighted the fact that the approach some have used to produce the conviction rate for cases of rape from official figures is not replicated in relation to any other crime. The Ministry of Justice's Chief Statistician has already launched an independent consultation to look at the measurement of conviction rates which specifically addresses this concern. Baroness Stern's recommendations on this point will also be considered as part of the National Statistician's short review of crime statistics which is due to report back by the end of April 2011.

One aspect of rape which elicits much attention and misunderstanding is the phenomenon of false allegations. The Stern Review highlights issues around this including the broad range of estimates of the extent to which false allegations have been put forward and the inconsistent interpretation of the term 'false allegation'. To help improve understanding of the extent and nature of false allegations of rape, the government has appointed

an independent research company to conduct a case file review of a large sample of serious sexual and violent crimes<sup>9</sup>. One element of this research is to review the prevalence and nature of false allegations present in the sample. A report will be published in the second half of 2011.

### Improving communication and challenging attitudes

#### Recommendation 2

*We recommend that the basic elements of the Sexual Offences Act 2003 are given more publicity, and information in simple language is made available to young people and those who work with young people who are able to disseminate it widely.*

#### Recommendation 5

*We recommend that when education and awareness-raising campaigns and programmes on rape and sexual assault are developed, careful consideration be given to their design so that they spread understanding of the current law on rape; do not in any way perpetuate false understandings of how rape victims respond; and take full advantage of the diverse range of new media outlets so they are as imaginative, targeted and effective as possible.*

Baroness Stern's approach chimes with the government's focus on the importance of prevention in tackling violence against women and girls. As set out in our strategic vision published on 25 November 2010, and reinforced in the action plan published alongside this response, we are committed to challenging the attitudes, behaviours and practices which allow rape and sexual violence to be tolerated by society.

Personal Social Health and Economic (PSHE) education helps young people to enjoy safe, responsible and fulfilled lives. The personal wellbeing programme provides schools a context in which young people can learn about developing and maintaining positive relationships including choices relating to sexual activity. This work will be taken forward in the context of the Department of Education's review of Personal Social Health and Economic (PSHE) education

<sup>9</sup> The review will cover Rape, Sexual Assault, GBH with intent and GBH without intent.

which will also consider Sex and Relationship Education (SRE). We will look at how all schools are able to follow good practice regarding the teaching of sexual consent.

We agree with Baroness Stern's view that, despite significant work to challenge the many myths and uninformed attitudes that rape engenders, false notions about rape remain widespread<sup>10</sup>. We therefore fully endorse the recommendation that future communications campaigns should be carefully developed to avoid inadvertently perpetuating these attitudes and should also be as targeted and innovative as possible to provide the correct level of challenge that will support change. We will ensure that the findings of the Stern Review be taken into account in the development of future government-led campaigns as part of our vision to tackle violence against women and girls, and we would encourage all local areas to give similar thought to their own communications work.

#### Department of Health: Violence Against Women and Children Campaign

The Department of Health launched an awareness-raising campaign in November 2010, targeting health professionals and patients. The campaign encouraged health professionals to recognise the signs of violence and to be aware of support available, both for their patients and for themselves, should they become victims of violence. The campaign covers all aspects of violence against women and children, including rape and sexual assault. Included within the campaign resources are case studies which demonstrate the reality of rape and its impact on victims. To support this campaign, the NHS Choices website has pulled together content on violence and abuse in one place to improve access to information for the public.

<sup>10</sup> Baroness Stern, A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales (Home Office, 2010) (Chapter 1).

## Supporting victims

The government is clear that every victim should have access to the support they need in the aftermath of abuse. We are committed to supporting victims both by empowering partners to develop the appropriate support services in their local area and through provision of direct financial support to voluntary and community organisations.

### Independent Sexual Violence Advisers

#### Recommendation 19

*We recommend that Independent Sexual Violence Advisers be seen as an intrinsic part of the way rape complainants are dealt with, as the service that enables the rest to operate effectively and a crucial part of the way in which the State fulfils its obligations to victims of violence. Funding should be available in all areas where the demand makes a post viable. The service provided spans a number of different local responsibilities across the criminal justice agencies, the local authority and the health service. Therefore the most suitable body to oversee the arrangements seems to us to be whatever arrangement local areas develop in line with our recommendation made in Chapter Two for local machinery to ensure a strategic approach to victims of rape.*

Independent Sexual Violence Advisers (ISVAs) work with victims of recent and historic serious sexual crimes to enable them to access the services they need in the aftermath of the abuse they have experienced. They provide impartial advice to the victim on all options open to them,

throughout and beyond the criminal justice process, such as reporting to the police, accessing Sexual Assault Referral Centres (SARCs), seeking support from specialist sexual violence organisations and other services such as housing or benefits.

We warmly welcome the Stern Review's very positive assessment of the role of ISVAs across England and Wales. The government is committed to providing £1.72m annually to 2015 to fund ISVAs based in either voluntary and community sector organisations or SARCs. This funding will almost double the number of ISVAs supported by the Home Office to over 80 and funding has been made available to organisations which were able to demonstrate sufficient local need and the ability to operate the service effectively. Providing this funding for the first time on a stable basis means that areas which bid successfully for ISVA funding will be able to plan their delivery of the service over a four year period.

However, support for ISVAs from local partners will remain essential both to ensure that there is sufficient resource to meet the needs of victims within a given locality and to support ISVAs in making linkages between the many agencies that are involved in supporting rape victims at a local level. We therefore encourage local areas to consider the second aspect of Baroness Stern's recommendation and put in place appropriate strategic governance arrangements for the ISVA service in their area.

To further support the development of the ISVA service across England and Wales, we are also working with the voluntary and community sector and SARC's to build on the training available to ISVAs to ensure a minimum quality standard. We are working with Skills for Justice to develop the agreed National Occupational Standards for Domestic and Sexual Abuse and Violence to ensure they adequately capture the range of skills that ISVAs will need and provide a framework for the qualification of ISVAs. We will also provide an introductory e-learning package for all Home Office funded ISVAs and continue to work with the sector to determine how best to build on this training over the coming four years. These initiatives will complement local induction and training arrangements.

## Sexual Assault Referral Centres

### Recommendation 7

*We welcome the specific commitment by the government to have one Sexual Assault Referral Centre in every police force area by 2011 and recommend that since some police force areas are very large, the need for additional centres should be considered once the initial phase of development is complete.*

### Recommendation 8

*We acknowledge that the existing funding arrangements for Sexual Assault Referral Centres vary across the country, and we would not wish to be prescriptive about how they are set up and run. However, it is clear to us that there is a greater chance of success when there is a strong partnership between the NHS, the police and elements of local government, and equal commitment in the setting up and operation of a Sexual Assault Referral Centre. We recommend this commitment should be shared equally by the police, the NHS and local government.*

Much progress has been made with the delivery of Sexual Assault Referral Centres (SARC's) in recent years, with new SARC's opened and improvements made to the services of and accessibility to those already in operation. A further £3.2 million of central investment from the Home Office and Department of Health was made available to SARC's in 2010/11 and we now have 36 SARC's in operation across

England and Wales, with a further 14 in development.

