

Witness: AA  
No 1  
Date: 09/09/2019  
Exhibit

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

Claim No.

B E T W E E N:

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

Claimant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

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EXPERT REPORT OF PROFESSOR ABIGAIL ADAMS

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1. I am an Associate Professor and Senior Research Fellow in the Department of Economics at the University of Oxford. I am also a Research Fellow at the Institute for Fiscal Studies, London. My area of research expertise is in Applied Microeconometrics, with a particular focus on the econometrics of consumer choice and policy evaluation.
2. I am the convenor of the Applied Microeconomics Research Group in the Department of Economics at Oxford, and teach quantitative economics at the graduate and undergraduate level at Oxford University, including supervision of research theses in these fields.
3. My formal education in economics includes a BA in Philosophy, Politics, and Economics (Class I), the MPhil in Economics (Distinction), and a DPhil in Economics (Edgeworth Prize), all from Oxford University. After graduation I spent two years as a Junior Research Fellow at Merton College, Oxford, before being appointed to a Cowles Foundation Postdoctoral Research Fellowship at Yale University. In October 2016, I was awarded a 'Future Research Leader' grant by the Economic and Social Research Council (ESRC) and in November 2018, I was awarded an ONS-Turing Foundation Data Science Award.
4. My research has been published in the leading outlets of a number of disciplines, including economics (American Economic Review, American Economic Journal and The Economic Journal), computer science (CHI), and law (Modern Law Review). A number of my publications deal directly with economic incentives and the law.<sup>1</sup>

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<sup>1</sup> A Adams and J Prassl, 'Vexatious Claims? Challenging the Case for Employment Tribunal Fees' (2017) 80(3) *Modern Law Review* 412.

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5. Appendix A presents the letters from the Centre for Women's Justice solicitors that formally set out my instructions, and my full CV.

### Executive Summary

6. I have been asked to consider whether the available evidence is consistent with a change in Crown Prosecution Service ['CPS'] practise toward the charging of rape<sup>2</sup> following:
- a. A series of RASSO workshops, known as "RASSO Roadshows", from Autumn 2016 and across 2017;
  - b. The removal of references to the merits-based approach in CPS training courses in May 2017;
  - c. The withdrawal of the primary legal guidance explaining the merits-based approach in November 2017;
  - d. The removal of outstanding secondary references to the merits-based approach and merits-based guidance in Autumn 2018 and thereafter.
7. In summary, my findings are as follows:
- a. The volume, and percentage, of rape cases charged were both lower in 2017/18 than in any other year since 2013/14. Evidence available for 2018/19 suggests that the decline in charging rates has continued: for the period April-September 2018, 37.3% of all rape-flagged cases were charged; for rape-only flagged cases, the charging rate for this period was 30%. These are the lowest charging rates recorded since 2009/10, the earliest period for which I have data.
  - b. Despite falls in both the number of pre-charging decisions and cases charged, the reporting of rape offences is at its highest level since 2002, when consistent records became available.<sup>3</sup>
  - c. None of the factors highlighted by the Director of Legal Services at the CPS in their briefing note to RASSO teams and staff can fully account for the fall in the rape charging rate: a fall in police referrals, a rise in cases where files are returned to the police, and an increase in the length of time for cases to progress through the system, are insufficient to explain the most recent decline in the rape charging rate.
  - d. Notably, it has been a rise in the proportion of "No Further Action" ['NFA'] cases, cases in which a decision has been made not to charge for evidential or public interest reasons, that is responsible for the further decline in charging rates in April-September 2018. Explanations given by the CPS [REDACTED] do not suggest that a fall in police referrals, a rise in returning case files to the police, and lengthier prosecutions would increase the NFA rate.

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<sup>2</sup> I focus in this report solely on 'rape' cases, and in particular on "rape-flagged" and "rape-flagged only" cases. I define these terms in the following section.

<sup>3</sup> However, this could be due to changing recording practises initiated by *Crime Recording: making the Victim Count* (<https://www.justiceinspectors.gov.uk/hmicfrs/publications/crime-recording-making-the-victim-count/>)

- e. It also appears that the magnitude of recent declines cannot be attributed to changes in disclosure practice alone. Taking the rate of failure in the CPS January 2018 disclosure review as a benchmark for the impact of greater scrutiny of unused material on charging practise implies a much smaller decline in the charging rates than that observed in the available data for 2018/19.
- f. Between 2013/14 and 2017/18, the proportion of NFA cases was fairly stable between 31-33%. In April-September 2018, the proportion of NFA cases rose to 39%. This has led to a decline in the charging rate amongst cases that were not administratively finalised ['AF']. On average between 2013/14 and 2017/18, the charging rate amongst non-AF cases was 63.1% for all rape-flagged cases and 55.9% for rape-only cases. In the latest available data for April-September 2018, the charging rate of non-AF cases was 48.7% amongst all rape-flagged cases and 40.6% for rape-only cases.
- g. It remains difficult to come to definitive statistical conclusions on the basis of the available data as to whether the decline in the charging of rape cases was caused by the removal of guidance and trainings around the merits-based approach to the prosecution of rape cases. Standard econometric routes to establishing causality are not available in this case because the change in CPS guidance occurred in a piecemeal fashion over a number of months and there is no natural control group. However, these statistics imply that there has been a fall in the proportion of cases referred to the CPS that have successfully passed the Full Code Test.

## **Key Background**

### *Data and Case Outcomes*

- 8. I understand from those instructing me that the changes in CPS guidance and training courses have affected sexual offences other than rape, but also that there is a lack of clarity regarding the degree to which those sexual offences may have been affected. In this report I therefore focus primarily on 'rape-flagged' cases. This category of cases is defined by the CPS as follows:

"A rape flag is applied at the onset of any case referred by the police to the CPS for a charge of rape; and remains in place even if the charge is not proceeded with, is amended or dropped. If a case is referred by the police for a charge other than rape but at a later date a charge of rape is preferred the flag is applied at that point."<sup>4</sup>

- 9. The category of all-rape flagged cases encompasses the following sub-categories: rape & child abuse flagged cases; rape & domestic abuse flagged cases; rape, child abuse & domestic abuse flagged cases; rape only flagged cases.<sup>5</sup> Occasionally, given the lack of clarity concerning how child abuse and domestic abuse cases might have been affected, I

<sup>4</sup> Response to Freedom of Information Requests made by Ann Coffey MP on 13th February 2019, Excel Worksheet, Caveats.

<sup>5</sup> Response to Freedom of Information Requests made by Ann Coffey MP on 13th February 2019, Excel Worksheet, PCD Age Band.

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will also report figures for the subset of rape-only flagged cases, clearly stating when this is the case.

10. Unless otherwise clearly stated, this report will be concerned with data on the outcomes of any case referred by the police to the CPS for a charge of rape (i.e. all rape-flagged cases). This data is made available through the CPS' Case Management System (CMS) and its associated Management Information System (MIS).<sup>6</sup> These are often referred to by the CPS as 'pre-charge decisions'.<sup>7</sup> Note that this is a smaller set of cases than the number of rape-flagged offences reported to the police as not all cases are referred to the CPS for a charging decision.

11. Upon referral from the police, the CPS must decide whether a case should be finalised into one of three categories:

- a. **Charge:** A case has been finalised by a decision to charge.
- b. **No Further Action ['NFA']:** A decision is taken not to prosecute for evidential or public interest reasons.
- c. **Administratively Finalised ['AF']:** this is a heterogeneous classification, which has been defined or explained in various different ways.

- i. It is summarised by the Government Legal Department in their cover letter to the third tranche of disclosure on 13<sup>th</sup> August 2019 as follows:

"Data included in the definition of 'administratively finalised' can be summarised as follows:

- Where the CPS has returned the file to the police and for whatever reason, including that a decision is taken to take no further action ("NFA"), they do not return it for a further consultation...
- Where the police inform the CPS, following a submission for a charging decision, that they have NFA'd the case.
- Where a decision to charge has been made and communicated to the police but they have not, for whatever reason, been able to locate the suspect.

This does not include cases where the police have NFA'd a case without any reference to the CPS as such cases will not be recorded on CPS systems."<sup>8</sup>

- ii. In the response to the Freedom of Information Request by Ms Rachel Krys on 21<sup>st</sup> June 2019 ['Krys FOI Request'], the definition is given as:

"Administrative Finalisation - The case has been finalised administratively because there has been no response from the police to an action plan, early investigative advice has been given or another reason may apply. This is an

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<sup>6</sup> Please see the discussion in the *Violence Against Women and Girl's Report 2017/18*, pA2.

<sup>7</sup> See e.g. Response to Freedom of Information Requests made by Ann Coffey MP on 13th February 2019, Excel Worksheet, Caveats.

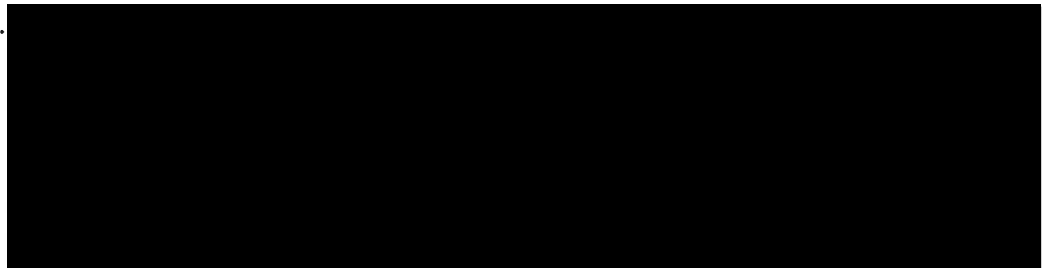
<sup>8</sup> Letter from the Government Legal Department to Ms Ellis, 13<sup>th</sup> August Disclosure Pack, [15].

administrative process and not a legal decision. These cases can be reopened at any time following a response from the police).”<sup>9</sup>

- iii. The Violence Against Women and Girls Report 2017/18 gives the following explanation:

“Cases are ‘administratively finalised’ for a number of reasons. In 2017–18 we have encouraged the use of police early investigative advice (EIA). In cases where the police then decide not to submit a full file for a charging decision, these will be ‘administratively finalised’ as there has been no Full Code Test charging decision. Most ‘administratively finalised’ pre charge cases relate to EIA, but a proportion have been subject to a Full Code Test and the case will have been referred back to the police to obtain further evidence.”<sup>10</sup>

iv.



#### *Timeline of Changes to Merits-Based Approach Guidance*

12. I have been provided with documents that demonstrate that CPS policy documents and legal practice guidance previously made explicit reference to a “merits-based approach” [‘MBA’] to guide the question of whether there was a realistic prospect of conviction, a necessary condition for a case to be charged. It is apparent from the documents provided to me that starting in Autumn 2016, a number of changes to CPS training, policy documents, and practice guidance were made that relate to the application of the MBA. I summarise the key dates below:

- a. **September 2016:** a desire to increase the trial conviction rate for rape cases to 52% was recorded in “Decision Making in RASSO Cases” prepared by Mr Gregor McGill, the Director of Legal Services. It was argued that this could be achieved “if 350 weak cases were not charged.”<sup>12</sup> Caution was noted as “There is a risk that any change to the approach in Code decision making in these cases may lead to an overcorrection and result in a failure to prosecute some difficult cases where the Code Test is arguably met.”<sup>13</sup>
- b. **November 2016 – September 2017:** a series of workshops took place across all CPS areas in which training was given to every RASSO prosecutor, conducted by the Director of Legal Services, Gregor McGill, and the then Legal Advisor to the

<sup>9</sup> Response to Krys FOI Request, Rape – PCDs Excel Worksheet.

<sup>10</sup> Violence against Women and Girls Report 2017/18, p9.

<sup>11</sup>

<sup>12</sup> Decision Making in Rasso Cases, 28<sup>th</sup> June Disclosure Pack, [7].

<sup>13</sup> Decision Making in Rasso Cases, 28<sup>th</sup> June Disclosure Pack, [11].

Defendant, Neil Moore.<sup>14</sup> These sessions have been referred to as the “RASSO Roadshows”<sup>15</sup>.

- c. **May 2017:** references to the MBA were removed from the refresher training course for all existing RASSO prosecutors<sup>16</sup> and from the induction course for all new RASSO prosecutors.<sup>17</sup>
- d. **July 2017:** Minutes of the Rasso Unit Heads meeting on 17<sup>th</sup> July 2017 record a concern that prosecutors have previously applied the MBA as a ‘lower standard’ and thus:

“prosecutors are to make no reference to the “merits based approach” in any review they now conduct. It is also important that counsel do not refer to this in any advices they do, as if we agree with or send out that advice to the police, the CPS could be seen as adopting the merits based approach... all [RASSO Unit Heads were] informed that references to the ‘merits based approach’ have been removed from training and guidance materials.