The provision of multiple services in a safe and victim-centred environment should be the accepted standard. The necessary minimum elements for developing SARC's are set out in the revised national service guidance published in autumn 2009 and, as outlined above, we are developing National Occupational Standards to ensure the support delivered by Independent Sexual Violence Advisors is consistent in its quality. However, as Baroness Stern advises, we will not seek to impose a one-size-fits-all model on local areas as we recognise that areas may wish to adapt the SARC model to meet their particular local needs. For example, an area may wish to purchase its SARC services from another area which has well-developed expertise, or it may wish to have a small centre of expertise with a high number of follow up sites because of the area's geography. To ensure SARC services are focused on local needs and demand we strongly support the recommendation from the Stern Review that areas consider with some care the appropriate strategic and management structures for the provision of SARC services. The involvement of all relevant partners, including the voluntary and community sector, is essential to a strong SARC service, with appropriate referral and follow up mechanisms.

### The Treetops Centre – Sexual Assault Referral Centre (SARC)

The Hampshire and Isle of Wight SARC (The Treetops Centre) [www.treetopscentre.co.uk](http://www.treetopscentre.co.uk) provides a comprehensive service to people who have experienced rape or sexual abuse. The Clinical Director and Forensic Physicians are female and the SARC has a clinical governance agreement with Solent Healthcare NHS. The Centre has received awards from the Strategic Health Authority and Hampshire Constabulary for its partnership approach. It is co-located with a pre-existing domestic violence service, and support and advocacy workers from that service also provide a day service to the SARC.

**The Centre:**

- ensures the best possible care of the client to minimise the risk of further harm, physical and mental health issues and to promote recovery;
- facilitates forensic examination so that evidence can be collected for use in the investigation of crime should the client choose to do so;
- promotes partnership working at all levels throughout Hampshire and the Isle of Wight, as well as nationally to assist with providing best practice and best value; and
- provides a centre of excellence which places client care and quality of service at the heart of its work.

Central to the development of SARC services will be the reforms to the NHS and the creation of Public Health England (PHE). We are currently consulting on the funding and commissioning routes for public health, which includes proposals for SARCs to sit within PHE<sup>11</sup>. These reforms are still at an early stage. As we move forward we will give consideration as to how commissioners might be encouraged to collaborate to ensure the provision of high quality SARC services in their areas. Similarly, as we develop plans for the introduction of Police and Crime Commissioners (PCCs), who will be in place from May 2012, we will consider how to ensure they understand the role of SARCs in providing support for victims of sexual crime.

We will also continue to support SARCs by providing advice and guidance to those who commission SARC services and through the collection and promotion of operational best practice in the provision of those services.

## Forensic Medical Services

### Recommendation 6

*We support wholeheartedly the recommendation that the funding and commissioning of forensic and clinical services for victims of sexual assault should be*

*transferred from the police to the NHS. We also endorse the view of the taskforce led by Sir George Alberti that forensic physicians should be employed by the NHS, have better access to high-quality training, be an integrated part of the new NHS clinical governance framework and commissioned in sufficient numbers to meet the needs of victims of rape. We would further recommend that there should be more appropriate accreditation for forensic physicians to ensure every victim of rape should have the choice of a male or female forensic physician to undertake the examination.*

Fundamental to the provision of high quality SARC services is the ability for victims to undertake a forensic examination in dedicated, forensically approved premises within the SARC if they wish. Aligned to this is the continued improvement of this service which should be provided in a sympathetic and supportive environment by forensic physicians and other practitioners who are appropriately qualified, trained and supported and who are experienced in sexual offences examinations for adults and children. However, this has not always been the case, and some services are still offered to victims which do not meet these requirements. We therefore support the Stern Review's recommendation that the inadequacies in the provision of forensic and clinical care of victims should be addressed.

One means of addressing this issue is to ensure that the health service has responsibility for the delivery of the forensic examination service. A feasibility study to understand the likely impacts of any decision to transfer funding, commissioning and budgetary responsibility for forensic and clinical care in sexual assault from the police to the health services has begun<sup>12</sup>. This will need to take into account the outcome of the consultation on commissioning and funding routes in public health also currently underway.

We have also funded development of the examination for the Diploma in the Forensic and Clinical Aspects of Sexual Assault by the Society of Apothecaries. This will provide a basic level qualification for doctors, nurses, midwives and

<sup>11</sup> The consultation ends on 31st March 2011.

<sup>12</sup> A joint Department of Health/Home Office commitment with the work commissioned by the Department of Health and awarded to the University of Birmingham.

other clinicians who examine and care for victims of sexual assault. The government has provided funding to the Society of Apothecaries to enable them to give scholarships to the initial cohorts of candidates. Further funding has been made available to develop an e-learning tool that will help candidates to prepare for the diploma examination.

Overall, the Department of Health is continuing to work with the medical Royal Colleges, their relevant faculties, and other national bodies, to improve advanced training and recognition for their members who are engaged in forensic medical practice. Together, these initiatives should see an increase in the numbers of appropriately trained forensic practitioners available to SARCs, which should in due ensure that victims are more likely to be offered a physician of the gender of their choice.

### Information for victims

#### Recommendation 15

*We recommend that the booklet 'CPS Policy for Prosecuting Cases of Rape' should be widely available to all victims and witnesses. It should be available to all victim and witness units, Independent Sexual Violence Advisers, Sexual Assault Referral Centres, Rape Crisis Centres and should be given as a matter of routine at the appropriate moment to all rape complainants who have decided to report the rape to the police. The Crown Prosecution Service should ensure the booklet is kept under review and regularly updated.*

The provision of an effective response to victims of any crime relies on effective communication and information. This is particularly true of rape victims. The very nature of the crime against them heightens the fear that they may not be believed, that the needs of the investigation may 'take over' and remove control from them. They also dread the prospect of recounting highly personal details in a court full of officials and strangers. The Stern Review highlights the importance of effective communication about these processes and we accept the recommendation. The Crown Prosecution Service continues to make its 'CPS Policy for Prosecuting Cases of Rape' booklet available to victims and has introduced new

guidance for prosecutors on appropriate and effective communication with victims following the finalisation of the prosecution. We will also seek to improve communication with victims across the criminal justice system.

### Criminal Injuries Compensation

#### Recommendation 20

*We recommend that the Criminal Injuries Compensation Authority policy that applicants 'who suffer a sexual assault while under the influence of drugs or alcohol will be eligible for a full award' is made clearer in the guidance available to the public and to those supporting victims of rape.*

#### Recommendation 21

*We appreciate the requirement to exercise care in disbursing public money and the complexity of assessing each individual's entitlement. We recommend that the eligibility requirement in respect of character, as evidenced by unspent criminal convictions, be reconsidered in terms of its appropriateness for rape victims, with a view to providing clear guidance to case officers that unless there are exceptional circumstances it should not apply to rape victims.*

#### Recommendation 22

*We recommend that the appropriate victims' organisations be consulted and detailed guidance be provided for case officers explaining why the requirement of immediate reporting to the police should normally be waived for rape victims.*

Provision of compensation for victims of crime, regardless of the outcome of any investigation or court proceedings, is a valued part of our criminal justice system. While financial assistance can never fully compensate victims of violent crime, it can recognise the suffering of the victim and give them some financial support that may help to address the lasting impacts of the crime and may help them move on. Whilst acknowledging the positive consequences of this scheme, the Stern Review highlights the concern that has emerged in response to press reports that victims of rape had received reduced awards because they had been drinking at the time of the attack. This is not right and we fully endorse the review's

recommendation that the Criminal Injuries Compensation Authority's (CICA) guidance on this matter be made clearer. We welcome the steps that CICA has already taken to address this, including the provision of more training for staff and the revision of the online guidance. These revisions have been absorbed into the printed guidance issued by CICA.