ACTION 11: [RASSO Unit Heads] were asked to raise this with their teams and the local Bar.”<sup>18</sup>

- e. **November 2017:** the primary legal guidance on the MBA, *Code for Crown Prosecutors Test – Merits Based Approach Guidance*, was removed.<sup>19</sup>
- f. **Autumn 2018:** references to the MBA were removed from the ‘Code for Crown prosecutors’ module of the ‘Introduction to Prosecuting’ e-L course and the ‘Child Sexual Abuse for Specialists’ e-L course and the guidelines governing the prosecuting of child sexual abuse and rape and sexual offences.<sup>20</sup>

### **The issue I am exploring in this Report**

- 13. The key empirical challenge for me is to isolate the magnitude of any fall in the charging rate that has resulted from the changes to how the MBA is reflected in guidance and trainings. This is difficult because there have been other changes to CPS practice, which the CPS have relied on to justify the falls in charging rate in question. I address these changes further below.

### **Magnitude of the Decline**

- 14. I begin by outlining the statistics on the changes in the overall number of cases charged and the charging rate as reported in the annual *Violence Against Women and Girls Report 2017/18* and from the responses to Freedom of Information Requests made by Ann Coffey MP on 13<sup>th</sup> February 2019 [‘Coffey FOI Request’] as well as the Krys FOI Request’.

<sup>14</sup> Letter of Engagement from CWJ to Professor Abigail Adams on 21<sup>st</sup> June 2019, p2; Email from Government Legal Department to Ms Elis, 17<sup>th</sup> July 2019, [7].

<sup>15</sup> XX Witness Statement, [34]

<sup>16</sup> Email from Robert Allen to Simon Mowat, August 22<sup>nd</sup> 2019 Disclosure Pack, p550.

<sup>17</sup> Email from Robert Allen to Simon Mowat and Marion Langford, August 22<sup>nd</sup> 2019 Disclosure Pack, p436.

<sup>18</sup> Minutes of RASSO Unit Heads Meeting on 10<sup>th</sup> July 2017, [11.2].

<sup>19</sup> Letter from the Government Legal Department to Ms Ellis, 13<sup>th</sup> August Disclosure Pack, [1].

<sup>20</sup> Letter from the Government Legal Department to Ms Ellis, 13<sup>th</sup> August Disclosure Pack, [1], [2] and [5].

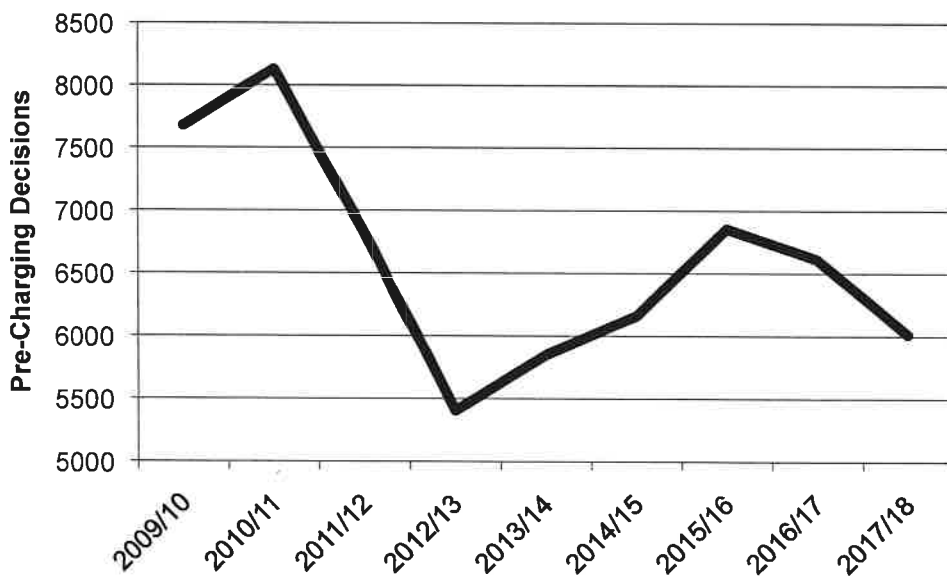
15. In summary:

- a. Reporting of rape is at its highest level since records began in 2002;
- b. The number of rape cases charged was lower in 2017/18 than in any year since 2009/10, the earliest period that information is available for;
- c. The charging rate looks set to be lower in 2018/19 than in any year since 2009/10, the earliest period that information is available for.

16. Figure 1 gives the publically available CPS statistics on the annual volume of charged cases and the total number of pre-charging decisions, since 2009/10.<sup>21</sup> The number of rape cases charged in 2017/18 was lower than in any other year since 2009/10. On average, 3,446 rape cases were charged per year between 2009/10 and 2016/17. In 2017/18, however, only 2,822 cases were charged; a fall of 23% compared to the 2016/17 volume.

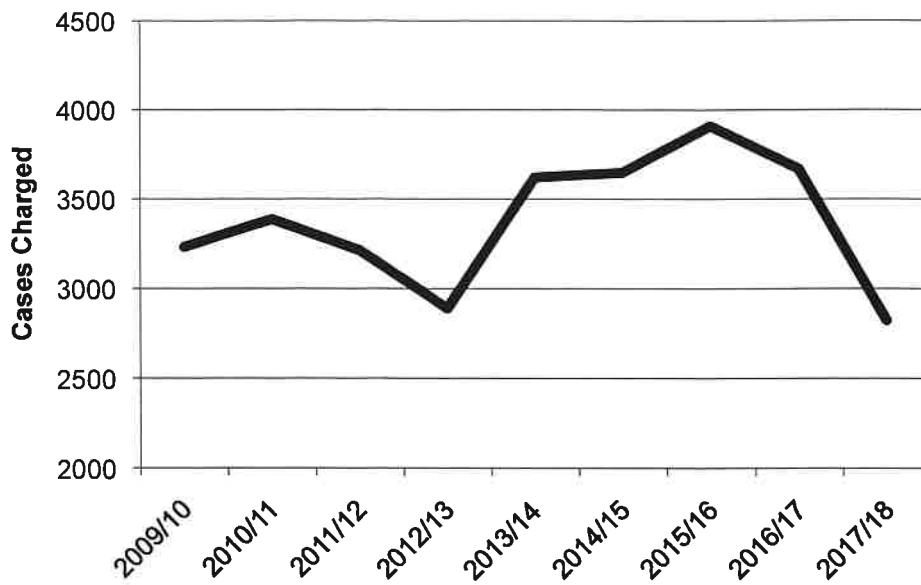
17. The volume of cases charged was not lower simply because fewer cases were referred for pre-charging decisions. While Figure 1a shows a fall in the number of pre-charge cases referred to the CPS from the police between 2015/16 and 2017/18, the number of cases charged by the CPS fell even further (Figure 1b). Therefore, the percentage of those cases referred to the CPS which were charged (the charging rate) fell to 47% as shown in Figure 2 from 57% in 2015/16 (and compared to 62% in 2013/14, the highest rate over the period of data available).

**Figure 1: Volume of Pre-Charging Decisions and Cases Charged, 2009/10-2017/2018**



a) Number of Pre-Charge Decisions Referred to the CPS by the Police

<sup>21</sup> These statistics are published as part of the annual *Violence Against Women and Girls Report*. These figures are taken from the 2017/18 report.



b) Number of Cases Charged

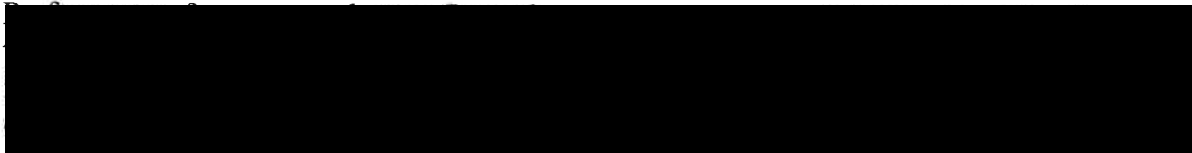
Source: Violence Against Women and Girls Report 2017/18



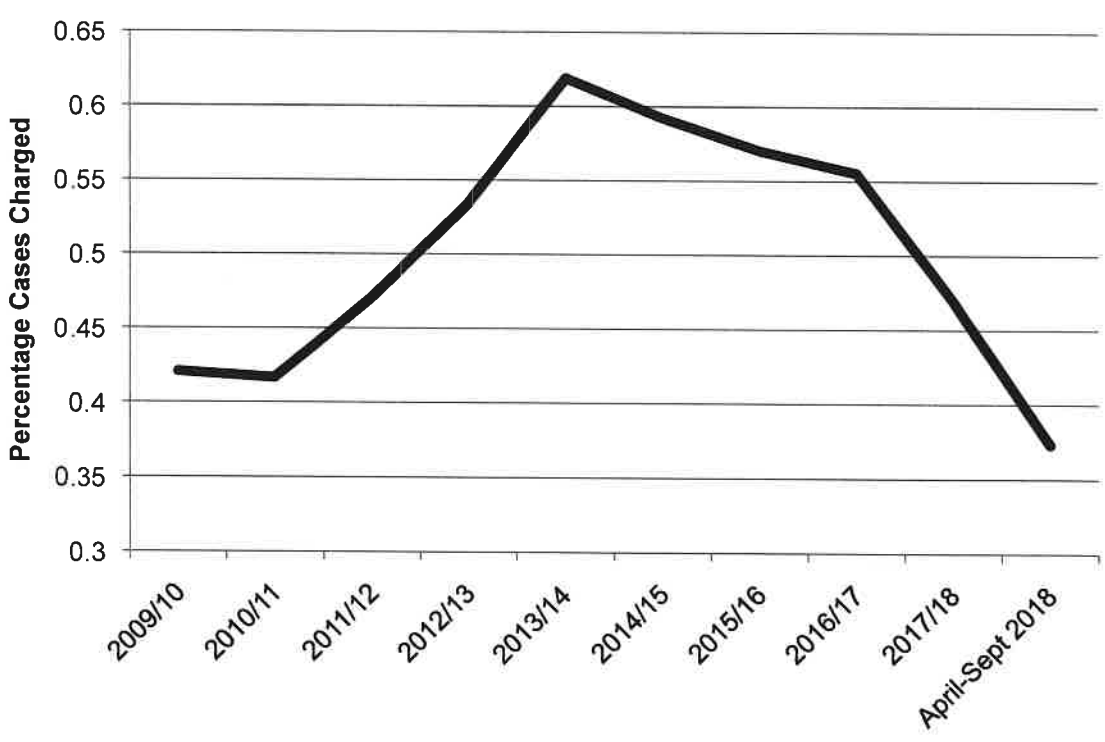
18. While statistics for the full year are not available, data published alongside the Coffey FOI Request reveals that the charging rate is likely to fall even further in 2018/19. Between April and September 2018, the charging rate was 37% amongst all rape-flagged cases. For rape-only cases, the charging rate was 30%. Figure 2 gives the charging rate for all rape-flagged cases since 2009/10 including the last available information from the Coffey FOI request.

19. If these trends continue throughout 2018/19, this would imply that the rape-charging rate is at its lowest level since 2009/10, the earliest period that information is available for.

20. These developments have been met with concern in other areas of Government.



**Figure 2: Charging Rate for All Rape-Flagged Cases**



Source: Violence Against Women and Girls Report 2017/18 and Coffey FOI Request

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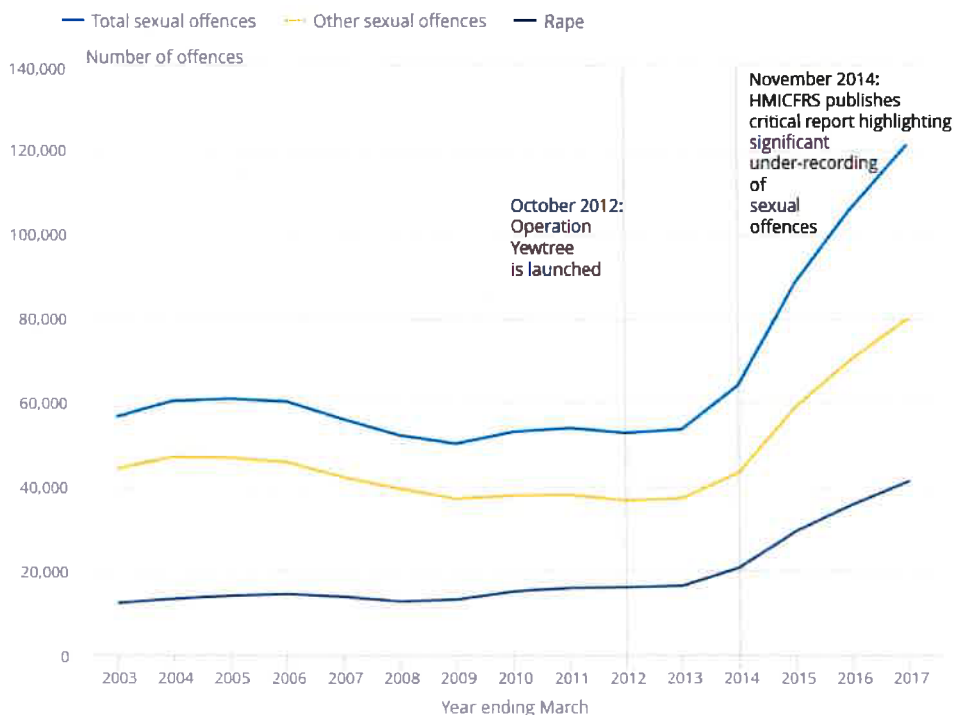
21. I note that the fall in pre-charging decisions and rape charges has occurred against a consistent rise in the reporting of rape offences to the police. The number of rapes reported to the police reached the highest level recorded since the introduction of the National Crime Recording Standard in 2002.<sup>24</sup>

<sup>25</sup> Figure 3 gives the graphic produced by the Office for National Statistics showing the rise in rape reports to the police.

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**Figure 3: Police Recorded Sexual Offences**

**Figure 2: Police recorded sexual offences, by offence type, year ending March 2003 to year ending March 2017**



Source: Police recorded crime, Home Office

Source:

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#sexual-offences-recorded-by-the-police>

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<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#sexual-offences-recorded-by-the-police>

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## Assessing the CPS' Proposed Explanation of the Trends

22. I understand from documents provided to me that in response to the EVAW Letter Before Action in respect of this claim, Susan Hemming and Greg McGill, Director of Legal Services, issued a briefing note for RASSO teams and staff ['CPS Briefing Note'] to outline their interpretation of the key issues.<sup>27</sup> In this note, the CPS' preferred explanation for the fall in the charging rate is discussed. A copy of this discussion is copied at Figure 4.

### Figure 4. Excerpt from CPS Briefing Note on 15<sup>th</sup> July 2019

#### Fall in cases

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

24. I assess the merit of each of these arguments in turn.

#### Fall in Charging Referrals

25. As already discussed at [17], a fall in the number of police referrals to the CPS cannot alone explain the drop in the CPS charging rate. While referrals from the police did fall between 2015/16 and 2017/18 (Figure 1a), the number of cases charged by the CPS from this group has fallen further still. This has resulted in a fall in the charging rate of cases referred from the police to the CPS (Figure 2). Thus I consider the argument at [20a] without merit.

<sup>27</sup> Briefing for RASSO teams (attached to email dates 15<sup>th</sup> July 2019), 13<sup>th</sup> August 2019 Disclosure pack, p19.

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26. Further, a fall in police referrals to the CPS could be a response to changes in CPS practice following the removal of MBA guidance. Guidance to police officers on charging, outlines that “[c]ases should not be charged by the police or referred to prosecutors unless [the Full Code Test (set out in the Code for Crown Prosecutors)] can be met or unless the making of a charging decision in accordance with the Threshold Test is justified. This means the case must be capable, through the gathering of further evidence of meeting the Full Code Test realistic prospect of conviction evidential standard.”<sup>28</sup> If police officers observe a change in what counts in practice as a ‘realistic prospect of conviction’ due to the removal of MBA guidance then they might respond by reducing referrals of more complex and difficult cases.

#### Rise in Case Files Returned to the Police

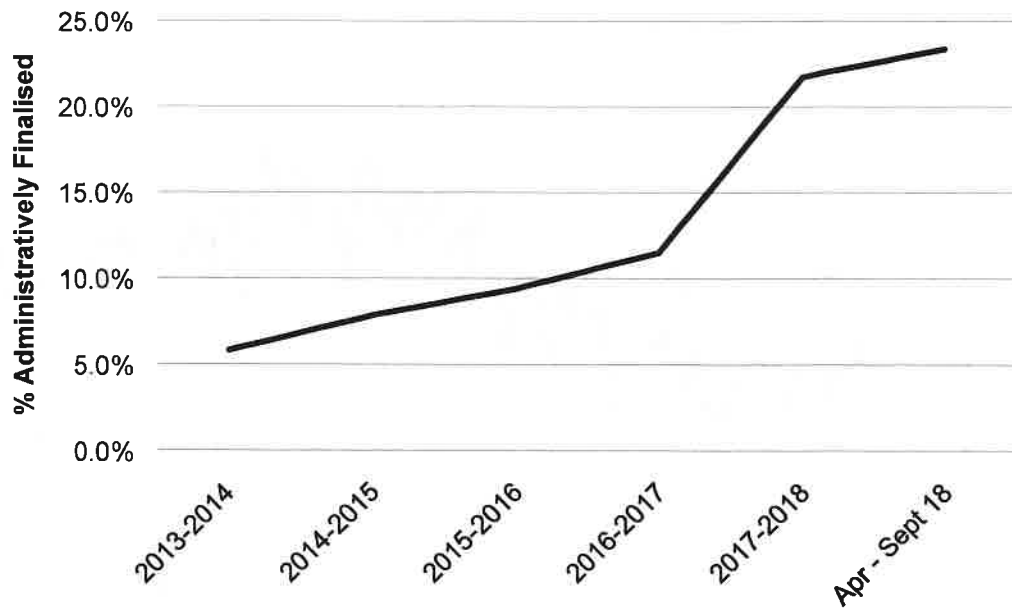
27. Given the definitions provided by the CPS summarised at [11], a rise in cases being returned to the police would result in an increase in the rate of ‘AF’ cases, which can reduce the overall charging rate.
28. In 2017/18, it was a doubling of the proportion of AF decisions that primarily lay behind the fall in the rape charging rate. Figure 5 shows the rise in the proportion of AF decisions over time, highlighting the notable rise in 2017/18. Yet, the rate of increase appears to have slowed for 2018/19; 23.4% of cases were AF over the period April-September 2018, compared to 21.7% in 2017/18. Thus there is some evidence in support of the argument at [20b].
29. However, a rise in cases being returned to the police cannot explain the further fall in the charging rate over April-September 2018. Rather, it is a rise in the proportion of NFA cases that is responsible for this further decline in charging rates. Between 2013/14 and 2017/18, the proportion of NFA cases was fairly stable between 31-33%. In April-September 2018, this rose to 39%. Monthly data obtained through the Krys FOI request, suggests that the increase in the NFA rate may have started to increase in March 2018 but it is difficult to establish this without further monthly data into 2018/19 (Figure 6).
30. Further, a rise in case files being returned to the police is not inconsistent with a change in CPS practise following the removal of MBA guidance and trainings. If the evidential threshold for cases to be charged changed as CPS guidance and trainings was heightened, more cases might be referred back to the police to obtain further evidence. Such cases would then be classified as AF as per the explanation given by the CPS: “[a] proportion [of AF cases] have been subject to a Full Code Test and the case will have been referred back to the police to obtain further evidence.”<sup>29</sup>

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<sup>28</sup> Charging (The Director's Guidance) 2013 - fifth edition, May 2013 (revised arrangements), para 8.

<sup>29</sup> Violence against Women and Girls Report 2017/18, p9.

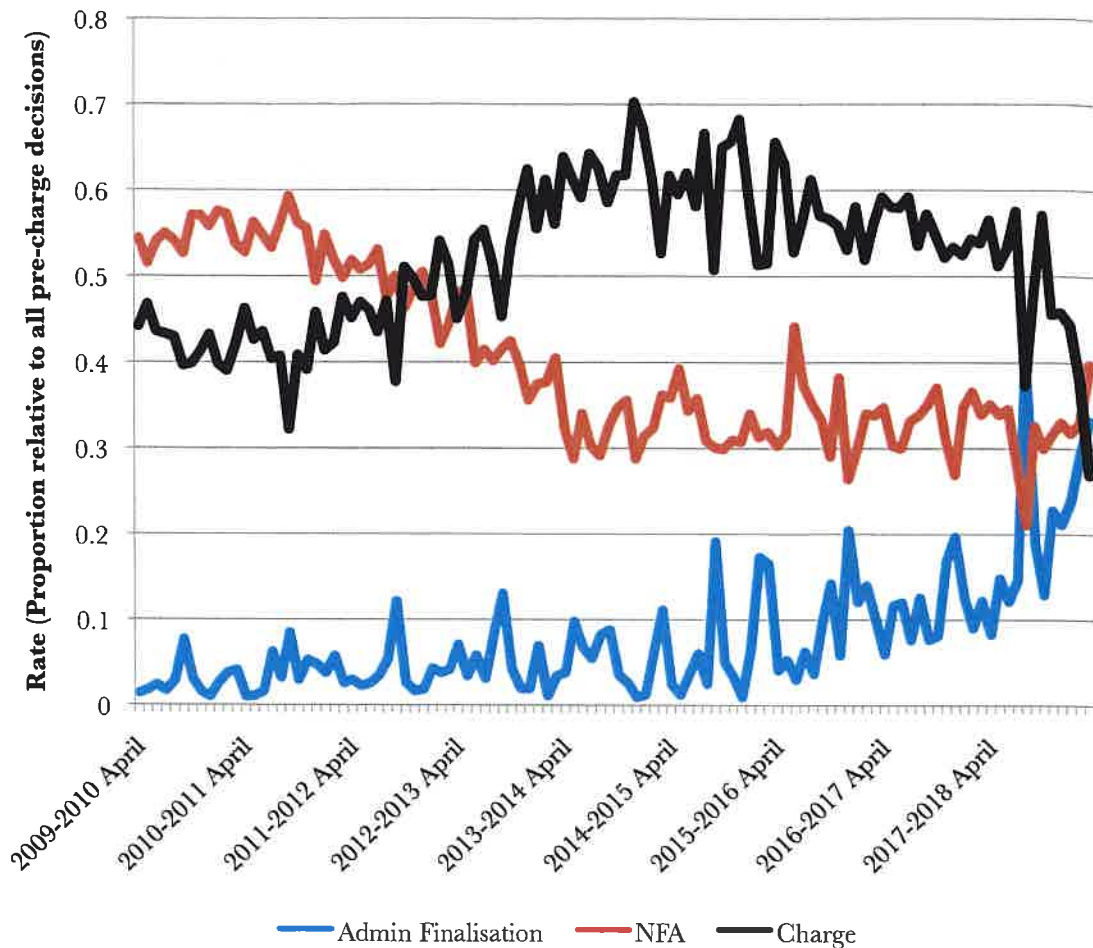
**Figure 5. Percentage of Administratively Finalised Decisions**



Source: Coffey FOI Request

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**Figure 6, Monthly Charge, AF, and NFA Rates April 2009 – March 2018**



Source: Kryss Freedom of Information Request

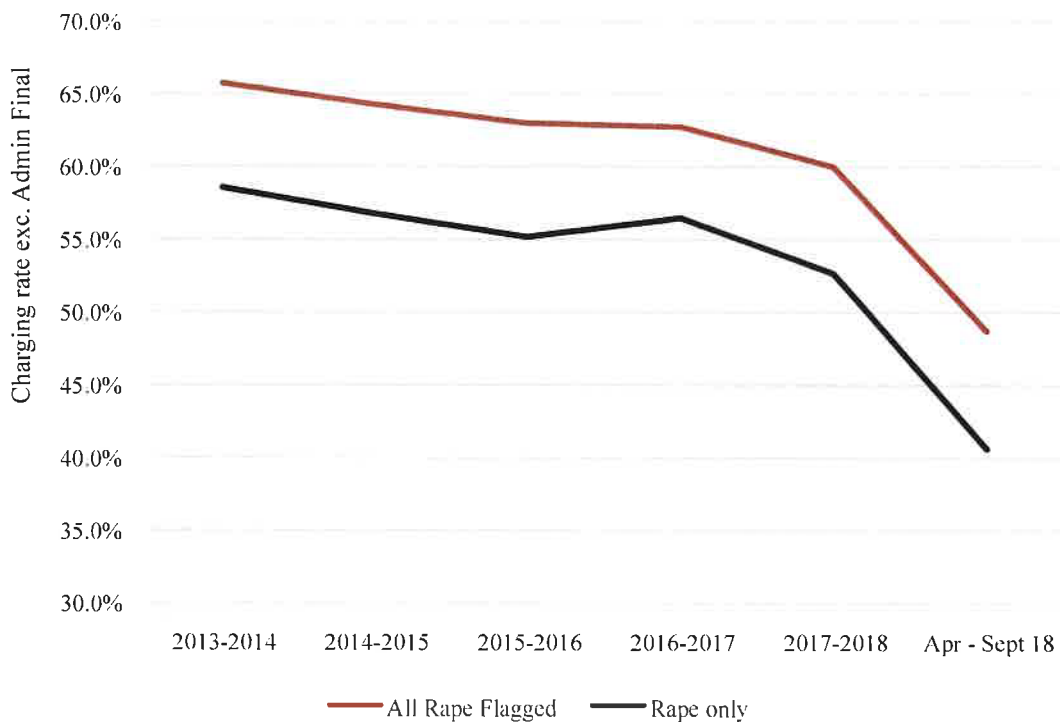
31. These trends imply that the charging rate of cases *excluding* AF decisions looks set to fall significantly in 2018/19. This cannot be explained by a rise in cases being returned to the police. Figure 7 shows the charging rate excluding AF decisions. On average between 2013/14 and 2017/18, the charging rate amongst non-AF cases was 63.1% for all rape-flagged cases and 55.9% for rape-only cases. In the latest available data for April-September 2018, the charging rate of non-AF cases was 48.7% amongst all rape-flagged cases and 40.6% for rape-only cases.<sup>30</sup>

32. As there have been declines in both the overall charging rate and the charging rate excluding AF cases, it follows that the proportion of cases passing the Full Code Test has fallen in recent years. In 2013/14, the proportion of cases passing the Full Code Test was between 62% and 66% for all rape-flagged cases and between 55% and 59% for rape-only cases. However, over April-September 2018, these figures had fallen to between 37% and 49% for all rape-flagged cases and between 30% and 41% for rape-only cases.<sup>31</sup>

<sup>30</sup> Coffey FOI Request.