We do not accept, however, that a reduction in award for a rape victim who has unspent criminal convictions implies that rape victims are accorded less protection and support from the state. A reduction in award on such a basis for any victim is not intended to imply that a victim is in some way responsible for the crime committed against them due to their past life. Rather, it reflects the fact that a person who has themselves committed a criminal offence has probably caused distress, loss or injury to other people, and has certainly caused expense to society through police time, court appearances and the cost of sentencing. The terms of the compensation award scheme, agreed and set by Parliament, require CICA to consider the applicant's character as shown by his or her unspent criminal convictions. Other than this, CICA does not seek information on any other aspect of a rape victim's lifestyle. The guidance does not apply to rape victims alone and to give them an exemption from the criminal convictions provisions of the scheme would create unfairness in terms of other victims of violent crime, particularly where convictions are for serious or violent offences. We do not think, therefore, that it would be justified or proportionate to reconsider the eligibility requirement in respect of character, as evidenced by unspent criminal convictions, for rape victims.

We agree that the requirement for immediate reporting to the police cannot be applied to rape victims in the same way as to victims of other crimes because, as the Stern Review highlights, there are often legitimate reasons why a rape victim delays reporting. However, CICA needs to be able to gather sufficient evidence to take a decision on the facts of the case. When making awards of public money, CICA must be in a position to take a decision whether, on the balance of probabilities, a crime took place. For this

reason, an award may be made when the offender has not been convicted. If there are clear reasons for the delay in the rape being reported and the case officer can still gather sufficient evidence that it has occurred, the terms set by Parliament allow CICA the discretion to set aside the requirement for immediate reporting and take a view based on the facts of the case. We are exploring with CICA how to ensure that case officers have the correct guidance and training in applying discretion in rape cases.



## An effective criminal justice response

The Stern Review, along with many other commentators and victims' organisations, states clearly that criminal justice outcomes should not be the only way in which the state measures its response to victims of rape. The government agrees entirely and has made clear its commitment to supporting specialist services for victims of sexual violence to ensure all their needs are met properly.

Nevertheless, an effective criminal justice response remains a vital part of what victims should rightly expect: recognition of the harm done to individuals, enforcement of the law, punishment of perpetrators, and the prevention of further risk of harm to victims and other members of society. Not every report of rape will result in a successful conviction, but it is this government's ambition that every report be treated seriously from the point of disclosure; that every victim be treated with dignity; and that every investigation and that prosecution be conducted thoroughly and professionally, without recourse to myths and stereotypes.

### Investigation

#### Recommendation 10

*The work that the Association of Chief Police Officers has been doing in partnership with the Crown Prosecution Service and National Policing Improvement Agency is designed to improve the approach taken by all forces in responding to and investigating rape complaints. We have therefore based our*

*recommendations on the assumption that all forces aspire to provide a high-quality service to everyone who reports a rape. The 'Guidance on Investigating and Prosecuting Rape' seems to us to reflect the very best that a police service can achieve, and we would make no suggestions for improvements to it. We recommend that the Association of Chief Police Officers should continue the work of seeing the guidance implemented in every police force area.*

We welcome this recommendation. We also welcome the work that the Association of Chief Police Officers (ACPO) continues to do to improve police investigations of rape, including support visits to every police force area in 2009/10. In recognition of the joint nature of investigating and prosecuting rape, 39 (out of 42) of these visits were conducted jointly with the Crown Prosecution Service. These resulted in bespoke reports for the Chief Crown Prosecutors, as well as Chief Police Officers, that identified good practice and set out recommendations for improvement.

ACPO has developed a series of 'key statements' of investigation based on the joint 'Guidance on Investigating and Prosecuting Rape' which will ensure that there is a national bench-mark for rape investigation which can be adapted to local conditions. It has also encouraged all forces to develop action plans setting out how they will deliver effectively on those key statements.

Similarly, the Crown Prosecution Service (CPS) will continue to ensure that the joint guidance is

appropriately and consistently applied across CPS areas. The CPS will also continue to conduct robust evaluation of performance in violence against women prosecutions. In January 2011, the CPS launched a violence against women assurance system. As part of this assurance, 25 per cent of all rape cases will be sampled and analysed to ensure that they are being appropriately handled. Reports will be reviewed by the Chief Operating Officer to provide strategic oversight and ensure that emerging concerns are addressed and learning shared across the CPS.

### Recommendation 13

*We understand the National Policing Improvement Agency provides key computer technologies to assist forces with tracking intelligence on sex offenders and their offences. We further understand that the mechanics of capturing this intelligence on a national basis do exist. We therefore recommend that the National Policing Improvement Agency take steps to ensure that all police forces are aware of these ways of capturing intelligence.*

The Stern Review highlights the impact that effective sharing of information in relation to rape can have, whether that is preventative or in bringing a series of seemingly random attacks together to identify serial perpetrators. We fully endorse the review's recommendation that the very best use be made of intelligence in rape cases, including the sharing of such information across force boundaries.

The system used to hold such police intelligence is the Violent and Sex Offender Register (ViSOR) which interacts with a number of other systems to bring intelligence together, including the Police National Computer (PNC) and the Police National Database (PND). The updated version of guidance on the standards of intelligence appropriate for use with ViSOR, ViSOR Standards v2.0, was published in December 2010<sup>13</sup>. ACPO and the NPIA are also exploring the feasibility of including non-stranger rape as a data set on ViSOR.

<sup>13</sup> ACPO and NPIA have developed a joint programme to consolidate existing national policing doctrine into Authorised Professional Practice (APP). APP will be implemented across priority areas (which require common standards for reasons of high risk, interoperability or VFM) during 2011/12.

In addition, further analysis of the consistent use of ViSOR will take place as one element of a thematic inspection jointly conducted by Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Probation and due to complete in spring 2011. This will feed into the assessment of the training currently provided on ViSOR, and how that training could be improved and marketed more effectively to the officers that need to access it.

### Intelligent approach to the prevention of sexual violence

The Bristol sexual violence perpetrator pilot has devised a robust risk assessment process that has identified a number of high risk sexual violence perpetrators. The process incorporates three stages (Recidivism Assessment; Harm Assessment; Long Term Risk Assessment Matrix), each of which utilises variations of accepted risk assessment tools. The process considers and weights not only criminal convictions but also arrests, intelligence and unpursued allegations. The process incorporates Police and Probation data bases in the selection of the cohort.

The pilot has discovered that there are 86 high risk sexual violence perpetrators in the city of Bristol. The majority of these individuals are neither on the Sexual Offenders Register nor being managed through Multi Agency Public Protection Arrangements (MAPPA) because they have not been convicted of a sexual offence.

The ultimate aim of the Constabulary and its partners in Probation and the Prison Service is to proactively manage these individuals within an Integrated Offender Management (IOM) Framework; this will include the provision of direct access to 'Pathways' out of offending.

In the short term and in order to test out how this approach might work in practice, police have convened a 'Sexual Violence (SV) Perpetrator Tasking Group'. The group consists of representatives from Police, Probation, Prison Service, Offender Health, Primary Care and Mental Health Trusts and has an experienced MAPPA chair. It incorporates elements from both the MAPPA conference model and the IOM tasking and coordinating meeting and operates as dynamic

multi-agency case management meeting to coordinate efforts in the better management of these individuals.

#### Recommendation 9

*It is clear that this video-recorded 'achieving best evidence' interviews is an issue of considerable concern which is posing problems for the smooth running of trials. It is causing distress to some victims, and the costs are not inconsiderable. We encountered very strong views that currently this is a big hindrance to effective trials and action needs to be taken. We recommend that this issue be looked at again by the Association of Chief Police Officers, the Crown Prosecution Service, Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate. We understand the National Policing Improvement Agency has a small internal research programme looking at the issue of achieving best evidence in rape investigations, and we recommend that this plays a part in finding a solution that preserves the benefits for the victim but is more effective in the courtroom.*

Whilst we support the ambition of improved victim care which lies behind the introduction of 'achieving best evidence' (ABE) interviews, we accept the Stern Review's observation that this is giving rise to a number of procedural difficulties in practice. We do not wish to see the supportive and sympathetic techniques, which are used to enable victims to give a full account of the trauma they have suffered, have the ultimate effect of undermining the prosecution's case in court, and letting down the victim they were intended to help. We therefore welcome the recommendation that this issue be considered further by the relevant agencies, with a view to improving upon the current approach.

Work on investigative interviewing is already underway under the auspices of the ACPO Working Group, with members representing other key agencies such as the CPS and the judiciary. Guidance, 'Advice on the Structure of Visually Recorded Witness Interviews', intended to maximise the quality of interviews with witnesses, was published in August 2010 and has been sent to all Chief Constables and to rape champions in every police force area. The advice contained in this document will be incorporated

into national learning and development programmes and will be reflected in the revised ABE guidance to be published by the Ministry of Justice in spring 2011. Once this guidance has been published, ACPO, NPIA and the CPS will consider whether further updates are required to the joint Guidance on Investigating and Prosecuting Rape to ensure that forces are using ABE appropriately when interviewing rape victims.

#### Recommendation 11

*We were very impressed with the specialist police units. It may be that the combination of high-level investigation, victim care and a focus on vulnerable people provided for by specialist units is the best way forward. We therefore recommend that the Association of Chief Police Officers works with the National Policing Improvement Agency to assess the benefits of this specialisation in terms of its cost effectiveness, the number of victims reporting, the level of victim satisfaction and the opportunities it provides for a more strategic approach to protecting the vulnerable.*

The specialist unit approach to dealing with rape investigations has developed over recent years, with numerous forces around the country adopting the approach. Specialist or dedicated units allow officers to develop their experience of dealing with sexual violence in a range of ways, from supporting victims appropriately to developing appropriate investigation techniques specific to sexual violence. These units contain resources that are generally ring-fenced and sit outside of mainstream Criminal Investigation Department (CID) activity. They are therefore able to provide an efficient, prompt and effective response to rape - for instance, ensuring sufficient numbers of specially trained officers are available to be sent to attend victims as soon as a rape is reported. We therefore welcome the recommendation of the review that this approach should be evaluated.

The ACPO Rape Support Programme includes a commitment to evaluating the specialist unit approach and will look at eight different forces across the country. It will produce a report for consideration by the ACPO Rape Working Group in spring 2011. Emerging evidence from the evaluation suggests that forces which develop a specialist unit tend to observe an increase in

reporting and confidence amongst victims and a more joined up approach between agencies, the voluntary sector and the police. This results in a more joined-up service for victims.

## Prosecution

### Recommendation 17

*We accept that in very busy court centres there are great difficulties in ensuring individual ownership of cases. Nevertheless, it is desirable and we recommend that the Crown Prosecution Service takes steps to ensure its stated policy of individual ownership of cases is applied so that cases are managed and progressed effectively.*

### Recommendation 18

*We also recommend that the Association of Chief Police Officers, the Crown Prosecution Service and the Local Government Association initiate discussions to resolve difficulties about disclosure of local authority third-party material, with a view to ensuring all local authorities adopt the protocol between the Crown Prosecution Service, police and local authorities on the exchange of information.*

The Stern Review brought out some concerns, raised by the judiciary, about the thoroughness of preparatory work that goes into rape cases, particularly with regard to the disclosure of information by a third party, such as social services or GPs. The disclosure of material that can undermine a case during a trial can result in a witness's credibility's being reduced and even in the discontinuance of a case. This, of course, can cause incalculable damage to the victim. Therefore, where the prosecutor has an opportunity to review the material and address the issues raised at an early stage in the investigation, such an outcome may be preventable, and all steps should be taken to ensure this happens.

We welcome the recommendation to ensure the protocol on exchange of information is used to best effect. The Director of Public Prosecutions (DPP), head of the CPS, has confirmed that the CPS will try to re-establish effective voluntary arrangements with as many local authorities as possible. To this end, the CPS has carried out an audit of its areas to identify any problems in the

implementation of the protocol and is discussing its findings with the Association of Directors of Social Services and ACPO with a view to undertaking a review of the protocol. This should ensure that material which may undermine a prosecution can be dealt with effectively at an early stage in the proceedings.

The Stern Review also deals with the CPS policy of individual prosecutor ownership of rape cases. This policy seeks to ensure that cases are managed and progressed effectively, with less chance of such preparatory work slipping through the gaps between prosecutors. We accept the recommendation that this should be achieved wherever possible. The CPS is committed to ensuring that its rape policy is consistently applied, including allocating every rape case to a rape specialist prosecutor who is responsible for its conduct from early in the investigation until the case is finalised. From January 2011, this element of CPS policy will be included in the violence against women assurance scheme, as detailed in the section on An Effective Criminal Justice Response.

The introduction of the violence against women assurance scheme is just one aspect of a package of measures to strengthen rape prosecutions announced by the DPP in December 2010. Other measures include seeking the views of interested parties on the factors that prosecutors should consider before prosecuting people connected with rape allegations on grounds of perverting the course of justice. This will inform new guidance for prosecutors. In addition any prosecutor who is considering charging a person who has retracted a rape allegation with an offence of perverting the course of justice will need the DPP's approval before they can proceed. The DPP is also committed to reinforcing the 'merits-based' approach to rape prosecutions by dealing effectively with myths and stereotypes and improving the quality of communication with victims.

## Managing performance

### Recommendation 14

*We recommend, for the 2010 thematic inspection to be carried out by Her Majesty's Inspectorate of*

*Constabulary and her Majesty's Crown Prosecution Service Inspectorate, a different approach to the one adopted for the previous thematic inspections. Specifically, we recommend that forces are assessed against the following:*

- *those reporting are treated well, i.e. victim satisfaction*
- *local arrangements are in place so that the many people who report, where reporting is part of a pattern of abuse in their lives, are linked into other agencies; and*
- *good practice in the collection of intelligence material is in place.*

#### Recommendation 16

*We learnt that joint police/prosecution performance measures are currently being considered by the cross-government Rape Monitoring Group. We welcome this development and recommend that this work is completed with all speed in order to remove what are seen to be barriers to effective joint working between the Crown Prosecution Service and police.*

The final aspect that the Stern Review considered in relation to the response of the criminal justice system was that of performance and partnership working. Reflecting on previous scrutiny, the review highlighted the impact that the thematic inspections in 2002 and 2007 had had on police and CPS performance but recommended that a different approach be taken in future.