<sup>31</sup> As the administratively finalised category includes some cases which have had the Full Code Test applied, the proportion of cases passing the Full Code Test is bounded between the charging rate calculated over all referrals and the charging rate of non-AF'd cases.

**Figure 7. Charging Rate excluding Administratively Finalised Decisions**

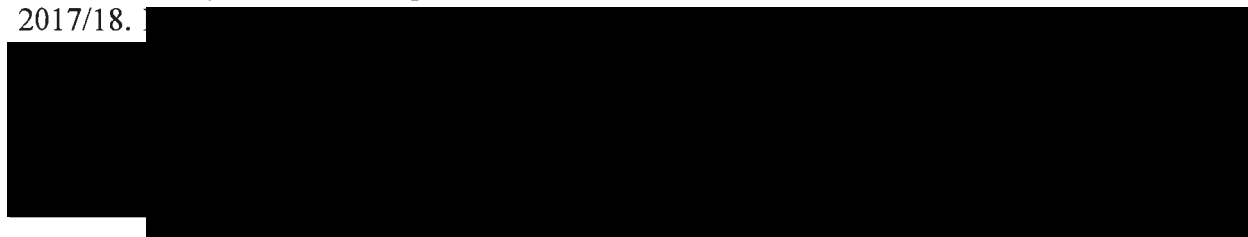


Source: Coffey FOI Request

*An increase in the length of time for cases to progress through the system.*


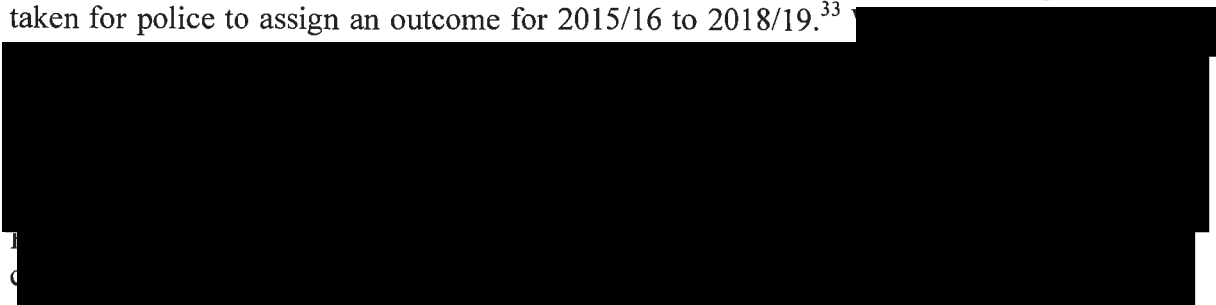
33. An increase in the length of time for cases to progress through the system upon referral to the CPS might also have been expected to increase the AF rate and thus reduce the charging rate (measured against all referral decisions). Greater use of early investigative advice, for example, as described in the Violence Against Women and Children Report 2017/18 (p9), would be expected to increase the time for an outcome to be assigned and, from the definitions given by the CPS, cases referred for early investigative advice can be classified as AF. For example, in the Krys FOI Request, the definition for AF is given as: “The case has been finalised administratively because there has been no response from the police to an action plan, early investigative advice has been given or another reason may apply.”<sup>32</sup>

34. Additional data tables published alongside the Violence Against Women and Girl’s Report 2017/18 suggest that the average time taken between a case being referred by the police and a charging decision being made rose from 7.5 weeks in 2015/16 to 11.1 weeks in 2017/18.



<sup>32</sup> Response to Krys FOI Request, Rape – PCDs Excel Worksheet.

35. The overall time for police to assign an outcome upon a rape-flagged offence being reported has been largely stable in recent years. Figure 8b shows the median length of time taken for police to assign an outcome for 2015/16 to 2018/19.<sup>33</sup>



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<sup>33</sup> Crime Outcomes in England and Wales: year ending March 2019, Statistical Bulletin HOSB 12/19, July 2019.

<sup>34</sup> PMIU Report, p12.

<sup>35</sup> For some reason the Crime Outcome report only provides a breakdown for 2017/18.

<sup>36</sup> PMIU Report, p12.



**Table 3.1: The difference in the average (median) length of time taken to assign an outcome between the year ending March 2016 and the year ending March 2019, by offence type**

England and Wales, Recorded crime and outcomes					
	Median number of days for an outcome to be assigned <sup>1</sup>				Difference between y.e March 2018 and y.e March 2019
	Y.e. March 2016	Y.e. March 2017	Y.e. March 2018	Y.e. March 2019 <sup>2</sup>	
Violence against the person	17	17	15	18	3
Sexual offences	80	79	73	77	4
of which: Rape	138	144	129	126	-3
Robbery	34	31	23	24	1
Theft offences	7	4	2	2	0
Criminal Damage and Arson	4	3	2	3	1
Drug offences	10	13	14	21	7
Possession of weapons offences	9	13	13	18	5
Public order offences	16	13	8	12	4
Miscellaneous crimes	20	20	19	24	5
<b>All crimes (excluding fraud)</b>	<b>11</b>	<b>8</b>	<b>6</b>	<b>9</b>	<b>3</b>

1. Median Days for Y.E March 2016 to Y.E March 2018 are as first published.
2. Only includes data for forces who send offence-level data to the Home Office Data Hub.

b) Crime Outcomes Report

36. Regardless, as discussed at [24]-[27] above, a rise in the AF-rate cannot explain the fall in the charging rate in the most recent period of data, which was driven by an increase in the NFA-rate. In conclusion, therefore, none of the explanations given in the CPS Briefing Note are able to account fully for the most recent declines in the charging rate.

*Changes to disclosure practice*

37. I am also instructed that there have been changes to the CPS' disclosure practice as summarised below:

- a. **November 2017:** the case of *R v Allen* was adjourned to review phone downloads. The case was dropped by the CPS in December 2017.<sup>37</sup>
- b. **January 2018:** a disclosure review of all live RASSO cases was undertaken, concluding on 13<sup>th</sup> February 2018.<sup>38</sup> The findings were published in June 2018 and follow-up actions implemented in 2018/19.<sup>39</sup>
  - i. 3,637 cases at different pre-trial stages were scrutinised as part of the review. The methodology by which these cases were selected is not reviewed in any detail in report detailing the findings of the exercise.

<sup>37</sup> CPS and Metropolitan Police Service, *A joint review of the disclosure practise in R v Allen: Findings and recommendations for the Metropolitan Police Service and CPS London*, January 2018.

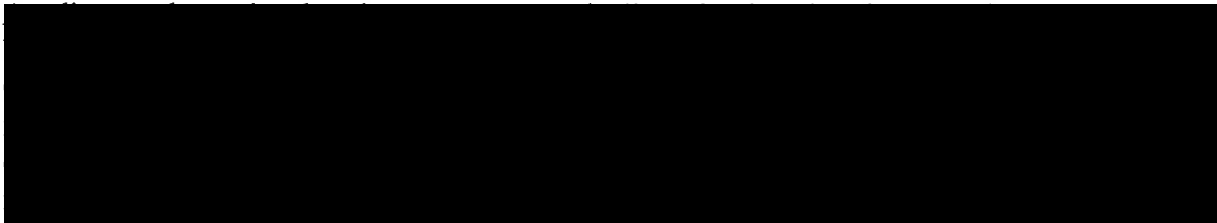
<sup>38</sup> CPS Publishes Outcome of Sexual Offences Review, CPS News Story, 2th June 2018.

<sup>39</sup> Violence against Women and Girls Report 2017/18, p9.

- ii. 47 cases out of the 3,637 reviewed were found to “have issues with the disclosure of unused material.”<sup>40</sup>

38. I have also considered whether these changes could be responsible for the drop in the rates and volumes of rape cases charged outlined above.

39.



40. However, I note that additional scrutiny through the review process is likely to uncover evidence that might be unfavourable to the prosecution, potentially causing a fall in the charging rate coming through a higher NFA rate. As noted in the report following the disclosure review, “In some of the cases that were stopped this [communications] evidence was so undermining that there was no longer a realistic prospect of conviction.”<sup>42</sup>

41. Yet the available evidence suggests that the potential magnitude of this channel is likely to be small. Assuming that the cases selected for the January 2018 disclosure review were representative of pre-charging decisions more broadly, 47 cases of the 3637 stopped as part of the review (1.3%) were “identified as having issues with the disclosure of unused material”.<sup>43</sup> This suggests that one would expect only a very small decline in the charging rate amongst non-AF’d cases following more stringent review of unused material. Of course, this assumes that the selection of cases for the review are representative and I cannot comment on the validity of that assumption.

**Conclusion**

42. The evidence I have outlined above indicates that there are other potentially relevant events relating to the significant fall in rates and volumes observed. This causes difficulties for my analysis: the fundamental problem is that it is not possible directly to observe what the charging rate of rape cases would have been in the absence of the change in MBA guidance and workshops: the question is a hypothetical one.<sup>44</sup>

43. In this situation, I would ordinarily consider analysing the following sources of variation in the data:

- a. Magnitude: use the available data to assess whether the decline in charging rates is “too large” to have been caused by a combination of a change in disclosure

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<sup>40</sup> CPS Publishes Outcome of Sexual Offences Review, CPS News Story, 2th June 2018.



<sup>42</sup> Rape and serious sexual offence prosecutions: Assessment of disclosure of unused material ahead of trial, June 2018, p6.

<sup>43</sup> Rape and serious sexual offence prosecutions: Assessment of disclosure of unused material ahead of trial, June 2018, p4.

<sup>44</sup> That is to say, I do not have a relevant comparator or “counterfactual” such as would be yielded by a randomised control trial.

practise, a fall in referrals to the CPS, and a rise in cases being returned to the police;

- b. Timing: compare charging rates for rape cases before and after the dates at which guidance and training were changed;
- c. Control groups: compare the development of charging practises in related areas that are said not to have been affected by the workshops but will have been affected by changes in disclosure practise.
- d. Composition: use data on charging rates by characteristics of the defendant and victim to establish whether the decline is concentrated among groups who are most likely to have been affected by the change in guidance (but equally affected by the change in disclosure rules) or to establish whether the decline over time is not simply due to a change in the characteristics of cases reported to the police (a change in 'case mix').

One would then draw appropriate inferences from this evidence about whether the workshops and guidance had any causal effect on charging practises.

44. Unfortunately, most of these routes are not available to me:

- a. Timing: CPS guidance and practise has changed over a relatively long period in a number of incremental steps ([12]). Further, the timeline over which changes to references to MBA occurred includes the disclosure review. This makes an approach based on exploiting any change in trends around well-defined events very challenging.
- b. Control Groups: all RASSO units were affected by the changes in MBA guidance and thus there is no group that was left unaffected.
- c. Composition: There is very little detailed data on the demographic characteristics of claimants and defendants making it difficult to conduct any detailed analysis of the composition of cases charged, AF or with an NFA decision and how this has changed over time. While the Coffey FOI Request does break statistics down by defendant age, the age bands remain wide and it is unclear how one might expect a shift away from the MBA to affect trends in charging rates across these age brackets.

45. I have thus concentrated on analysing whether the magnitude of the decline in charging rates, and the mechanism through which this has been achieved (i.e. AF or NFA decisions) supports a central role for the changes made by reference to removal of the MBA.