The joint inspection '*Rape Investigation: Adding Value to Victims through Focusing on Suspects and Defendants*' began in November 2010. It is visiting six force areas to examine how suspects and defendants are managed, with a focus on identification of repeat suspects and assessment and management of any risks identified. The handling of intelligence will be a key consideration in the inspection.

The inspection is intended to drive improved performance in the way that cases are handled (and thereby seeks to improve victim outcomes, which may lead to an increase in victim satisfaction) through ensuring that suspect/defendant issues are incorporated into the investigation and prosecution of cases. It will also seek to ensure

that these issues are considered at each stage of a case instead of the tendency to concentrate on issues affecting the credibility of victims. The inspection will, to an extent, cover the requirement for multi-agency working between agencies. Furthermore, it will provide a clear message that victim care is related to ensuring that specially trained officers are on hand, that quality SARC service provision is necessary to provide the appropriate crisis care, and that the trauma of the incident must be taken into account when interviewing the victim.

We are not in a position to prescribe performance measures but it is still important that police are able to benchmark their performance on this issue at a peer level. The Rape Monitoring Group is considering a range of validation measures that may be used to better measure joint working. Further training will be rolled out which will help forces understand their own performance. However, the HMIC-led Rape Monitoring Group will continue to look at performance in handling rape cases in each force area and is in the process of designing a series of statistical measures which will assess this by following each case from the point at which it is reported to the police to the point at which it is considered or discontinued in court. This will remove the focus on separate police and CPS measurements which cannot accurately be combined in order to provide the wider view for which the Stern Review calls. The Rape Monitoring Group is also developing a toolkit for use by local areas to support better understanding of performance on a self-help basis in addressing rape in a particular area. This is currently out for consultation. In addition, ACPO is leading on a piece of work to examine the early findings emerging from the HMIC thematic inspection. These suggest that joint working between the police and the CPS, such as early consultation, has not been taking place on a consistent basis. ACPO will provide, as it currently does in partnership with the NPIA, a number of training days for key staff to ensure that the basis for joint work is understood and implemented consistently across the country.

## Accountability and governance

As we have set out in our strategic vision to tackle violence against women and girls, an effective response to rape and sexual violence is not achievable by government alone. All partners, at both national and local level, need to understand the roles that they play in supporting victims of rape and sexual violence – whether this is through the criminal justice system, or in the provision of the services such as support, advocacy and counselling which rape victims need. Crucially, victims need an approach that is co-ordinated, victim-centred and consistent.

### Recommendation 12

*We recognise that there are a number of existing local arrangements in place, such as Local Criminal Justice Boards and Community Safety Partnerships. We do not wish to be prescriptive about the types of local arrangements needed, but are of the view that local arrangements should aim to bring together health, the voluntary sector, local authority safeguarding services, the police, the Crown Prosecution Service and Her Majesty's Court Service to focus on rape. We therefore recommend that a suitable arrangement should be put in place, bringing together representatives from these organisations, to create an effective governance structure for the handling of rape complaints and to enable issues to be brought to a multi-agency forum where action can be taken.*

### Recommendation 23

*In order to assess the extent to which all police forces and the Crown Prosecution Service are implementing the 2009 'Guidance on Investigating and Prosecuting*

*Rape', we recommend the government reports annually to Parliament on progress made.*

We welcome the Stern Review's focus on multi-agency working at a local level and the need for decisive and strategic leadership. We fully endorse the recommendation that this is what is required. As the right structure for bringing together local partners will depend on local circumstances we do not wish to prescribe what model local areas should use. However, whatever structure a local area may opt for, it will need to take account of imminent changes to the policing and health landscapes to ensure that an effective local response to rape and sexual violence is embedded within those new arrangements from the start. As part of the new violence against women assurance regime, the CPS will review local multi-agency structures and share best practice across areas.

The joint 2009 ACPO, CPS and NPIA guidance on *Investigating and Prosecuting Rape* was developed by those agencies to bring together the best examples of operational good practice. Central government does not monitor the implementation of this guidance at force level and cannot therefore provide reports to Parliament on that basis.

The CPS publishes annually a comprehensive violence against women Crime report which sets out data, actions and case studies in relation to offences which come within the ambit of violence against women. While it is not presented to Parliament, this information is in the public domain and will implicitly cover the extent to which the

guidance is being implemented by CPS areas. This will also come under further scrutiny as the HMIC-led Rape Monitoring Group develops new validation measures which look at all elements of police performance on rape.

### Next Steps

Baroness Stern has provided a comprehensive analysis of the way that rape complaints are handled in England and Wales. Our intention is to build on the foundation she has provided.

As well as the twenty-three recommendations which we have responded to here, the Stern Review also brought out a number of challenges and issues which did not have recommendations attached to them.

With our partners, we will give consideration to these challenges as part of our policy development on rape and sexual violence as we move forward.

We will also continue to monitor the implementation of the actions included in this response, and indeed our progress in tackling rape and sexual violence more broadly, through the Inter-Ministerial Group on violence against women and girls and its supporting governance structure.

## Summary of responses

**Generally agreed** = government and its partners are in position to take forward the recommendation

**Partially agreed** = government and its partners are in a position to take forward the recommendation in part or more work is required before the recommendation can be taken forward

Stern Review Recommendation	Government Response Summarised	Section
<p><b>Recommendation 1</b></p> <p>We recommend that the National Statistician and the Home Office should aim to ensure that the publication of crime statistics is always accompanied by enough explanation to ensure that their meaning can be widely understood.</p>	Generally agreed.	Understanding sexual violence: Improving presentation of data.
<p><b>Recommendation 2</b></p> <p>We recommend that the basic elements of the Sexual Offences Act 2003 are given more publicity, and information in simple language is made available to young people and those who work with young people who are able to disseminate it widely.</p>	Generally agreed.	Understanding sexual violence: Improving communication and challenging attitudes.
<p><b>Recommendation 3</b></p> <p>In view of the controversy surrounding false allegations, the strong feelings the subject arouses and the part the controversy plays in the response to rape complainants, we recommend that the Ministry of Justice commissions and publishes an independent research report to study the frequency of false allegations of rape compared with other offences and the nature of such allegations.</p>	Generally agreed.	Understanding sexual violence: Improving presentation of data.