46. In my opinion and given my understanding of what might influence the AF and NFA rates, the available evidence does not support the explanations put forward in the CPS Briefing Note. I also do not consider, for the reasons set out above, that changes to the CPS's disclosure policy can explain the magnitude of the changes seen.

47. By contrast, the trends reported at [11]-[18] are certainly *consistent* with a change in the practice of charging rape cases brought about by the removal of the MBA guidance and other events summarised at [12] above. In particular, there has been a greater decline in the

20

charging of rape cases in 2017/18 and 2018/19 than might have otherwise been expected given the trends since 2013/14. This has also occurred against the backdrop of increased reporting of rape offences. While the evidence is not sufficient for me to come to firm statistical conclusions either way about the *causal* impact of these changes in the application of the MBA approach on the charging rate for rape cases, I importantly have not identified any other causal factor in the documents and information provided to me that could explain such a drop. As I have already said, the reasons provided by the CPS itself do not appear to me to explain the decline in the charging rate, based on the analysis I have conducted.

48. I would naturally be happy to consider any further material available in due course to provide the Court with an update of my views, including by reference to further data which may become available for 2018/2019 and any further factors the Defendant considers relevant.

### **Expert declaration**

I understand that my duty is to help the Court and that this duty overrides any obligation to any party by whom I am engaged. I confirm that I have complied with that duty in preparing this report and will continue to do so. I am aware of the requirements of Part 35 of the Civil Procedure Rules, its practice direction and Civil Justice Council guidance for the instruction of experts in civil claims.

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

Signed

*Abi Adams.*

9 September 2019

# Abigail Adams

PLACE AND DATE OF BIRTH: London, UK — 28 August 1988  
 ADDRESS: New College, Oxford, OX1 3BN  
 EMAIL: [abi.adams@economics.ox.ac.uk](mailto:abi.adams@economics.ox.ac.uk)  
 WEBSITE: <http://abiadams.com>

## Employment & Affiliations

- Current* | ASSOCIATE PROFESSOR at University of Oxford  
 2016 - | *Department of Economics & New College*  
 | *Convenor of the Applied Microeconomics Group*
- Affiliations* | RESEARCH FELLOW, Institute for Fiscal Studies (2013-)  
 | ACADEMIC PANEL, Administrative Justice Council (2018-)  
 | ACADEMIC AFFILIATE, Bonavero Institute for Human Rights (2018-)  
 | RESEARCH ASSOCIATE, Centre for Economic Performance (2018-)  
 | RESEARCH AFFILIATE, Centre for Economic Policy Research (2018-)
- 2015-2016 | POSTDOCTORAL RESEARCH FELLOW at Yale University  
 | *Cowles Foundation, Structural Microeconomics Programme*
- 2013-2015 | JUNIOR RESEARCH FELLOW at Merton College, Oxford  
 | *Fellow in Economics & Equality Officer.*
- 2012 | ECONOMICS & DATA CONSULTANT at Obama for America, Chicago  
 | *Media Tracking System & Big Data Analytics.*

## Education

- 2011-2013 | DPHIL IN ECONOMICS at University of Oxford  
 | Thesis: *Essays in Nonparametric Demand Analysis*  
 | Advisor: *Professor Ian Crawford*  
 | *Edgeworth Prize for Outstanding Doctoral Thesis*
- 2009-2011 | MPhil IN ECONOMICS at University of Oxford  
 | Distinction
- 2006-2009 | BA IN POLITICS, PHILOSOPHY & ECONOMICS at University of Oxford  
 | 1<sup>st</sup> Class Degree  
 | *Distinction in Preliminary Examinations, Academic Scholarship*

## Relevant Publications

*Articles* | Consume Now or Later? Time Inconsistency, Collective Choice & Revealed Preference (2014), *AMERICAN ECONOMIC REVIEW* with *Laurens Cherchye, Bram De Rock & Ewout Verriest.*  
 | *Based on MPhil Thesis.*

For Love or Reward? Characterising Preferences for Giving to Parents in an Experimental Setting (2015), *THE ECONOMIC JOURNAL* with *Maria Porter*

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The Zero Hours Contract (2016), *GIORNALE DI DIRITTO DEL LAVORO* with Mark Freedland & Jeremias Prassl

Vexatious Claims: Challenging the Case for Employment Tribunal Fees (2017), *MODERN LAW REVIEW* with Jeremias Prassl

A Data Driven Analysis of Workers' Earnings on Amazon Mechanical Turk (2018), *CHI* with Kotaro Hara, Kristy Milland, Saiph Savage, Chris Callison Burch & Jeffrey Bingham

Rethinking Legal Taxonomies for the Gig Economy (2018), *OXFORD REVIEW OF ECONOMIC POLICY* with Judith Freedman & Jeremias Prassl

What Do Consumers Consider Before They Choose, R&R at *QUARTERLY JOURNAL OF ECONOMICS* with Jason Abaluck

Mutually Consistent Revealed Preference Bounds, R&R at *AMERICAN ECONOMIC JOURNAL: MICROECONOMICS*

*Books* MICROECONOMETRICS WITH MATLAB: AN INTRODUCTION (2016), Oxford University Press with Damian Clarke and Simon Quinn

*Chapters* The Squeeze on Incomes in *THE GREEN BUDGET 2014*, eds. C. Emmerson, P. Johnson and H. Miller with Andrew Hood and Peter Levell  
*Featured in The Financial Times, The Huffington Post, Bloomberg News and others.*

Poverty & the Cost of Living (2014), York: Joseph Rowntree Foundation with Peter Levell  
*Featured in the Guardian & quoted in House of Lords debate.*

Labour Legislation & Evidence Based Public Policy (2015), in *NEW FRONTIERS IN EMPIRICAL LABOUR LAW* eds. A. Blackham & A. Ludlow, Oxford: Bloomsbury (Hart) Publishing with Jeremias Prassl

Zero Hours Work in the United Kingdom (2018), International Labor Organisation INWORK Report with Jeremias Prassl

## Selected Scholarships, Honours & Awards

2018	Turing-HSBC-ONS Data Science Award (£100,000)
2018	Modern Law Review Wedderburn Prize
2018	Winner ESRC Outstanding Impact in Public Policy (for work on employment tribunal fees with Jeremias Prassl)
2018	O <sup>2</sup> RB Excellence in Impact Award (for work on employment tribunal fees with Jeremias Prassl)
2016	ESRC Future Leaders Award (£200,000)
2015	Edgeworth Prize for Outstanding Doctoral Thesis, University of Oxford
2014	Selected for Lindau Nobel Meeting on Economic Sciences
2014	World Economic Forum Global Shaper
2014	Joseph Rowntree Foundation Research Grant (£20,000) with Peter Levell
2013	Selected for Econometric Society European Winter Meeting
2010	ESRC 2+2 Studentship
2009	Economics FHS Prize, Oriel College, University of Oxford



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Charity No: 1169215

**Our Ref:** EVAWX01-01

**Date:** 21<sup>st</sup> June 2019

Professor Abigail Adams



Dear Professor Adams

**Re: Our Letter of Engagement : Potential Judicial Review Claim  
In the matter of: R (on the application of the End Violence against Women Coalition) v The  
Director of Public Prosecutions**

We write to provide you with formal instructions in respect of the above matters, in which you have agreed to provide an expert statistician's report.

### Case summary

Our client is the End Violence against Women Coalition, which has decided to bring a claim for judicial review against the Director of Public Prosecutions concerning a change of Crown Prosecution Service (CPS) policy/practice, namely a shift away from the so-called "merits-based approach" to rape prosecutions. EVAW has gathered evidence to suggest that this change in practice, although it was never formally announced or consulted on, is reflected in CPS trainings, in its internal and external guidance, and in practice.

The "merits-based approach" was, in summary, the brief endorsed by the CPS until recently in its policy documents and legal/practice guidance on Rape and Sexual Offences. It originates from a High Court ruling that, until recently, was cited in the CPS' Legal Guidance. In brief, the High Court in the case of *B* observed that, when prosecutors are deciding whether or not to charge a suspect, it may be tempting in cases that are traditionally more difficult to 'win' – such as certain types of rape cases – to apply a 'bookmakers' approach', and refuse to charge if they think the case does not have a statistically good chance of success. The High Court held that this was wrong, and the question should always be whether the Evidential Test (part of the 'Code for Crown Prosecutors') was satisfied on the case's own merits.

The Crown Prosecution Service then developed guidance and trainings, which confirmed and explained this methodology and referred to it as a core part of its policy in relation to rape charging decisions. In 2009 for example, the then advisor to the Director of Public Prosecutions, delivered face-to-face training lectures with prosecutors. The speaking notes from the training show that prosecutors were trained to understand that the question of whether there is a realistic prospect of conviction is approached by reference to the "merits-based approach". That training was complemented, until very recently, by a policy document entitled 'Code for Crown Prosecutors Test – Merits Based Approach', and by references to the merits-based approach throughout the Crown's internal and external legal guidance for prosecutors in relation to rape.

EVAW believes that by 2011, prosecutors throughout the country had been trained according to this approach and that this is reflected in an apparent upsurge in prosecutions and indeed successful

prosecutions in the years that followed. Following Joint Action Plans from the CPS and the Police in 2014 and 2015, training continued to emphasise the importance of the merits-based approach.

In 2017, the Director of Legal Services for the Crown Prosecution Service and the then Principal Legal Advisor delivered a series of face-to-face training sessions to CPS Rape and Serious Sexual Offences ('RASSO') units to RASSO units around the country. EVAW have recently been informed by the CPS, in response to a Freedom of Information Act request, that these training sessions took place on 8 March 2017 (London North), 10 March 2017 (London South), 7 May 2017 (Yorkshire & Humberside), 25 May 2017 (North East), 25 May 2017 (Merseyside and Cheshire), 25 May 2017 (East of England), 23 June 2017 (Thames Chiltern), 5 July (Wessex), 19 July 2017 (North East), 21 July 2017 (South East) and on 30 August and 8 September 2017 in the ARU.

In preparing for this challenge, EVAW has obtained a useful witness statement from a 'RASSO' prosecutor within the Crown Prosecution Service who attended one such training and has explained that in his view the key message delivered in the training was that prosecutors were charging too many rape cases. It was also indicated to prosecutors during the training, according to this witness, that the '*merits-based approach*' should no longer be adopted in rape cases. EVAW will seek to adduce this witness' evidence anonymously to avoid jeopardy to his career and consequently we cannot provide you with any identifying details.

The same witness has also disclosed that the CPS removed all reference to '*the merits-based approach*' from its internal intranet. He has not been able to provide exact dates that references were removed but states that it took place in 2017. Meanwhile, we have noted similar changes to the Crown Prosecution Service's external guidance (its online Legal Guidance) in 2017 and 2018. By using a digital archiving website we have been able to identify that guidance explaining '*the merits-based approach*' was removed from the CPS' Legal Guidance between October 2017 and November 2017. Later, in November 2018, the CPS 'updated' its Legal Guidance on 'Case-Building' in Rape and Sexual Offences cases to confirm that all references to '*the merits-based approach*' had been removed from that page too. The same update appeared in the CPS' Legal Guidance on Child Sexual Abuse, from which previous references to the '*merits-based approach*' have likewise been removed.

The online version of the Legal Guidance for Rape and Sexual Offences still refers to the merits-based approach to prosecuting rape in its introduction, but all other references have been removed. Meanwhile, further online research has identified that in response to an FOIA request published in 2018, the Crown Prosecution Service stated that it '*does not follow a "merits-based" or a "bookmakers" approach to the prosecution of rape cases*'.

The Director of Public Prosecutions and the Director of Legal Services have made some assertions – publicly and privately – in response to the allegations of a change in approach, in which they essentially deny any concerted change. In 2018, a victim of rape named Bonny Turner (who has since waived her right to anonymity) brought a judicial review against the Director of Public Prosecutions' decision not to prosecute her attacker, in which she relied on the introduction of a new 'secret policy' steering prosecutors towards dropping more rape cases, as reported on the *Guardian* in September 2018. Ms Turner was denied permission to apply for judicial review and ultimately withdrew her case following the Director of Public Prosecutions' denial of any secret policy or of the training programme to which the *Guardian* article had referred.

It has also been indicated in some of the publicity that has surrounded the CPS' most recent Violence against Women and Girls' data that the Director considers any decline in prosecutions over the course 2018 to be temporary. It has been stated essentially that any stagnation in prosecutions since 2017 has arisen, solely or principally of the fact that all rape and sexual offences cases charged were exceptionally paused, and reviewed, between January and June 2018 to ensure that disclosure was being managed effectively.