<p><b>Recommendation 4</b></p> <p>We recommend that the Home Office and Ministry of Justice should work with the National Statistician in order to find a way of presenting criminal justice data that enables comparisons to be made of the outcomes for various offences, and makes clear what conclusions can and cannot be drawn from those data.</p>	<p>Generally agreed.</p>	<p>Understanding sexual violence: Improving presentation of data.</p>
<p><b>Recommendation 5</b></p> <p>We recommend that when education and awareness-raising campaigns and programmes on rape and sexual assault are developed, careful consideration be given to their design so that they spread understanding of the current law on rape; do not in any way perpetuate false understandings of how rape victims respond; and take full advantage of the diverse range of new media outlets so they are as imaginative, targeted and effective as possible.</p>	<p>Generally agreed.</p>	<p>Understanding sexual violence: Improving communication and challenging attitudes.</p>
<p><b>Recommendation 6</b></p> <p>We support wholeheartedly the recommendation that the funding and commissioning of forensic medical services should be transferred from the police to the NHS. We also endorse the view of the taskforce led by Sir George Alberti that forensic physicians should be employed by the NHS, have better access to high-quality training, be an integrated part of the new NHS clinical governance framework and commissioned in sufficient numbers to meet the needs of victims of rape. We would further recommend that there should be more appropriate accreditation for forensic physicians to ensure every victim of rape should have the choice of a male or female forensic physician to undertake the examination.</p>	<p>Generally agreed.</p>	<p>Supporting victims: forensic medial services.</p>
<p><b>Recommendation 7</b></p> <p>We welcome the specific commitment by the government to have one Sexual Assault Referral Centre in every police force area by 2011 and recommend that since some police force areas are very large, the need for additional centres should be considered once the initial phase of development is complete.</p>	<p>Partially agreed.</p> <p>Local areas are best placed to consider how best to provide services to rape victims but they should ensure that all victims have access to the specialist services they need.</p>	<p>Supporting victims: sexual assault referral centres.</p>

<p><b>Recommendation 8</b></p> <p>We acknowledge that the existing funding arrangements for Sexual Assault Referral Centres vary across the country, and we would not wish to be prescriptive about how they are set up and run. However, it is clear to us that there is a greater chance of success when there is a strong partnership between the NHS, the police and elements of local government, and equal commitment in the setting up and operation of a Sexual Assault Referral Centre. We recommend this commitment should be shared equally by the police, the NHS and local government.</p>	<p>Partially agreed.</p> <p>It is clear that strong partnership working leads to the best results in this area. Local areas are best placed to agree strategic and funding arrangements that suit them to allow for delivery of the specialist services that victims need.</p>	<p>Supporting victims: sexual assault referral centres.</p>
<p><b>Recommendation 9</b></p> <p>It is clear that video-recorded 'achieving best evidence' interviews is an issue of considerable concern which is posing problems for the smooth running of trials. It is causing distress to some victims, and the costs are not inconsiderable. We encountered very strong views that currently this is a big hindrance to effective trials and action needs to be taken. We recommend that this issue be looked at again by the Association of Chief Police Officers, the Crown Prosecution Service, Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate. We understand the National Policing Improvement Agency has a small internal research programme looking at the issue of achieving best evidence in rape investigations, and we recommend that this plays a part in finding a solution that preserves the benefits for the victim but is more effective in the courtroom.</p>	<p>Generally agreed.</p>	<p>An effective criminal justice response: investigation.</p>

<p><b>Recommendation 10</b></p> <p>The work that the Association of Chief Police Officer has been doing in partnership with the Crown Prosecution Service and National Policing Improvement Agency is designed to improve the approach taken by all forces in responding to and investigating rape complaints. We have therefore based our recommendations on the assumption that all forces aspire to provide a high-quality service to everyone who reports a rape. The 'Guidance on Investigating and Prosecuting Rape' seems to us to reflect the very best that a police service can achieve, and we would make no suggestions for improvements to it. We recommend that the Association of Chief Police Officers should continue the work of seeing the guidance implemented in every police force area.</p>	<p>Generally agreed.</p>	<p>An effective criminal justice response: investigation.</p>
<p><b>Recommendation 11</b></p> <p>We were very impressed with the specialist police units. It may be that the combination of high-level investigation, victim care and a focus on vulnerable people provided for by specialist units is the best way forward. We therefore recommend that the Association of Chief Police Officers works with the National Policing Improvement Agency to assess the benefits of this specialisation in terms of its cost effectiveness, the number of victims reporting, the level of victim satisfaction and the opportunities it provides for a more strategic approach to protecting the vulnerable.</p>	<p>Generally agreed.</p>	<p>An effective criminal justice response: investigation.</p>
<p><b>Recommendation 12</b></p> <p>We recognise that there are a number of existing local arrangements in place, such as Local Criminal Justice Boards and Community Safety Partnerships. We do not wish to be prescriptive about the types of local arrangements needed, but are of the view that local arrangements should aim to bring together health, the voluntary sector, local authority safeguarding services, the police, the Crown Prosecution Service and her Majesty's Court Service to focus on rape. We therefore recommend that a suitable arrangement should be put in place, bringing together representatives from these organisations, to create an effective governance structure for the handling of rape complaints and to enable issues to be brought to a multi-agency forum where action can be taken.</p>	<p>Partially agreed.</p> <p>We agree that multi-agency arrangements are important in providing an effective response to the needs of victims of rape. Local areas are best placed to agree the partnership arrangements that work for them.</p>	<p>Accountability and governance.</p>

<p><b>Recommendation 13</b></p> <p>We understand the National Policing Improvement Agency provides key computer technologies to assist forces with tracking intelligence on sex offenders and their offences. We further understand that the mechanics of capturing this intelligence on a national basis do exist. We therefore recommend that the National Policing Improvement Agency take steps to ensure that all police forces are aware of these ways of capturing intelligence.</p>	<p>Generally agreed.</p>	<p>An effective criminal justice response: investigation.</p>
<p><b>Recommendation 14</b></p> <p>We recommend, for the 2010 thematic inspection to be carried out by Her Majesty's Inspectorate of Constabulary and her Majesty's Crown Prosecution Service Inspectorate, a different approach to the one adopted for the previous thematic inspections. Specifically, we recommend that forces are assessed against the following:</p> <ul style="list-style-type: none"> <li>• those reporting are treated well, i.e. victim satisfaction;</li> <li>• local arrangements are in place so that the many people who report, where reporting is part of a pattern of abuse in their lives, are linked into other agencies; and</li> <li>• good practice in the collection of intelligence material is in place.</li> </ul>	<p>Partially agreed.</p> <p>The thematic inspection carried out in 2010 has focused on how suspects and defendants are managed, with a particular emphasis on the identification of repeat suspects and the assessment and management of any risks identified. This includes a focus on the use of intelligence and is intended to improve overall victim satisfaction.</p>	<p>An effective criminal justice response: managing performance.</p>
<p><b>Recommendation 15</b></p> <p>We recommend that the booklet 'CPS Policy for Prosecuting Cases of Rape' should be widely available to all victims and witnesses. It should be available to all victim and witness units, Independent Sexual Violence Advisers, Sexual Assault Referral Centres, Rape Crisis Centres and should be given as a matter of routine at the appropriate moment to all rape complainants who have decided to report the rape to the police. The Crown Prosecution Service should ensure the booklet is kept under review and regularly updated.</p>	<p>Generally agreed.</p>	<p>Supporting victims: information for victims.</p>