A formal letter before action, informing the Crown Prosecution Service of our proposed claim for judicial review of their ostensible change in policy/practice, has now been sent on behalf of EVAW to the

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Director of Public Prosecutions, as of the 10<sup>th</sup> May 2019. The Director of Public Prosecutions has been asked to respond to the letter within 14 days, confirming whether he agrees to reinstate the merits-based approach and review all cases in which the wrong approach may have been applied, and if not, summarising his position. If he does not agree to the aforementioned requests, we will aim to issue legal proceedings by the end of July 2019 if possible.

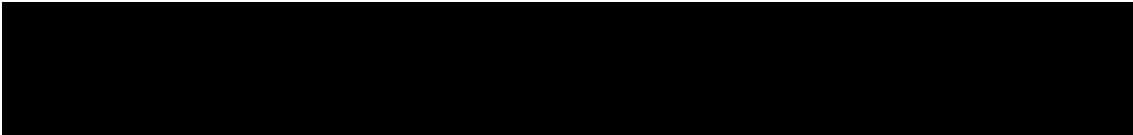
### Documents provided to you

You are instructed to consider the following documents, which we have categorised thematically:

#### **PART 1 – Outline of the Claimant’s case, and disclosure sought**

- i. Our client’s letter before action to the Director of Public Prosecutions, sent on the 10<sup>th</sup> June 2019. **Please let us know if you consider that it would assist your report to see any of the underlying documents referred to in that letter, including relevant policy documents and reports, and we will provide the same.**

#### **PART 2 – Evidence gathered in relation to the case**

- i. Signed witness statement of ‘XX’, a ‘RASSO’ prosecutor who wishes to remain anonymous, and annexes to that statement;
- ii. Consecutive ‘*Violence Against Women and Girls*’ crime reports produced by the CPS for all years that are publicly available, dated from 2012/13 through to 2017/18;
- iii. Consecutive Home Office Statistical Bulletins for ‘*Crime outcomes in England and Wales*’, dated from 2013/14 through to year ending March 2018. **(You will also find the underlying data in respect of each bulletin in OpenDocument, for each year, at this web-page: <https://www.gov.uk/government/collections/crime-outcomes-in-england-and-wales-statistics>);**
- iv. Further, more recent, data published by Home Office Official Statistics, entitled ‘*Crime outcomes in England and Wales, year to December 2018*’, in an Excel data table;
- v. Response of the CPS dated 13<sup>th</sup> February 2019 to FOIA request made by Ann Coffey MP, including an Excel data table;
- vi. Crown Prosecution Service press release, 5 June 2018, entitled ‘*CPS publishes outcome of sexual offences review*’;
- vii. Article in the *Guardian*, 24 September 2018, entitled ‘*Prosecutors urged to ditch ‘weak’ rape cases to improve figures*’;
- viii. Article in *The Guardian*, 13 November 2018: ‘*Director of public prosecutions defends 23% fall in rape charges*’;
- ix. Response of the CPS dated 7<sup>th</sup> May 2019 to FOIA request made by Rachel Kryes, Co-Director of the End Violence against Women Coalition, regarding requested locations and dates of trainings;
- x. 

- xi. Statement of Facts and Grounds of Judicial Review lodged in support of Bonny Turner's judicial review claim in October 2018; and
- xii. Summary Grounds of Defence filed by the Defendant in 2018, together with supporting evidence.

**PART 3 – Additional data and critical analysis (by way of background) relating to rape and sexual offences in the criminal justice system**

- i. A list of articles and other documents authored/provided to Centre for Women's Justice by Katrin Hohl, Senior Lecturer in Criminology, namely:
  - a. Stanko, B. and Hohl, K. (2015) 'Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales', *European Journal of Criminology* 2015, Vol. 12(3) 324–341
  - b. Data graphs and analysis which were originally included by KH and ES in a draft of the above 2015 article, but never published;
  - c. Stanko, B. and Hohl, K. (2018) 'Why training is not improving the police response to sexual violence against women: A glimpse into the 'black box' of police training' in Milne, E., Brennan, K., South, N., Turton, J. (Eds.) *Women and the Criminal Justice System Failing Victims and Offenders?* Cham: Palgrave Macmillan. pp 167-186;
  - d. An Excel data table showing the underlying data in the CPS' *'Violence against Women and Girls'* crime report for 2017/18;
  - e. The Office for National Statistics' analyses from the Crime Survey for England and Wales (CSEW) of sexual assaults reported to the police by adults aged 16 to 59 in 2016/17. (**We have been unable to print this in hard copy due to its size, but it can be accessed at this web-page:** <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/sexualoffencesappendixtables>);
  - f. Excel spreadsheet prepared by Katrin Hohl in 2019 based on available data entitled 'Latest attrition figures';
- ii. A 'User Guide' prepared by the Home Office entitled *'Police Recorded Crime and Outcomes: Open Data Tables User Guide'*, dated October 2016, containing information about how data is recorded.

In addition to reviewing the above documents (in Part 1 and Part 2), we would like to alert you to the following additional source of data: an online 'widget' produced by the multi-agency 'Rape Monitoring Group, although we note that at present the most recent data available is from 2016/17: <https://www.justiceinspectors.gov.uk/hmicfrs/police-forces/data/rape-monitoring-group/>. You are invited to make use of this online tool if it assists you.

**Our instructions**

Your report is required to consider and to comment on:

- a. To what extent is the available evidence consistent with a change in CPS practice toward the charging of rape offences following a series of training workshops in 2017?; and

b. What further data is required to determine whether the 2017 workshops caused a decline in the charging of rape cases in a more conclusive manner?

Should you consider that any further information or documents might assist you to answer these questions, either at this stage or in due course, please do not hesitate to ask.

We will also provide you in due course with the Director of Public Prosecutions' response to our letter before action and, at our later stage, to our grounds of judicial review should it be necessary to issue proceedings. At that stage it may be necessary to provide you with supplementary instructions to address issues that may be raised by the Director of Public Prosecutions' Defence.

You may also let us know if you think that any of the documents we have sent you are entirely irrelevant to the matters in issue and propose to exclude them from the scope of your review.

### **Funding**

This is a crowdfunded case, and one in which we may need to provide a budget to the court in support of a claimant's costs cap. We would be very grateful therefore if a fixed fee could be agreed for your report, or in any event a maximum cap on your charges, so that this can be factored into our costs budget. **If this is agreeable to you, would you please kindly confirm a quotation for your costs, or a proposed maximum costs budget, by return.**

### **Timescales**

Subject to the level of detail and further data provided by the Director of Public Prosecutions in his response to our letter before action, we would be grateful if you would confirm that you will be able to complete your report by mid-July, or at the latest by the final week of July.

Please do not hesitate to ask me if you have any questions about the above.

Yours faithfully

**Kate Ellis**  
**Solicitor**  
**CENTRE FOR WOMEN'S JUSTICE**  
[k.ellis@centreforwomensjustice.org.uk](mailto:k.ellis@centreforwomensjustice.org.uk)

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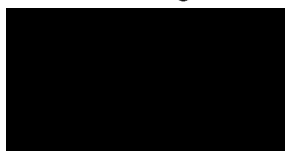
🌐 centreforwomensjustice.org.uk

Charity No: 1169215

**Our Ref: EVAWX01-01**

**Date: 21<sup>st</sup> June 2019**

Professor Abigail Adams



Dear Professor Adams

**Re: In the matter of: R (on the application of the End Violence against Women Coalition) v  
The Director of Public Prosecutions  
Additional data for review**

Further to a case bundle of documents we have sent to New College earlier today, please find enclosed further data we have since received from the CPS, as a result of a further successful FOI request by EVAW.

As you suggested, EVAW requested that the CPS provide data showing the number of total pre-charge decisions, total administratively finalised decisions, total NFA decisions, and total decisions to charge at the **monthly** level by each CPS Area Rape and Serious Sexual Offences ('RASSO') unit between the start of 2009 and the present date. The response, and accompanying excel sheet, is attached to this email.

I would suggest that this could be inserted into your existing bundle at the end of Tab '2', or as you wish.

I hope that this information will assist you in compiling your expert statistician's report.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kate Ellis'.

**Kate Ellis  
Solicitor**







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Charity No: 1169215

Our Ref: EVAWX01-01
19th July 2019

BY EMAIL TO: [Redacted]

Dear Professor Adams

Re: In the matter of: R (on the application of the End Violence against Women Coalition) v The Director of Public Prosecutions:
Further documents for consideration

Further to previous correspondence I am writing to provide you with further documents, including data, for inclusion/consideration in your report:

- 1. The Home Office has just published additional crime outcomes data up to March 2019. Please find its report enclosed. https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2018-to-2019.
2. Also enclosed are two consequence tranches of disclosure that we have received from the Defendant, dated the 28th June 2019 and 17th July 2019 respectively, including further sources of data.

Yours faithfully

Kate Ellis
Solicitor
CENTRE FOR WOMEN'S JUSTICE
[Redacted]

Enc.







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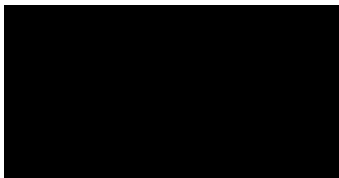
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Charity No: 1169213

**Our Ref: EVAWX01-01**

**Date: 23<sup>rd</sup> August 2019**



Dear Professor Adams

**In the matter of: R (on the application of the End Violence against Women Coalition) v The Director of Public Prosecutions**

**Further documents for consideration; and further instructions**

Thank you for providing your expert report in draft form.

We have now received a total of **four** separate tranches of pre-action disclosure from the Defendant, since his initial letter dated the 24<sup>th</sup> June 2019 in response to our letter before claim.

In our letter dated the 19<sup>th</sup> July 2019 (headed 'Further documents for consideration'), we sent you the first two tranches we had received as of that date, dated the 28<sup>th</sup> June 2019 and the 17<sup>th</sup> July 2019 respectively.

I now attach the further two tranches of disclosure that we have received dated the 13<sup>th</sup> August 2019 and the 22<sup>nd</sup> August 2019 respectively.

In the third and fourth tranches of disclosure the Defendant has advised that a number of further events took place which we consider to be important for the purposes of your chronology, in that they appear to represent further occasions on which there was a nationwide shift away from the merits-based approach:

- In May 2017, the decision was taken to remove all references to the merits-based approach from the refresher training course for all existing RASSO prosecutors and the induction course for all new RASSO prosecutors (see paragraph 5 of the covering letter to the third tranche of disclosure dated 13<sup>th</sup> August 2019; and section 3 of the fourth tranche of disclosure dated 22<sup>nd</sup> August 2019);
- In November 2017, the primary legal guidance explaining the merits-based approach – entitled 'Code for Crown Prosecutors – Merits Based Approach' was removed (see paragraph 1 of the covering letter to the third tranche of disclosure dated 13<sup>th</sup> August 2019). This removal of guidance was referenced in our initial instruction letter to you although we had not received confirmation of the date. The guidance removed is the document that our witness 'XX' provided at Annex G to his statement, also in your bundle.



- In Autumn 2018, a number of further changes were made to ensure that references to the merits-based approach were removed from other relevant guidance and training courses (see paragraphs 1, 2 and 5 of the covering letter to the third tranche of disclosure dated 13<sup>th</sup> August 2019).

In light of this disclosure, could we please ask that alongside the questions that you were initially asked to address in your report, which concerned the impact of a series of workshops in 2017, you also now consider the impact of the removal by the CPS of all references to the merits-based approach from their training courses in May 2017; the withdrawal of primary guidance explaining the merits based approach in November 2017; and the final removal of outstanding secondary references to the merits-based approach or merits-based approach guidance in Autumn 2018.

We have agreed that you will provide us with an amended report by the **4<sup>th</sup> September 2019**. We are grateful as ever to you for working to short deadlines. If you will require further time, please do let us know as soon as possible.

Finally, as discussed by email earlier today we would be grateful if you would provide us with an invoice for all of your work to date when you send us the revised version of your report. We are hopeful that this will be the last substantive work that we will ask you to do at the pre-action stage, although if you are willing we may instruct you again when the proceedings are underway.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kate Ellis', is written below the closing.

**Kate Ellis**  
**Solicitor**  
**CENTRE FOR WOMEN'S JUSTICE**



Witness: AA  
 No 1  
 Date: 19/09/2019  
 Exhibit

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

Claim No.

B E T W E E N:

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

Claimant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

---

SUPPLEMENTARY EXPERT REPORT  
 OF PROFESSOR ABIGAIL ADAMS

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1. I am an Associate Professor in the Department of Economics at the University of Oxford, and a Fellow of New College. I am also a Research Fellow at the Institute for Fiscal Studies, London. My area of research expertise is in Applied Microeconometrics, with a particular focus on the econometrics of consumer choice and policy evaluation.
2. I have been asked to prepare a short supplementary report to my main expert witness report dated 9<sup>th</sup> September in order to incorporate a discussion of the statistics in the Violence Against Women and Girls Report 2019/20 that was published on 12<sup>th</sup> September. Given the short time available to me, and constraints imposed by pre-commitments, I focus on whether the newly available statistics change the conclusions in my Expert Witness Report that are summarized in the Executive Summary ([7]).