<p><b>Recommendation 16</b></p> <p>We learnt that joint police/prosecution performance measures are currently being considered by the cross-government Rape Monitoring Group. We welcome this development and recommend that this work is completed with all speed in order to remove what are seen to be barriers to effective joint working between the Crown Prosecution Service and police.</p>	<p>Partially agreed</p> <p>Performance management is changing. We are not in a position to prescribe performance measures but it is still important that police are able to benchmark their performance on this issue at a peer level. The Rape Monitoring Group is considering a range of validation measures that may be used to better measure joint working. Further training will be rolled out which will help forces to understand their own performance.</p>	<p>An effective criminal justice response: managing performance.</p>
<p><b>Recommendation 17</b></p> <p>We accept that in very busy court centres there are great difficulties in ensuring individual ownership of cases. Nevertheless, it is desirable and we recommend that the Crown Prosecution Service takes steps to ensure its stated policy of individual ownership of cases is applied so that cases are managed and progressed effectively.</p>	<p>Generally agreed.</p>	<p>An effective criminal justice response: prosecution.</p>
<p><b>Recommendation 18</b></p> <p>We also recommend that the Association of Chief Police Officers, the Crown Prosecution Service and the Local Government Association initiate discussions to resolve difficulties about disclosure of local authority third-party material, with a view to ensuring all local authorities adopt the protocol between the Crown Prosecution Service, police and local authorities on the exchange of information.</p>	<p>Generally agreed.</p>	<p>An effective criminal justice response: prosecution.</p>

<p><b>Recommendation 19</b></p> <p>We recommend that Independent Sexual Violence Advisers be seen as an intrinsic part of the way rape complainants are dealt with, as the service that enables the rest to operate effectively and a crucial part of the way in which the State fulfils its obligations to victims of violence. Funding should be available in all areas whether the demand makes a post viable. The service provided spans a number of different local responsibilities across the criminal justice agencies, the local authority and the health service. Therefore the most suitable body to oversee the arrangements seems to us to be whatever arrangement local areas develop in line with our recommendation made in Chapter Two for local machinery to ensure a strategic approach to victims of rape.</p>	<p>Generally agreed.</p>	<p>Supporting victims: independent sexual violence advisers.</p>
<p><b>Recommendation 20</b></p> <p>We recommend that the Criminal Injuries Compensation Authority policy that applicants 'who suffer a sexual assault while under the influence of drugs or alcohol will be eligible for a full award' is made clearer in the guidance available to the public and to those supporting victims of rape.</p>	<p>Generally agreed.</p>	<p>Supporting victims: criminal injuries compensation.</p>
<p><b>Recommendation 21</b></p> <p>We appreciate the requirement to exercise care in disbursing public money and the complexity of assessing each individual's entitlement. We recommend that the eligibility requirement in respect of character, as evidenced by unspent criminal convictions, be reconsidered in terms of its appropriateness for rape victims, with a view to providing clear guidance to case officers that unless there are exceptional circumstances it should not apply to rape victims.</p>	<p>Not agreed</p> <p>The government does not intend to pursue a change of the terms of the Criminal Injuries Compensation Scheme in Parliament to exclude rape victims alone from this requirement.</p>	<p>Supporting victims: criminal injuries compensation.</p>
<p><b>Recommendation 22</b></p> <p>We recommend that the appropriate victims' organisations be consulted and detailed guidance be provided for case officers explaining why the requirement of immediate reporting to the police should normally be waived for rape victims.</p>	<p>Generally agreed.</p>	<p>Supporting victims: criminal injuries compensation.</p>

<p><b>Recommendation 23</b></p> <p>In order to assess the extent to which all police forces and the Crown Prosecution Service are implementing the 2009 'Guidance on Investigating and Prosecuting Rape', we recommend the government reports annually to Parliament on progress made.</p>	<p><b>Not agreed.</b></p> <p>The government does not monitor the implementation of the ACPO, CPS and NPIA guidance. The CPS currently publishes data annually on violence against women cases and the Rape Monitoring Group is revising its measures to take account more fully of police performance. We will not therefore duplicate this information but will monitor the implementation of the actions set out in this response through the Inter-Ministerial Group on violence against women and girls.</p>	<p><b>Accountability and governance.</b></p>
--	--	--

Cabinet Office  
35 Great Smith Street  
London SW1P 3BQ

Publication date March 2011

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gov.uk](mailto:psi@nationalarchives.gov.uk).

**ISBN: 978-1-84987-430-4**

HO\_01758\_G

Any enquiries regarding this publication should be sent to us at [sexualviolence@homeoffice.gsi.gov.uk](mailto:sexualviolence@homeoffice.gsi.gov.uk)

This publication is available for download at [www.official-documents.gov.uk](http://www.official-documents.gov.uk).

AND

This document is also available from our website at [www.homeoffice.gsi.gov.uk](http://www.homeoffice.gsi.gov.uk)



# Joint CPS and Police Action Plan on Rape

June 2014

Rape and sexual abuse against women, men and children is an appalling misuse of power and control which can have a devastating impact on lives. The vast majority of offences are not reported to the police and more than a third of victims tell no one about their experience.

In this context the drop in the number of reported cases that were then referred by police to the CPS in 2012-13 was of particular concern and why the CPS and police have worked together to look into the reasons behind it. This culminated in a National Scrutiny Panel attended by police, prosecutors, academics and victims' groups, on 4 April 2014, and out of which comes a detailed action plan.

The drop in volumes has turned around over the last year, with a rise in police referrals and the number of cases charged. However this needs careful monitoring for months and years to come, as do the number of convictions and conviction rates which have fallen since this work began. Through this action plan we will ensure police and CPS continue this ongoing work.

A key finding we identified from our work on the rape scrutiny panel is the need for proper understanding of the legislation on consent. Police and prosecutors must focus their cases on the behaviour of the accused, not the complainant and, significantly, the Panel uncovered some pervasive myths that remain to this day among not only some police and prosecutors but perhaps society as a whole, and which may be a barrier to justice for some vulnerable victims.

Despite efforts to raise awareness, many people still believe a rapist is a man in a balaclava in a dark alley, and a victim is a woman who shows her fear through fight. That is very rarely the case - most rapists know their victim, many victims do not physically fight and the trauma of being raped will affect each victim differently.

There is an urgent need to change the discourse on rape. Our police officers, our prosecutors, our courts and our communities must reject the out of date myths and acknowledge the realities of rape. We also need to debate and understand the fundamental issue of consent.

These are issues that go beyond police and prosecution authorities, but we are determined that the actions set out here are not seen by anyone as a plan to file away, rather the next step in the long term development of justice in this area. We want everyone involved in criminal justice to read this and sign up to a wider ambition of delivering justice to victims of rape as we have.

Finally, we want to express our gratitude to the Panel members particularly to Professor Liz Kelly from London Metropolitan University, Ruth Mason from End Violence Against Women and Girls Coalition, Dianne Whitfield from Coventry Rape and Serious Abuse Centre, Michelle Stoops an Independent Sexual Violence Advisor Manager, and Betsy Stanko from the Mayor's Office for Policing and Crime whose expert advice continue to make a real difference to the policing and prosecutorial approach to rape cases.