**Magnitude of the Decline**

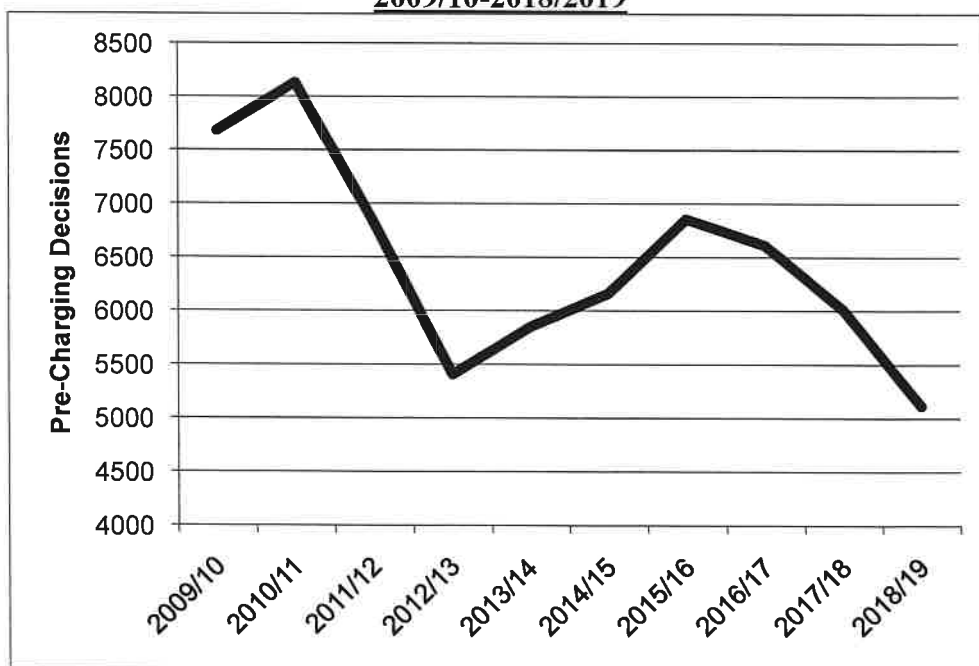
3. I begin by outlining the statistics on the changes in the overall number of cases charged and the charging rate as reported in the annual *Violence Against Women and Girls Report 2018/19* ['VAWG Report 2018/19'] and *Violence Against Women and Girls Report 2017/18*.
4. In summary:
  - a. The number of rape-flagged cases charged was lower in 2018/19 than in any year since 2009/10, the earliest period that information is available for;

- b. The charging rate for rape-flagged cases was lower in 2018/19 than in any year since 2009/10, the earliest period that information is available for.
- c. The charging rate of rape-flagged cases amongst those not administratively finalised [‘AF’] was its lowest since 2011/12.

Thus, the trends identified in my Expert Witness Report continue to hold in the most recent year of data.

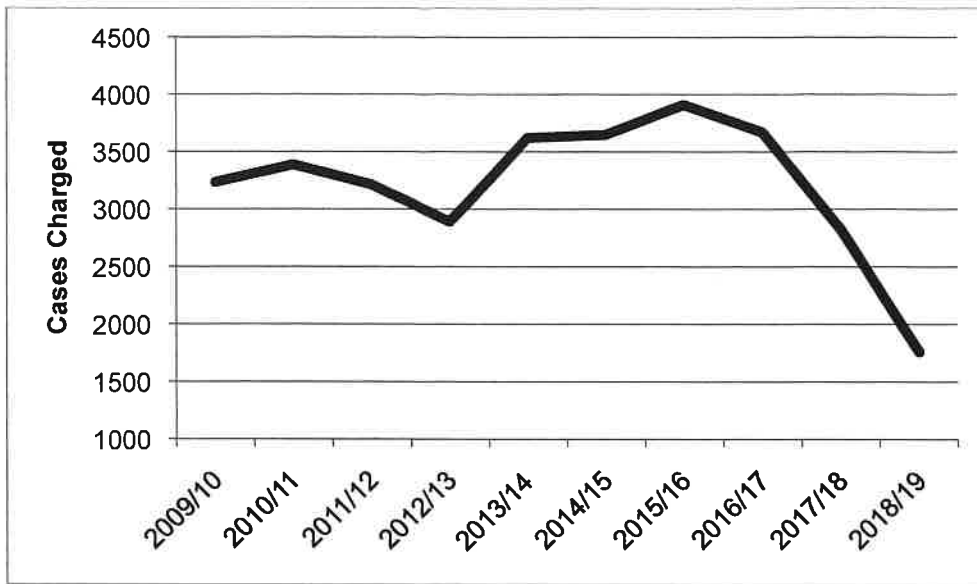
- 5. Figure 1 gives the publically available CPS statistics on the annual volume of charged cases and the total number of pre-charging decisions, since 2009/10, updated to give the figures for 2018/19.<sup>1</sup> In 2018/19, 1,758 cases were charged compared to 3,446 on average for the years 2009/10 to 2016/17.
- 6. The volume of cases charged was not lower simply because the CPS made fewer pre-charge decisions. As shown in Figure 2a, the percentage of rape-flagged cases charged amongst all cases that the CPS made a pre-charge decision on fell to 34% in 2018/19 from 57% in 2015/16 (and compared to 62% in 2013/14, the highest rate over the period of data available).
- 7. As shown in Figure 2b, the charging rate amongst non-AF cases fell further in 2018/19 to 48%, compared to an average of 56% for the period 2009/10 to 2016/17 (and compared to 66% in 2013/14). This is the lowest charging rate amongst non-AF’d cases since 2011/12. In the latest VAWG Report 2018/19 (p A20), decisions amongst non-AF’d cases have been referred to as “Legal (substantive) decisions” The number of legal “No Further Action” decisions is now higher than the number of legal decisions made to charge.

**Figure 1: Volume of Pre-Charging Decisions and Cases Charged, 2009/10-2018/2019**



<sup>1</sup> These statistics are published as part of the annual *Violence Against Women and Girls Report*. These figures are taken from the 2017/18 report.

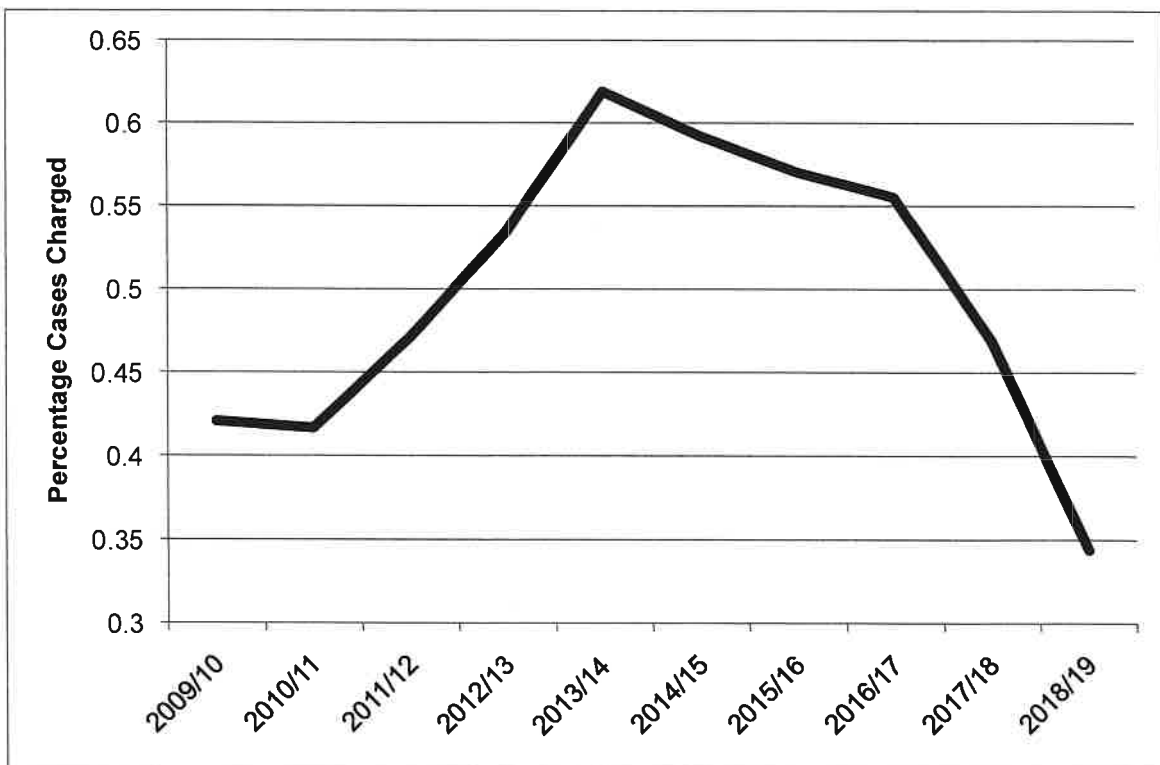
a) Number of Pre-Charge Decisions Completed by CPS



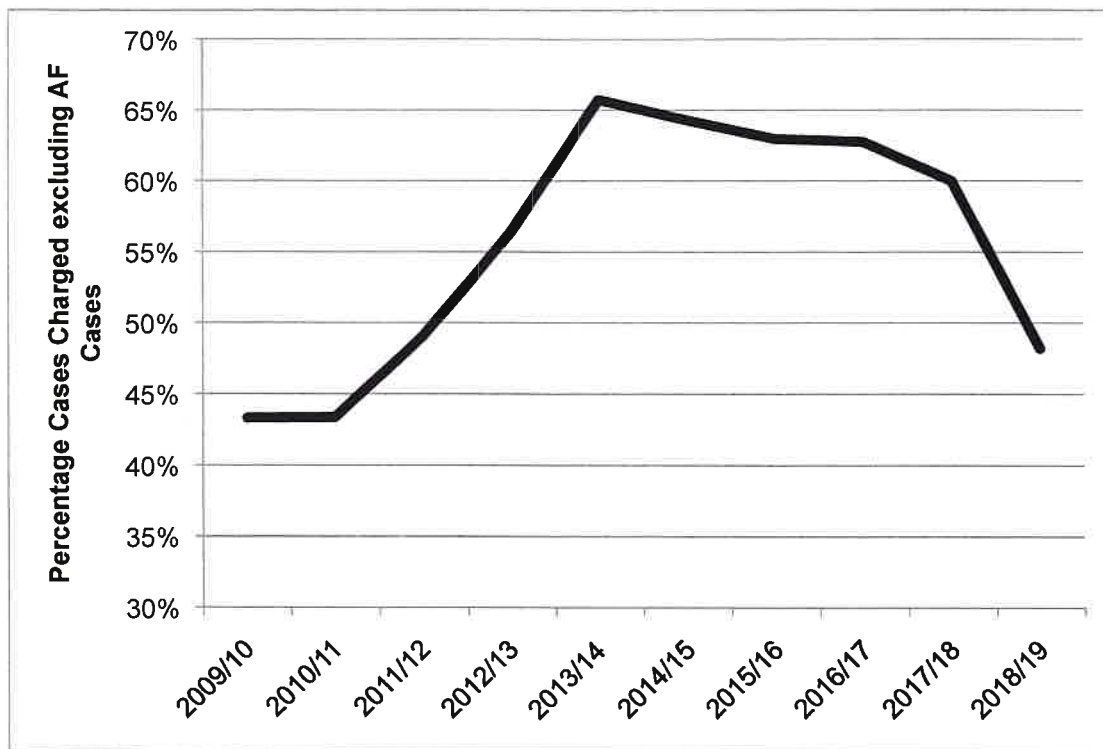
b) Number of Cases Charged

Source: Violence Against Women and Girls Report 2017/18 and Violence Against Women and Girls Report 2018/19.

**Figure 2: Charging Rate for All Rape-Flagged Cases**



a) Charging Rate for all Pre-Charge Decisions Completed by CPS



b) Charging Rate for Non-Administratively Finalised Decisions

Source: Violence Against Women and Girls Report 2017/18 and Violence Against Women and Girls Report 2018/19

8. The Crown Prosecution Service [‘CPS’] publicly gave their explanation for the decline in the number of charges of all rape-flagged cases in the VAWG Report 2018/19. No further grounds of explanation for the decline are given beyond those that were articulated in the CPS Briefing Note on 15<sup>th</sup> July 2019, although more detail on the relationship between number of police-CPS consultations and the increase in the length of cases is given.

**Figure 3. CPS Explanation for the Decline in the Rape Charges**

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

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

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

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

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

9. Three key factors are again highlighted as the preferred explanation for a fall in the number of charges made for rape:
  - a. A fall in charging referrals from the police;
  - b. A rise in cases where files are returned to the police;
  - c. An increase in the length of time for cases to progress through the system.

I briefly assess the merit of each of these arguments in turn. Please see [22]-[36] of my Expert Witness Report for a deeper discussion of each ground of explanation.

10. I note that CPS terminology in this area is confusing and the language used to describe the number of referrals and caseload. As described in the VAWG Report 2018/19:

“Prior to 2018-19, the VAWG report recorded the data on ‘pre-charge decision’ completed by the CPS as ‘police referrals’. This report provides two sets of data - (i) the receipt of cases from the police referred to us for a charging decision (Table 16) and (ii) ‘pre-charge decisions completed by the CPS’ (Graph 17) (previously called ‘police referrals’).”

In my previous report, as pre-charge decisions completed by the CPS were referred to as police referrals, I did not make the distinction now being made in the latest round of statistics.

11. Nonetheless a fall in police referrals and a fall in the number of pre-charge decisions completed by the CPS cannot explain the drop in the *charging rate*. While the number of pre-charge decisions did continue to fall in 2018/19 (Figure 1a) and the number of police referrals fell from 4,370 in 2017/18 to 3,375 in 2018/19, the number of cases charged has fallen further still resulting in a fall in the charging rate (Figure 2). Thus I again consider the argument at [9a] without merit.
12. Given the definitions provided by the CPS that were summarised in my first Expert Witness Report at [8]-[11], a rise in cases being returned to the police would result in an increase in the rate of ‘administratively finalised’ [‘AF’] cases. However, a rise in cases being returned to the police cannot explain the fall in the charging rate amongst cases that were not administratively finalised (Figure 2b). This has been driven by a rise in the proportion of “No Further Action” [‘NFA’] outcomes being assigned amongst non AF’d cases.
13. An increase in the length of time for cases to progress through the system might also have been expected to increase the AF rate and thus reduce the charging rate (measured against all referral decisions). The latest available data from the VAWG Report 2018/19 does suggest a continued increase in the length of time to reach a decision on a case (p A21). The average days to reach a charging decision have risen from 78 days in 2017/18 to 108 days in 2018/19. However, as discussed at [12] above and in my first Expert Witness Report in more detail, a rise in the AF-rate cannot explain the fall in the charging rate amongst non-AF’d cases. In conclusion, therefore, none of the explanations given by the CPS are able to account fully for the most recent declines in the charging rate.

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**Expert declaration**

I understand that my duty is to help the Court and that this duty overrides any obligation to any party by whom I am engaged. I confirm that I have complied with that duty in preparing this report and will continue to do so. I am aware of the requirements of Part 35 of the Civil Procedure Rules, its practice direction and Civil Justice Council guidance for the instruction of experts in civil claims.

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

Signed

A handwritten signature in black ink that reads "Abi Adams". The signature is written in a cursive style with a large initial 'A'.

19 September 2019



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

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

Claim No.

B E T W E E N:

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

Claimant

-and-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Defendant

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SECOND SUPPLEMENTARY EXPERT REPORT  
OF PROFESSOR ABIGAIL ADAMS

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1. I am an Associate Professor in the Department of Economics at the University of Oxford. I am also a Research Fellow at the Institute for Fiscal Studies, London. My area of research expertise is in Applied Microeconometrics, with a particular focus on the econometrics of consumer choice and policy evaluation.
2. I have been asked to prepare a short supplementary report to my main expert witness report dated 9<sup>th</sup> September and the supplement dated 19<sup>th</sup> September in order to address the points raised in Jean Ashton's Witness Statement and to clarify the relationship between her evidence and my own.
3. For the avoidance of doubt, I have not had access to the data underlying her Statement, and therefore I only respond to the points she has raised as opposed to conducting my own independent analysis of the data underlying Annex 1 – Annex 5.

### Key Points

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

“[15] In summary:

- a. Reporting of rape is at its highest level since records began in 2002;
  - b. The number of rape cases charged was lower in 2017/18 than in any year since 2009/10, the earliest period that information is available for;
  - c. The charging rate looks set to be lower in 2018/19 than in any year since 2009/10, the earliest period that information is available for.”
5. In my supplementary report, I concluded that these trends continued to hold for 2018/19 and that “[t]he charging rate for rape-flagged cases amongst those not administratively finalised [‘AF’] was its lowest since 2011/12” [Supplementary Report, 4].
6. Ms Ashton's statement does not reject these findings:
- a. Ms Ashton's statement does not contain any discussion of trends in the reporting of rape offences.
  - b. Annex 4-Centered Moving Average and Annex 4-Raw Data show that the number of rape-flagged cases that were charged in 2018/19 was lower than in any previous period she considers in these figures.
  - c. Annex 3-Centered Moving Average and Annex 3-Raw Data shows that charging rate was lower in 2018/19 than in any previous period she considers in these figures.
  - d. Annex 5-Centered Moving Average and Annex 5-Raw Data shows that the proportion of cases charged amongst those with a legal decision (i.e. the charging rate for rape-flagged cases amongst those not AF'ed) was lower in 2018/19 than in any previous period since approximately Q1 2012/13. I state ‘approximately’ because I do not have access to the precise numbers underlying the graphs presented.
  - e. Ms Ashton also comments on the rise in the proportion of No Further Action decisions in the recent data: “The proportion of NFA decisions remained relatively static from 2013/14 until part way through 2017/18 when the rate starts to increase.” [Ashton Statement, 44]
7. Ms Ashton does not provide evidence to contradict my conclusion that the factors previously identified by the CPS in their public explanation of the trends and in their internal briefing note to RASSO prosecutors are insufficient to fully account for the fall in the rape charging rate. Rather, the focus of Ms Ashton's statement is to point to other factors that have not been previously communicated by the CPS [Ashton Statement, 20].

8. The only point covered in my reports that is directly addressed by Ms Ashton is police referrals. As to that:
- a. Ms Ashton does not disagree with my conclusion that “a fall in the number of police referrals to the CPS cannot alone explain the drop in the CPS charging rate” [Original Report, 25]; the number of cases charged has fallen faster than police receipt. This is evident in Annex 3-Centered Moving Average which shows a fall in the percentage of cases charged amongst all those finalised.
  - b. As to a change in volumes, Ms Ashton argues that a fall in police receipts might not be an outcome of a change in practice, pointing to the decline in receipts around the time of Alison Levitt QC’s trainings in 2009 [Ashton Statement, 26]. I completely agree with Ms Ashton that this is a complicated matter and I have sought not to overstate my conclusions in this regard. In my Original Report, I observed that, given the guidance given to police officers on charging,<sup>1</sup> “[i]f police officers observe a change in what counts in practice as a ‘realistic prospect of conviction’ due to the removal of MBA guidance then they might respond by reducing referrals of more complex and difficult case” [Original Report, 26]. I still consider this to be a logical possibility (and have been instructed that this is a matter which has been addressed by factual evidence from other witnesses on behalf of EAW).
9. Otherwise, as I indicate above, Ms Ashton does not argue that the trends in the charging of rape cases are inconsistent with a change in CPS practise toward the charging of rape following Greg McGill’s RASSO roadshows and the removal of references to the merits-based approach [‘MBA’] in CPS training courses and guidance. Rather she argues that given the “numerous events which occurred over the period in question... it is not possible to conclude the impact of any one event” [Ashton Report, 46] and that “the picture is significantly more complex” than just the removal of references to the MBA [Ashton Report, 4].
10. Ms Ashton and I are in complete agreement over the difficulty of making causal statements of the impact of the roadshows and the removal of references to the MBA. As Ms Ashton notes in her report, I explicitly note the difficulty of making causal conclusions at a number of points (see Ashton Report [7], [8], [40], [45], [46]).
11. However, the question I was asked to consider was “whether the available evidence is consistent with a change in Crown Prosecution Service [‘CPS’] practice”. I found that it was. I was also asked to consider whether the available evidence was consistent with the explanations that had (at that point) been put forward by the CPS, and concluded that they could not fully account for the observed trends.

### **Clarifications on any points of apparent disagreement**

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

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<sup>1</sup> Charging (The Director's Guidance) 2013 - fifth edition, May 2013 (revised arrangements), para 8.

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

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

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

**Figure 1. Excerpt from CPS Briefing Note on 15<sup>th</sup> July 2019**

**Fall in cases**

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

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

**Figure 2. CPS Explanation in VAWG Report 2018/19**

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

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

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

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

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

13. At [10], Ms Ashton suggests that my report does not take into account all relevant events over the period: “At paragraph 6 of her statement, Professor Adams identifies four key events over the observed time period. However, there were many more events over this period which may have impacted the data (see full list at paragraph 20).” As to that point:
  - a. First, the list that I give at [6] of my original report is simply the list of events that relate to the CPS change in practise toward the charging of rape cases. These were the events that I was instructed to consider.
  - b. The list of additional factors that I considered in my report were those explicitly mentioned in the CPS Briefing Note and VAWG Report 2018/19.
  - c. In my report, I also included an explicit discussion of the change in disclosure practise ([37]-[41]) and explicitly stated that “The evidence I have outlined ... indicates that there are other potentially relevant events [in addition to those explicitly highlighted by the CPS] relating to the significant fall in rates and volumes observed” [42]. Indeed, Ms Ashton directly quotes this passage in her own report.
  
14. Ms Ashton argues that the CPS’ quarterly presentation of the data allows “data trends to be more easily identifiable and allow[s them] to more accurately map multiple events across the timeline” [Ashton Statement, 18]. She goes on to present the data as a centred moving average trend that smooths out short-term fluctuations in the data.
  - a. Ms Ashton does not identify any specific trends that are obscured by my presentation of the data.
  - b. I focused on annual data in my reports as this was the form in which the public VAWG statistics are presented and I did not have data from 2018/19 in a less aggregated format. While I had access to data at the monthly level following the Freedom of Information Request by Ms Rachel Kryz on 21<sup>st</sup> June 2019 [‘Kryz FOI Request’], I did not focus on this data in my report given it: a) showed the same trends as the annual data but in a less transparent manner given seasonal trends and b) was not available for 2018/19.

- c. Nonetheless, in Figure 6 of my initial report, I used the monthly data to show that the data I had access to “suggests that the increase in the NFA rate may have started to increase in March 2018 but it [was] difficult to establish this without further [granular] data into 2018/19” [Original Report, 29]. Ms Ashton has access to more granular quarterly data through to the end of 2018/19. She finds support for my hypothesis that the NFA rate appeared to increase in 2017/18, stating that the NFA rate starts to increase “part way through 2017/18” [Ashton Statement, 44].
- d. At [19] of her statement, Ms Ashton describes her use of the centred moving average methodology. Intuitively this method involves taking an average of the data values before and after an event. While it is true that this can “help to determine the movement of the trend” [Ashton Statement, 19], it is more controversial and not-robust to argue that it helps “to visualise change when it actually happens”. Indeed, as Ms Ashton advises in Annex 1, smoothing methods can actually complicate identifying the timing of changes in trends: “trends may appear to start 2 quarters earlier because of this methodology” [Ashton Statement, Annex 1]. This is important to bear in mind given the interest in changes in charging rates over a short window of time.

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

- a. Events Pre-2013: Public Services Spending Review 2010; Operation Yew Tree (October 2012).<sup>2</sup>
- b. Events in 2017: CPS Admin Triage Implementation; changes made to pre-charge bail; CMS outstanding case checks.
- c. Ms Ashton does not explain the relevance of the events occurring before 2013 for understanding the most recent falls in the volume of charging decisions or the charge rate of rape-flagged cases. She simply notes that pre-charge receipts “continue[d] to decline after the implementation of the 2010 Spending Review” but this decline “appeared to curtail around October 2012 with the beginning of... Operation Yew Tree” [Ashton Statement, 24-27]. She does not provide any further discussion of why these further matters are relevant for understanding recent trends.
- d. Ms Ashton discusses the CPS Admin Triage Implementation and changes made to pre-charge bail in the context of the decline in pre-charge volumes [Ashton Report, 30-33]. However, she provides no explanation for why these events might be relevant for the fall in the charging rate and the rise in the rate of NFA decisions.
- e. Ms Ashton discusses changes to the CPS case management system made in June 2017 in which reminders were sent to the police where “a response had not been received to an action plan set by the prosecutor” [Ashton Statement, 42]. She suggests that this change might have been expected to increase the volume and proportion of administratively finalised decisions. In October 2018, new codes were introduced “to better explain the reason for pre-charge NFA decisions”

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

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

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

**Statement of truth**

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

Signed



5 December 2019