**Alison Saunders CB**

Director of Public Prosecutions  
Crown Prosecution Service



**Martin Hewitt**

Assistant Commissioner  
Metropolitan Police Service  
National Policing Lead for Adult Sexual Offences

## 1. Striking the balance: Offender centric investigations while ensuring an effective response to victims

An effective strategy in the investigation and prosecution of many cases requires a focus on the actions of the offender, rather than those of the victim. This is particularly important in rape cases where, all too often, there is a misunderstanding of critical issues around consent and credibility, especially where vulnerable victims are involved. The service provided to victims will remain a central driver in our efforts to improve the response to rape and the ongoing safety of the victim will continue to be a paramount consideration, even where a decision has been taken to stop an investigation. We will:

Action	Lead	Timing
1. Ensure proper understanding and application of legislation on consent from investigation through to presentation at courts. This includes focussing on steps taken by an individual to seek consent before engaging in sexual activity as well as the freedom and capacity of victims to make a choice.	National Policing Lead, CPS, Third Sector Organisations	By December 2014
2. Develop an exit strategy following a police decision to take no further action in order to assess the risk of reoffending by the alleged perpetrator, and to safeguard the victim against future abuse.	National Policing Lead, College of Policing	By December 2014
3. Finalise practical guidance for prosecutors on all violence against women and girls (VAWG) cases including rape where a vulnerable victim is involved; shifting the focus away from the credibility of the victim to the credibility of the overall allegation. This will also involve consideration of the behaviour of the defendant including around seeking consent.	CPS	By October 2014
4. Conduct research into the reasons behind victim withdrawals following a decision to charge in order to identify steps to encourage victims to engage with the court process, without creating an overreliance on their support.	CPS	By October 2014
5. Review CPS arrangements for instructing advocates in rape trials to ensure legal advocates with the relevant skills, attitudes and training are instructed at the appropriate stage.	CPS	By September 2014

## 2. Tools for the job: Investigators and prosecutors on handling of rape cases

In order to ensure we strike the right balance in our approach to rape cases, investigators and prosecutors need the right tools for the job. This includes providing guidance and re-establishing an updated protocol to ensure a high-quality and consistent service to victims. We will:

Action	Lead	Timing
6. Develop Authorised Professional Practice on Rape for consultation and finalisation to support frontline investigators.	College of Policing	Consultation: June 2014 Final Guidance: By December 2014
7. Provide further clarification for police and prosecutors on charging VAWG cases and the criteria and process for obtaining early investigative advice in rape cases, in the Director's Guidance on Charging.	CPS	6th Edition of the Director's Guidance will be published in December 2014. Interim advice to police and prosecutors will be published in August 2014.
8. Update the joint police and CPS National Protocol on the investigation and prosecution of rape cases including providing greater clarity around the process for obtaining early investigative advice and around the nature of the advice provided.	National Policing Lead, CPS	By October 2014
9. Review the approach to Achieving Best Evidence following publication of a joint inspection by the Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Crown Prosecution Service Inspectorate (HMCPIS).	National Policing Lead, Police	2014, following publication of review

Guidance and protocols on their own are not enough, however, and training should be provided to ensure that practitioners can respond to the complex set of circumstances they are likely to face in these cases. We will:

Action	Lead	Timing
<p>10. Hold a National Conference on rape with all rape specialist prosecutors, police rape leads and third sector organisations in order to raise awareness about key issues including consent, focussing on the offender, application of the full code test and vulnerable victims.</p>	<p>DPP and National Policing Lead</p>	<p>By December 2014</p>
<p>11. Jointly commission a series of regional workshops with police and CPS rape leads to reinforce the need to embed existing policies and new developments. This includes consideration of early investigative advice, charging and pre-trial witness interviews.</p>	<p>National Policing Lead, CPS</p>	<p>2015 – following national conference</p>

### 3. Continuous improvement: Oversight and accountability

It is vital that we review the way we work to identify areas for improvement. We will:

Action	Lead	Timing
12. Review the structure and resourcing of CPS Rape and Serious Sexual Offence (RASSO) units including the gatekeeping arrangements and the process for seeking early investigative advice in order to achieve consistency of approach and to spread best practice.	CPS	By October 2014
13. Review our approach to child abuse including child sexual abuse following joint HMIC and HMCPSP inspection into the investigation and inspection of these crimes.	CPS, National Policing Lead for Child Abuse	Inspection commenced January 2014

To achieve continuous improvement in the handling of rape cases, we need to ensure the effective implementation of guidance and protocols through oversight of the key processes. We will:

Action	Lead	Timing
14. Develop a process to provide oversight on police decisions to take no further action in rape cases; reporting bi-annually through the Police Rape Working Group which includes involvement from third sector organisations and the CPS. This will include quality of record keeping and authorisation of decision making.	National Policing Lead	By December 2014
15. Extend the CPS VAWG assurance regime, which reports on VAWG performance to the DPP, to monitor application of arrangements for Early Investigative Advice. To also report to Police Rape Working Group.	CPS	Bi-annually from October 2014
16. Respond to HMIC Crime Recording Review to capture how police forces record rape	National Policing Lead, Police	Inspection to report by April 2015

<p><b>17. Derive learning from rape cases from the CPS 'Victims' Right to Review' scheme which was introduced to make it easier for victims to seek a review of a CPS decision not to bring charges or to terminate proceedings.</b></p>	<p>CPS</p>	<p>By December 2014</p>
<p><b>18. Gather information from local criminal justice agencies and third sector organisations to better understand issues in relation to court listings and timeliness for rape cases. To raise any identified issues with the Senior Presiding Judge and other Government departments.</b></p>	<p>CPS</p>	<p>By October 2014</p>

In addition, we will continue to publish details of our performance on rape prosecutions so that the public can hold us to account as well as improving individual-level accountability. We will:

Action	Lead	Timing
<p><b>19. Provide further data in the CPS VAWG Annual Crime Report around the handling of rape cases including publishing information on pre-charge decisions, caseload levels, timeliness of providing charging advice, charging levels and prosecution results including jury acquittals and victim issues.</b></p>	<p>CPS</p>	<p>By July 2015</p>
<p><b>20. Ensure individual level accountability of Chief Crown Prosecutors and Unit heads for effective case building, rape conviction rates, volumes and charging.</b></p>	<p>CPS</p>	<p>Throughout 2014-15</p>
<p><b>21. Make links with wider Government action on rape including through the following groups in order to coordinate with wider actions such as around the provision of Independent Sexual Violence Advisors and rape victims' experience of the criminal justice system:</b>  - VAWG Inter-Ministerial Group (IMG) chaired by the Home Secretary;  - National Sexual Violence against Children and Vulnerable People (SVACVP) group; and  - the cross-agency HMIC-led Rape Monitoring Group (RMG).</p>	<p>CPS, National Policing Lead</p>	<p>VAWG IMG and RMG meet quarterly  SVACVP working group meets fortnightly</p>
<p><b>22. Provide an update on delivery of all of these actions.</b></p>	<p>Update from DPP and National Policing Lead.</p>	<p>By April 2015</p>



## ISSUES FOR DISCUSSION

**Action 1: Ensure proper understanding and application of legislation on consent from investigation through to presentation at courts. This includes focussing on steps taken by an individual to seek consent before engaging in sexual activity as well as the freedom and capacity of victims to make a choice.**

1. What is the 'proper understanding of consent'? Explore 'active' consent,
2. Who needs 'proper understanding':  
e.g. general public, juries, young people, statutory agencies.
3. Mechanisms to disseminate proper understanding to different groups.
4. Who needs 'proper understanding and application of legislation':  
e.g. police, prosecutors, judges.
5. Mechanisms to disseminate 'proper understanding and application of legislation' to:
  - a. Police
  - b. Prosecutors
  - c. Judges
  - d. Juries
6. Action plans August – finalisation December.